

**MINUTES OF THE REGULAR MEETING  
OF THE  
POWER AUTHORITY OF THE STATE OF NEW YORK**

**May 22, 2014**

**Table of Contents**

<b><u>Subject</u></b>	<b><u>Page No.</u></b>	<b><u>Exhibit</u></b>
<b>Introduction</b>	<b>2</b>	
<b>1. Adoption of the May 22, 2014 Proposed Meeting Agenda</b>	<b>3</b>	
<b>2. Consent Agenda:</b>	<b>4</b>	
<b>a. Minutes of the Annual Meeting held on March 25, 2014</b>	<b>5</b>	
<b>b. Contracts for the Sale of Western New York Hydropower –         Transmittal to the Governor         Resolution</b>	<b>6</b>	<b>2b-A-1 – 2b-A-3; 2b-B; 2b-C</b>
<b>c. Municipal and Rural Electric Cooperative Economic         Development Program – Allocations to Villages of         Castile and Bergen         Resolution</b>	<b>9</b>	
<b>d. Allocations of Hydropower and Notice of Public Hearing         Resolution</b>	<b>12</b>	<b>2d-A; 2d-A-1; 2d-A-2; 2d-B</b>
<b>e. Awards of Fund Benefits from the Western New York         Economic Development Fund Recommended by the         Western New York Power Proceeds Allocation Board         Resolution</b>	<b>17</b>	<b>2e-A – 2e-E</b>
<b>f. Corporate Policy - Risk Management and Executive Risk         Management Committee Charter         Resolution</b>	<b>22</b>	<b>2f-A-1; 2f-A-2; 2f-B-1; 2f-B-2</b>
<b>g. Committee Appointments         Resolution</b>	<b>24</b>	
<b>h. Procurement (Services) Contract – Coopers Corners Shunt         Reactor Project Capital Expenditure Authorization         Request and Contract Award         Resolution</b>	<b>25</b>	
<b>i. Procurement (Services) Contract – Niagara Switchyard –         Transmission Life Extension and Modernization         Program – Capital Expenditure Authorization Request         and Contract Award         Resolution</b>	<b>28</b>	

<b><u>Subject</u></b>	<b><u>Page No.</u></b>	<b><u>Exhibit</u></b>
j. Procurement (Services) Contract –Niagara, St. Lawrence and Blenheim-Gilboa Pumped Storage Projects – Visitors’ Centers Upgrade – Capital Expenditure Authorization Requests and Contract Award Resolution	31	
k. STL-CEC Microwave System Upgrade Project – Capital Expenditure Authorization Request – Increase in Authorized Funding – Resolution	34	
l. Procurement (Services) Contracts – Business Units and Facilities – Awards, Extensions and/or Additional Funding Resolution	36	21-A; 21-B
<b>Discussion Agenda:</b>	<b>43</b>	
3. Q&A on Report from the President and Chief Executive Officer	43	3-A; 3-B
4. Contribution of Funds to the State Treasury Resolution	44	
5. Election of Executive Vice President and Chief Financial Officer Resolution	47	
6. Retirement Resolutions Resolution	48	
7. Next Meeting	56	
8. Closing	57	

Minutes of the Regular Meeting of the Power Authority of the State of New York held via videoconference at the following participating locations at approximately 9:19 a.m.

- 1) New York Power Authority, 123 Main Street, White Plains, NY
- 2) Metschl & Associates - AKA EyeNetworks, 295 Main Street, Ellicott Square Building Suite 1098, Buffalo, NY
- 3) VC Rooms, 247 West Fayette Ave., Suite 202, Syracuse, NY
- 4) Eyenetwork@Alliance Court Reporting, 183 E Main Street, Suite 1500, Rochester, NY

**Members of the Board present were:**

John R. Koelmel, Chairman  
Joanne M. Mahoney, Vice Chair  
Eugene Nicandri, Trustee  
R. Wayne LeChase, Trustee

---

Gil Quiniones	President and Chief Executive Officer
Edward Welz	Chief Operating Officer
Donald Russak	Executive Vice President and Chief Financial Officer
Arthur Cambouris	Acting Executive Vice President and General Counsel
Robert Lurie	Senior Vice President – Strategic Planning
James Pasquale	Senior Vice President – Economic Development & Energy Efficiency
Joan Tursi	Senior Vice President – Corporate Support Services
Jill Anderson	Vice President – Public & Regulatory Affairs and Chief of Staff
Joseph Leary	Vice President – Community & Government Relations
Karen Delince	Corporate Secretary
Brian McElroy	Treasurer
Michael Saltzman	Director Communications & Media Relations
Peter Prunty	Director Infrastructure – Infrastructure
Gregory Jablonsky	Manager Network Services – Infrastructure
Silvia Louie	Senior Project Manager – Executive Office, Public and Regulatory Affairs/Chief of Staff
Glenn Martinez	Senior Network Analyst – Infrastructure
Lorna Johnson	Associate Corporate Secretary
Sheila Baughman	Assistant Corporate Secretary
Joseph Rivera	Contractor – Infrastructure

---

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

**Introduction**

*Chairman Koelmel welcomed the Trustees and staff members who were present at the meeting. He said 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 May 22, 2014 Proposed Meeting Agenda**

Upon motion made and seconded, the meeting Agenda was adopted.

**Conflicts of Interest**

*Vice Chair Mahoney declared the following conflicts and indicated that she would not be participating in the discussion or voting on the matters:*

*– Op-Tech Environmental Services, Inc. and Arcadis of New York, Inc. (Item 2l)*

*Trustee LeChase stated for the record that his company does business with some of the companies either as subcontractors, suppliers or, in one instance, owner. However, since he has no personal dealings with them, he believes no conflicts of interest exist that would prevent him from voting on those items.*

*Chairman Koelmel and Trustee Nicandri declared no conflicts.*

2. **Consent Agenda:**

Upon motion made and seconded, the Consent Agenda was approved.

*Since Vice Chair Mahoney declared conflicts of interest pertaining to Op-Tech Environmental Services, Inc. and Arcadis of New York, Inc. (Item 2l), the Consent Agenda was approved with the exclusion of those firms because the conflicts resulted in a failure to attain the required number of votes necessary for their approval.*

*In response to a question from Trustee Nicandri, Mr. Welz said with respect to item #2k (STL-CEC Microwave System Upgrade Project Capital Expenditure Authorization Request – Increase in Authorized Funding), staff's request for an increase in funding was as a result of increases in cost as well as delays due to weather conditions.*

a. **Approval of the Minutes**

The Minutes of the Annual Meeting held on March 25, 2014 were unanimously adopted.

**b. Contracts for the Sale of Western New York  
Hydropower – Transmittal to the Governor**

The President and Chief Executive Officer submitted the following report:

**“SUMMARY**

The Trustees are requested to: (1) approve proposed final contracts for the sale of Expansion Power (‘EP’) and/or Replacement Power (‘RP’) allocations to the three businesses described in Exhibit ‘2b-B’; and (2) authorize transmittal of the proposed final contracts to the Governor for his review and requested authorization for the Authority to execute the contracts pursuant to Public Authorities Law (‘PAL’) §1009. The three proposed final contracts are attached as Exhibit ‘2b-A-1,’ ‘2b-A-2’ and ‘A-3.’

**BACKGROUND**

Under PAL §1005(13), the Authority may allocate and sell directly or by sale for resale, 250 MW of EP and 445 MW of RP to businesses located within 30 miles of the Niagara Power Project, provided that the amount of EP allocated to businesses in Chautauqua County on January 1, 1987 shall continue to be allocated in such county.

The contracts before the Board pertain to the sale of EP and/or RP to three businesses as described in Exhibit ‘2b-B.’ The contracts would provide for the sale by the Authority of the allocations to each business under a direct sale arrangement for the approved term of the allocation. Transmission and delivery service would be provided by each company’s local utility, either National Grid or New York State Electric and Gas, in accordance with the respective utilities’ Public Service Commission-filed delivery service tariffs. The following is a summary of some pertinent provisions of the contracts:

- The contracts would provide for the direct billing of all production charges (*i.e.* demand and energy) as well as all New York Independent System Operator, Inc. (‘NYISO’) charges, plus taxes or any other required assessments, as set forth in the Trustee approved Service Tariff WNY-1 (‘ST WNY-1’).
- The contracts include each customer’s agreed-upon commitments with respect to employment, power utilization and capital investment. The Authority would retain the right to reduce or terminate a customer’s allocation if employment, power utilization, or capital investment commitments are not met.
- The contract provides for the sale of additional allocations of EP and/or RP to the customers in appropriate circumstances under the contract by incorporating new allocations into Schedule A of the contract. The Trustees approved this convention in the 2010 long-term extension contract, which simplifies contract administration.
- To accommodate non-payment risk that could result from a direct billing arrangement with the Authority, the contracts include commercially reasonable provisions concerning, among other things, the ability to require deposits in the event of a customer’s failure to make payment for any two monthly bills. This is consistent with recent Authority contracts that incorporate direct billing, including the Authority’s Recharge New York sales contracts.
- The contract requires that the companies perform an energy efficiency audit at least once within five years at the facility receiving the low-cost power to help ensure the hydropower is utilized as effectively as possible.

The Authority has discussed each contract with the relevant business and in each case has received the consent of the business to the proposed contract. Each prospective customer has acknowledged that ST WNY-1 rates will apply to its allocation consistent with all allocations of EP and RP as of July 1, 2013.



As required by PAL §1009, when the Authority has reached agreement with its co-party on such a contract, it is required to transmit the proposed contract to the Governor and other elected officials and hold a public hearing on the proposed 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 contract may be modified, if advisable.

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 may execute the contract.

## DISCUSSION

At their March 21, 2013 meeting, the Trustees authorized the Corporate Secretary to transmit the proposed contract for SiGNa Chemistry, Inc. ('SiGNa') to the Governor and legislative leaders and to schedule a public hearing on the contract, contingent upon the company finding a location for its proposed new facility. Subsequently, SiGNa firmed up plans to construct the facility on Buffalo Avenue in Niagara Falls with manufacturing operations to commence mid-to-late 2014.

At their December 17, 2013 meeting, the Trustees authorized the Corporate Secretary to transmit the proposed contract for Delphi Automotive PLC to the Governor and legislative leaders and to schedule a public hearing on the contract.

At their March 25, 2014 meeting, the Trustees authorized the Corporate Secretary to transmit the proposed contract for Trinity Packaging Corporation to the Governor and legislative leaders and to schedule a public hearing on the contract.

A public hearing for each of the contracts was held on April 10, 2014 at the Niagara Power Project's Power Vista Visitors' Center in Lewiston, New York. There were no oral statements made at the public hearing and no written statements were submitted. The official transcript of the public hearing is attached as Exhibit '2b-C.'

Delphi has notified staff that the Lockport facility where the allocation would be used would be operated by Delphi Automotive Systems, LLC, a wholly-owned subsidiary of Delphi Automotive PLC. The proposed final contract has been updated to reflect this information.

## RECOMMENDATION

The Manager – Business Power Allocations and Compliance recommends that the Trustees approve the proposed contracts for the sale of Replacement Power and/or Expansion Power allocations that are attached as Exhibits '2b-A-1,' '2b-A-2' and '2b-A-3' and authorize the transmittal of the contracts to the Governor for approval.

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 contracts for the sale of (1) Expansion Power (“EP”) and Replacement Power (“RP”) to Delphi Automotive Systems, LLC, (2) RP to SiGNa Chemistry, Inc., and (3) RP to Trinity Packaging Corporation (collectively, the “Contracts”), are in the public interest and, in accordance with Public Authorities Law §1009, should be submitted to the Governor for his review and that copies of the Contracts, along with the record of the public hearing thereon, be forwarded to 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; and be it further**

**RESOLVED, That the Chairman and the Corporate Secretary be authorized and directed to execute such Contracts in the name of, and on behalf of, the Authority if the Contracts are approved by the Governor; and be it further**

**RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency, or his designee, be, and hereby is, authorized, subject to the approval of the form thereof by the Acting Executive Vice President and General Counsel, to negotiate and execute any and all documents necessary or desirable to implement the Contracts with the businesses as set forth in the foregoing report of the President and Chief Executive Officer; 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 Acting Executive Vice President and General Counsel.**

**c. Municipal and Rural Electric Cooperative  
Economic Development Program –  
Allocations to Villages of Castile and Bergen**

The President and Chief Executive Officer submitted the following report:

**“SUMMARY**

The Trustees are requested to approve two allocations, 210 kW and 450 kW, of hydropower under the Municipal and Rural Electric Cooperative Economic Development Program (‘EDP’) to the Village of Castile and the Village of Bergen, respectively.

**BACKGROUND**

The 1991 amendment to the power sales agreement between the Authority and the Municipal and Rural Electric Cooperative Systems set aside a block of 54 MW from the 752 MW of hydropower allocated to the systems for economic development in the systems’ service territories. The total allocation was increased to 764.8 MW as a result of additional power resulting from the Niagara Project upgrade.

Power from this block can be allocated to individual systems to meet the increased electric load resulting from eligible new or expanding businesses in their service area. Recommended allocations under the EDP are made using guidelines that were approved by the Trustees on September 23, 2008.

As of January 28, 2014, 31.3 MW have been allocated. The Villages of Castile and Bergen have submitted applications for power under the Program for consideration by the Trustees.

**DISCUSSION**

**Village of Castile**

An application has been submitted by the Village of Castile to the Authority on behalf of Upstate Door Inc. Upstate Door, Inc. is dedicated to offering uniquely crafted doors and woodwork in the region. The company was founded in 1995 and manufactures custom hardwood doors. The company acquired Sun Dor Classics in 2011, relocating the company from Kansas to Castile, New York. It is a fast growing enterprise and the company plans to expand the manufacturing capacity in Castile while retaining its other factory in Warsaw, NY. The employees of Upstate Door produce custom-made high-quality hardwood doors in their Warsaw and Castile, NY facilities.

The expansion at the Castile factory will provide increased capacity needed for meeting its rapidly growing demand. The goal of the 30,000-ft. expansion is to increase the facility and equipment to match the output capacity of the Warsaw factory which averages 60,000 kWh and 320 kW. The expansion is estimated to add an additional 22 new full-time jobs to the existing ten full-time jobs, making the total job commitment at Castile 32 jobs. The 54 jobs at Warsaw will remain in Warsaw and will not be relocated due to this expansion. The expanded facility in Castile is expected to be fully operational by the second quarter of 2018.

The expansion is expected to include a capital expenditure of approximately \$2.2 million as well as add approximately 320 kW of new incremental load to the Village of Castile’s service territory. The current base load is approximately 267 kW, making this a total load commitment of 587 kW.

NYPA’s EDP guidelines classify this as an eligible business expansion because it is categorized as a manufacturer whose purpose is to construct products for residential and commercial application. Under the program, the first 100 kW allocated will be 100 % hydropower and any additional kW at 50% hydropower and 50% incremental power, making this EDP allocation award equal to 210 kW.

It is recommended that the Trustees approve an allocation of 210 kW of Municipal and Rural Electric Cooperative Economic Development Power to the Village of Castile on behalf of Upstate Door, Inc. The EDP

guidelines require that a minimum of 50 jobs per MW of allocated hydropower should be attained; this allocation exceeds the aforementioned guidelines.

#### Village of Bergen

An application has been submitted by the Village of Bergen to the Authority on behalf of Liberty Pumps. Headquartered in Bergen, NY, Liberty Pumps was founded in 1965 and is a leading manufacturer of pumping products for ground water and wastewater removal in residential and commercial applications. As a privately held and family-owned company, it has been an important employer in the Bergen area, employing a significant amount of people in this small community.

Liberty Pumps is experiencing significant business growth and requires additional space to expand its offerings. Liberty Pumps will be expanding within the Village of Bergen and has purchased 3.75 acres of land adjacent to its existing property. The land will be used for production, warehouse, research and development, testing, sales, marketing and presentation.

The expansion is estimated to add 26 new full-time jobs to the existing 134 full-time jobs, making the total job commitment in Bergen 160 jobs. The expansion will also add approximately 800 kW of new incremental load to the Village of Bergen's service territory (with the current base load of approximately 531 kW) making the Village's new total load commitment 1,331 kW.

The expansion is expected to include a capital expenditure of approximately \$7.5 million. Liberty Pumps has accepted local government support in the form of property tax abatement and other exemptions. In March 2014, the company was approved for \$1,334,927 in financial assistance from the Genesee County Economic Development Center ('GCEDC').

NYPA's EDP guidelines classify this as an eligible business expansion because it is categorized as a manufacturer whose purpose is to construct products for residential and commercial application. Under the program, the first 100 kW allocated will be 100 % hydropower and any additional kW at 50% hydropower and 50% incremental power, making this EDP allocation award equal to 450 kW.

It is recommended that the Trustees approve an allocation of 450 kW of Municipal and Rural Electric Cooperative Economic Development power to the Village of Bergen on behalf of Liberty Pumps. The EDP guidelines require that a minimum of 50 jobs per MW of allocated hydropower should be attained; this allocation exceeds the aforementioned guidelines.

#### RECOMMENDATION

The Vice President of Marketing recommends that the Trustees approve the allocations of 210 kW and 450 kW, respectively, under the Municipal and Rural Electric Cooperative Economic Development Program to the Village of Castile and the Village of Bergen, in accordance with the above discussion.

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 allocations of hydropower to the Village of Castile and the Village of Bergen under the Municipal and Rural Electric Cooperative Economic Development Program are hereby approved as set forth in the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the Senior Vice President of Economic Development and Energy Efficiency or his designee be, and hereby is, authorized to execute any and all documents necessary or desirable to effectuate this allocation, subject to the approval of the form thereof by the Acting Executive Vice President and General Counsel; 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 Acting Executive Vice President and General Counsel.**

**d. Allocations of Hydropower and Notice of Public Hearing**

The President and Chief Executive Officer submitted the following report:

**“SUMMARY**

The Trustees are requested to approve a 500 kilowatt (‘kW’) allocation of available Expansion Power (‘EP’) to Captive Plastics, LLC (dba Berry Plastics) in Dunkirk (Chautauqua County), and a 100 kW allocation of available Replacement Power (‘RP’) to Durez Corporation in Niagara Falls (Niagara County), as further described herein and in Exhibits ‘2d-A,’ ‘2d-A-1’ and ‘2d-A-2.’ These allocations will support capital expansion of \$18.6 million and the creation of 16 jobs in Western New York (‘WNY’). The Trustees are also requested to authorize a public hearing pursuant to Public Authorities Law (‘PAL’) §1009 on the proposed direct sale contracts, the current form of which is attached as Exhibit ‘2d-B.’

**BACKGROUND**

Under PAL §1005(13), the Authority may contract to allocate 250 megawatts (‘MW’) of firm hydroelectric power as EP and up to 445 MW of 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 must be 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 garner support for the projects to be recommended for allocations of Authority hydropower. Discussions routinely occur with National Grid, Empire State Development Corporation (‘ESD’), the Buffalo Niagara Enterprise and Niagara County Center for Economic Development and Erie County Industrial Development Agency (‘IDA’) to coordinate other economic development incentives that may help bring projects to New York State. Staff confers with these entities to help maximize the value of hydropower to improve the economy of WNY and the State of New York. Each organization has expressed support for today’s recommended allocations.

**DISCUSSION**

At this time, 9,115 kW of unallocated EP and 32,463 kW of unallocated RP is available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).

**Captive Plastics, LLC (dba Berry Plastics)**

Captive Plastics, LLC (dba Berry Plastics) , located in Dunkirk (Chautauqua County), submitted an application for hydropower requesting 920 kW in connection with an expansion project to enlarge its existing facility by 20,000 square-feet in order to accommodate increased bottle production for a potential new, long-term contract.

Berry Plastics Group, Inc., the parent of Captive Plastics, LLC, is a leading global manufacturer and marketer of plastic consumer packaging and engineered materials. Headquartered in Evansville, Indiana, Berry Plastics serves more than 13,000 customers ranging from large multinational corporations to small local businesses. Its products include open top and closed top packaging, plastic containers, polyethylene-based plastic films, industrial tapes, medical specialties, flexible packaging, heat-shrinkable coatings, specialty laminates and bulk bags.

Captive Plastics' Dunkirk facility is one of three locations in New York State (the other facilities are located in Syracuse and Macedon), has been in operation for 12 years and was acquired by Berry Plastics five years ago.

Captive Plastics is currently in competition with two other out-of-state bottling companies looking to secure a major new, long-term contract to produce polyethylene blend food bottles. Production would increase by 186 million bottles annually. The expansion includes a capital investment of \$17.8 million and the creation of 10 new, well-paying jobs.

Captive Plastics was awarded a 1,296 kW retention allocation under Recharge New York ('RNY') in December 2013, with a commitment to create 15 new jobs above a base employment of 56 for a total job commitment of 71. The 10 new jobs related to this expansion project would be in addition to the 71 jobs committed to under the RNY program.

The company's expansion plan (including purchasing new machinery and leasing a 40,000-square-foot warehouse building across the street) would begin in June 2014 with full-scale production beginning March 2015.

Captive Plastics has indicated it will experience a reduction in production due to the recent announcement by ConAgra, one of its customers, to close two Chautauqua County plants. However, if Captive Plastics is able to secure the subject new contract with the help of a hydropower allocation, the new production would not only offset the loss of business from ConAgra, but would result in higher production levels at the facility.

The job creation ratio for the proposed allocation of 500 kW is 20 new jobs per MW. This ratio is below the historic average of 27 new jobs per MW based on allocations made over the past four years. The total project investment of \$17.8 million would result in a capital investment ratio of \$35.6 million per MW. This ratio is above the four-year historic average of \$24.9 million per MW.

Additional state support includes \$979,003 in Excelsior Tax Credits from ESD. Captive Plastics is also in discussions with the Chautauqua County IDA for additional incentives.

Staff recommends that an allocation of 500 kW of EP be awarded to Captive Plastics in order to help secure an investment of \$17.8 million and creation of 10 new jobs at its facility in Chautauqua County, as detailed in Exhibits '2d-A' and '2d-A-1.'

#### Durez Corporation

Durez Corporation ('Durez'), located on Packard Road in Niagara Falls, submitted an application for hydropower requesting 150 kW in connection with a proposed expansion project to repurpose existing unused production equipment at its facility in order to begin production of a new product.

Durez (a subsidiary of Sumitomo Bakelite Co., Ltd.) is the worldwide leader in engineering thermoset resins and molding compounds. It has nearly a 100-year history in the thermoset industry as one of the original licensees of phenolic technology. Durez has thermoset material production facilities in North America (Ontario, Connecticut, California, Ohio and Niagara Falls) Europe and Asia, serving a wide range of industries, including automotive, aerospace and electrical systems.

The Niagara Falls facility has been operating under various owners for nearly 80 years. Sumitomo acquired Durez from Occidental Chemical in 2000. The facility produces phenolic resin, which primarily services the coatings, abrasives, automotive and aerospace markets.

The proposed facility expansion at Niagara Falls is in direct competition with the Durez facility in Kenton, Ohio, which also produces resin. Durez anticipates entering into this new market would increase total sales from the Niagara Falls facility by 30%. The company believes that a hydropower allocation would help secure this expansion at the Niagara Falls facility enabling the creation of 6 new, well-paying jobs and solidifying the current employment level of 56.

The expansion includes a total capital investment of \$800,000, of which the majority – \$710,000 – is dedicated to repurposing and restarting unused production equipment. An agitator and transfer pumps would be purchased and installed as part of the project.

The job creation ratio for the proposed allocation of 100 kW is 60 new jobs per MW. This ratio is above the historic average of 27 new jobs per MW based on allocations made over the past four years. The total project investment of \$800,000 would result in a capital investment ratio of \$8 million per MW. This ratio is below the four-year historic average of \$24.9 million per MW.

Durez also indicated that if its expansion proves successful, it would help demonstrate to the parent company that New York State is a competitive place to do business, increasing the potential for future expansion and investment in the Niagara Falls facility. The company has also submitted an application for RNY Power for its existing load. The application has yet to be reviewed.

Staff recommends that an allocation of 100 kW of RP be awarded to Durez in order to help secure an investment of \$800,000 and creation of six new jobs at its facility in Niagara County, as detailed in Exhibits ‘2d-A’ and ‘2d-A-2.’

#### Contract Information

The Authority is in the process of discussing a proposed hydropower sales contract with Captive Plastics and Durez, respectively, and anticipates receiving customer approval of a contract substantially similar to the form attached as Exhibit ‘2d-B.’ Accordingly, the Trustees are requested to authorize a public hearing pursuant to PAL §1009 on the contract form attached as Exhibit ‘2d-B.’

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 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 contract may be modified, if advisable. 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 may execute the contract.

The general form of the proposed contract is consistent with recently approved contracts for the sale of EP and RP. Some pertinent provisions of the proposed form of contract include the provision for direct billing of all production charges (i.e., demand and energy) as well as all New York Independent System Operator, Inc. (‘NYISO’) charges, plus taxes or any other required assessments, as set forth in the Authority’s Service Tariff No. WNY-1. The proposed form of contract would also include (i) commercially reasonable provisions relating to financial security to reflect a direct billing arrangement between the Authority and its EP/RP customers, and (ii) provisions authorizing data transfers and addressing other utility-driven requirements which are necessary for efficient program implementation. Such provisions have been used in other Authority contract forms, including the Authority’s Recharge New York Power Program contracts.

As is typical, the provision of electric service for these hydropower allocations is subject to enforceable employment and usage commitments. The standard contract form includes annual job reporting requirements and a job compliance threshold of 90%. Should Captive Plastics’ or Durez’s actual jobs reported fall below the compliance threshold, the Authority has the right to reduce the allocation on a pro-rata basis.

The recommended allocation would be sold to the company pursuant to the Authority’s Service Tariff No. WNY-1, which applies to all allocations of EP and RP. Transmission and delivery service would be provided by National Grid in accordance with its Public Service Commission-filed service tariffs.



RECOMMENDATION

The Manager – Business Power Allocations and Compliance recommends that the Trustees approve the allocation of 500 kW of EP to Captive Plastics, LLC (dba Berry Plastics), and 100 kW of RP to Durez Corporation, as detailed in Exhibits ‘2d-A,’ ‘2d-A-1’ and ‘2d-A-2.’

The Trustees are also requested to authorize the Corporate Secretary to convene a public hearing on the form of the proposed contract finally negotiated with Captive Plastics and Durez, respectively, the current form of which is attached as Exhibit ‘2d-B,’ and transmit copies of the proposed form of the contracts to the Governor and legislative leaders pursuant to PAL §1009.

Staff will report to the Board of Trustees on the public hearing and the proposed contracts at a later time and make additional recommendations regarding the proposed contracts.

For the reasons stated, I recommend 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 allocations of 500 kilowatts (‘kW’) of Authority hydropower (Expansion Power) to Captive Plastics, LLC (dba Berry Plastics) and 100 kW of Authority hydropower (Replacement Power) to Durez Corporation as detailed in Exhibit “2d-A,” “2d-A-1” and “2d-A-2” be, and hereby is, approved on the terms set forth in the foregoing report of the President and Chief Executive Officer; 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 direct sale contracts for the sale of hydropower and energy finally negotiated with Captive Plastics, LLC and Durez Corporation (the ‘Contracts’), the current form of which is attached as Exhibit “2d-B,” subject to rates previously approved by the Trustees; and be it further**

**RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit copies of the proposed Contracts 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 Corporate Secretary be, and hereby is, authorized to arrange for the publication of a notice of public hearing in six newspapers throughout the State, in accordance with the provisions of 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**

**May 22, 2014**

**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 Acting Executive Vice President and General Counsel.**

**e. Awards of Fund Benefits from the Western New York Economic Development Fund Recommended by the Western New York Power Proceeds Allocation Board**

The President and Chief Executive Officer submitted the following report:

**“SUMMARY**

The Trustees are requested to accept the recommendations of the Western New York Power Proceeds Allocation Board (‘WNYPPAB’) and approve the awards of Fund Benefits from the Western New York Economic Development Fund to Innomotive Solutions Group LLC and Nexus Natural Gas LLC, the eligible applicants listed in Exhibit ‘2e-A,’ and authorize the other actions described herein with respect to such applicants and awards.

The Trustees are also requested to authorize the withdrawal of the award listed in Exhibit ‘2e-B’ since the applicant has declined the award and withdrawn its application.

For informational purposes, Exhibit ‘2e-C’ lists: (1) projects the WNYPPAB has determined are not being recommended for an award of Fund Benefits; (2) applications that have been withdrawn by the applicant; (3) applications that were deferred for future consideration; (4) an application which failed to receive an affirmative vote for a recommendation of Fund Benefits due to lack of a quorum resulting from the recusal of certain WNYPPAB members; and (5) a project that has been preliminarily recommended for an award of Fund Benefits but which is not being forwarded to the Trustees at this time pending completion of legal requirements, including review under the State Environmental Quality Review Act (‘SEQRA’).

**BACKGROUND**

**1. Western New York Power Proceeds Allocation Act**

On March 30, 2012, Governor Cuomo signed into law the Western New York Power Proceeds Allocation Act (the ‘Act’). The Act provides for the creation, by the Authority, of the Western New York Economic Development Fund. The Fund consists of the aggregate excess of revenues received by the Authority from the sale of Expansion Power (‘EP’) and Replacement Power (‘RP’) produced at the Niagara Power Project that was sold in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis to an eligible EP or RP customer under the applicable tariff or contract.

Under the Act, an ‘eligible applicant’ is a private business, including a not-for-profit corporation. ‘Eligible projects’ is defined to mean ‘economic development projects by eligible applicants that are physically located within the State of New York within a thirty-mile radius of the Niagara power project located in Lewiston, New York that will support the growth of business in the state and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments.’ Eligible projects include, for example, capital investments in buildings, equipment, and associated infrastructure owned by an eligible applicant for fund benefits; transportation projects under state or federally approved plans; the acquisition of land needed for infrastructure; research and development where the results of such research and development will directly benefit New York state; support for tourism and marketing and advertising efforts for western New York state tourism and business; and energy-related projects.

Eligible projects do not include public interest advertising or advocacy; lobbying; the support or opposition of any candidate for public office; the support or opposition to any public issue; legal fees related to litigation of any kind; expenses related to administrative proceedings before state or local agencies; or retail businesses as defined by the board, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

Fund Benefits have been provided to successful eligible applicants in the form of grants. It is anticipated that Fund Benefits will be disbursed as reimbursement for expenses incurred by an Eligible Applicant for an Eligible Project.

At least 15% percent of Fund Benefits must be dedicated to eligible projects which are 'energy-related projects, programs and services,' which is 'energy efficiency projects and services, clean energy technology projects and services, and high performance and sustainable building programs and services, and the construction, installation and/or operation of facilities or equipment done in connection with any such projects, programs or services.'

Allocations of Fund Benefits may only be made on the basis of moneys that have been deposited in the Fund. No award may encumber future funds that have been received but not deposited in the Fund.

## 2. Western New York Power Proceeds Allocation Board

Under the Act, the WNYPPAB is charged with soliciting applications for Fund Benefits, reviewing applications, making eligibility determinations, and evaluating the merits of applications for Fund Benefits. WNYPPAB uses the criteria applicable to EP, RP and PP, and for revitalization of industry as provided in Public Authorities Law §1005. Additionally, WNYPPAB is authorized to consider the extent to which an award of Fund Benefits is consistent with the strategies and priorities of the Regional Economic Development Council having responsibility for the region in which an eligible project is proposed. A copy of these criteria (collectively, 'Program Criteria'), adapted from WNYPPAB's 'Procedures for the Review of Applications for Fund Benefits,' is attached as Exhibit '2e-D.'

The WNYPPAB met on March 4, 2013 and, in accordance with the Act, adopted by-laws, operating procedures, guidelines related to the application, and a form of application. At that time, WNYPPAB defined 'retail business' to mean a business that is primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain goods or services.

WNYPPAB also designated the Western New York Regional Director of Empire State Development Corporation ('ESD') to be its designee ('Designee') to act on its behalf on all administrative matters. Among other things, the Designee was authorized to preform analyses of the applications for Fund Benefits and make recommendations to WNYPPAB on the applications.

Under the Act, a recommendation for Fund Benefits by WNYPPAB is a prerequisite to an award of Fund Benefits by the Authority, and the Act authorizes the Authority to award Fund Benefits to an applicant upon a recommendation of the WNYPPAB. Upon a showing of good cause, the Authority has discretion as to whether to adopt the WNYPPAB's recommendation, or to award benefits in a different amount or on different terms and conditions than proposed by the WNYPPAB. In addition, the Authority is authorized to include within the contract covering an award ('Award Contract') such other terms and conditions the Authority deems appropriate.

## 3. Application Process

In an effort to provide for the efficient review of applications and disbursement of Fund Benefits, the WNYPPAB established a schedule of dates through the end of 2014 on which the WNYPPAB would meet to consider applications. At this time, applications are being accepted on a rolling basis. In addition, the application process was promoted through a media release and with assistance from state and local entities, including the Western New York and Finger Lakes Regional Economic Development Councils, the Empire State Development Corporation and other local and regional economic development organizations within the State. A webpage was created that is hosted on [WWW.NYPA.GOV/WNYPPAB](http://WWW.NYPA.GOV/WNYPPAB) with application instructions, a link to the approved application form and other program details including a contact phone number and email address staffed by the Western New York Empire State Development regional office.

## DISCUSSION

For this sixth round of WNYPPAB action, the WNYPPAB considered 12 applications seeking over \$8.1 million in Fund Benefits. WNYPPAB's staff analyzed the applications and made recommendations to WNYPPAB concerning each of the applications based on eligibility requirements and Program Criteria. Copies of the recommendations from staff to the WNYPPAB regarding recommended awards of Fund Benefits can be found in Exhibit '2e-E.'

At its April 28, 2014 meeting, the WNYPPAB took the following actions on applications for Fund Benefits:

1. Recommendations for Awards of Fund Benefits

The WNYPPAB is recommending to the Trustees that the applications listed on Exhibit '2e-A' receive an award of Fund Benefits in the amounts indicated. The applicants have indicated that the proposed projects would directly create or retain approximately 28 jobs in Western New York. The total to be expended on the proposed projects is expected to exceed \$8 million. These two recommendations are presently before the Trustees for consideration.

Given the nascent stage of the proposed projects, it was not possible at this time to identify all of the terms and conditions that would be applicable to each award and memorialized in an Award Contract. With the Trustees' authorization, it is anticipated that the Authority, in consultation with ESD, will negotiate final terms and conditions with successful applicants after receipt of more detailed information concerning the projects and proposed schedules. In addition to appropriate business terms, staff anticipates that Award Contracts will contain provisions for periodic audits of the successful applicant for the purpose of determining contract and program compliance and, where appropriate, terms providing for the partial or complete recapture of Fund Benefits disbursements if the applicant fails to maintain agreed-upon commitments, relating to, among other things, employment levels and/or project element due dates.

2. Recommendation for Withdrawal of Award of Fund Benefits

On September 24, 2013, the Trustees approved an award of Fund Benefits to the applicant listed on Exhibit '2e-B' in the amount indicated therein. The applicant has informed WNYPPAB staff of its decision to decline the award and has withdrawn its application. Accordingly, the Trustees are requested to withdraw this award so that the amount of the award can be restored to the Fund for accounting purposes.

3. Other WNYPPAB Determinations

The following information is being provided to the Trustees for their information only. No action by the Trustees is required with respect to these matters.

Exhibit '2e-C' lists: (1) projects the WNYPPAB has determined are not being recommended for an award of Fund Benefits; (2) applications that have been withdrawn by the applicant; (3) applications that were deferred for future consideration; (4) one application which failed to receive an affirmative vote for a recommendation of Fund Benefits due to lack of a quorum resulting from the recusal of certain WNYPPAB members; and (5) a project that has been preliminarily recommended for an award of Fund Benefits but which is not being forwarded to the Trustees at this time pending completion of legal requirements, including review under SEQRA.

RECOMMENDATION

The Vice President, Marketing recommends that:

- (1) the Trustees accept the recommendations of the Western New York Power Proceeds Allocation Board and make awards of Fund Benefits to the applicants and in the amounts identified in Exhibit '2e-A,' conditioned upon an agreement to be negotiated with each applicant on the final terms and conditions that would be applicable to each award to be contained in an Award Contract approved by the President and Chief Executive Officer and approved by the Acting Executive Vice President and General Counsel as to form;
- (2) the Senior Vice President – Economic Development and Energy Efficiency, or his designee(s), in consultation with Empire State Development Corporation, be authorized to negotiate with the applicants concerning such final terms and conditions that will be applicable to the awards;

- (3) the Senior Vice President – Economic Development and Energy Efficiency, or his designee, be authorized to execute on behalf of the Authority Award Contracts for the award listed on Exhibit ‘2e-A’ subject to the foregoing conditions; and
- (4) the Trustees authorize the withdrawal of the award of Fund Benefits to the applicant listed on Exhibit ‘2e-B’ in the amount indicated therein.

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.

**WHEREAS, the Western New York Power Proceeds Allocation Board (“WNYPPAB”) has recommended that the Authority make awards of Fund Benefits from the Western New York Economic Development Fund (“Fund”) to the eligible applicants listed in Exhibit “2e-A”;**

**NOW THEREFORE BE IT RESOLVED, That the Authority hereby accepts the recommendation of the WNYPPAB and authorizes the awards of Fund Benefits to the applicants and in the amounts listed in Exhibit “2e-A,” conditioned upon an agreement between the Authority and each applicant on the final terms and conditions that would be applicable to each award and set forth in a written award contract (“Award Contract”) between the Authority and each applicant approved by the President and Chief Executive Officer and approved by the Acting Executive Vice President and General Counsel as to form; and be it further**

**RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency, or his designee, in consultation with the Empire State Development Corporation, is authorized to negotiate with successful applicants concerning such final terms and conditions that will be applicable to the awards; and be it further**

**RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency, or his designee, is authorized to execute on behalf of the Authority Award Contracts for the awards listed on Exhibit “2e-A” subject to the foregoing conditions; and be it further**

**RESOLVED, That the Authority hereby authorizes the withdrawal of the award of Fund Benefits to the applicant listed on Exhibit “2e-B” in the amount indicated therein; 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 Acting Executive Vice President and General Counsel.**

**f. Corporate Policy - Risk Management and Executive Risk Management Committee Charter**

The President and Chief Executive Officer submitted the following report:

**“SUMMARY**

The Trustees are requested to approve the 2014 Corporate Policy – Risk Management (the ‘Policy’) and the 2014 Executive Risk Management Committee Charter (the ‘Charter’), which are attached hereto as Exhibits ‘2f-A-1’ and ‘2f-B-1.’

In accordance with leading industry practice, the Trustees' approval of the governance materials is intended as an affirmation of the philosophy, framework and delegation of authority for the Authority's risk management activities, including those related to energy commodity and credit risk.

The members of the Executive Risk Management Committee (‘ERMC’) reviewed the proposed Policy and Charter and recommend their approval.

**BACKGROUND**

At their meeting of March 21, 2013, the Trustees approved the 2013 Policy and Charter that are to be updated and submitted for Trustee approval annually.

**DISCUSSION**

The Policy and Charter establish the Authority’s governance related to the enterprise view of risk management. The Policy and Charter align risk management governance materials with existing Authority governance documents including the Board of Trustees Charter of the Audit Committee.

Proposed changes include certain points of clarification including an update to the ‘2.0 Definitions’ section that better represents terms that apply to the Authority’s present risk management practice. Also proposed is the removal of the paragraph in section ‘6.2.1 - Delegation of Authority’ as no specific delegation is granted in the paragraph nor is any delegation deemed necessary. These changes are reflected in the redline versions as Exhibits ‘2f-A-2’ and ‘2f-B-2,’ respectively.

**RECOMMENDATION**

The Senior Vice President – Chief Risk Officer recommends that the Trustees approve the 2014 Corporate Policy – Risk Management and the 2014 Executive Risk Management Committee Charter as reflected in Exhibits ‘2f-A-1’ and ‘2f-B-1’ and discussed above.

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 Corporate Policy – Risk Management (the “Policy”) and the related Executive Risk Management Committee Charter (the “Charter”) establishing the philosophy, framework and delegation of authority necessary to govern the activities of the Authority related to risk management activities including the program for Energy Commodity and Credit Risk Management is hereby adopted in the form attached as Exhibits “2f-A” and “2f-B”; and be it further**



**RESOLVED, That the Executive Risk Management Committee consisting of five members including the Chief Financial Officer, who serves as Chair, plus four additional members appointed by the President and Chief Executive Officer, is hereby granted the authority, within the requirements established by the Policy and Charter, to enter into energy related commodity hedge transactions and to post any necessary collateral in support of such transactions, to meet the requirements of the Authority's customers or facilities for a transaction term not to exceed four years beyond the last day of the month the transaction is entered, with specific Trustee approval required prior to entering transactions, for energy and energy-related products of greater than a four-year term, or the issuance of competitive solicitations for same; and be it further**

**RESOLVED, That the Chairman, the Vice Chair, the President and Chief Executive Officer, the Executive Vice President and Chief Operating Officer, the Executive Vice President and Chief Financial Officer, the Senior Vice President and Chief Risk Officer and any other necessary Authority officers 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 necessary to effectuate the foregoing resolution, subject to the approval of the form thereof by the Acting Executive Vice President and General Counsel.**

**g. Committee Appointments**

The Chairman submitted the following report:

**SUMMARY**

In accordance with Article V the By-Laws of the Power Authority of the State of New York, as amended March 27, 2012 ('By-Laws'), the Trustees are requested to approve the following committee appointments effective immediately.

**BACKGROUND**

The following changes in committee composition are recommended in order to achieve an even distribution of assignments for each Trustee. (Changes indicated in bold.)

**Governance Committee**

Eugene L. Nicandri (**Chair**), Joanne M. Mahoney, John R. Koelmel

**Strategic Planning and Energy Policy Committee**

Joanne M. Mahoney (Chair), **Jonathan F. Foster**, John R. Koelmel

**RECOMMENDATION**

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 Chairman, was unanimously adopted.

**RESOLVED, That the members of the Governance Committee shall be Eugene L. Nicandri (Chair), Joanne M. Mahoney, John R. Koelmel, effective immediately; and be it further**

**RESOLVED, That the members of the Strategic Planning and Energy Policy Committee shall be: Joanne M. Mahoney (Chair), Jonathan F. Foster, John R. Koelmel, effective immediately.**

**h. Procurement (Services) Contract –  
Coopers Corners Shunt Reactor Project  
Capital Expenditure Authorization  
Request and Contract Award**

The President and Chief Executive Officer submitted the following report:

**“SUMMARY**

The Trustees are requested to authorize additional capital expenditures in the amount of \$4,685,000 for construction and installation associated with Phase 2 of the Coopers Corners Shunt Reactor Project (‘Project’). This Project (estimated installed cost of \$9.8 million) entails the installation of a 200 MVAR Shunt Reactor at the 345 kV Coopers Corners Substation, located in the Town of Thompson, NY, owned and operated by the New York State Electric & Gas Corporation (‘NYSEG’). For Phase 1 of the Project, the Trustees approved the amount of \$4.9 million in capital expenditures at their November 9, 2012 meeting. The Project will eliminate the need for the Authority to perform undesirable switching operations to mitigate high voltages observed at Coopers Corners during light load operating conditions.

The Trustees are also requested to approve the award of a construction contract in the amount of \$3.8 million to O’Connell Electric Company, Inc. (‘O’Connell’) of Victor, NY to provide materials, installation and testing services for the 345 kV Shunt Reactor at the Coopers Corners Substation. An interim contract award to O’Connell in the amount of \$400,000 has been issued to cover initial material procurement and mobilization costs.

**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 contracts in excess of \$3 million.

During months when there is less electric demand on the system, the New York Independent System Operator (‘NYISO’) load can reach very low levels (below 11,000 MW). While this results in lightly loaded transmission lines, the resulting voltages are above acceptable operating limits. Historically, high voltages have been observed at the Coopers Corners 345 kV Substation and surrounding area. These voltage problems may be worsened if other transmission equipment is also out-of-service (e.g. Fraser Static VAR Compensator and/or UE1-7 345 kV transmission line).

The current NYISO mode of operation to reduce the high voltage problem is to request the Authority to perform undesirable/non-best practice switching operations such as:

- Setting the Bleheim-Gilboa units in speed-no-load or spin-pump mode.
- Operating the Marcy STATCOM fully inductive.
- Tripping the Marcy–Coopers Corners and/or the Coopers Corners–Rock Tavern 345 kV transmission lines.

The above switching operations are unacceptable methods of operating the Authority’s assets. The Authority and the NYISO met in November of 2011 to discuss implementation of an improved operating protocol and agreed that installation of a shunt reactor would avoid the need for line switching and provide a ‘best practice’ long-term solution.

The NYISO performed a System Impact Study (‘SIS’) to evaluate the impact of the Project on the reliability of the New York State Transmission System. The SIS results show that installation of a 200 MVAR shunt reactor is the ideal solution for high voltage issues during light load conditions.

The Authority and NYSEG executed an Engineering and Procurement Agreement in July 2012 for the installation of a 200 MVAR shunt reactor at the Coopers Corners 345 kV Substation. The Authority will own the



**RESOLVED**, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to authorize the award of a contract to O'Connell Electric Company, Inc. in the amount of \$3.8 million to provide material, installation and testing services for the Project, as recommended in the foregoing report of the President and Chief Executive Officer and as set forth below:

<u>Contractor</u>	<u>Contract Approval</u>
O'Connell Electric Company, Inc. (Victor, NY)	<u>\$3.8 million</u>

**AND BE IT FURTHER RESOLVED**, That the Authority, in accordance with Treasury Regulation Section 1.150-2, hereby declares its official intent to finance as follows: The Authority intends to reimburse to the maximum extent permitted by law, with the process of tax-exempt obligation to be used by the Authority, all expenditure made and which may be made in accordance with the Project described in the foregoing report of the President and Chief Executive Officer, with the maximum principal amount of obligations to be used for such project expected to be \$9.8 million; 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 and 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 Acting Executive Vice President and General Counsel.

**i. Procurement (Services) Contract –  
Niagara Switchyard – Transmission Life Extension  
and Modernization Program – 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 \$154.7 million for Phase 1 of the Niagara Switchyard Life Extension and Modernization (‘Project’). The Project (estimated total phase 1 and phase 2 installed cost of \$266.9 million) is part of the Transmission Life Extension and Modernization Program and will be presented for Trustee funding authorization in two phases as explained below.

The Trustees are also requested to approve the award of a contract in the amount of \$5.3 million to ABB, Inc. Power Transformer Division, Raleigh, NC for the engineering, manufacturing, assembly, and testing of one 800 MVA auto-transformer to replace the existing auto-transformer #4 at the Niagara Switchyard in Lewiston, NY. The President and Chief Executive Officer has, in accordance with the Authority’s Expenditure Authorization Procedures, approved the amount of \$750,000 for preliminary Project engineering.

**BACKGROUND**

Section 2879 of the New York State Public Authorities Law and the Authority’s Guidelines for Procurement Contracts require the Trustees’ approval for non-personal services contracts in excess of \$3 million and contracts involving services to be rendered for a period in excess of one year. The Authority’s Expenditure Authorization Procedures require the Trustees’ approval for construction contracts with a value in excess of \$3 million.

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

- Upgrades, refurbishments, and replacements associated with switchyards and substations
- Transmission line structures or towers and associated hardware, including tower painting
- Replacement of the submarine cable on PV-20
- Work along rights-of-way, including access roads

The Program scope is a result of internal and external assessments and recommendations. Funding will be requested in a tiered approach for each project as the complete plan of work develops.

This Project is divided into two phases:

Phase 1 of the Project which is presented today for authorization will replace:

1. Thirty-three oil circuit breakers (OCBs), insulators and miscellaneous hardware
2. Twenty-one motor operated disconnects (MODs) and seventy-one manual disconnect switches
3. Three auto-transformers
4. Metering, instrument transformers and grounding
5. Switchgear, 13.8 kV transformers, motor control centers (MCCs) and cables

Phase 2 of the Project which will be presented at a later date for authorization will replace:

1. Twenty-nine OCBs, insulators and miscellaneous hardware
2. Twenty-three MODs and seventy-seven manual disconnect switches

3. Two auto-transformers
4. Grounding, fence, gate, and roadways

In response to the Authority's Request for Proposal advertised in the New York State *Contract Reporter* on June 25, 2013 (RFQ No. Q135496AT), nine proposals were received on August 9, 2013 from Jiangsu Huapeng Transformer Ltd., Hico America, Inc., Kenny Construction Company, GE Prolec Transformers Inc., SPX Transformer Solutions, Inc., Smit Transformer Sales Inc., ABB Inc., Mitsubishi Electric, and Toshiba International Corporation. The bids were evaluated from a cost, delivery schedule, and technical standpoint and ABB Inc.'s proposal is deemed lowest in cost and technically acceptable.

### DISCUSSION

The Project has been structured in a manner to prioritize the replacement of poor performing and aged equipment. Replacement of listed equipment will be sequenced in conjunction with planned equipment replacements, outages, internal resource availability, and external utility upgrades, as follows:

Phase 1: 2014 – 2019  
Phase 2: 2020 – 2025

This initial capital expenditure authorization for Phase 1 is comprised of the following:

Preliminary Engineering (Previously Approved)	\$ 750,000
Engineering and Design	\$ 7,467,000
Procurement	\$ 64,021,000
Construction/Installation	\$ 64,371,000
Authority Indirect and Direct Expenses	<u>\$ 18,123,000</u>
<b>TOTAL:</b>	<b><u>\$154,732,000</u></b>

### FISCAL INFORMATION

Payment 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 Acting Vice President – Project Management, the Vice President – Engineering, the Vice President – Transmission, the Acting Vice President – Procurement, the Project Manager, and the Regional Manager – Western New York recommend that the Trustees approve capital expenditures in the amount of \$154.7 million and award of a contract in the amount of \$5.3 million to ABB, Inc. Power Transformer Division, Raleigh, NC for the Niagara Switchyard Life Extension and Modernization Project.

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 in pursuant to the Authority's  
Expenditure Authorization Procedures, capital expenditures in  
the amount of \$154.7 million are hereby authorized for the  
Niagara Switchyard Life Extension and Modernization Project**

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, approval is hereby granted to award a contract to ABB, Inc. Power Transformer Division, Raleigh, NC in the amount of \$5.3 million to engineer, manufacture, assemble and test one 800 MVA Auto-Transformer as part of the Niagara Switchyard Life Extension and Modernization Project, as recommended in the foregoing report of the President and Chief Executive Officer and set forth below:

**Contractor**

**Contract Approval**

ABB, Inc. Power  
Transformer Division  
Raleigh, NC

**\$5.3 million**

**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 and 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 Acting Executive Vice President and General Counsel.



**j. Procurement (Services) Contract –Niagara, St. Lawrence and Blenheim-Gilboa Pumped Storage Projects – Visitors’ Centers Upgrade – Capital Expenditure Authorization Requests and Contract Award**

The President and Chief Executive Officer submitted the following report:

**“SUMMARY**

The Trustees are requested to authorize additional capital expenditures in the aggregate amount of \$12,652,100 and approve the award of a five-year contract to Hadley Exhibits, Inc. of Buffalo, NY (‘Hadley’), in the amount of \$9,020,899, to perform improvements and comprehensive upgrades to the exhibits and facilities at the Authority’s Visitors Centers (herein referred to as the ‘Project’). The Visitors Centers include the Power Vista Visitors Center located at the Robert Moses Niagara Power Project, the Frank S. McCullough, Jr. Hawkins Point Visitors Center and Boat Launch located at the St. Lawrence/FDR Power Project, and the Blenheim-Gilboa Visitors Center located at the Blenheim-Gilboa Pumped Storage Project (herein referred to as the ‘Facilities’).

**BACKGROUND**

Section 2879 of the New York State Public Authorities Law and the Authority’s Guidelines for Procurement Contracts require the Trustees’ approval for non-personal services contracts in excess of \$3 million and 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 contracts in excess of \$3 million.

Many of the exhibits at the Facilities are no longer functional, displaying signs of wear, irrelevant to present-day topics and programs, and cannot be easily updated and maintained. As these Facilities are open to the public, the exhibits need to be upgraded to include present-day technologies and represent the Authority’s current programs and customers. Additionally, the Facilities are a significant component in fulfilling the Authority’s Federal Energy Regulatory Commission (‘FERC’) obligation to provide public recreational opportunities at its hydro facilities, and are included in each site’s FERC-approved Recreation Plan.

In 2013, the Authority awarded a contract to Crystal McKenzie, Inc. to perform Benefit Analysis Studies for the Facilities to evaluate the condition and recommend upgrades to the existing exhibits, provide recommendations for new exhibits, as well as other additions and modifications necessary to modernize the Facilities.

**DISCUSSION**

The scope-of-work under this contract includes content development, detailed design, fabrication, and installation of exhibits that will feature new hands-on interactive elements, wall-mounted exploration stations, wall- and table-mounted touch-screen technologies, and other interactive exhibits. The scope also includes: the addition of a local area communication network to support exhibit connectivity, improvements to the overall floor plan layout, signage, lighting and electrical infrastructure, the removal of the existing chair-lifts, addition of a handicapped-accessible ramp and an elevator at the Niagara Power Vista, and a three-year term for as-needed maintenance at each of the Facilities. The design and construction work will be performed in four phases as follows:

- |  |                           |
|--|---------------------------|
| 1. Niagara Power Vista Visitors Center Upgrades        | Summer 2014 - Spring 2016 |
| 2. Niagara Power Vista Elevator Installation           | Summer 2014 - Spring 2015 |
| 3. St. Lawrence Hawkins Point Visitors Center Upgrades | Fall 2015 - Spring 2017   |
| 4. Blenheim-Gilboa Visitors Center Upgrades            | Fall 2015 - Spring 2017   |

In addition, the contract with Hadley includes an option for a three-year maintenance agreement if selected, which spans from 2016 through 2019. This maintenance is not included as part of the capital project.

The Authority issued a Request for Information in the New York State *Contract Reporter* on December 20, 2013, seeking pre-qualification statements from experienced firms. On January 14, 2014, the following four responses were received:

<u>Firms</u>	<u>Location</u>
Cannon Design-Build, Inc.	Chicago, IL
Crystal McKenzie, Inc.	New York City, NY
Hadley Exhibits, Inc.	Buffalo, NY
Thinking Outside the Square	Buffalo, NY

Based on the review of those submissions, a Request for Quotation was issued to all four firms on February 21, 2014. Subsequently, on April 3, 2014, the following two proposals were received:

<u>Bidder</u>	<u>Lump Sum with Options</u>
Hadley Exhibits, Inc.	\$9,020,899
Cannon Design-Build, Inc.	\$11,133,102

The proposals were evaluated from a cost, technical, safety and similar work experience standpoint, by an Evaluation Committee.

Hadley's proposal was the lowest in price and was also technically acceptable. The company has extensive experience in exhibit design and construction, has demonstrated knowledge of the scope-of-work, and is capable of completing this project in a timely manner.

Hadley's experience, resources and capabilities meet the Authority's requirements as described in the bid document.

Of the total contract amount, approximately \$8,700,000 is associated with the upgrades to the Facilities, with the balance of approximately \$300,000 for the as-needed maintenance option.

The following table summarizes the capital expenditure estimate by facility, with the previously-approved authorizations by the President and Chief Executive Officer and the current authorization request:

Facility	Project Estimate	Previous Authorization	Current Authorization
Robert Moses Niagara Power Project – Power Vista	\$8,925,000	\$260,700	\$8,664,300
St. Lawrence/FDR Power Project – Frank S. McCullough, Jr. Hawkins Point Visitors Center and Boat Launch	\$2,410,000	\$249,600	\$2,160,400
Blenheim-Gilboa Pumped Storage Project - Visitors Center	\$2,100,500	\$273,100	\$1,827,400
<b>TOTAL</b>	<b>\$13,435,500</b>	<b>\$783,400</b>	<b>\$12,652,100</b>

Future-year funding for design and construction will be included in the Capital Budget request for that year. Future long-term maintenance will be budgeted, as necessary, in the Operating Budget request for that year.

#### FISCAL INFORMATION

Payment associated with this project will be made from the Authority's Capital Fund. Payments associated with future long-term maintenance will be made from the Authority's Operating Fund.

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Acting Vice President – Project Management, the Vice President – Engineering, the Acting Vice President – Procurement, the Project Manager and the Regional Managers of Central, Northern, and Western New York recommend that the Trustees authorize capital expenditures in the amount of \$12,652,100 and approve the award of a five-year contract to Hadley Exhibits, Inc. of Buffalo, NY in the amount of \$9,020,899, to perform improvements and comprehensive upgrades to the exhibits and facilities at the Authority’s Power Vista Visitors Center located at the Robert Moses Niagara Power Project, the Frank S. McCullough, Jr. Hawkins Point Visitors Center and Boat Launch located at the St. Lawrence/FDR Power Project, and the Blenheim-Gilboa Visitors Center located at the Blenheim-Gilboa Pumped Storage Project.

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 Authority’s Expenditure Authorization Procedures, capital expenditures are hereby approved in the aggregate amount of \$12,652,100, for the Niagara Power Project, St. Lawrence Power Project, and Blenheim-Gilboa Pumped Storage Project Visitors Centers Upgrade Project, 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, approval is hereby granted to award a five-year contract to Hadley Exhibits, Inc. of Buffalo, NY, in the amount of \$9,020,899, for the Niagara Power Project, St. Lawrence Power Project, and Blenheim-Gilboa Pumped Storage Project Visitors Centers Upgrade Project, as recommended in the foregoing report of the President and Chief Executive Officer and set forth below:**

<u>Contractor</u>	<u>Contract Approval</u>
Hadley Exhibits, Inc. Buffalo, NY (Q14-5598FS)	<u>\$9,020,899</u>

**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 and 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 Acting Executive Vice President and General Counsel.**

**k. STL-CEC Microwave System Upgrade Project –  
Capital Expenditure Authorization Request –  
Increase in Authorized Funding**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to authorize an increase to the Capital Expenditure Authorization Request ('CEAR') in the amount of \$701,000 to complete the upgrade of the Microwave Communication System, from analog to digital, from the St. Lawrence/FDR Power Project ('STL') to the Frederick R. Clark Energy Center ('CEC'), (the 'Project'). The Project completion is expected during the summer of 2014.

In March 2013, based on increased Project scope-of-work, additional funding in the amount of \$866,000 was authorized by the President and Chief Executive. This additional authorization was within the \$1.0 million limit that the President and Chief Executive Officer can authorized for projects previously authorized by the Trustees. This request will result in a total increase of \$1,567,000.

**BACKGROUND**

In accordance with the Authority's Expenditure Authorization Procedures, requests for an increase in expenditure authorization that exceed \$1 million require the Trustees' approval.

At their meeting of March 29, 2011, the Trustees approved the Project CEAR in the amount of \$5.8 million and the award of a competitively bid contract to Aviat U.S., Inc. to upgrade the STL-CEC Microwave Communication System. The Project includes the replacement of all existing electronic equipment with 'state-of-the-art' hierarchical digital electronic equipment at STL, CEC and four remote repeater facilities.

**DISCUSSION**

The requested funds will cover the costs associated with Project contracting delays, increased construction management costs, increased scope and engineering. With the addition of the requested funds, the total Project budget will be \$7,367,000.

Initial Approval	\$5,800,000
Previous Request (March 2013)	866,000
Current Request	<u>701,000</u>
Total:	<u>\$7,367,000</u>

**FISCAL INFORMATION**

Payment 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 Acting Vice President – Project Management, the Vice President – Engineering, the Vice President – Transmission, the Acting Vice President – Procurement, the Project Manager and the Regional Manager – Northern New York recommend that the Trustees authorize additional capital expenditures in the amount of \$701,000 to complete the upgrade of the Microwave Communication System from the St. Lawrence/FDR Power Project to the Frederick R. Clark Energy Center.

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 Authority’s Expenditure Authorization Procedures, additional capital expenditures in the amount of \$701,000 are hereby authorized to complete the upgrade of the new Microwave Communication System from the St. Lawrence/FDR Power Project (“STL”) to the Frederick R. Clark Energy Center (“CEC”), as recommended in the foregoing report of the President and Chief Executive Officer; 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 and 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 Acting Executive Vice President and General Counsel.**

**I. Procurement (Services) 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 ‘2I-A,’ as well as the continuation and/or funding of the procurement (services) contracts listed in Exhibit ‘2I-B,’ 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 bases for the new awards if other than to the lowest-priced bidders and the intended duration of such contracts, or the reasons for 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 \$3 million, as well as personal services contracts in excess of \$1 million if low bidder, or \$500,000 if sole-source, single-source or non-low bidder.

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 \$1 million or 25% of the originally approved contract amount not to exceed \$3 million.

**DISCUSSION**

**Awards**

The terms of these contracts will be more than one year; therefore, the Trustees’ approval is required. 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, which range in estimated value from \$663,500 to \$15 million. 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 can be 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 ‘2I-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 '21-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 a 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:**

#### **Operations Support Services**

##### ***Project Management***

Due to the need to commence services, the contract with **Greenman-Pedersen, Inc. ('GPI') (4600002789)** became effective on April 30, 2014, for the initial interim award amount of \$100,000, subject to the Trustees' approval as soon as practicable, in accordance with the Authority's Guidelines for Procurement Contracts and EAPs. Such contract would provide for consulting and inspection services related to the application of paints and other coatings on equipment, structures and infrastructure surfaces, per the National Association of Corrosion Engineers ('NACE') certified coating system, in support of the Authority's Transmission Life Extension and Modernization Program and other Authority projects. Services include field and home office technical support, on an 'as needed' basis, and involve, but are not limited to, inspections of Authority buildings, bridges, roadways, tunnels and transmission towers located throughout New York State, in compliance with NACE certification requirements; laboratory testing and analysis; development and/or review of coating specifications and inspection plans; preparation of detailed reports and recommendations for various applications, etc. This interim award allows GPI to perform coating inspection services related to the application of paints and other coatings in support of the ongoing Barnhart Island Bridge Rehabilitation Project. Bid documents were developed by staff and were downloaded electronically from the Authority's Procurement website by 58 firms, including those that may have responded to a notice in the New York State *Contract Reporter*. One proposal was received and evaluated. Reasons why other firms did not submit a bid include, but are not limited to, this was not their scope of work, they could not meet the delivery or schedule requirements, or they downloaded the documents for information purposes only. Staff recommends the award of a contract to GPI, which is qualified to perform such services, meets the bid requirements and has provided satisfactory services under the existing contract for such work. The intended term of the new contract is five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the term of the contract, \$5 million.

Due to the need to commence services, the contract with **O'Connell Electric Company, Inc. ('O'Connell') (4500244895)** became effective on May 1, 2014, for the initial interim award amount of \$500,000, subject to the Trustees' approval as soon as practicable, in accordance with the Authority's Guidelines for Procurement Contracts and EAPs. Such contract would provide for the installation of sixteen 115 kV power circuit breakers, one 100 MVAR capacitor bank and demolition of existing synchronous condensers and associated equipment at the St. Lawrence/FDR Project's Robert Moses Switchyard, as part of the Transmission Life Extension and Modernization Program. This interim award allows O'Connell to mobilize its resources and procure long-lead items, maximizing the amount of work that can be completed during the warmer weather months and facilitating coordination between construction and delivery of equipment. Bid documents were developed by staff and were downloaded electronically from the Authority's Procurement website by 87 firms, including those that may have responded to a notice in the New York State *Contract Reporter*. Two proposals were received and evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to O'Connell, the lower-priced bidder, which is qualified to perform such services and meets the bid requirements. Furthermore, O'Connell is a full-service regional electrical, power line, utilities and communication contractor with

more than 100 years of experience and possesses the resources to complete this work. The intended term of the subject contract is up to three years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the term of the contract, \$10,818,950 (including the initial interim award amount of \$500,000, as well as \$920,000 for any emergent site environmental conditions involving the disposal of oil, concrete and soil, and the provision of clean fill).

Due to the need to commence services, the contract with **O'Connell Electric Company, Inc. ('O'Connell') (4500245184)** became effective on May 9, 2014, for the initial interim award amount of \$250,000, subject to the Trustees' approval as soon as practicable, in accordance with the Authority's Guidelines for Procurement Contracts and EAPs. Such contract provides for site preparation and related work in connection with the 765 kV Auto-Transformer Replacement Project at the Massena Substation, as part of the Transmission Life Extension and Modernization Program. This interim award allows O'Connell to commence mobilization activities. Bid documents were developed by staff and were downloaded electronically from the Authority's Procurement website by 124 firms, including those that may have responded to a notice in the New York State *Contract Reporter*. Two proposals were received and evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to O'Connell, the lower-priced evaluated bidder, which is qualified to perform such work and meets the bid requirements. O'Connell's proposal presented a detailed technical approach to the proposed scope of work. Furthermore, the firm possesses the necessary resources to perform this work. The intended term of the subject contract is up to two years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the term of the contract, \$5,190,480.

### ***Environment, Health & Safety***

The contract with **TRC Environmental Corp. ('TRC') (Q14-5615; PO# TBA)** would provide for Relative Accuracy Test Audits ('RATA' Testing) of the Continuous Emissions Monitoring Systems ('CEMS') at the Authority's power plant sites in the Southeastern New York ('SENY') Region, in compliance with all applicable regulatory requirements and performance specifications. Services include, but are not limited to, testing for nitrous oxide, carbon monoxide, ammonia and oxygen to demonstrate the accuracy, precision and reliability of the CEMS system, required by the New York State Department of Environmental Conservation ('NYS DEC') to maintain each plant's Title V Air Permit. Bid documents were developed by staff and were downloaded electronically from the Authority's Procurement website by 19 firms, including those that may have responded to a notice in the New York State *Contract Reporter*. Two proposals were received and evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to TRC, the lower-priced evaluated bidder, which is qualified to perform such services and meets the bid requirements. The contract would become effective on or about July 1, 2014, for an intended term of up to five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the term of the contract, \$663,500.

The Authority's operating facilities, substations, electrical transmission facilities, and maintenance and support facilities store and use various types of oils and hazardous materials in their normal operating practices. Government regulations require that owners and operators of facilities that store oil and have the potential to spill oil on land or in waters of the United States or adjoining shorelines prepare Spill Prevention Control and Countermeasure ('SPCC') Plans. In addition, government regulations require that a strong spill contingency plan be included in the SPCC plan, which provides a written commitment of manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged. In compliance with such federal, state and local requirements, the Authority maintains contracts with emergency spill response contractors. Since the existing contracts for such services are expiring and the need is ongoing, bid documents (**Q14-5581**) were developed by staff and were downloaded electronically from the Authority's Procurement website by 64 firms, including those that may have responded to a notice in the New York State *Contract Reporter*. Seven proposals were received, evaluated and rated based on weighted criteria including, but not limited to: contractor response time of two hours or less with sufficient resources to contain, control and clean up discharged oil; U.S. Coast Guard certification, which establishes response capability guidelines in a marine environment, for those facilities that have the potential to discharge oil to surface waters; completeness / responsiveness of the proposal; amount and type of equipment at the contractor's staging facility; and calculated costs for typical land and surface water spill scenarios. This process determined the most qualified and cost-effective contractor/s for each facility, as further set forth in the Award



Recommendation documents. Staff recommends the award of contracts to six firms: **Allstate Power Vac, Inc. ('Allstate'), Environmental Products & Services of Vermont, Inc. ('EP&S'), Miller Environmental Group, Inc. ('Miller'), National Vacuum Corp. ('NVC'), OP-TECH Environmental Services, Inc. ('OP-TECH') and WRS Environmental Services, Inc. ('WRS')**, which are qualified to perform such work and meet the bid requirements. The one remaining firm was not selected based on its low technical score and not fully meeting the bid requirements. It should be noted that several of the recommended firms have provided satisfactory service to the Authority under existing contracts for such work. The award of contracts to multiple firms would ensure that each Authority facility will be able to obtain sufficient resources to respond to a spill within two hours of contractor notification and that each site also has one back-up contractor for emergency situations. The new contracts would become effective on or about June 1, 2014, for an intended term of up to five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate total amount expected to be expended for the term of the contracts, \$15 million. Such contracts will be monitored for utilization levels, available approved funding and combined total expenditures.

The contracts with **AECOM Technical Services, Inc. ('AECOM'), ARCADIS of New York, Inc. ('ARCADIS'), Kleinfelder East, Inc. ('Kleinfelder'), Kleinschmidt Associates, PA, PC ('Kleinschmidt'), Louis Berger & Associates, PC ('Berger') and TRC Environmental Corp. ('TRC') (Q13-5541)** would provide for on-call general environmental services to the Authority, as needed. Services to be provided by these engineering / environmental consulting firms include, but are not limited to, providing technical expertise and assistance on projects and tasks in the following two areas: 1) Environmental Operations (e.g., hazardous waste management plans, site investigations, spill prevention, control and countermeasure plans, State Pollutant Discharge Elimination System ('SPDES') permits, notices of termination, notices of intent, storm water pollution preventions plans, etc.) and 2) Studies (e.g., fisheries studies, wetland delineation and design, rare-threatened and endangered species considerations, etc.). Bid documents were developed by staff and were downloaded electronically from the Authority's Procurement website by 210 firms, including those that may have responded to a notice in the New York State *Contract Reporter*. Thirty-five proposals were received and evaluated; of this number, seven did not meet the bid requirements and were not considered further. The remaining 28 proposals were evaluated in greater detail; each proposal was rated by the evaluation team based on weighted criteria, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to the six aforementioned firms, which were the highest scoring, most qualified bidders based primarily on their technical capability, experience in specific technical areas defined in the bid documents, pricing and responsiveness / quality of the proposal. The award of multiple contracts will provide the Authority with a vehicle for rapid response to a wide variety of emergent tasks and will ensure that adequate specialty environmental expertise is available, as needed. Work will be assigned to the firm possessing the most capability in the area required and the ability to meet the Authority's schedule and budget considerations. The contracts would become effective on or about June 1, 2014, for an intended term of up to five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate total amount expected to be expended for the term of the contracts, \$4 million. Such contracts will be monitored for utilization levels, available approved funding and combined total expenditures.

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

#### **Executive Offices**

The contract with **Ernst & Young LLP ('EY') (4500231450)** provides for consulting and auditing services. The Authority's Board of Trustees and Executive Management Committee requested a management audit of the Authority's Procurement and Internal Audit Departments, including an assessment of the Authority's procurement policies and practices, as well as the Authority's internal audit methodology, procedures and resources for conducting internal audits. After a competitive search, the firm of Ernst & Young was awarded a contract, which became effective on May 2, 2013, for a term of less than one year, in the lump sum amount of \$365,000. It was anticipated that EY would conclude its work by October 2013. However, the EY audits were suspended from June 2013 until January 2014, when EY was requested to resume the work. Administratively, the contract term was extended through April 30, 2014. EY provided its assessments and recommendations to the Trustees in February 2014. Based on this report, EY was requested to undertake additional assessments regarding the Authority's competitive bidding processes and the Authority's internal audit function. In order to provide for the continuation of

services under the existing contract, which would extend beyond one year, the President and Chief Executive Officer authorized a three-month interim extension of the subject contract through July 31, 2014 and also authorized additional funding in the amount of \$392,000, in accordance with the Authority's Guidelines for Procurement Contracts and Expenditure Authorization Procedures, subject to the Trustees ratifying such actions as soon as practicable. The current contract amount is \$757,000; staff estimates that no additional funding will be required for services to be provided during the extended term. The Trustees are requested to ratify and approve the three-month interim extension of the subject contract through July 31, 2014, as well as the additional funding previously authorized in accordance with the EAPs.

## **Operations Support Services**

### ***Project Management***

At their meeting of September 26, 2006, the Trustees approved the award of a contract to **NAES Corp. (formerly North American Energy Services) (4500133069)** to provide for the operation and maintenance ('O&M') of the New York City Department of Environmental Protection's ('NYC DEP') East Delaware and Neversink hydroelectric facilities ('Facilities'). The original award, which was competitively bid, became effective on November 29, 2006 for an initial term of 19 months, with an option to extend for two additional years. (There are provisions in the contract to extend the contract term for additional periods of time, to a maximum of nine additional years; requests to exercise any such further renewal options and approval of additional funding beyond the current levels will be presented to the Trustees for review and approval as needs arise.) Several incremental additional funding increases, as well as contract term extensions, were subsequently authorized by the Trustees, most recently at their meeting of June 26, 2012, when the approved compensation limit was increased to \$17,959,957. Since the need for such services is ongoing and the contract provides the aforementioned option for additional extension(s), a two-year extension is now requested to provide for the continuation of such services through June 30, 2016. The current contract amount is \$17,910,956; staff projects that an additional \$3,960,000 will be required for the extended term (\$2,248,860 for O&M services and \$1,711,140 to support new and/or ongoing capital projects that have been identified and agreed to by the NYC DEP for the extended term). The Trustees are requested to approve extension of the subject contract through June 30, 2016, as well as the additional funding requested, thereby increasing the approved contract value to 21,919,957. All contract renewals between the Authority and NAES are subject to the Operating Agreement between the Authority and NYC DEP. The City of New York, acting through NYC DEP, will reimburse the Authority for all direct and administrative costs.

The contract with **Northline Utilities LLC ('Northline') (4500232210)** provides for construction services in connection with Phase 3 of the Alcoa Transmission Line Relocation Project, which entails the relocation of the existing 115 kV Transmission Lines MRG1, MRG2 and MR3 in support of Alcoa's Massena Modernization Project. At their meeting of May 21, 2013, the Trustees approved capital expenditures in the amount of \$3,715,000 for the project, which included funding for Phase 3 construction / installation. The original award for Phase 3, which was competitively bid, became effective on May 21, 2013, for a term of less than one year and an award amount of \$2,135,916; an additional \$362,812 was subsequently authorized in accordance with the Authority's EAPs. Delays in completing Phase 3 construction work are the result of additional work being required and long lead-times for transmission material delivery due to Hurricane Sandy. A three-month extension is now requested in order to complete the work. The current contract amount is \$2,498,728; staff anticipates that no additional funding will be required for the extended term. The Trustees are requested to approve extension of the subject contract through August 31, 2014, with no additional funding requested. It should be noted that Alcoa will reimburse the Authority for 100 percent of the cost of the project.

The contract with **Power Engineering, Inc. (4500232540)** provides for post-upgrade mechanical testing and analysis for Unit 11 of the Lewiston Pump Generating Plant ('LPGP') at the Niagara Power Project, as part of the Authority's Life Extension and Modernization ('LEM') Program. The original award, which was competitively bid, became effective on June 7, 2013, for a term of less than one year and an award amount of \$722,648 (from the approved total of \$774,098). Several equipment performance anomalies identified subsequent to the Unit's upgrade and return to service in 2013 prevented the completion of the original scope of work. Additional testing, instrumentation and investigation were required in order to determine the root cause of the anomalies and to implement short-term repairs. Additional testing and analysis needs to be performed to provide the information

required to determine and implement the appropriate long-term remedial measures for this Unit and for all other such Units to be upgraded during the LEM Program, and to complete the original contract scope. A one-year extension is therefore requested in order to resolve these issues and perform this work. The current contract amount is \$722,648; staff anticipates that an additional \$509,346 will be required for the proposed extended term. The Trustees are requested to approve extension of the subject contract through June 6, 2015, as well as the additional funding requested.

#### FISCAL INFORMATION

Funds required to support contract services for various Business Units/Departments and Facilities have been included in the 2014 Approved O&M Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years. Payment will be made from the Operating Fund.

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.

#### RECOMMENDATION

The Vice President – Public and Regulatory Affairs and Chief of Staff, the Vice President – Environment, Health and Safety, the Acting Vice President – Project Management, the Acting Vice President – Procurement, the Vice President – Transmission, the Regional Manager – Western New York, the Regional Manager – Northern New York, the Regional Manager – Central New York and the Regional Manager – Southeastern New York recommend that the Trustees approve the award of multiyear procurement (services) contracts to the companies listed in Exhibit '21-A' and the extension and/or funding of the procurement (services) contracts listed in Exhibit '21-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 adopted with Vice Chair Mahoney being recused from the vote as it relates to Op-Tech Environmental Services, Inc. and Arcadis of New York, Inc.

**RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award and funding of the multiyear procurement services and other contracts set forth in Exhibit "21-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 "21-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 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**

May 22, 2014

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

**Discussion Agenda:**

**3. Report of the President and Chief Executive Officer**

**Performance Scorecard**

*President Quiniones said he was pleased to report that, based on the Performance Scorecard, the Authority was doing very well, exceeding most of the goals outlined in the Scorecard. He then asked Mr. Welz to brief the Trustees on environmental and safety which was below target. Mr. Welz said that to date, there has been seven DART (the measure of the Authority's safety performance) related issues. There were some incidents at the 500 MW and Blenheim-Gilboa plants, and a reclassification of "injury." And since the individual employees were placed on medical leave, it had to be counted as DART incidents. However, with better weather conditions expected in the months ahead, the DART rate will adjust to the target as outlined in the Performance Scorecard.*

*Responding to a question from Chairman Koelmel, President Quiniones said despite the weather conditions at the beginning of the year, the Authority is performing well financially. Notwithstanding the DART rate, from a reliability, generation and transmission perspective, the Authority is operating extremely well. In addition, the Y-49 transmission cable repairs and the implementation of the Authority's Strategic Plan are going according to plan. There are no cautionary "flags" at this time to report. President Quiniones ended by saying that the trajectory for the balance of the year is very positive. However, he will continue to be vigilant and focused in executing the Authority's plans.*

#### **4. Contribution of Funds to the State Treasury**

The President and Chief Executive Officer submitted the following report:

##### **“SUMMARY**

The Trustees are requested to authorize the release of \$25 million in funds to the Empire State Development Corporation (‘ESD’) in furtherance of ESD’s statewide economic development initiatives, as authorized by legislation approving the 2014-15 Budget of the State of New York (Chapter 55 of the Laws of 2014).

##### **BACKGROUND**

The Authority is requested, from time to time, to make financial contributions and transfers of funds to the State or to otherwise provide financial support for various State programs. Any such contribution or transfer of funds must (1) be authorized by the law; (2) be approved by the Trustees ‘as feasible and advisable;’ and (3) satisfy the requirements of the Authority’s General Resolution Authorizing Revenue Obligations dated February 24, 1998, as amended and supplemented (‘Bond Resolution’). In addition, as set forth in the Trustees’ Policy Statement dated May 24, 2011, a debt service coverage ratio of 2.0 is to be used as a reference point in considering any such payments or transfers.

The Bond Resolution’s requirements to withdraw monies ‘free and clear of the lien and pledge created by the [Bond] Resolution’ are such that (a) withdrawals must be for a ‘lawful corporate purpose as determined by the Authority,’ and (b) the Authority must determine, taking into account among other considerations anticipated future receipt of revenues or other moneys constituting part of the Trust Estate, that the funds to be so withdrawn are not needed for (i) payment of reasonable and necessary operating expenses, (ii) an Operating Fund reserve for working capital, emergency repairs or replacements, major renewals or for retirement from service, decommissioning or disposal of facilities, (iii) payment of, or accumulation of a reserve for payment of, interest and principal on senior debt or (iv) payment of interest and principal on subordinate debt.

##### **DISCUSSION**

The State’s fiscal year (‘SFY’) 2014-15 Budget legislation authorizes the Authority as deemed ‘feasible and advisable by its trustees’ to provide up to \$90 million in contributions to the State’s general fund, or as otherwise directed in writing by the State’s director of the budget, whereupon such funds ‘will be utilized to support energy-related initiatives of the state or for economic development purposes.’ In addition, the Budget legislation specified that up to \$25 million is to be considered for payment by June 30, 2014 and the remainder of any such contribution considered for payment by March 31, 2015. The legislation specifies that such economic development purposes may include, but shall not be limited to, efforts to attract and expand business investment and job creation in New York state through the Open for Business program, provided that in the event any contributed funds are used by a state agency or public authority for the purpose of advertising and promoting the benefits of the START-UP NY program, no less than sixty percent of the contributed funds used for such purpose shall be used for advertising and promotion outside the state of New York.

In accordance with Section 19 of Part I of Chapter 55 of the Laws of 2014, the State’s director of the budget has formally requested that the Authority transfer on or before June 30, 2014 the sum of \$25 million to the credit of ESD in furtherance of ESD’s Statewide economic development initiatives. With regard to the remaining amount contemplated in the SFY 2014-15 Budget (\$65 million), staff is not recommending any action at this time, but will return to the Board with a recommendation as to that amount based on the financial circumstances of the Authority at the time such contribution is to be considered for payment.

In the first quarter of 2014, the Trustees approved and the Authority released contributions totaling \$65 million, pursuant to the last year’s SFY 2013-14 Budget legislation. Last fiscal year’s \$65 million amount, together with the up to \$25 million considered herein, totals to \$90 million for the Authority’s calendar year 2014 operations, which is the amount the Authority budgeted for in its 2014 Operating Budget.

The low-cost power and other benefits the Authority makes available under its various programs are valuable economic development tools that the Authority desires to promote, and there exists significant amounts of unallocated power and other benefits available under these programs that can support economic development in the State. Accordingly, the Authority has an interest in promoting the effectiveness of ESD's Statewide economic development initiatives, thereby increasing the number and quality of businesses that apply for available benefits under the Authority's Programs.

Staff has reviewed the effects of the release of \$25 million in State contributions at this time on the Authority's expected financial position and reserve requirements. In addition, in accordance with the Board's Policy Statement, staff calculated the impact of these transfer amounts on the Authority's debt service coverage ratio and determined it would not fall below the 2.0 reference point level. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to release \$25 million at this time.

#### FISCAL INFORMATION

Staff has determined that sufficient funds are available in the Operating Fund to transfer \$25 million in contributions at this time and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution. Such transfer pursuant to the SFY 2014-15 Budget legislation was anticipated and is within the amount reflected in the Power Authority's 2014 Operating Budget approved by the Trustees at their December 17, 2013 meeting.

#### RECOMMENDATION

The Treasurer recommends that the Trustees affirm that the transfer of \$25 million to the Empire State Development Corporation is feasible and advisable and authorize such payment.

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

*Mr. Brian McElroy presented highlights of staff's recommendation to the Trustees. In response to a question from Trustee Nicandri, Mr. McElroy said the debt service coverage ratio in relation to the transfer is 3.5 times. Responding to further questioning from Trustee Nicandri, Mr. McElroy said the ratio has been increasing over the years and he will provide the actual calculations to the Board. Responding to still further questioning from Trustee Nicandri, Mr. Russak said the Authority is at a steady state with respect to its earnings level. The capital investments that the Authority will be making will not directly affect the coverage calculation and therefore, going forward, will not have a direct effect as money is spent on the transmission investments.*

*Responding to a question from Chairman Koelmel, Mr. Russak said the coverage calculation takes into account any capital additions and that is why it is not going to have a direct effect right away. The Authority is in a good place financially and is prepared to meet the challenge of the significant increase in investments that it will be making over the next several years, namely, the Transmission Life Extension and Modernization (LEM); Lewiston Pumped-Generation LEM and the Build Smart NY Programs.*

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

**RESOLVED, That the Trustees hereby authorize a payment to the Empire State Development Corporation (“ESD”) in the amount of \$25 million from the Operating Fund as authorized by Chapter 55 of the Laws of 2014 as discussed in the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the amount of \$25 million to ESD described in the foregoing resolution is not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further**

**RESOLVED, That as a condition to making the payments specified in the foregoing resolution, on the day of such payments, the Treasurer or the Deputy Treasurer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further**

**RESOLVED, That the Chairman, the Vice Chair, the President and Chief Executive Officer, the Chief Operating Officer, the Acting Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolution, subject to approval as to the form thereof by the Acting Executive Vice President and General Counsel.**



5. **Election of Executive Vice President and Chief Financial Officer**

The Chairman of the Governance Committee submitted the following report:

**“SUMMARY**

The Trustees are requested to consider the election of Robert F. Lurie of Morristown, New Jersey as Executive Vice President and Chief Financial Officer of the Authority effective May 31, 2014.

**BACKGROUND AND DISCUSSION**

The election of non-statutory officers is governed by the Authority’s By-laws. Article V, Section 3, requires the Governance Committee to make recommendations to the Board of Trustees on the election of non-statutory officers and their compensation. Article IV, Section 2, provides that non-statutory officers shall be elected by the Trustees upon the recommendation of the Governance Committee. Section 3 of the same Article provides that such non-statutory officers shall hold office until his successor is chosen and qualified or his earlier removal, resignation or death.

**RECOMMENDATION**

It is recommended by the Governance Committee that, pursuant to the Authority’s By-laws, originally adopted in April 9, 1954 and last amended on March 27, 2012, Robert F. Lurie be elected as Executive Vice President and Chief Financial Officer, effective May 31, 2014, to hold such office until his successor is chosen and qualified or his earlier removal, resignation or death.

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

*Trustee LeChase presented the recommendation for the election of the new Chief Financial Officer to the Board. He said the Governance Committee met in special session prior to this meeting and on President Quiniones’ recommendation and information, it approves and recommends to the full Board the appointment of Robert Lurie as Executive Vice President and Chief Financial Officer.*

The following resolution, as submitted by the Chairman of the Governance Committee, was unanimously adopted.

**RESOLVED, That pursuant to Article IV, Section 2 of the Authority’s By-Laws, Robert F. Lurie is hereby elected as Executive Vice President and Chief Financial Officer, effective May 31, 2014, to hold office until his successor is chosen and qualified or his earlier removal, resignation or death.**

6. **Retirement Resolutions**

*Chairman Koelmel said on behalf of the Trustees and Executive Management, he wanted to recognize Donald Russak and Joan Tursi who are retiring and asked President Quiniones to provide a few remarks.*

President Quiniones made the following remarks:

*“Don will be leaving his position as Executive Vice President and Chief Financial Officer knowing that he leaves the Authority with its financial house in order and stronger than it has ever been in its history. I can’t overstate the role that he has played in our successes that have helped to maintain NYPA’s strong financial position. And, in fact, as recent as last year, Standard & Poor’s upgraded our credit rating from “stable” to “positive”--- what a legacy Don is leaving for the Power Authority.*

*During his tenure as Chief Financial Officer, NYPA decisively surpassed its goals in such critical areas as net income, debt service coverage ratio, leverage and liquidity, while meeting our stringent budget requirements and targets. These elements have been essential for the major contributions that our organization makes to the state’s electric power system and economy.*

*Don’s institutional knowledge and thorough comprehension and command of the issues affecting NYPA and our industry have been of tremendous help to me, the executive management team and to this Board’s decision-making. But if I had to characterize Don in one word, it would be “commitment,” i.e., commitment to the Power Authority. He exudes this quality, and I thank him for his steadfastness and professionalism throughout his nearly 35 years of service. Don, we wish you all the best in your retirement.”*

*Chairman Koelmel added that Mr. Russak has been terrific, brilliant, and wonderful to work with. He said Don has provided the Trustees with incredible counseling and confidence. He thanked him on behalf of the entire state and the organization for his incredible service and many contributions through the years.*

*In response, Mr. Russak said it has been a long run and he has been very proud to help serve the Power Authority through the years. He said he looks forward to its continued success and wished the organization all the best.*

*Chairman Koelmel said Ms. Joan Tursi was also retiring and asked President Quiniones to provide a few remarks on her many contributions.*

President Quiniones made the following remarks:

*“NYPA employees owe a debt of gratitude to Joan, our Senior Vice President for Enterprise Shared Services, who is also retiring after more than 30 years at NYPA. She has been a tireless advocate for the workforce, instituting programs that have given employees many opportunities to succeed in their careers. This has enhanced our efforts to attract and retain employees in a highly competitive environment. Most recently, Joan was instrumental in the implementation of an innovative on-site MBA program, in conjunction with Pace University. She has always understood that an inspired and talented workforce is our greatest asset. Many of the endeavors*

*spearheaded by Joan have been forward-looking. Because of her leadership and dedicated efforts, NYPA is ready for the industry challenges that lie ahead. Joan has helped to reinvigorate our corporate culture and make NYPA a place where people look forward to coming to work.*

*Joan, thank you for all that you've accomplished. You're the consummate professional and I wish you the very best."*

*Chairman Koelmel said on behalf of the Board, he wanted to thank Joan for her valuable service and many contributions. He said she has been sage in steering the Authority through many challenging issues. He continued that every organization's success is a function of its talent and the Board appreciates her leadership which, not only put the Authority in a better place, but helped to make sure it was well-positioned to move forward as it pursues new opportunities.*

*In response, Ms. Tursi thanked the Chairman for his kind words and said it had been wonderful working at the Power Authority.*

*Chairman Koelmel said in addition to Don and Joan, this is also Trustee LeChase's last meeting, another bittersweet moment for all of us. He said Trustee LeChase has been at the table through some of the Authority's recent transitions - leadership and organizational - and contributed significantly to those changes.*

He then made the following remarks.

*"As an attorney, and Chief Executive Officer of a highly successful construction company, and advocate for upstate businesses, Trustee LeChase brought invaluable private-sector experience and knowledge of economic development to his duties as a Trustee of the Power Authority. This supported our rollout of the hugely successful ReCharge NY program, with Wayne being a strong advocate for the hundreds of allocations that we've made in support of nearly 400 thousand jobs. Further, his background in building construction and energy efficiency has been of great help in NYPA's administering of Build Smart NY, another initiative of the Governor's. Beyond this, his practical common-sense approach has helped us navigate many complex issues.*

*Wayne, it's been a pleasure serving with you on this Board, and we wish you all the best.*

*Wayne, on behalf of the members of the Board, I want to thank you for your tremendous service, your invaluable guidance and wisdom and be assured, you will be missed. Thanks also for your incredible commitment, time and energy that you have brought for the benefit of the Power Authority and the State of New York during your years on the Board."*

*Trustee Nicandri said he wanted to express his appreciation to Trustee LeChase. He said he has been a great friend and person to work with. He enjoyed their time together and he is going to miss them.*

*Trustee Mahoney said she wanted to echo the Chairman's and Trustee Nicandri's words and added that on a personal level it's been a pleasure to get to know him. She said she enjoyed being able to work with him, that it's been comforting to have someone of his stature sitting on the NYPA Board with them and she wished him all the best in the future.*

*Trustee LeChase thanked the Chairman and Trustees for their comments. He said he was going to miss a great team. He enjoyed his tenure with the Power Authority which rounds out about ten years of civic duty that he felt very strongly about. He is sad that it is time to end it and get on with the next stage of his life; however, he thinks that the Power Authority is properly positioned; it's an exciting and vibrant place – it is helping the State get back on track and he is very proud to have served with such a great team and with such a great Board.*

The following resolutions, as submitted by the Chairman, were unanimously adopted.

**Resolution – R. Wayne LeChase**

**WHEREAS, R. Wayne LeChase, successful businessman, accomplished attorney and community leader, has provided exemplary public service on behalf of the citizenry of New York State in carrying out his statutory duties over the last three years as a New York Power Authority (NYPA) Trustee; and**

**WHEREAS, Mr. LeChase contributed greatly to the NYPA Board of Trustees' oversight role of executive management in the operation of the Power Authority's generation and transmission facilities, as well as in carrying out programs of Governor Andrew M. Cuomo to modernize the state's electric power system, spur economic development and advance energy efficiency; and**

**WHEREAS, as the chairman of a full-service construction management company in Rochester, Mr. LeChase brought wide expertise and knowledge of best business practices to his trustee role, including a focus on the Power Authority embodying the highest standards of integrity, safety and robust financial and operational performance; and**

**WHEREAS, the dedication of Mr. LeChase for reinvigorating the state's economy was reflected by his voting affirmatively for hundreds of lower-cost power allocations under the Governor's Recharge New York program, which is linked to nearly 400,000 jobs throughout the state, including more than 15,000 in Mr. LeChase's beloved Finger Lakes region; and**

**WHEREAS, as a member of the Trustees' Audit and Strategic Planning and Energy Policy Committees, Mr. LeChase provided insightful guidance to the Power Authority's Office of Internal Audit to ensure NYPA's continued solid financial performance and for the drafting of its new multiyear Strategic Vision document for encapsulating its priorities; and**

**WHEREAS, Mr. LeChase provided expertise in articulating the economic development, energy technology, electric market and environmental imperatives of a rapidly changing electric power industry and for aggressively building on NYPA's strengths going forward; and**

**WHEREAS, Mr. LeChase's lifelong commitment to environmental protection and sustainability, and actions on the NYPA board were in unison with Governor Cuomo's policies for managing finite resources, improving energy efficiency and reducing climate-changing carbon emissions;**

**NOW THEREFORE BE IT RESOLVED, That the Trustees of the Power Authority of the State of New York express their gratitude to R. Wayne LeChase for his dedicated public service as a fellow trustee and their highest regard and admiration for his steadfast contributions to the State of New York, including philanthropic activities for the public's well-being. The Trustees extend their best wishes to Wayne and his family for good health and great success in all their future endeavors in the decades ahead.**

**May 22, 2014**

**Resolution – Donald A. Russak**

WHEREAS, Donald A. Russak has forged a unique, multi-faceted and enduring record of accomplishment during a stellar career of nearly 35 years at the New York Power Authority in which he has played an indispensable role in ensuring NYPA's financial strength; and

WHEREAS, to an extent all but unparalleled in the Authority's history, Mr. Russak has combined financial and economics expertise with a deep understanding of power rates and contracts, customer relations, law and public policy; and

WHEREAS, as Executive Vice President and Chief Financial Officer since March 2012, and in other senior financial positions, Mr. Russak has spearheaded numerous initiatives and successes that have helped to maintain the Power Authority's coveted AA bond ratings and led Standard & Poor's to upgrade the Authority's credit outlook to "Positive," enhancing access to the financial resources that will enable NYPA to fulfill its ambitious strategic objectives; and

WHEREAS, Mr. Russak's tenure as CFO has also seen NYPA decisively surpass its goals in such critical areas as net income, debt service coverage, leverage and liquidity while meeting stringent budget targets; and

WHEREAS, Mr. Russak helped to lay the groundwork for this solid performance through his involvement in implementing a landmark debt restructuring plan that has enabled the Authority to reduce its net debt by \$1.3 billion, or more than 40 percent, since the late 1990s; and

WHEREAS, he has contributed immeasurably to the well-being of NYPA employees, past and present, by conceiving and leading an effort to establish a dedicated trust fund to meet the costs of future retiree health and life insurance benefits; and

WHEREAS, Mr. Russak was an essential participant in negotiations and analysis concerning such vital matters as the Authority's sale of its two nuclear power plants and an agreement for NYPA to share in their value; power-supply contracts with the New York City government customers and Alcoa; the Power for Jobs and Recharge New York programs; and the Authority's financial relationship with the state; and

WHEREAS, to these and varied other assignments, including dealings with rating agencies and auditors and supervision of NYPA's risk management and strategic planning functions, Mr. Russak has brought the skills and insight that have been evident since his earliest days as a power analyst; an unfailing equanimity; and an uncommon ability to earn the trust of his colleagues and counterparts; and

WHEREAS, having burnished his legacy by serving-- trademark diagrams often in hand-- as a respected mentor to countless staff members, and with NYPA's financial outlook secure, Mr. Russak has announced his retirement;

**NOW THEREFORE BE IT RESOLVED, That the Trustees of the Power Authority of the State of New York salute Don Russak for his many contributions to the Authority and the people of the state; thank him for the invaluable counsel he has provided to this Board; and wish him; his wife, Roseann, and their growing family a future of health, happiness and continued success.**

**May 22, 2014**

**Resolution – Joan Tursi**

**WHEREAS, Joan Tursi has worked with singular professionalism and purpose to advance the interests of the New York Power Authority and those of its employees at a time of profound change in the electric power industry and unprecedented challenges for the Authority; and**

**WHEREAS, throughout an extraordinary career of more than 30 years at NYPA, Ms. Tursi has demonstrated a keen intelligence, superb analytical skills and a superior gift for constructive collaboration, helping her to rise from the position of budget analyst to that of Senior Vice President for Enterprise Shared Services; and**

**WHEREAS, as a senior vice president since 2008, Ms. Tursi has with great effectiveness and lasting impact overseen NYPA-wide activities in areas as diverse as human resources and information technology, corporate travel and fleet operations and facilities management and real estate; and**

**WHEREAS, as the executive sponsor of NYPA's Investing in Employees strategic initiative and related workforce retention programs, Ms. Tursi has resolutely sought to balance employees' personal and professional needs by spearheading such innovations as an MBA degree curriculum at the Authority offices; a program enabling staff members to earn their NYPA salaries while performing volunteer work; and an online Employee Community Forum and other communications vehicles; and**

**WHEREAS, she has further strengthened NYPA's efforts to attract and retain qualified employees in a highly competitive environment by playing key roles in expanding the Authority's diversity, training and mentoring activities and in implementing a restructured and refined compensation program; and**

**WHEREAS, she has provided invaluable leadership and guidance for such other vital endeavors as rebuilding and modernizing the Authority's computerized operations network and launching an initiative to better manage and share knowledge throughout the organization; and**

**WHEREAS, Ms. Tursi's exemplary work in budgeting and accounting positions, and then as Director of Budgets for almost 10 years, not only honed her talents and prepared her for her current responsibilities, but also led to her recognition in 2000 as NYPA's Woman Leader of the Year; and**

**WHEREAS, the patience, empathy and candor that she has displayed throughout her NYPA career have earned her the abiding admiration, respect and loyalty of those who have worked with and for her-- along with their gratitude for the cakes and cards with which she has marked their birthdays and other milestones; and**

**WHEREAS, Ms. Tursi is retiring from the Authority, having contributed immensely to its past successes and done much to lay the groundwork for the fulfillment of its new Strategic Vision;**



May 22, 2014

**NOW THEREFORE BE IT RESOLVED, That the Trustees of the Power Authority of the State of New York convey their deepest thanks and appreciation to Joan Tursi for her service to NYPA and the people of the state and that they wish her; her husband, Bill, and their son and daughter a happy, healthy and rewarding future.**

May 22, 2014

7. **Next Meeting**

The Regular Meeting of the Trustees will be held on **July 29, 2014, at 11:00 a.m., at the Clarence D. Rappleyea Building, White Plains, New York**, unless otherwise designated by the Chairman with the concurrence of the Trustees.

**Closing**

Upon motion made and seconded, the meeting was adjourned by the Chairman at approximately 9:50 p.m.

A handwritten signature in black ink, appearing to read "Karen Delince", written in a cursive style.

Karen Delince  
Corporate Secretary

May 22, 2014

# **EXHIBITS**

**For**

**May 22, 2014**

**Regular Meeting**

**Minutes**

---

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  
to  
DELPHI AUTOMOTIVE SYSTEMS, LLC

---

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 Delphi Automotive Systems, LLC (“Customer”), with offices at 5725 Delphi Drive, Troy, Michigan 48098. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree 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, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, Niagara Power Project hydroelectric power plays an important role in providing competitively priced power for sale to attract and retain business investment and to promote economic development in western New York State.

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, PAL § 1005(11) provides that the Authority is authorized to “[t]o exercise all the powers necessary or convenient to carry out and effectuate the purposes and provisions of ... title [1 of article 5 of the PAL] ... and as incidental thereto to . . . sell ... electric power, and generally to do any and every thing necessary or convenient to carry out the purposes of ... title [1 of article 5 of the PAL] ...”;

WHEREAS, on December 17, 2013, the Authority’s Board of Trustees (“Trustees”) approved the transfer of a 1,000 kilowatt (“kW”) allocation of RP and a 500 kW allocation of EP to the Customer for a five (5) year term (defined in Section I of this Agreement as the

“Allocation”) in connection with the continued operation of the Facility as further described in this Agreement;

WHEREAS, on December 17, 2013, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the transfer of the Allocation;

WHEREAS, the Parties have reached an agreement on the terms and conditions that will be applicable to the sale of the Allocation provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

**NOW THEREFORE**, the Parties hereto agree as follows:

## **I. Definitions**

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation(s) of EP and/or RP set forth in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **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-1 and the Rules.
- E. **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(5) and (13).
- F. **Facility** means the Customer’s facilities as further described in this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **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.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **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.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **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.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **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(5) and (13).
- Q. **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.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, 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.
- S. **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.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.
- W. **Taxes** is as defined in Service Tariff No. WNY-1



- X. **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.
- Y. **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.

## **II. Electric Service**

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. 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 on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. 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-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. 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.
- F. The Contract Demand may not exceed the Allocation.

## **III. Rates, Terms and Conditions**

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. 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. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. 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.

#### **IV. Expansion Power and/or Replacement Power Commitments**

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement. The Authority shall have the right to reduce the Allocations based on reductions in the Contract Demand made pursuant to Schedule B if the Customer fails to meet such commitments.
- B. The Authority will provide written notice to the Customer of any reduction made pursuant to this Article within thirty (30) days of such determination and will furnish the Customer with a revised Schedule A which reflects the reduced Allocation.
- C. 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 obligations provided for in Schedule B.

#### **V. Rules and Service Tariff**

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

## **VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges**

- A. The Customer shall be responsible complying with all requirements of its local electric utility 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. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. 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-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, 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 such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

## **VII. Billing and Billing Methodology**

- A. 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.
- B. The Authority will render bills by the 10<sup>th</sup> business day of the month for charges due for the previous month. 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 other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. 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.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) 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.
- G. 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. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to 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 shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit,

the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. 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.

#### **VIII. Hydropower Curtailments and Substitute Energy**

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will 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. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

#### **IX. Effectiveness, Term and Termination**

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this

Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.

- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. 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-1, or the Rules.

## **X. Additional Allocations**

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP 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 (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) 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, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. 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 additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

## **XI. Notification**

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

New York Power Authority  
123 Main Street  
White Plains, New York 10601  
Email: MED-BPAC@nypa.gov  
Facsimile: 914-390-8156  
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Delphi Automotive Systems, LLC  
5725 Delphi Drive  
Troy, Michigan 48098  
Email:  
Facsimile:  
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. 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: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) 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; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written 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.

## **XII. Applicable 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).

### **XIII. Venue**

Each Party consents to the exclusive jurisdiction and venue of any state or federal 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.

### **XIV. Successors and Assigns; Resale of Hydropower**

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

### **XV. Previous Agreements and Communications**

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification 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.

### **XVI. Severability and Voidability**

- A. 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.
- B. Notwithstanding the preceding paragraph, 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.



## **XVII. Waiver**

- A. 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.
- B. 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.

## **XVIII. 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 by email as a PDF file 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:

**DELPHI AUTOMOTIVE SYSTEMS, LLC**

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

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

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

AGREED:

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

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

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

**SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER TO  
CUSTOMER**

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

Customer: Delphi Automotive Systems, LLC

Type of Allocation (EP or RP)	Amount (kW)	Facility	Expiration Date	Trustee Approval Date
EP	500	Lockport Technical Center 200 Upper Mountain Road Lockport, New York 14094	Five (5) years from commencement of Electric Service of any portion of this Allocation	12/17/13
RP	1,000	Lockport Technical Center 200 Upper Mountain Road Lockport, New York 14094	Five (5) years from commencement of Electric Service of any portion of this Allocation	12/17/13

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER  
AND/OR REPLACEMENT POWER TO CUSTOMER**

**EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS**

I. Customer Commitments and Related Matters

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) 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.

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.

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 sole discretion.

B. Employment Records and Reports

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.

### C. Capital Investment

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's Capital Investment Commitments set forth in the Appendix of this Schedule B.

The Customer shall furnish to the Authority records and other proof of the Customer's capital investments in the Facility as the Authority may request to allow the Authority to determine the Customer's compliance with the Capital Investment Commitments provided for in the Appendix to this Schedule B.

In addition, each year beginning with 2014, the Customer shall record its annual capital investments at the Facility, and report such information to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority will use such information for the purpose of determining the Customer's compliance with the Capital Investment Commitments provided for in the Appendix to this Schedule B.

## II. Reductions of Contract Demand

### A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D 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.

### B. Power Utilization Levels

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. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) 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 Article II.D 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.

#### C. Capital Investment Levels

If the Customer's capital investment at the Facility in any year is less than 90% of its Capital Investment Commitment for such year, the Contract Demand may be reduced by the Authority subject to Article II.D 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 capital investment made at the Facility for such year divided by the Capital Investment Commitment for such year. 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.

#### D. 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 this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or facilities upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

### III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

## **APPENDIX TO SCHEDULE B**

### **BASE EMPLOYMENT LEVEL**

Beginning with the commencement of Electric Service through the Expiration Date as provided for in Schedule A, the Customer agrees to maintain a Base Employment Level of two hundred fifty (250) persons at the Customer's Facility located at the Lockport Technical Center, 200 Upper Mountain Road, Lockport, New York 14094 in accordance with Article I of this Schedule B.

### **CAPITAL INVESTMENT COMMITMENTS**

The Customer shall make capital investments in the Facility in the following amounts for each calendar year indicated:

<u>Calendar Year</u>	<u>Capital Investment Commitment</u>
2014	\$1,500,000
2015	\$70,000
2016	\$70,000
2017	\$70,000
<u>2018</u>	<u>\$70,000</u>
Total	\$1,780,000



**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER  
AND/OR REPLACEMENT POWER TO CUSTOMER**

**TAKEDOWN SCHEDULE**

N/A



POWER AUTHORITY OF THE STATE OF NEW YORK  
30 SOUTH PEARL STREET  
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and  
Replacement Customers located  
In Western New York

**Service Tariff No. WNY-1**

## **Table of Contents**

<b>Schedule of Rates for Firm Power Service</b>	<b>Leaf No.</b>
<b>I. Applicability</b> .....	3
<b>II. Abbreviations and Terms</b> .....	3
<b>III. Monthly Rates and Charges</b> .....	5
A. New Expansion Power and Replacement Power Base Rates.....	5
B. EP and RP Rates no Lower than Rural/Domestic Rate.....	6
C. Monthly Base Rates Exclude Delivery Service Charges.....	6
D. Minimum Monthly Charge.....	6
E. Billing Period.....	6
F. Billing Demand.....	6
G. Billing Energy.....	7
H. Contract Demand.....	7
<b>IV. General Provisions</b> .....	8
A. Character of Service.....	8
B. Availability of Energy.....	8
C. Delivery.....	8
D. Adjustment of Rates.....	8
E. Billing Methodology and Billing.....	9
F. Payment by Customer to Authority.....	9
1. Demand and Energy Rates, Taxes.....	9
2. Transmission Charge.....	10
3. NYISO Transmission and Related Charges.....	10
4. Taxes Defined.....	11
5. Substitute Energy.....	11
6. Payment Information.....	11
G. Adjustment of Charges.....	11
1. Distribution Losses.....	11
2. Transformer Losses.....	11
3. Power Factor.....	11
H. Conflicts.....	12
I. Customer Resales Prohibited.....	12
<b>V. Annual Adjustment Factor</b> .....	13

## Schedule of Rates for Firm Power Service

### **I. Applicability**

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) 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

**Agreement**: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

**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 customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who 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** and/or **Replacement Power**: 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 load split methodology applicable to a Customer's allocation. It 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, or such local utility's tariff, regarding the delivery of WNY Firm Power. 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 starting July 1, 2013, and for any year thereafter.

**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-1.

**Target Rate**: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein 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**

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

1. The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
  - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
  - B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
  - C. Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

#### **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) and PAL § 1005(5) (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 sole 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 Customer's Load Split Methodology as following:

- 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 following:

- 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 B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended 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, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

**G. Billing Period**

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**

The 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**

The 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 of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority 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. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

### **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 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 and Billing**

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

1. The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

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 local utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer’s local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer’s local electric utility for delivery of WNY Power. 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 methodology provided for in any contract between the Authority and the Customer’s local electric utility for delivery of WNY Power.

**F. Payment by Customer to Authority**

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum 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 (“NYISO Charges”)

The Customer shall compensate the Authority for the following 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, less any associated grandfathered Transmission Congestion Contracts ("TCCs") 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 third 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. 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. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. 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.
3. 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.
4. 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 sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

**H. Adjustment of Charges**

1. Distribution Losses

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

**I. Conflicts**

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. 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.

**J. Customer Resales Prohibited**

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

## **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. 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 by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties 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 unable to reach agreement on substitute indices within the 90-day period, the Parties 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 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

---

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  
TO  
SIGNA CHEMISTRY, INC.

---

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 SiGNa Chemistry, Inc. (“Customer”), with offices at 445 Park Avenue, Suite 1036, New York, NY 10022. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree 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, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, PAL § 1005(11) provides that the Authority is authorized to “[t]o exercise all the powers necessary or convenient to carry out and effectuate the purposes and provisions of ... title [1 of article 5 of the PAL] ... and as incidental thereto to . . . sell ... electric power, and generally to do any and every thing necessary or convenient to carry out the purposes of ... title [1 of article 5 of the PAL] ...”;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support the operation of the Facility it proposes to build and operate;

WHEREAS, on March 21, 2013, the Authority’s Board of Trustees (“Trustees”) approved a 2,500 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term in connection with the construction and operation of the Facility (defined in Section I of this Agreement as the “Allocation”) as further described in this Agreement;

WHEREAS, on March 21, 2013, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, 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, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

**NOW THEREFORE**, the Parties hereto agree as follows:

## **I. Definitions**

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **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-1 and the Rules.
- E. **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(5) and (13).
- F. **Facility** means the Customer's facilities as further described in this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).

- J. **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.
- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **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.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **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.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **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(5) and (13).
- Q. **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.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, 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.
- S. **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.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute

Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- W. **Taxes** is as defined in Service Tariff No. WNY-1
- X. **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.
- Y. **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.

## II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. 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 on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. 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-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. 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.
- F. The Contract Demand may not exceed the Allocation.

### **III. Rates, Terms and Conditions**

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. 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. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. 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.

### **IV. Expansion Power and/or Replacement Power Commitments**

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement, and the Customer's obligation to take and pay for such Electric Service, are expressly conditioned upon the Customer's timely completion of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter



commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility by March 21, 2016 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

## **V. Rules and Service Tariff**

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

## **VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges**

- A. The Customer shall be responsible complying with all requirements of its local electric utility 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. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. 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-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements

between them relating to such matters.

- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, 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 such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

## **VII. Billing and Billing Methodology**

- A. 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.
- B. The Authority will render bills by the 10<sup>th</sup> business day of the month for charges due for the previous month. 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 other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. 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.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated

damages, an additional interest charge of one and one-half percent (1 1/2%) 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.

- G. 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. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to 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 shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. 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.

### **VIII. Hydropower Curtailments and Substitute Energy**

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will 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. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules

(Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

## **IX. Effectiveness, Term and Termination**

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. 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-1, or the Rules.

## **X. Additional Allocations**

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP 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 (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) 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.
- B. 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 additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

## **XI. Notification**

- A. Correspondence involving the administration of this Agreement shall be addressed 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

SiGNa Chemistry, Inc.  
3115 Buffalo Avenue  
Niagara Falls, New York 14303  
Email: \_\_\_\_\_  
Facsimile:  
Attention: \_\_\_\_\_

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. 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: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) 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; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written 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.

## **XII. Applicable 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).

## **XIII. Venue**

Each Party consents to the exclusive jurisdiction and venue of any state or federal 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.

#### **XIV. Successors and Assigns; Resale of Hydropower**

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

#### **XV. Previous Agreements and Communications**

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification 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.

#### **XVI. Severability and Voidability**

- A. 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.
- B. Notwithstanding the preceding paragraph, 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.

#### **XVII. Waiver**

- A. 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.
- B. 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.

## **XVIII. 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 by email as a PDF file 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:

**SIGNA CHEMISTRY, INC.**

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

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

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

AGREED:

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

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

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



**SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER TO  
CUSTOMER**

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

Customer: SiGNa Chemistry Inc.

Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Replacement Power	2,500 kW	3115 Buffalo Avenue Building 101 Niagara Falls, New York 14303	March 21, 2013	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER  
AND/OR REPLACEMENT POWER TO CUSTOMER**

**EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS**

I.      Employment Commitments

A.      Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) 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.

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.

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 sole discretion.

B.      Employment Records and Reports

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.

## II. Reductions of Contract Demand

### A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D 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.

### B. Power Utilization Levels

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. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) 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 Article II.D 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.

### C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

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 obligations provided for in this Schedule B.

#### D. 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 this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

### III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

## **APPENDIX TO SCHEDULE B**

### **BASE EMPLOYMENT LEVEL**

Within three (3) years of commencement of Electric Service and continuing through the term of the Allocation, the Customer shall employ at least fifty (50) full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation.

A “full-time employee” shall mean an individual who works at least thirty-five (35) hours per week at the Facility. For the purpose of calculating the Base Employment Level, an individual working less than thirty-five (35) hours per week shall not be counted as a full-time employee; provided, however, that two individuals each working at least twenty (20) hours per week but less than thirty-five (35) hours per week at the Facility shall be counted as one full-time employee.

The Base Employment Level may not be created or maintained by transfers of employees from previously held positions with the Customer or from any of 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.

### **CAPITAL INVESTMENT**

The Customer shall build the Facility and make a capital investment of at least \$9.5 million for the Facility (the “Capital Investment”). The Capital Investment for the Facility is expected to consist of the following specific expenditures:

- |                                     |                |
|-------------------------------------|----------------|
| A. Powder Process Line 1            | \$1.0 million  |
| B. Powder Process Line 2            | \$2.25 million |
| C. Expanded Powder Process Capacity | \$6.25 million |

Total Capital Investment: \$9.5 million

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than March 21, 2016 (*i.e.*, within three (3) years of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended by the Authority in its sole discretion.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER  
AND/OR REPLACEMENT POWER TO CUSTOMER**

**TAKEDOWN SCHEDULE**

N/A



POWER AUTHORITY OF THE STATE OF NEW YORK  
30 SOUTH PEARL STREET  
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and  
Replacement Customers located  
In Western New York

**Service Tariff No. WNY-1**

## **Table of Contents**

<b>Schedule of Rates for Firm Power Service</b>	<b>Leaf No.</b>
<b>I. Applicability</b> .....	<b>3</b>
<b>II. Abbreviations and Terms</b> .....	<b>3</b>
<b>III. Monthly Rates and Charges</b> .....	<b>5</b>
A. New Expansion Power and Replacement Power Base Rates.....	5
B. EP and RP Rates no Lower than Rural/Domestic Rate.....	6
C. Monthly Base Rates Exclude Delivery Service Charges.....	6
D. Minimum Monthly Charge.....	6
E. Billing Period.....	6
F. Billing Demand.....	6
G. Billing Energy.....	7
H. Contract Demand.....	7
<b>IV. General Provisions</b> .....	<b>8</b>
A. Character of Service.....	8
B. Availability of Energy.....	8
C. Delivery.....	8
D. Adjustment of Rates.....	8
E. Billing Methodology and Billing.....	9
F. Payment by Customer to Authority.....	9
1. Demand and Energy Rates, Taxes.....	9
2. Transmission Charge.....	10
3. NYISO Transmission and Related Charges.....	10
4. Taxes Defined.....	11
5. Substitute Energy.....	11
6. Payment Information.....	11
G. Adjustment of Charges.....	11
1. Distribution Losses.....	11
2. Transformer Losses.....	11
3. Power Factor.....	11
H. Conflicts.....	12
I. Customer Resales Prohibited.....	12
<b>V. Annual Adjustment Factor</b> .....	<b>13</b>



## Schedule of Rates for Firm Power Service

### **I. Applicability**

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) 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

**Agreement:** An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

**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 customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who 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** and/or **Replacement Power:** 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 load split methodology applicable to a Customer's allocation. It 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, or such local utility's tariff, regarding the delivery of WNY Firm Power. 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 starting July 1, 2013, and for any year thereafter.

**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-1.

**Target Rate**: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein 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**

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

1. The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
  - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
  - B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
  - C. Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

#### **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) and PAL § 1005(5) (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 sole 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 Customer's Load Split Methodology as following:

- 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 following:

- 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 B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended 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, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

**G. Billing Period**

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**

The 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**

The 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 of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority 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. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

### **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 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 and Billing**

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

1. The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

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 local utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer’s local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer’s local electric utility for delivery of WNY Power. 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 methodology provided for in any contract between the Authority and the Customer’s local electric utility for delivery of WNY Power.

**F. Payment by Customer to Authority**

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum 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 (“NYISO Charges”)

The Customer shall compensate the Authority for the following 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, less any associated grandfathered Transmission Congestion Contracts ("TCCs") 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 third 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. 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. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. 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.
3. 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.
4. 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 sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

**H. Adjustment of Charges**

1. Distribution Losses

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

**I. Conflicts**

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. 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.

**J. Customer Resales Prohibited**

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

## **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. 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 by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties 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 unable to reach agreement on substitute indices within the 90-day period, the Parties 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 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>
<u>Measuring Year -1 (2011)</u>			
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			<b>1.00</b>

- 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

---

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  
to  
TRINITY PACKAGING CORPORATION

---



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 Trinity Packaging Corporation (“Customer”), with offices at 55 Innsbruck Drive, Cheektowaga, New York 14227. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree 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, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at a new and/or expanded facility to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on March 25, 2014, the Authority’s Board of Trustees (“Trustees”) approved a 200 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on March 25, 2014, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, 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, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

**NOW THEREFORE**, the Parties hereto agree as follows:

## **I. Definitions**

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **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-1 and the Rules.
- E. **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(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **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.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **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.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **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.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **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(5) and (13).
- Q. **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.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, 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.
- S. **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.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.
- W. **Taxes** is as defined in Service Tariff No. WNY-1

- X. **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.
- Y. **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.

## **II. Electric Service**

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. 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 on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. 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-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. 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.
- F. The Contract Demand may not exceed the Allocation.

## **III. Rates, Terms and Conditions**

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. 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. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. 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.

#### **IV. Expansion Power and/or Replacement Power Commitments**

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement, and the Customer's obligation to take and pay for such Electric Service, are expressly conditioned upon the Customer's timely completion of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.
- E. In the event the Customer fails to complete the Facility by March 25, 2017 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

## **V. Rules and Service Tariff**

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

## **VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges**

- A. The Customer shall be responsible complying with all requirements of its local electric utility 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. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. 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-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing

related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, 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 such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

## **VII. Billing and Billing Methodology**

- A. 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.
- B. The Authority will render bills by the 10<sup>th</sup> business day of the month for charges due for the previous month. 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 other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. 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.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) 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.
- G. 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. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall

have the right to require the Customer to 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 shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. 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.

### **VIII. Hydropower Curtailments and Substitute Energy**

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will 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. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.



## **IX. Effectiveness, Term and Termination**

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. 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-1, or the Rules.

## **X. Additional Allocations**

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP 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 (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) 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.
- B. 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 additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

## **XI. Notification**

- A. Correspondence involving the administration of this Agreement shall be addressed 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

Trinity Packaging Corporation  
55 Innsbruck Drive  
Cheektowaga, NY 14227

Email:  
Facsimile:  
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. 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: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) 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; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written 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.

## **XII. Applicable 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).

## **XIII. Venue**

Each Party consents to the exclusive jurisdiction and venue of any state or federal 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.

## **XIV. Successors and Assigns; Resale of Hydropower**

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.

- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

#### **XV. Previous Agreements and Communications**

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification 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.

#### **XVI. Severability and Voidability**

- A. 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.
- B. Notwithstanding the preceding paragraph, 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.

#### **XVII. Waiver**

- A. 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.
- B. 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.

#### **XVIII. 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 by email as a PDF file 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:

**TRINITY PACKAGING CORPORATION**

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

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

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

AGREED:

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

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

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

**SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER TO  
CUSTOMER**

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

Customer: TRINITY PACKAGING CORPORATION

Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Replacement Power	200 kW	55 Innsbruck Drive, Cheektowaga, NY 14227	March 25, 2014	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER  
AND/ OR REPLACEMENT POWER TO CUSTOMER**

**EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS**

I.      Employment Commitments

A.      Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) 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.

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.

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 sole discretion.

B.      Employment Records and Reports

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.

## II. Reductions of Contract Demand

### A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D 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.

### B. Power Utilization Levels

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. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D 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.

### C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

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 obligations provided for in this Schedule B.



#### D. 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 this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

### III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

## **APPENDIX TO SCHEDULE B**

### **BASE EMPLOYMENT LEVEL**

Within three (3) years of commencement of Electric Service, the Customer shall employ at least one hundred fifty (150) full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B. The Base Employment Level is derived from: (1) a stipulation by the Customer that there are one hundred and twenty nine (129) full-time employees at the Facility as of the time of the award of the Allocation by the Authority; and (2) a commitment by the Customer to employ 21 additional full-time employees at the Facility.

### **CAPITAL INVESTMENT**

The Customer shall make a total capital investment of at least \$6,500,000 to renovate and furnish the Facility (the “Capital Investment”). The Capital Investment for the Facility is expected to consist of the following specific expenditures:

Oxidizer:	\$860,000
Printing Press:	\$3,500,000
Slitter:	\$320,000
Pouch Machine:	\$500,000
Compressor:	\$50,000
Additional Capital Expenses:	\$1,270,000

**Total Capital Investment:       \$6,500,000**

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than March 25, 2017 (*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 sole discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER  
AND/OR REPLACEMENT POWER TO CUSTOMER**

**TAKEDOWN SCHEDULE**

N/A



POWER AUTHORITY OF THE STATE OF NEW YORK  
30 SOUTH PEARL STREET  
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and  
Replacement Customers located  
In Western New York

**Service Tariff No. WNY-1**

## **Table of Contents**

<b>Schedule of Rates for Firm Power Service</b>	<b>Leaf No.</b>
<b>I. Applicability</b> .....	3
<b>II. Abbreviations and Terms</b> .....	3
<b>III. Monthly Rates and Charges</b> .....	5
A. New Expansion Power and Replacement Power Base Rates.....	5
B. EP and RP Rates no Lower than Rural/Domestic Rate.....	6
C. Monthly Base Rates Exclude Delivery Service Charges.....	6
D. Minimum Monthly Charge.....	6
E. Billing Period.....	6
F. Billing Demand.....	6
G. Billing Energy.....	7
H. Contract Demand.....	7
<b>IV. General Provisions</b> .....	8
A. Character of Service.....	8
B. Availability of Energy.....	8
C. Delivery.....	8
D. Adjustment of Rates.....	8
E. Billing Methodology and Billing.....	9
F. Payment by Customer to Authority.....	9
1. Demand and Energy Rates, Taxes.....	9
2. Transmission Charge.....	10
3. NYISO Transmission and Related Charges.....	10
4. Taxes Defined.....	11
5. Substitute Energy.....	11
6. Payment Information.....	11
G. Adjustment of Charges.....	11
1. Distribution Losses.....	11
2. Transformer Losses.....	11
3. Power Factor.....	11
H. Conflicts.....	12
I. Customer Resales Prohibited.....	12
<b>V. Annual Adjustment Factor</b> .....	13

## Schedule of Rates for Firm Power Service

### I. Applicability

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) 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

**Agreement**: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

**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 customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who 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** and/or **Replacement Power**: 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 load split methodology applicable to a Customer's allocation. It 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, or such local utility's tariff, regarding the delivery of WNY Firm Power. 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 starting July 1, 2013, and for any year thereafter.

**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-1.

**Target Rate**: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein 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**

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

1. The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
  - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
  - B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
  - C. Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

#### **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) and PAL § 1005(5) (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 sole 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 Customer's Load Split Methodology as following:

- 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 following:

- 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 B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended 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, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

**G. Billing Period**

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**

The 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**

The 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 of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority 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. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

### **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 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 and Billing**

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

1. The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

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 local utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer’s local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer’s local electric utility for delivery of WNY Power. 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 methodology provided for in any contract between the Authority and the Customer’s local electric utility for delivery of WNY Power.

**F. Payment by Customer to Authority**

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum 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 (“NYISO Charges”)

The Customer shall compensate the Authority for the following 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, less any associated grandfathered Transmission Congestion Contracts ("TCCs") 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 third 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. 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. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. 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.
3. 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.
4. 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 sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

**H. Adjustment of Charges**

1. Distribution Losses

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

**I. Conflicts**

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. 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.

**J. Customer Resales Prohibited**

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

## **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. 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 by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties 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 unable to reach agreement on substitute indices within the 90-day period, the Parties 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 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>
<u>Measuring Year -1 (2011)</u>			
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			<b>1.00</b>

- 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

New York Power Authority  
Contracts for the Sale of Western New York Hydropower - Transmittal to the Governor

Exhibit "2b-B"  
May 22, 2014

Line	Company Name	Program	City	County	Trustee Public Hearing Authorization Date	Allocation (kW)	New Jobs	Total Job Commitment	Capital Investment	Proposed Direct Sale Contract Term
1	Delphi Automotive Systems, LLC <sup>1,2</sup>	EP/ RP	Lockport	Niagara	12/17/2013	1,500	0	250	\$1,780,000	5 Years
3	SiGNa Chemistry, Inc.	RP	Niagara Falls	Niagara	3/21/2013	2,500	50	50	\$9,500,000	7 Years
4	Trinity Packaging Corporation	RP	Cheektowaga	Erie	3/25/2014	200	21	150	\$6,500,000	7 Years

1 As reflected in the proposed contract, the Delphi allocation is comprised of a 500 kW EP allocation and a 1,000 kW RP allocation for a total of 1,500 kW of hydropower.

2 Delphi Automotive Systems, LLC, is a wholly owned subsidiary of Delphi Automotive PLC , the name originally presented in the Trustee item of December 17, 2013.

*New York State Power Authority  
Public Hearing*

---

*Lewiston, NY  
April 10, 2014*

---



**METSCHL**  
AND ASSOCIATES

COURT REPORTERS • LEGAL VIDEO SERVICES

**Buffalo, NY:** 716 856-1906

**Rochester, NY:** 585 697-0969

**Toll Free:** 800 397-1796

*Original File 041014pas.txt*

*Min-U-Script® with Word Index*

New York State Power Authority

Thursday, April 10, 2014

2:30 p.m. - 6:30 p.m.

Niagara Power Project Visitors' Center

5777 Lewiston Road

Lewiston, New York 14092

Patricia A. Schreier

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

RS :

MS . DELINCE . . . . . 3 , 10

MR . PASQUALE . . . . . 5



1 MS. DELINCE: Good afternoon. This is a public  
2 hearing required by law and authorized by the New York  
3 State Power Authority's Board of Trustees on the  
4 proposed direct sale contracts for the transfer of  
5 hydropower from GM Component Holdings LLC to Delphi  
6 Automotive PLC and the sale of hydropower to Gracious  
7 Living USA, SIGNa Chemistry, Inc., and Trinity Packaging  
8 Corporation.

9 My name is Karen Delince and I am the Authority's  
10 Corporate Secretary.

11 New York State Public Authority Section 1009 sets  
12 forth procedures for executing certain contracts  
13 negotiated by the Authority.

14 First, prior to the hearing it requires that notice  
15 of the hearing be provided. Therefore, a notice was  
16 sent to the Governor, the Senate's President Pro Temp,  
17 the Senate Minority Leader, the Senate Finance Committee  
18 Chair, the Assembly Speaker, the Assembly Minority  
19 Leader, the Assembly Ways and Means Committee Chair.

20 In addition, notices appeared in the following  
21 newspapers once a week for the four weeks leading up to  
22 this hearing; the Niagara Gazette, Buffalo News, Buffalo  
23 Business First, Lewiston Porter Sentinel, Albany Times

1 Union, Dunkirk Observer.

2 The public was also given access to the proposed  
3 contracts on the Authority's website and at the  
4 Authority's White Plains office during the 30 day period  
5 prior to today's hearing.

6 After the hearing the public will be given access  
7 to the hearing transcript at [www.nypa.gov](http://www.nypa.gov) and at the  
8 White Plains office once it is completed.

9 The next step in the process set forth in Section  
10 1009 will be for the NYPA Trustees to reconsider the  
11 proposed contracts in light of public comments.

12 Once the Trustees have completed their final review  
13 the contracts will be forwarded to the Governor for his  
14 consideration and approval.

15 If you plan to make an oral statement at this  
16 hearing, I ask that you so indicate on the sign-in  
17 sheet. Also, if you have a written statement, please  
18 give a copy to me and one to the reporter.

19 Written statements may be of any length and will  
20 appear in the record of the hearing in addition to oral  
21 statements.

22 The record of the hearing will remain open for  
23 additional comments through close of business, Friday,

1 April 11th.

2 Additional comments should be mailed, faxed or  
3 e-mailed to the corporate secretary at 123 Main Street,  
4 11-P, White Plains, NY, 10601 or (914) 390-8040 or  
5 secretarys.office@nypa.gov.

6 At this point I would like to introduce Mr. James  
7 Pasquale, the Authority's Senior Vice President of  
8 Economic Development and Energy Efficiency, who will  
9 provide additional details on the proposed direct sale  
10 contracts.

11 Thank you. Mr. Pasquale.

12 MR. PASQUALE: Thank you, Ms. Delince.

13 Good afternoon. My name is James F. Pasquale and I  
14 am the Senior Vice President of Economic Development and  
15 Energy Efficiency at the New York State Power Authority.

16 I am here today to present a summary of the  
17 proposed contracts to four companies for the direct sale  
18 of Expansion Power or Replacement Power - hydropower  
19 that is generated here at the Authority's Niagara Power  
20 Project.

21 Under Public Authorities Law Section 1005  
22 Subsection 13, the Authority may allocate and sell  
23 directly or by sale-for-resale, 250 MW of Expansion

1 Power, known as EP and 445 MW of Replacement Power,  
2 known as RP to businesses located within 30 miles of the  
3 Niagara Power Project, provided that the amount of EP  
4 allocated to businesses in Chautauqua County on  
5 January 1, 1987 shall continue to be allocated in  
6 Chautauqua County.

7 Three companies have been awarded hydropower  
8 allocations by the Authority's Trustees in return for  
9 commitments made to create or expand their businesses in  
10 Western New York.

11 Specifically: Graciously Living USA was awarded  
12 3,700 kilowatts to create a household plastic products  
13 manufacturing facility in Buffalo, committing to 42  
14 million dollars in capital investment and the creation  
15 of 250 jobs.

16 SIGNa Chemistry, Inc., was awarded 2,500 kilowatts  
17 to build a chemical manufacturing facility in Niagara  
18 Falls to make chemicals for the fuel cell and enhanced  
19 oil recovery industries committing to 9.5 million  
20 dollars in capital investment and creation of 50 jobs.

21 Trinity Packaging Corporation was awarded 200  
22 kilowatts for an expansion project that would  
23 reconfigure and increase production capabilities at its

1 Cheektowaga facility, committing to 6.5 million in  
2 capital investment and the creation of 21 jobs.

3 The fourth contract is to Delphi Automotive Systems  
4 LLC in Lockport, which was approved to receive two  
5 hydropower allocations, 500 kilowatts of EP and 1,000  
6 kilowatts of RP, transferred from GM Component Holdings  
7 LLC, also of Lockport.

8 The transfer was requested as part of Delphi's  
9 complete legal separation from GM, initiated several  
10 years ago, and culminating in a physical separation of  
11 infrastructure at the Upper Mountain Road campus shared  
12 by the companies.

13 Delphi will maintain an employment level of 250  
14 jobs and invest \$1.78 million in its Lockport facility  
15 during the contract's five year term.

16 In aggregate, the four companies have committed to  
17 capital spending of more than 59 million dollars in  
18 their Western New York facilities while creating or  
19 retaining 571 jobs.

20 To summarize, some of the pertinent provisions of  
21 the proposed contracts, first, the contracts provide for  
22 the direct billing of all hydropower supply charges, all  
23 New York Independent System Operator, Inc., (NYISO)

1 charges and taxes.

2 Each contract includes the customer's agreed upon  
3 commitments with respect to employment and capital  
4 investment. The contracts retain the Authority's right  
5 to reduce or terminate a customer's allocation if  
6 employment, power utilization or capital investment  
7 commitments are not met.

8 For example, the contracts include an annual job  
9 reporting requirement and a job compliance threshold of  
10 90 percent. Should a company's average annual  
11 employment fall below the compliance threshold of  
12 90 percent of the employment commitment, the Authority  
13 has the right to reduce the allocation on a pro rata  
14 basis.

15 The contract compels the company to perform an  
16 energy audit at the facility at least once within five  
17 years, helping to ensure the customer uses the  
18 hydropower efficiently. Additionally, to accommodate  
19 non-payment risk that could result from the direct  
20 billing arrangement, the contract includes commercially  
21 reasonable provisions concerning the Authority's ability  
22 to charge late payment fees and to require deposits in  
23 the event of customer failure to make payment for any

1 two monthly bills.

2 These contract provisions are consistent with other  
3 Authority direct sale contracts including the Recharge  
4 New York sales contracts.

5 The contracts will serve the allocations in  
6 accordance with the Authority's Service Tariff WNY-1  
7 which specifies the rates and other terms applicable to  
8 all EP and RP allocations.

9 The Service Tariff specifies a three year rate  
10 phase-in to a target rate based on the rate of the  
11 Authority's other hydropower program - Preservation  
12 Power - to ultimately ensure consistency among the  
13 Authority's three hydropower programs.

14 Transmission and delivery service for these  
15 allocations will be provided by National Grid or NYSEG  
16 in accordance with the utilities' Public Service  
17 Commission approved delivery service tariffs.

18 As Ms. Delince stated earlier, the Authority will  
19 accept your comments on the proposed contracts until the  
20 close of business on Friday, April 11, 2014. I will now  
21 turn the Public Hearing back to Ms. Delince.

22 MS. DELINCE: Thank you, Mr. Pasquale. We will  
23 now recess and reconvene when speakers arrive.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

(recess)

MS. DELINCE: The April 10th, 2014 public  
hearing on the proposed direct sale contracts is now  
officially closed at 6:30 p.m.

(Hearing closed at 6:30 p.m.)



	9:23	8:22	5:10,17;7:21,21;8:4,	5:8,15
<b>\$</b>	<b>Assembly (3)</b>	<b>charges (2)</b>	8:9;3,4,5,19;10:3	<b>efficiently (1)</b>
<b>\$1.78 (1)</b>	3:18,18,19	7:22;8:1	<b>contract's (1)</b>	8:18
7:14	<b>audit (1)</b>	<b>Chautauqua (2)</b>	7:15	<b>e-mailed (1)</b>
	8:16	6:4,6	<b>copy (1)</b>	5:3
<b>A</b>	<b>Authorities (1)</b>	<b>Cheektowaga (1)</b>	4:18	<b>employment (5)</b>
	5:21	7:1	<b>Corporate (2)</b>	7:13;8:3,6,11,12
<b>ability (1)</b>	<b>Authority (7)</b>	<b>chemical (1)</b>	3:10;5:3	<b>Energy (3)</b>
8:21	3:11,13;5:15,22;	6:17	<b>Corporation (2)</b>	5:8,15;8:16
<b>accept (1)</b>	8:12;9:3,18	<b>chemicals (1)</b>	3:8;6:21	<b>enhanced (1)</b>
9:19	<b>Authority's (12)</b>	6:18	<b>County (2)</b>	6:18
<b>access (2)</b>	3:3,9;4:3,4;5:7,19;	<b>Chemistry (2)</b>	6:4,6	<b>ensure (2)</b>
4:2,6	6:8;8:4,21;9:6,11,13	3:7;6:16	<b>create (2)</b>	8:17;9:12
<b>accommodate (1)</b>	<b>authorized (1)</b>	<b>close (2)</b>	6:9,12	<b>EP (4)</b>
8:18	3:2	4:23;9:20	<b>creating (1)</b>	6:1,3;7:5;9:8
<b>accordance (2)</b>	<b>Automotive (2)</b>	<b>closed (2)</b>	7:18	<b>ERS (1)</b>
9:6,16	3:6;7:3	10:4,6	<b>creation (3)</b>	2:1
<b>addition (2)</b>	<b>average (1)</b>	<b>comments (4)</b>	6:14,20;7:2	<b>event (1)</b>
3:20;4:20	8:10	4:11,23;5:2;9:19	<b>culminating (1)</b>	8:23
<b>additional (3)</b>	<b>awarded (4)</b>	<b>commercially (1)</b>	7:10	<b>example (1)</b>
4:23;5:2,9	6:7,11,16,21	8:20	<b>customer (2)</b>	8:8
<b>Additionally (1)</b>	<b>B</b>	<b>Commission (1)</b>	8:17,23	<b>executing (1)</b>
8:18		9:17	<b>customer's (2)</b>	3:12
<b>afternoon (2)</b>	<b>back (1)</b>	<b>commitment (1)</b>	8:2,5	<b>expand (1)</b>
3:1;5:13	9:21	8:12	<b>D</b>	6:9
<b>aggregate (1)</b>	<b>based (1)</b>	<b>commitments (3)</b>		<b>Expansion (3)</b>
7:16	9:10	6:9;8:3,7		5:18,23;6:22
<b>ago (1)</b>	<b>basis (1)</b>	<b>committed (1)</b>	<b>day (1)</b>	<b>F</b>
7:10	8:14	7:16	4:4	
<b>agreed (1)</b>	<b>below (1)</b>	<b>Committee (2)</b>	<b>DELINCE (8)</b>	<b>facilities (1)</b>
8:2	8:11	3:17,19	2:4;3:1,9;5:12;	7:18
<b>Albany (1)</b>	<b>billing (2)</b>	<b>committing (3)</b>	9:18,21,22;10:2	<b>facility (5)</b>
3:23	7:22;8:20	6:13,19;7:1	<b>delivery (2)</b>	6:13,17;7:1,14;
<b>allocate (1)</b>	<b>bills (1)</b>	<b>companies (4)</b>	9:14,17	8:16
5:22	9:1	5:17;6:7;7:12,16	<b>Delphi (3)</b>	<b>failure (1)</b>
<b>allocated (2)</b>	<b>Board (1)</b>	<b>company (1)</b>	3:5;7:3,13	8:23
6:4,5	3:3	8:15	<b>Delphi's (1)</b>	<b>fall (1)</b>
<b>allocation (2)</b>	<b>Buffalo (3)</b>	<b>company's (1)</b>	7:8	8:11
8:5,13	3:22,22;6:13	8:10	<b>deposits (1)</b>	<b>Falls (1)</b>
<b>allocations (5)</b>	<b>build (1)</b>	<b>compels (1)</b>	8:22	6:18
6:8;7:5;9:5,8,15	6:17	8:15	<b>details (1)</b>	<b>faxed (1)</b>
<b>among (1)</b>	<b>Business (3)</b>	<b>complete (1)</b>	5:9	5:2
9:12	3:23;4:23;9:20	7:9	<b>Development (2)</b>	<b>fees (1)</b>
<b>amount (1)</b>	<b>businesses (3)</b>	<b>completed (2)</b>	5:8,14	8:22
6:3	6:2,4,9	4:8,12	<b>direct (7)</b>	<b>final (1)</b>
<b>annual (2)</b>	<b>C</b>	<b>compliance (2)</b>	3:4;5:9,17;7:22;	4:12
8:8,10		8:9,11	8:19;9:3;10:3	<b>Finance (1)</b>
<b>appear (1)</b>	<b>campus (1)</b>	<b>Component (2)</b>	<b>directly (1)</b>	3:17
4:20	7:11	3:5;7:6	5:23	<b>First (3)</b>
<b>appeared (1)</b>	<b>capabilities (1)</b>	<b>concerning (1)</b>	<b>dollars (3)</b>	3:14,23;7:21
3:20	6:23	8:21	6:14,20;7:17	<b>five (2)</b>
<b>applicable (1)</b>	<b>capital (6)</b>	<b>consideration (1)</b>	<b>Dunkirk (1)</b>	7:15;8:16
9:7	6:14,20;7:2,17;8:3,	4:14	4:1	<b>following (1)</b>
<b>approval (1)</b>	6	<b>consistency (1)</b>	<b>during (2)</b>	3:20
4:14	<b>cell (1)</b>	9:12	4:4;7:15	<b>forth (2)</b>
<b>approved (2)</b>	6:18	<b>consistent (1)</b>	<b>E</b>	3:12;4:9
7:4;9:17	<b>certain (1)</b>	9:2		<b>forwarded (1)</b>
<b>April (3)</b>	3:12	<b>continue (1)</b>	<b>earlier (1)</b>	4:13
5:1;9:20;10:2	<b>Chair (2)</b>	6:5	9:18	<b>four (3)</b>
<b>arrangement (1)</b>	3:18,19	<b>contract (5)</b>	<b>Economic (2)</b>	3:21;5:17;7:16
8:20	<b>charge (1)</b>	<b>contracts (16)</b>	5:8,14	<b>fourth (1)</b>
<b>arrive (1)</b>		3:4,12;4:3,11,13;	<b>Efficiency (2)</b>	7:3

<b>Friday (2)</b> 4:23;9:20 <b>fuel (1)</b> 6:18	7:9 <b>introduce (1)</b> 5:6 <b>invest (1)</b> 7:14 <b>investment (5)</b> 6:14,20;7:2;8:4,6	<b>Main (1)</b> 5:3 <b>maintain (1)</b> 7:13 <b>manufacturing (2)</b> 6:13,17 <b>may (2)</b> 4:19;5:22 <b>Means (1)</b> 3:19 <b>met (1)</b> 8:7 <b>miles (1)</b> 6:2 <b>million (5)</b> 6:14,19;7:1,14,17 <b>Minority (2)</b> 3:17,18 <b>monthly (1)</b> 9:1 <b>more (1)</b> 7:17 <b>Mountain (1)</b> 7:11 <b>MW (2)</b> 5:23;6:1	<b>Observer (1)</b> 4:1 <b>office (2)</b> 4:4,8 <b>officially (1)</b> 10:4 <b>oil (1)</b> 6:19 <b>once (4)</b> 3:21;4:8,12;8:16 <b>one (1)</b> 4:18 <b>open (1)</b> 4:22 <b>Operator (1)</b> 7:23 <b>oral (2)</b> 4:15,20	<b>Preservation (1)</b> 9:11 <b>President (3)</b> 3:16;5:7,14 <b>prior (2)</b> 3:14;4:5 <b>Pro (2)</b> 3:16;8:13 <b>procedures (1)</b> 3:12 <b>process (1)</b> 4:9 <b>production (1)</b> 6:23 <b>products (1)</b> 6:12 <b>program (1)</b> 9:11 <b>programs (1)</b> 9:13 <b>Project (3)</b> 5:20;6:3,22 <b>proposed (8)</b> 3:4;4:2,11;5:9,17; 7:21;9:19;10:3 <b>provide (2)</b> 5:9;7:21 <b>provided (3)</b> 3:15;6:3;9:15 <b>provisions (3)</b> 7:20;8:21;9:2 <b>public (9)</b> 3:1,11;4:2,6,11; 5:21;9:16,21;10:2
<b>G</b>	<b>J</b>	<b>K</b>	<b>P</b>	
<b>Gazette (1)</b> 3:22 <b>generated (1)</b> 5:19 <b>given (2)</b> 4:2,6 <b>GM (3)</b> 3:5;7:6,9 <b>Good (2)</b> 3:1;5:13 <b>Governor (2)</b> 3:16;4:13 <b>Gracious (1)</b> 3:6 <b>Graciously (1)</b> 6:11 <b>Grid (1)</b> 9:15	<b>James (2)</b> 5:6,13 <b>January (1)</b> 6:5 <b>job (2)</b> 8:8,9 <b>jobs (5)</b> 6:15,20;7:2,14,19 <b>Karen (1)</b> 3:9 <b>kilowatts (5)</b> 6:12,16,22;7:5,6 <b>known (2)</b> 6:1,2	<b>L</b>	<b>N</b>	
<b>H</b>	<b>L</b>	<b>N</b>		
<b>hearing (13)</b> 3:2,14,15,22;4:5,6, 7,16,20,22;9:21;10:3, 6 <b>helping (1)</b> 8:17 <b>Holdings (2)</b> 3:5;7:6 <b>household (1)</b> 6:12 <b>hydropower (9)</b> 3:5,6;5:18;6:7;7:5, 22;8:18,9;11,13	<b>late (1)</b> 8:22 <b>law (2)</b> 3:2;5:21 <b>Leader (2)</b> 3:17,19 <b>leading (1)</b> 3:21 <b>least (1)</b> 8:16 <b>legal (1)</b> 7:9 <b>length (1)</b> 4:19 <b>level (1)</b> 7:13 <b>Lewiston (1)</b> 3:23 <b>light (1)</b> 4:11 <b>Living (2)</b> 3:7;6:11 <b>LLC (3)</b> 3:5;7:4,7 <b>located (1)</b> 6:2 <b>Lockport (3)</b> 7:4,7,14	<b>name (2)</b> 3:9;5:13 <b>National (1)</b> 9:15 <b>negotiated (1)</b> 3:13 <b>New (7)</b> 3:2,11;5:15;6:10; 7:18,23;9:4 <b>News (1)</b> 3:22 <b>newspapers (1)</b> 3:21 <b>next (1)</b> 4:9 <b>Niagara (4)</b> 3:22;5:19;6:3,17 <b>non-payment (1)</b> 8:19 <b>notice (2)</b> 3:14,15 <b>notices (1)</b> 3:20 <b>NY (1)</b> 5:4 <b>NYISO (1)</b> 7:23 <b>NYPA (1)</b> 4:10 <b>NYSEG (1)</b> 9:15	<b>payment (2)</b> 8:22,23 <b>percent (2)</b> 8:10,12 <b>perform (1)</b> 8:15 <b>period (1)</b> 4:4 <b>pertinent (1)</b> 7:20 <b>phase-in (1)</b> 9:10 <b>physical (1)</b> 7:10 <b>Plains (3)</b> 4:4,8;5:4 <b>plan (1)</b> 4:15 <b>plastic (1)</b> 6:12 <b>PLC (1)</b> 3:6 <b>please (1)</b> 4:17 <b>pm (2)</b> 10:4,6 <b>point (1)</b> 5:6 <b>Porter (1)</b> 3:23 <b>Power (10)</b> 3:3;5:15,18,18,19; 6:1,1,3;8:6;9:12 <b>present (1)</b> 5:16	
<b>I</b>	<b>M</b>	<b>O</b>		<b>R</b>
<b>Inc (3)</b> 3:7;6:16;7:23 <b>include (1)</b> 8:8 <b>includes (2)</b> 8:2,20 <b>including (1)</b> 9:3 <b>increase (1)</b> 6:23 <b>Independent (1)</b> 7:23 <b>indicate (1)</b> 4:16 <b>industries (1)</b> 6:19 <b>infrastructure (1)</b> 7:11 <b>initiated (1)</b>	<b>mailed (1)</b> 5:2			<b>rata (1)</b> 8:13 <b>rate (3)</b> 9:9,10,10 <b>rates (1)</b> 9:7 <b>reasonable (1)</b> 8:21 <b>receive (1)</b> 7:4 <b>recess (2)</b> 9:23;10:1 <b>Recharge (1)</b> 9:3 <b>reconfigure (1)</b> 6:23 <b>reconsider (1)</b> 4:10 <b>reconvene (1)</b> 9:23 <b>record (2)</b> 4:20,22 <b>recovery (1)</b> 6:19 <b>reduce (2)</b> 8:5,13

remain (1) 4:22	3:16	9:10	9:16	5:3
Replacement (2) 5:18;6:1	Sentinel (1) 3:23	Tariff (2) 9:6,9	utilization (1) 8:6	13 (1) 5:22
reporter (1) 4:18	separation (2) 7:9,10	tariffs (1) 9:17	V	1987 (1) 6:5
reporting (1) 8:9	serve (1) 9:5	taxes (1) 8:1	Vice (2) 5:7,14	2
requested (1) 7:8	Service (5) 9:6,9,14,16,17	Temp (1) 3:16	W	2,500 (1) 6:16
require (1) 8:22	set (1) 4:9	term (1) 7:15	Ways (1) 3:19	200 (1) 6:21
required (1) 3:2	sets (1) 3:11	terminate (1) 8:5	website (1) 4:3	2014 (2) 9:20;10:2
requirement (1) 8:9	several (1) 7:9	terms (1) 9:7	week (1) 3:21	21 (1) 7:2
requires (1) 3:14	shall (1) 6:5	Therefore (1) 3:15	weeks (1) 3:21	250 (3) 5:23;6:15;7:13
respect (1) 8:3	shared (1) 7:11	Three (3) 6:7;9:9,13	Western (2) 6:10;7:18	3
result (1) 8:19	sheet (1) 4:17	threshold (2) 8:9,11	White (3) 4:4,8;5:4	3,10 (1) 2:4
retain (1) 8:4	SIGNa (2) 3:7;6:16	Times (1) 3:23	within (2) 6:2;8:16	3,700 (1) 6:12
retaining (1) 7:19	sign-in (1) 4:16	today (1) 5:16	WNY-1 (1) 9:6	30 (2) 4:4;6:2
return (1) 6:8	Speaker (1) 3:18	today's (1) 4:5	written (2) 4:17,19	390-8040 (1) 5:4
review (1) 4:12	speakers (1) 9:23	transcript (1) 4:7	wwwnypagov (1) 4:7	4
right (2) 8:4,13	Specifically (1) 6:11	transfer (2) 3:4;7:8	Y	42 (1) 6:13
risk (1) 8:19	specifies (2) 9:7,9	transferred (1) 7:6	year (2) 7:15;9:9	445 (1) 6:1
Road (1) 7:11	spending (1) 7:17	Transmission (1) 9:14	years (2) 7:10;8:17	5
RP (3) 6:2;7:6;9:8	State (3) 3:3,11;5:15	Trinity (2) 3:7;6:21	York (7) 3:2,11;5:15;6:10; 7:18,23;9:4	5 (1) 2:5
S	stated (1) 9:18	Trustees (4) 3:3;4:10,12;6:8	1	50 (1) 6:20
sale (6) 3:4,6;5:9,17;9:3; 10:3	statement (2) 4:15,17	turn (1) 9:21	1 (1) 6:5	500 (1) 7:5
sale-for-resale (1) 5:23	statements (2) 4:19,21	two (2) 7:4;9:1	1,000 (1) 7:5	571 (1) 7:19
sales (1) 9:4	step (1) 4:9	U	1005 (1) 5:21	59 (1) 7:17
Sales (1) 9:4	Street (1) 5:3	ultimately (1) 9:12	1009 (2) 3:11;4:10	6
Secretary (2) 3:10;5:3	Subsection (1) 5:22	Under (1) 5:21	10601 (1) 5:4	6.5 (1) 7:1
secretarysoffice@nypagov (1) 5:5	summarize (1) 7:20	Union (1) 4:1	10th (1) 10:2	6:30 (2) 10:4,6
Section (3) 3:11;4:9;5:21	summary (1) 5:16	up (1) 3:21	11 (1) 9:20	9
sell (1) 5:22	supply (1) 7:22	upon (1) 8:2	11-P (1) 5:4	9.5 (1) 6:19
Senate (2) 3:17,17	System (1) 7:23	Upper (1) 7:11	11th (1) 5:1	90 (2) 8:10,12
Senate's (1) 3:16	Systems (1) 7:3	USA (2) 3:7;6:11	123 (1)	
Senior (2) 5:7,14	T	uses (1) 8:17		
sent (1)	target (1)	utilities' (1)		

914 (1) 5:4				
----------------	--	--	--	--

New York Power Authority  
Recommendations for Allocations of Hydropower

Exhibit "2d-A"  
May 22, 2014

Exhibit Number	Company Name	Program	City	County	Existing Jobs	New Jobs	Estimated Capital Investment	New Jobs Avg. Wage & Benefits	Power Requested (kW)	Power Recommended (kW)	Contract Term
A-1	Captive Plastics, LLC (dba Berry Plastics)	EP	Dunkirk	Chautauqua	71	10	\$17,800,000	\$51,500	920	<b>500</b>	7 Years
A-2	Durez Corporation	RP	Niagara Falls	Niagara	56	6	\$800,000	\$73,333	150	<b>100</b>	7 Years
Totals						16	\$18,600,000			600	

**APPLICATION SUMMARY**  
**Expansion Power**

<b>Company:</b>	Captive Plastics, LLC (dba Berry Plastics)
<b>Project Location:</b>	Dunkirk
<b>County:</b>	Chautauqua
<b>IOU:</b>	National Grid
<b>Business Activity:</b>	Bottle manufacturer of plastic PET bottles for food and beverage industry
<b>Project Description:</b>	Looking to expand its existing facility by 20,000 square-feet to help facilitate a potential new, long-term customer for the production of food bottles.
<b>Existing Allocation(s):</b>	1,296 Recharge New York (Retention Allocation)
<b>Power Request:</b>	920 kW
<b>Power Recommended:</b>	500 kW
<b>Job Commitment:</b>	
<b>Base Employment:</b>	71 jobs
<b>New:</b>	10 jobs
<b>New Jobs/Power Ratio:</b>	20/MW
<b>New Jobs - Avg. Wage and Benefits:</b>	\$51,500
<b>Capital Investment:</b>	\$17.8 million
<b>Capital Investment/MW:</b>	\$35.6/MW
<b>Other ED Incentives:</b>	Pursuing sales tax exemption through Chautauqua County IDA & \$979,003 in Excelsior Tax Credits from ESD.
<b>Summary:</b>	Captive Plastics is in competition to secure a new, long-term agreement for production of food bottles and is looking to enlarge its existing facility and add equipment and machinery to increase production. With substantial electric costs for production at the facility, a low-cost hydropower allocation will help support this expansion and secure the company's future in New York State.

**APPLICATION SUMMARY**  
**Replacement Power**

<b>Company:</b>	Durez Corporation
<b>Project Location:</b>	Niagara Falls
<b>County:</b>	Niagara
<b>IOU:</b>	National Grid
<b>Business Activity:</b>	Manufacturer of phenolic resin for products that service the coatings, abrasives, automotive and aerospace industries.
<b>Project Description:</b>	The on-site expansion will repurpose unused production equipment to manufacture a new product; the project also includes a new agitator and transfer pumps
<b>Existing Allocation(s):</b>	New Customer
<b>Power Request:</b>	150 kW
<b>Power Recommended:</b>	100 kW
<b>Job Commitment:</b>	
<b>Existing:</b>	56 jobs
<b>New:</b>	6 jobs
<b>New Jobs/Power Ratio:</b>	60/MW
<b>New Jobs - Avg. Wage and Benefits:</b>	\$73,333
<b>Capital Investment:</b>	\$800,000
<b>Capital Investment/MW:</b>	\$8 million/MW
<b>Other ED Incentives:</b>	Nothing at this time.
<b>Summary:</b>	Durez has been operating in Niagara Falls under various ownerships for nearly 80 years. With plants in Canada, USA, Europe and Asia, the company is hoping that a hydropower allocation will help secure the expansion of its Niagara Falls plant in WNY, with expectations that the new product will increase sales at the Niagara Falls facility by 30 percent.

---

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  
to  
CAPTIVE PLASTICS, LLC (DBA BERRY PLASTICS)

---



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 Captive Plastics, LLC (dba Berry Plastics) (“Customer”), with offices at 3565 Chadwick Drive, Dunkirk, NY 14048. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree 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, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at a new and/or expanded facility to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on May 22, 2014, the Authority’s Board of Trustees (“Trustees”) approved a 500 kilowatt (“kW”) allocation of EP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on May 22, 2014, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, 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, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

**NOW THEREFORE**, the Parties hereto agree as follows:

## **I. Definitions**

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **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-1 and the Rules.
- E. **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(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **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.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **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.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **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.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **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(5) and (13).
- Q. **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.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, 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.
- S. **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.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.
- W. **Taxes** is as defined in Service Tariff No. WNY-1

- X. **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.
- Y. **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.

## **II. Electric Service**

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. 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 on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. 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-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. 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.
- F. The Contract Demand may not exceed the Allocation.

## **III. Rates, Terms and Conditions**

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. 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. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. 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.

#### **IV. Expansion Power and/or Replacement Power Commitments**

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement, and the Customer's obligation to take and pay for such Electric Service, are expressly conditioned upon the Customer's timely completion of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.
- E. In the event the Customer fails to complete the Facility by May 20, 2017 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

## **V. Rules and Service Tariff**

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

## **VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges**

- A. The Customer shall be responsible complying with all requirements of its local electric utility 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. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. 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-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing

related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, 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 such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

## **VII. Billing and Billing Methodology**

- A. 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.
- B. The Authority will render bills by the 10<sup>th</sup> business day of the month for charges due for the previous month. 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 other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. 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.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) 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.
- G. 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. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall

have the right to require the Customer to 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 shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. 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.

### **VIII. Hydropower Curtailments and Substitute Energy**

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will 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. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.



## **IX. Effectiveness, Term and Termination**

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. 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-1, or the Rules.

## **X. Additional Allocations**

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP 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 (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) 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.
- B. 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 additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

## **XI. Notification**

- A. Correspondence involving the administration of this Agreement shall be addressed 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

Captive Plastics, LLC (dba Berry Plastics)  
3565 Chadwick Drive  
Dunkirk, NY 14048

Email:  
Facsimile:  
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. 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: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) 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; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written 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.

## **XII. Applicable 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).

## **XIII. Venue**

Each Party consents to the exclusive jurisdiction and venue of any state or federal 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.

## **XIV. Successors and Assigns; Resale of Hydropower**

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.

- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

#### **XV. Previous Agreements and Communications**

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification 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.

#### **XVI. Severability and Voidability**

- A. 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.
- B. Notwithstanding the preceding paragraph, 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.

#### **XVII. Waiver**

- A. 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.
- B. 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.

#### **XVIII. 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 by email as a PDF file 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:

**CAPTIVE PLASTICS, LLC (DBA BERRY PLASTICS)**

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

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

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

AGREED:

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

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

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

**SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER TO  
CUSTOMER**

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

Customer: CAPTIVE PLASTICS, LLC (DBA BERRY PLASTICS)

Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Expansion Power	500 kW	3565 Chadwick Drive, Dunkirk, NY 14048	May 22, 2014	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER  
AND/ OR REPLACEMENT POWER TO CUSTOMER**

**EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS**

I.      Employment Commitments

A.      Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) 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.

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.

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 sole discretion.

B.      Employment Records and Reports

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.

## II. Reductions of Contract Demand

### A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D 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.

### B. Power Utilization Levels

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. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) 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 Article II.D 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.

### C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

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 obligations provided for in this Schedule B.



#### D. 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 this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

### III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

## **APPENDIX TO SCHEDULE B**

### **BASE EMPLOYMENT LEVEL**

Within three (3) years of commencement of Electric Service, the Customer shall employ at least eighty-one (81) full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

### **CAPITAL INVESTMENT**

The Customer shall make a total capital investment of at least \$17,800,000 to renovate and furnish the Facility (the “Capital Investment”). The Capital Investment for the Facility is expected to consist of the following specific expenditures:

Building Expansion:	\$9,000,000
Molds, Tooling:	\$3,700,000
Sidel SBO 10 (2):	\$3,400,000
Husky HiDet 400:	\$1,500,000
QA Equipment:	\$200,000

**Total Capital Investment:      \$17,800,000**

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than May 20, 2017 (*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 sole discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER  
AND/OR REPLACEMENT POWER TO CUSTOMER**

**TAKEDOWN SCHEDULE**

N/A



POWER AUTHORITY OF THE STATE OF NEW YORK  
30 SOUTH PEARL STREET  
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and  
Replacement Customers located  
In Western New York

**Service Tariff No. WNY-1**

## **Table of Contents**

<b>Schedule of Rates for Firm Power Service</b>	<b>Leaf No.</b>
<b>I. Applicability</b> .....	3
<b>II. Abbreviations and Terms</b> .....	3
<b>III. Monthly Rates and Charges</b> .....	5
A. New Expansion Power and Replacement Power Base Rates.....	5
B. EP and RP Rates no Lower than Rural/Domestic Rate.....	6
C. Monthly Base Rates Exclude Delivery Service Charges.....	6
D. Minimum Monthly Charge.....	6
E. Billing Period.....	6
F. Billing Demand.....	6
G. Billing Energy.....	7
H. Contract Demand.....	7
<b>IV. General Provisions</b> .....	8
A. Character of Service.....	8
B. Availability of Energy.....	8
C. Delivery.....	8
D. Adjustment of Rates.....	8
E. Billing Methodology and Billing.....	9
F. Payment by Customer to Authority.....	9
1. Demand and Energy Rates, Taxes.....	9
2. Transmission Charge.....	10
3. NYISO Transmission and Related Charges.....	10
4. Taxes Defined.....	11
5. Substitute Energy.....	11
6. Payment Information.....	11
G. Adjustment of Charges.....	11
1. Distribution Losses.....	11
2. Transformer Losses.....	11
3. Power Factor.....	11
H. Conflicts.....	12
I. Customer Resales Prohibited.....	12
<b>V. Annual Adjustment Factor</b> .....	13

## Schedule of Rates for Firm Power Service

### **I. Applicability**

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) 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

**Agreement**: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

**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 customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who 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** and/or **Replacement Power**: 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 load split methodology applicable to a Customer's allocation. It 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, or such local utility's tariff, regarding the delivery of WNY Firm Power. 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 starting July 1, 2013, and for any year thereafter.

**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-1.

**Target Rate**: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein 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**

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

1. The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
  - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
  - B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
  - C. Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

#### **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) and PAL § 1005(5) (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 sole 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 Customer's Load Split Methodology as following:

- 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 following:

- 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 B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended 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, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

**G. Billing Period**

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**

The 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**

The 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 of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority 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. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

### **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 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 and Billing**

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

1. The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

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 local utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer’s local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer’s local electric utility for delivery of WNY Power. 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 methodology provided for in any contract between the Authority and the Customer’s local electric utility for delivery of WNY Power.

**F. Payment by Customer to Authority**

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum 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 (“NYISO Charges”)

The Customer shall compensate the Authority for the following 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, less any associated grandfathered Transmission Congestion Contracts ("TCCs") 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 third 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. 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. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. 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.
3. 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.
4. 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 sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

**H. Adjustment of Charges**

1. Distribution Losses

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

**I. Conflicts**

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. 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.

**J. Customer Resales Prohibited**

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

## **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. 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 by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties 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 unable to reach agreement on substitute indices within the 90-day period, the Parties 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 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>
<u>Measuring Year -1 (2011)</u>			
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			<b>1.00</b>

- 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

---

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  
to  
DUREZ CORPORATION

---

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 Durez Corporation (“Customer”), with offices at 5000 Packard Road, Niagara Falls, New York 14304. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree 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, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at a new and/or expanded facility to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on May 22, 2014, the Authority’s Board of Trustees (“Trustees”) approved a 100 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on May 22, 2014, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, 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, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

**NOW THEREFORE**, the Parties hereto agree as follows:

## **I. Definitions**

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **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-1 and the Rules.
- E. **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(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **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.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **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.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **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.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **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(5) and (13).
- Q. **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.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, 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.
- S. **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.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.
- W. **Taxes** is as defined in Service Tariff No. WNY-1



- X. **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.
- Y. **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.

## **II. Electric Service**

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. 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 on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. 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-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. 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.
- F. The Contract Demand may not exceed the Allocation.

## **III. Rates, Terms and Conditions**

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. 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. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. 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.

#### **IV. Expansion Power and/or Replacement Power Commitments**

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement, and the Customer's obligation to take and pay for such Electric Service, are expressly conditioned upon the Customer's timely completion of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.
- E. In the event the Customer fails to complete the Facility by May 20, 2017 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

## **V. Rules and Service Tariff**

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

## **VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges**

- A. The Customer shall be responsible complying with all requirements of its local electric utility 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. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. 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-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing

related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, 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 such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

## **VII. Billing and Billing Methodology**

- A. 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.
- B. The Authority will render bills by the 10<sup>th</sup> business day of the month for charges due for the previous month. 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 other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. 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.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) 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.
- G. 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. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall

have the right to require the Customer to 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 shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. 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.

### **VIII. Hydropower Curtailments and Substitute Energy**

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will 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. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

## **IX. Effectiveness, Term and Termination**

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. 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-1, or the Rules.

## **X. Additional Allocations**

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP 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 (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) 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.
- B. 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 additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

## **XI. Notification**

- A. Correspondence involving the administration of this Agreement shall be addressed 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

Durez Corporation  
5000 Packard Road  
Niagara Falls, NY 14304

Email:  
Facsimile:  
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. 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: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) 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; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written 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.

## **XII. Applicable 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).

## **XIII. Venue**

Each Party consents to the exclusive jurisdiction and venue of any state or federal 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.

## **XIV. Successors and Assigns; Resale of Hydropower**

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.

- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

#### **XV. Previous Agreements and Communications**

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification 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.

#### **XVI. Severability and Voidability**

- A. 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.
- B. Notwithstanding the preceding paragraph, 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.

#### **XVII. Waiver**

- A. 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.
- B. 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.

#### **XVIII. 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 by email as a PDF file 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:

**DUREZ CORPORATION**

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

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

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

AGREED:

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

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

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

**SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER TO  
CUSTOMER**

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

Customer: DUREZ CORPORATION

Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Replacement Power	100 kW	5000 Packard Road Niagara Falls, NY 14304	May 20, 2014	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER  
AND/OR REPLACEMENT POWER TO CUSTOMER**

**EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS**

I.      Employment Commitments

A.      Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) 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.

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.

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 sole discretion.

B.      Employment Records and Reports

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.

## II. Reductions of Contract Demand

### A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D 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.

### B. Power Utilization Levels

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. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) 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 Article II.D 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.

### C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

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 obligations provided for in this Schedule B.

#### D. 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 this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

### III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

## **APPENDIX TO SCHEDULE B**

### **BASE EMPLOYMENT LEVEL**

Within three (3) years of commencement of Electric Service, the Customer shall employ at least sixty-two (62) full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

### **CAPITAL INVESTMENT**

The Customer shall make a total capital investment of at least \$800,000 to renovate and furnish the Facility (the “Capital Investment”). The Capital Investment for the Facility is expected to consist of the following specific expenditures:

Repurposed Reactor:	\$710,000
Transfer Pumps:	\$40,000
Liquid Expansion T-90 Agitator:	\$50,000

**Total Capital Investment:      \$800,000**

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than May 20, 2017 (*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 sole discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER  
AND/OR REPLACEMENT POWER TO CUSTOMER**

**TAKEDOWN SCHEDULE**

N/A





POWER AUTHORITY OF THE STATE OF NEW YORK  
30 SOUTH PEARL STREET  
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and  
Replacement Customers located  
In Western New York

**Service Tariff No. WNY-1**

## **Table of Contents**

<b>Schedule of Rates for Firm Power Service</b>	<b>Leaf No.</b>
<b>I. Applicability</b> .....	3
<b>II. Abbreviations and Terms</b> .....	3
<b>III. Monthly Rates and Charges</b> .....	5
A. New Expansion Power and Replacement Power Base Rates.....	5
B. EP and RP Rates no Lower than Rural/Domestic Rate.....	6
C. Monthly Base Rates Exclude Delivery Service Charges.....	6
D. Minimum Monthly Charge.....	6
E. Billing Period.....	6
F. Billing Demand.....	6
G. Billing Energy.....	7
H. Contract Demand.....	7
<b>IV. General Provisions</b> .....	8
A. Character of Service.....	8
B. Availability of Energy.....	8
C. Delivery.....	8
D. Adjustment of Rates.....	8
E. Billing Methodology and Billing.....	9
F. Payment by Customer to Authority.....	9
1. Demand and Energy Rates, Taxes.....	9
2. Transmission Charge.....	10
3. NYISO Transmission and Related Charges.....	10
4. Taxes Defined.....	11
5. Substitute Energy.....	11
6. Payment Information.....	11
G. Adjustment of Charges.....	11
1. Distribution Losses.....	11
2. Transformer Losses.....	11
3. Power Factor.....	11
H. Conflicts.....	12
I. Customer Resales Prohibited.....	12
<b>V. Annual Adjustment Factor</b> .....	13

## Schedule of Rates for Firm Power Service

### **I. Applicability**

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) 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

**Agreement:** An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

**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 customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who 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** and/or **Replacement Power:** 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 load split methodology applicable to a Customer's allocation. It 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, or such local utility's tariff, regarding the delivery of WNY Firm Power. 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 starting July 1, 2013, and for any year thereafter.

**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-1.

**Target Rate**: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein 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**

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

1. The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
  - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
  - B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
  - C. Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

#### **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) and PAL § 1005(5) (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 sole 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 Customer's Load Split Methodology as following:

- 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 following:

- 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 B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended 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, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

**G. Billing Period**

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**

The 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**

The 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 of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority 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. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

### **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 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 and Billing**

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

1. The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.



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 local utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer’s local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer’s local electric utility for delivery of WNY Power. 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 methodology provided for in any contract between the Authority and the Customer’s local electric utility for delivery of WNY Power.

**F. Payment by Customer to Authority**

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum 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 (“NYISO Charges”)

The Customer shall compensate the Authority for the following 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, less any associated grandfathered Transmission Congestion Contracts ("TCCs") 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 third 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. 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. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. 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.
3. 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.
4. 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 sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

**H. Adjustment of Charges**

1. Distribution Losses

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

**I. Conflicts**

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. 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.

**J. Customer Resales Prohibited**

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

## **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. 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 by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties 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 unable to reach agreement on substitute indices within the 90-day period, the Parties 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 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>
<u>Measuring Year -1 (2011)</u>			
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			<b>1.00</b>

- 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

## Applicants Recommended for an Award of Fund Benefits

Line	Business	City	County	Economic Development Region	Project Description	Project Type	Recommended Award Amount	Total Project Cost	Jobs Retained	Jobs Created
1	Innomotive Solutions Group LLC	Lancaster	Erie	Western NY	Purchasing a building in Lancaster which they will renovate and retrofit to accommodate the needs of their company. The project location will house the manufacturing and finishing of roll away doors built specifically to meet the specifications of emergency vehicles.	Business Investment	\$ 150,000	\$ 5,500,000	0	28
2	Nexus Natural Gas LLC	Tonawanda	Erie	Western NY	Seven companies will build a CNG station for the exclusive use of this partnership while each of the seven companies begins the conversion of their vehicles to run on CNG.	Capital Investment	\$ 570,000	\$ 2,800,000	0	0

**Total: \$ 720,000 \$ 8,300,000 0 28**

**Total Jobs Created & Retained: 28**

**Western NY Power Proceeds Allocation Board**

**Exhibit "2e-B"**  
**May 22, 2014**

**Applicant That Declined the Award of Fund Benefits**

				<b>Economic Development Region</b>		
<b>Line</b>	<b>Business</b>	<b>City</b>	<b>County</b>		<b>Project Type</b>	<b>Declined Award Amount</b>
1	Niagara Label Company	Akron	Erie	Western NY	Business Investment	\$ 150,000

**Applicants Not Recommended for an Award**

Line	Business	City	County	Economic Development Region	Project Description	Project Type
1	Buffalo SynGas, LLC	Cheektowaga	Erie	Western NY	Build a plant to turn organic waste into energy at near zero emissions.	Infrastructure/Downtown Investment
2	Humble Pie Group, LLC	Buffalo	Erie	Western NY	The build out of manufacturing capability and capacity at the current Humble Pie company office.	Business Investment
3	Triad Recycling and Energy, Inc	Tonawanda	Erie	Western NY	To expand recycling capabilities.	Business Investment

**Withdrawn Applications**

Line	Business	Classification
4	Buffalo Niagara Enterprise	Withdrawn by applicant
5	Entecco LLC	Withdrawn by applicant
6	Greater Buffalo United Accountable Healthcare Network, MSO, LLC (GBUAHN)	Withdrawn by applicant
7	Trek Industries	Withdrawn by applicant

**Applications Deferred for Further Analysis**

Line	Business	Classification
8	City Labs, Inc., A Florida Corporation	Deferred for further analysis
9	Riviera Theatre and Organ Preservation Society Inc.	Deferred for further analysis

**Applications that Failed to Pass due to a Lack of a Quorum**

Line	Business	Classification
10	Niagara Falls International Airport Stakeholders Group, Inc.	Lack of quorum due to WNYPPAB member recusals

**Applications Recommended for An Award but Not Forwarded to the Trustees**

Line	Business
11	PLSIII LLC d/b/a We Care Transportation Services

## Western NY Power Proceeds Allocation Board Exhibit “D”

---

### Criteria adapted from the Western NY Power Proceeds Allocation Board’s “Procedures for the Review of Applications for Fund Benefits”

---

1. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council (“REDC”) having responsibility for the region in which an Eligible Project is located.<sup>1</sup> The Western New York Regional Economic Development Council which is responsible for Eligible Projects in Erie and Niagara Counties Strategies & Priorities are:
  - Promote “Smart Growth” by investing in areas that infrastructure already exists and achieves certain goals, such as: preserving historic buildings; reviving downtowns; reviving main streets; investing in existing neighborhoods; and investing in former industrial sites. A project consistent with Smart Growth will also focus on: enhancing walkability; enhancing multiple modes of transportation; connecting disadvantaged communities to employment clusters; spurring mixed-use private investment in existing communities and preserving/enhancing natural lands and or resources.
  - Promote workforce development by increasing diversity in the labor force, developing and cultivating that includes workers with advancement potential, underemployed, unemployed and special population; align education and skills training to job market for current and future industry needs.
  - Foster entrepreneurship and new business formation and growth. Designing a plan that brings new technologies and/or products to the marketplace, increases new start ups in strategic industries and facilitates the commercialization of products that can lead to job growth in the Region.
  - Increase the industry profile of agriculture in WNY by: creating better access to markets; creating new products; creating new more efficient processes; creating strong regional brands; creating programs that promote careers in agriculture.
  - Utilize Western New York’s proximity to Canadian and U.S. population centers to advance economic development in WNY. Bi-national projects will: utilize cross-border planning to create transportation and logistical infrastructure; improve

---

<sup>1</sup> As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, “revitalization” projects.

---

operational relationships; promote the attractiveness of WNY as a hub for global trade.

- Position the WNY region as a global energy hub through new sources of clean energy, energy efficiency and energy efficient transportation.
- Support growth of advanced manufacturing by making research more available to manufacturers to help them innovate.
- Spur growth in the health and life sciences industry through improved commercialization, recruit high profile research talent and reducing the cost burden of healthcare while improving health outcomes.
- Expand the scope of higher education by increasing accessibility to Higher Education for communities that currently have limited access to educational opportunities; better aligning education with the industry needs and creating support structures for start-ups which will assist start-ups with commercialization, business planning, workforce preparation, facilities, etc.
- Grow visitors and visitor spending by raising the profile of WNY as a national and international destination; connect multiple tourist destinations in WNY; improve the profile of the WNY Gateway to the United States.

For more information on the Western New York Regional Economic Development Council please go to <http://regionalcouncils.ny.gov/content/western-new-york>.

2. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council ("REDC") having responsibility for the region in which an Eligible Project is located.<sup>2</sup> The Finger Lakes Regional Economic Development Council which is responsible for Eligible Projects in Orleans and Genesee Counties Strategies & Priorities can be found at: <http://regionalcouncils.ny.gov/content/finger-lakes>.
3. The number of jobs that would be created as a result of an award of Fund Benefits.
4. The applicant's long term commitment to the region as evidenced the current and/or planned capital investment in applicant's facilities in the region.
5. The ratio of the number of jobs to be created to the amount of Fund Benefits requested.
6. The types of jobs that would be created, as measured by wage and benefit levels, security and stability of employment.
7. The amount of capital investment, including the type and cost of buildings, equipment and facilities, proposed to be constructed, enlarged or installed.
8. The extent to which an award of Fund Benefits would affect the overall productivity or competitiveness of the applicant and its existing employment.

---

<sup>2</sup> As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, "revitalization" projects.

9. The extent to which an award of Fund Benefits may result in a competitive disadvantage for other business in the State.
  10. The growth potential of the applicant's facilities and the contribution of economic strength to the area in which the applicant's facilities are or would be located.
  11. The extent of the applicant's willingness to satisfy affirmative action goals.
  12. The extent to which an award of Fund Benefits is consistent with state, regional and local economic development strategies and priorities and supported by local units of government in the area in which the business is located.
  13. The impact of an award of Fund Benefits on the operation of any other facilities of the applicant, and on other businesses within the region.
  14. That the business is likely to close, partially close or relocate resulting in the loss of a substantial number of jobs.
  15. That the applicant is an important employer in the community and efforts to revitalize the business are in long-term interests of both employers and the community.
  16. That a reasonable prospect exists that the proposed award of Fund Benefits will enable the applicant to remain competitive and become profitable and preserve jobs for a substantial period of time.
- 
-

**Western New York Economic Development Fund  
Recommendation Memo**

**Recommended Award: Exhibit "E"**

Applicant Name:	Innomotive Solutions Group LLC d/b/a Whiting Group of Canada	REDC Region:	Western New York
Project Type:	Business Investment	County:	Erie
Industry:	Manufacturing	Locality:	Lancaster
Amount Requested:	\$150,000	Start Date:	7/1/2014
		Finish Date:	3/1/2015

**RECOMMENDED OFFER**

Recommended Total Award:	\$150,000
Total Project Cost:	\$5,500,000
% of Project Cost Recommended:	2.7%

**REGIONAL IMPACT MEASUREMENTS**

Number of Jobs Retained:	0
Number of Jobs Created:	28
Average Salary of Jobs:	\$28,571
Indirect Jobs Created	
Other Impact	

**PROJECT DESCRIPTION**

Innomotive Solutions Group will be purchasing a building in Lancaster which they will renovate and retrofit to accommodate the needs of their company. The project location will house the manufacturing and finishing of roll away doors built specifically to meet the specifications of emergency vehicles. Innomotive will be hiring and training 28 new employees from the WNY Region to meet its current U.S. market demand. This project will also mark the company's first step toward moving additional production from Canada to the U.S.

**BASIS FOR RECOMMENDATION**

This project demonstrates how the WNY business community can attract companies from other regions. Innomotive Solutions is a subsidiary of the Whiting Group of Canada; a company that has been researching the benefits of moving their operations from Canada to the U.S. for some time. Lancaster will now host the first phase of the company's transition and in turn, 28 new jobs with good entry level manufacturing salaries will come to the Town.

Innomotive Solutions has presented the WNYPPAB with a project budget totaling \$5,500,000. The recommendation to this Board is to incentivize this project with a grant in the amount of \$150,000 to be directed toward the purchase and installation of machinery and equipment which Innomotive estimates will cost \$3,360,000. It is also recommended that the grant be payable upon confirmation of the purchase and installation of the machinery and equipment and confirmation of the total cost.



**Western New York Economic Development Fund  
Recommendation Memo**

**Recommended: Exhibit "E"**

Applicant Name:	Nexus Natural Gas, LLC	REDC Region:	WNY
Project Type:	Construction of CNG Station and Truck Conversion	County:	Erie
Industry:	Multiple Industry Sectors	Locality:	Tonawanda
Amount Requested:	\$570,000	Start Date:	6/1/2014
		Finish Date:	1/1/2015
<b>RECOMMENDED OFFER</b>			
Recommended Total Award:	\$570,000		
Total Project Cost:	\$2,800,000		
% of Project Cost Recommended:	20%		
<b>REGIONAL IMPACT MEASUREMENTS</b>			
Number of Jobs Retained:	N/A		
Number of Jobs Created:	N/A		
Average Salary of Jobs:	\$30,000		
Indirect Jobs Created or Retained	20 created and 106 retained across 7 companies		
Other Impact			
<b>PROJECT DESCRIPTION</b>			
Nexus Natural Gas, LLC is an entity that was formed by seven different companies in the Town of Tonawanda that share the common goal of transitioning into cleaner alternative fuels that will ultimately lower operating costs and create economic growth. This project represents the effort of those seven companies to achieve the stated goal by building a CNG station for the exclusive use of this partnership while each of the seven companies begins the conversion of their vehicles to run on CNG.			
<b>OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED</b>			
ESD:	\$	NYPA:	\$
IDA:	\$	Other:	\$
<b>PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED</b>			
<b>TYPE</b>	<b>AMOUNT</b>	<b>STATUS</b>	
<b>BASIS FOR RECOMMENDATION</b>			

This project will go a very long way in decreasing emissions and improving air quality in the Town of Tonawanda and Grand Island as well as everywhere these vehicles travel throughout the State. The additional economic benefit to this project is that it will allow these seven companies to reduce their operating costs and expedite their future growth.

Nexus Natural Gas has presented the WNYPPAB with a project budget totaling \$2,845,000. The recommendation to this Board is to incentivize this project with a grant in the amount of \$570,000 to be directed toward the construction and installation of the CNG fueling station, which Nexus estimates will cost \$2,065,000. It is also recommended that the grant be payable upon completion of the CNG station and the conversion of 24 trucks across the seven partnered companies. It is anticipated that no funding would be provided for vehicles or vehicle upgrades.

**SUBJECT: RISK MANAGEMENT****1.0 SCOPE**

In the course of its operations, the New York Power Authority (“the Authority”) is subject to various sources of uncertainty which could materially impair or enhance its ability to carry out its mission objectives. These sources of uncertainty, or “risks,” stem from the Authority’s ongoing operations as well as external market, regulatory, and geo-political environments; taken together, these various risks comprise the Authority’s Risk Profile. The Authority seeks to maintain a robust and resilient organization and operation that reliably serves, protects and defends the value delivered by resources under its stewardship.

The Authority considers the management of risk to be an integral part of its duties. Risk Management is embedded into existing business practices and processes as part of the corporate culture rather than an independent activity. Therefore, the Authority practices Risk Management to:

- Enable successful delivery of its goals and objectives
- Encounter fewer unanticipated outcomes
- Encourage identification, ownership, assessment of risks
- Communicate to stakeholders what the Authority is doing to manage its risks
- Empower the Authority to withstand future uncertainty and volatility

The objective, framework and management controls necessary to govern the Authority’s Risk Management activities are set forth in this Risk Management Policy (“Policy”).

**2.0 DEFINITIONS**

- 2.1 Risk Management** – An integrated approach to identifying, assessing and addressing areas of uncertainty that could materially impair or enhance achievement of the Authority’s mission objectives.
- 2.2 Risk Profile** – representation of the portfolio of risks across the enterprise.
- 2.3 Risk Tolerance** – predefined limits of risk exposure to Authority’s mission objectives.

**2.4 Risk Response** – action or measure taken when a risk is identified and assessed that is aimed at achieving the Authority’s mission objectives.

**2.5 Strategic Goal** – a specific, quantifiable ambition that is set and committed to by an organization in order to achieve its mission and vision.

### **3.0 IMPLEMENTATION**

This Policy shall be adhered to by the staff of all Authority Business Units and Departments. Implementing procedures shall be prepared to define the necessary management controls. Recommendations for changes to this policy or a new corporate policy shall be processed in accordance with CP1-1 “Corporate Policy Program Administration”.

### **4.0 OBJECTIVE**

This Policy serves to support the following Risk Management objectives:

- Employ an integrated approach to identifying, assessing and managing risks across the Authority.
- Identify risk concentrations and analyze potential correlations to other risks; thereby enhancing the facilitation and integration of Risk Management between departments and business units.
- Utilize Risk Management to inform decisions in a risk-based corporate planning process, aligning risk with organizational strategy in a systematic, structured framework.
- Establish the delegation of authority and associated control limits necessary to enter into transactions in the normal conduct of business.

### **5.0 FRAMEWORK**

This Policy establishes the following Risk Management framework:

- Risk Management provides a structured process for consolidating risk assessments into an expression of risk around categories, such as financial liquidity, operational reliability, safety, workforce management, energy market

(price and volume), credit, energy efficiency objectives and legal and regulatory compliance.

- Risk Management has a forward-looking perspective as to the potential outcomes that may be realized in order to inform stakeholders and executive management of the potential for unacceptable outcomes.
- Risk Management establishes a Risk Profile to enable the Authority to fulfill its mission with a more informed forward-looking risk view.
- Risk Management includes business processes, procedures, evaluation tools, and methodologies for risk identification, assessment, and communication.
- Risk Management evaluates the Risk Response to unacceptable exposures. The primary mandate of Risk Response shall be the containment of exposures within established Risk Tolerances.

## **6.0 MANAGEMENT CONTROLS**

### **6.1 General**

All Risk Management activities shall be conducted in accordance with this Policy. Controls and procedures to be further delineated by management shall be in conformance with this Policy.

To align efforts, the Office of Ethics and Compliance, Internal Audit, Strategic Planning and Risk Management Department employ an integrated approach to Risk Management activities. The sharing of mutual interests strives to capture and manage information in a common language and context to provide enterprise collaboration, and facilitate the flow of communication across the Authority. This process supports the Authority's efforts to achieve optimal performance and demonstrate adherence to all mandated requirements.

### **6.2 Responsibilities**

#### **6.2.1 Delegation of Authority**

- a) President and Chief Executive Officer

This Corporate Policy is established under the authority of the President and Chief Executive Officer ("CEO").

- b) Board of Trustees

In accordance with leading industry practice, the Board of Trustees' shall affirm the philosophy, framework and delegation of authority for the Authority's Risk Management activities.

c) "Audit Committee" of the Board of Trustees

The Audit Committee seeks to enhance the Authority's Risk Management infrastructure and ensure timely and effective identification and mitigation of critical business risks. The Audit Committee shall provide guidance to the Authority's Chief Risk Officer on critical business objectives, risks and philosophy, tolerance for Risk Response and reporting requirements.

d) Executive Risk Management Committee

An Executive Risk Management Committee ("ERMC") is established by this Policy as management's controlling authority with respect to Risk Management activities; the ERMC shall be governed by the provisions herein and outlined in the ERMC Charter. The Board of Trustees, based on the recommendation of the Audit Committee, has delegated to the ERMC the authority by which energy commodity related hedge transactions may be entered into as necessary to offset financial risks to the Authority or its customers. The ERMC is responsible for the delegation of that authority as well as the establishment of necessary controls. The Chief Financial Officer ("CFO") serves as the chair of the ERMC and is ultimately responsible for the financial integrity of the Authority and, accordingly, no delegation of authority to the ERMC is intended to impair the CFO's ability to protect such financial integrity.

e) Chief Risk Officer ("CRO")

The CRO is responsible for providing overall leadership, vision, and direction for Risk Management. The CRO develops the Risk Management approach and provides risk reports to the Audit Committee and the ERMC in accordance with their respective charters. The CRO shall work with the ERMC to ensure this Policy and related implementing procedures are maintained to direct Risk Management processes.

f) Authority Personnel, Contractors, Business Units and Departments

All Authority personnel, contractors, business units and departments are responsible for the management of risk. Authority personnel, contractors, business units and departments shall make and support risk-informed decisions and remain vigilant in identifying and communicating emerging risk issues that could jeopardize the Authority's success.

g) Risk Management Department

Under the CRO's direction, the Risk Management Department coordinates, administers and sustains the Authority's Risk Management activities. The Risk Management Department is responsible for maintaining governance materials to codify the Authority's risk philosophy and framework, facilitating the enterprise risk identification and assessment process, developing Risk Management tools and techniques, and administering the Energy Commodity and Credit Risk Management program. The Energy Commodity and Credit Risk Management program governs staff activities and establishes necessary controls for the effective conduct of energy commodity and credit risk management, including: risk measurement, hedging activities, counterparty credit, collateral management and the control of all related activities.

h) Internal Audit

In accordance with its independent role (CP 5.1 – Internal Audit Program), Internal Audit shall conduct periodic independent evaluations of the adequacy and effectiveness of the Authority's Risk Management processes.

## **7.0 REFERENCES**

- 7.1** CP 1-1 Corporate Policy Program Administration
- 7.2** Executive Risk Management Committee Charter
- 7.3** Audit Committee Charter
- 7.4** Ethics Code of Conduct
- 7.5** CP 5-1 Internal Audit Program

---

**President and Chief Executive Officer**

---

**SUBJECT: RISK MANAGEMENT****1.0 SCOPE**

In the course of its operations, the New York Power Authority (“the Authority”) is subject to various sources of uncertainty which ~~if realized,~~ could materially impair or enhance its ability to carry out its mission objectives. These sources of uncertainty, or “risks,” stem from the Authority’s ongoing operations as well as external market, regulatory, and geo-political environments; taken together, these various risks comprise the Authority’s Risk Profile. The Authority seeks to maintain a robust and resilient organization and operation that reliably serves, protects and defends the value delivered by resources under its stewardship.

The Authority considers the management of risk to be an integral part of its duties. ~~The Authority is committed to embedding~~ Risk Management is embedded into existing business practices and processes ~~so that it becomes as~~ part of the corporate culture ~~and is not viewed as~~ rather than an independent activity. Therefore, the Authority ~~is committed to practicing~~ Risk Management to:

- Enable successful delivery of its goals and objectives
- Encounter fewer unanticipated outcomes
- Encourage identification, ownership ~~and~~ assessment of risks
- Communicate to stakeholders what the Authority is doing to manage its risks
- Empower the Authority to withstand future uncertainty and volatility

The objective, framework and management controls necessary to govern the Authority’s Risk Management activities are set forth in this Risk Management Policy (“Policy”).

**2.0 DEFINITIONS**

**2.1 Risk Management** – An integrated approach to identifying, assessing and addressing areas of uncertainty that could materially impair or enhance achievement of the Authority’s mission objectives.

~~**2.2 Risk Dimension** – a categorization of risks that aligns with a strategic goal.~~



**2.32.2 Risk Profile** – representation of the portfolio of risks across the enterprise. ~~categorized by Risk Dimension.~~

**2.42.3 Risk Tolerance** – predefined limits of risk exposure to Authority's mission objectives and vision.

**2.52.4 Risk Response** – action or measure taken ~~in advance of, or after, when~~ a risk is identified and assessed that is a risk occurs aimed at achieving the Authority's mission objectives.

**2.62.5 Strategic Goal** – a specific, quantifiable ambition that is set and committed to by an organization in order to achieve its mission and vision. ~~a specific area in which the Authority focuses resources and efforts over the horizon of the strategic plan. The Authority's Strategic Goals are grouped within three categories of Mission, Stewardship and Accountability that, respectively, define the Authority's: purpose; intention to maintain and grow entrusted resources; and commitment to responsible leadership.~~

~~**2.7 Hedge Transaction** – a contract with an exchange or directly with a counterparty company, establishing the price for future delivery of a specified energy related commodity quantity, or the financially settled equivalent of such future delivery, where such contract offsets an existing risk exposure.~~

### **3.0 IMPLEMENTATION**

This Policy shall be adhered to by the staff of all Authority Business Units and Departments. Implementing procedures shall be prepared to define the necessary management controls. Recommendations for changes to this policy or a new corporate policy shall be processed in accordance with CP1-1 "Corporate Policy Program Administration".

### **4.0 OBJECTIVE**

This Policy serves to support the following Risk Management objectives:

- Employ an ~~un coordinated~~ integrated approach to identifying, assessing and managing risks across the Authority.
- Identify risk concentrations and analyze potential correlations to other risks; thereby enhancing the facilitation and integration of Risk Management between departments and business units.

- Utilize Risk Management to inform decisions in a risk-based corporate planning process, aligning risk with organizational strategy in a systematic, structured framework.
- Establish the delegation of authority and associated control limits necessary to enter into transactions in the normal conduct of business.

## 5.0 FRAMEWORK

This Policy establishes the following Risk Management framework:

- Risk Management ~~will include~~provides a structured process for consolidating risk assessments into an expression of risk around categories, such as financial liquidity, operational reliability, safety, workforce management, energy market (price and volume), credit, energy efficiency objectives and legal and regulatory compliance.
- Risk Management ~~will provide~~has a forward-looking perspective as to the potential outcomes that may be realized in order to inform stakeholders and executive management ~~in advance~~ of the potential for unacceptable outcomes.
- Risk Management ~~will establish~~es a Risk Profile to enable the Authority to fulfill its mission with a more informed forward-looking risk view.
- Risk Management ~~will include~~s business processes, procedures, evaluation tools, and methodologies for risk identification, assessment, and communication.
- Risk Management ~~will evaluate~~s the Risk Response to unacceptable exposures. ~~Risk Response will be conducted according to a "non-speculative" philosophy, in which t~~he primary mandate of Risk Response shall be the containment of exposures within established Risk Tolerances.

## 6.0 MANAGEMENT CONTROLS

### 6.1 General

All Risk Management activities ~~will~~shall be conducted in accordance with this Policy. Controls and procedures to be further delineated by management shall be in conformance with this Policy.

To align efforts, ~~an integrated approach among~~ the Office of Ethics and Compliance, Internal Audit, Strategic ~~Planning Management~~ and Risk Management Department ~~will exist~~ employ an integrated approach to Risk Management activities. The sharing of mutual interests ~~will strive~~ to capture and manage information in a common language and context to provide enterprise collaboration, and facilitate the flow of communication across the Authority. This process ~~will assist in supports~~ the Authority's efforts to achieve optimal performance and demonstrate adherence to all mandated requirements.

## **6.2 Responsibilities**

### **6.2.1 Delegation of Authority**

#### **a) President and Chief Executive Officer**

This Corporate Policy is established under the authority of the President and Chief Executive Officer ("CEO").

#### **b) Board of Trustees**

In accordance with leading industry practice, the Board of Trustees' shall affirm the philosophy, framework and delegation of authority for the Authority's Risk Management activities.

#### **c) "Audit Committee" of the Board of Trustees**

The Audit Committee seeks to enhance the Authority's Risk Management infrastructure and ensure timely and effective identification and mitigation of critical business risks. The Audit Committee shall provide guidance to the Authority's Chief Risk Officer on critical business objectives, risks and philosophy, tolerance for Risk Response and reporting requirements.

#### **d) Executive Risk Management Committee**

An Executive Risk Management Committee ("ERMC") is established by this Policy as management's controlling authority with respect to Risk Management activities; the ERMC shall be governed by the provisions herein and outlined in the ERMC Charter. The Board of Trustees, based on the recommendation of the Audit Committee, has delegated to the ERMC the authority by which energy commodity related hedge transactions may be entered into as necessary to offset financial risks to the Authority or its customers. The ERMC is responsible for the delegation of that authority as well as the establishment of necessary controls. The Chief Financial Officer ("CFO") serves as the chair of the ERMC and is

ultimately responsible for the financial integrity of the Authority and, accordingly, no delegation of authority to the ERM is intended to impair the CFO's ability to protect such financial integrity.

e) Chief Risk Officer ("CRO")

The CRO is responsible for providing overall leadership, vision, and direction for Risk Management. The CRO develops the Risk Management approach and provides risk reports to the Audit Committee and the ERM in accordance with their respective charters. The CRO ~~will~~ shall work with the ERM to ensure this Policy and related implementing procedures are maintained to direct Risk Management processes.

f) Authority Personnel, ~~and~~ Contractors, Business Units and Departments

All Authority personnel, ~~and~~ contractors, business units and departments are responsible for the management of risk. Authority personnel, ~~and~~ contractors, business units and departments ~~are expected to~~ shall make and support risk-informed decisions and remain vigilant in identifying and communicating emerging risk issues that could jeopardize the Authority's success.

g) Risk Management Department

Under the CRO's direction, the Risk Management Department coordinates, administers and sustains the Authority's Risk Management activities. The Risk Management Department is responsible for maintaining governance materials to codify the Authority's risk philosophy and framework, facilitating the enterprise risk identification and assessment process, developing Risk Management tools and techniques, and administering the Energy Commodity and Credit Risk Management program. The Energy Commodity and Credit Risk Management program governs staff activities and establishes necessary controls for the effective conduct of energy commodity and credit risk management, including: risk measurement, hedging activities, counterparty credit, collateral management and the control of all related activities.

~~h) Office of Ethics and Compliance~~

~~The Office of Ethics and Compliance will conduct independent evaluations of the Risk Profile to ensure compliance with applicable laws, regulations and standards and adherence to the business conduct expected of employees contained in the Ethics Code of Conduct. It will facilitate the review and verification of all risks contained in the Legal/Regulatory~~

~~Compliance Risk Dimension consistent with the Risk Management processes.~~

~~i)h)~~ Internal Audit

In accordance with its independent role (CP 5.1 – Internal Audit Program), Internal Audit shall conduct periodic independent evaluations of the adequacy and effectiveness of the Authority's Risk Management processes.

## 7.0 **REFERENCES**

- 7.1 CP 1-1 Corporate Policy Program Administration
- 7.2 Executive Risk Management Committee Charter
- 7.3 Audit Committee Charter
- 7.4 Ethics Code of Conduct
- 7.5 CP 5-1 Internal Audit Program

---

**President and Chief Executive Officer**

# **Executive Risk Management Committee (ERMC)**

## **Charter**

## **1.0 PURPOSE**

The objective of the Executive Risk Management Committee (“ERMC”) is to provide oversight for the management of NYPA’s Risk Profile. The Risk Profile is a representation of the entire portfolio of risk across the enterprise.

The ERMC advises the President and Chief Executive Officer (“CEO”), Executive Management Committee (“EMC”), and Audit Committee of the Board of Trustees in accordance with the Corporate Policy 2-15 – Risk Management 3/21/2013 and the Resolution by the Board of Trustees dated March 21, 2013.

The Board of Trustees has delegated to the ERMC the authority by which NYPA staff may enter into energy commodity related hedge transactions as necessary to offset financial risks to the Authority or its customers.

## **2.0 DEFINITIONS**

2.1 Risk Management – An integrated approach to identifying, assessing and addressing areas of uncertainty that could materially impair or enhance achievement of the Authority’s mission objectives.

2.2 Risk Profile – representation of the portfolio of risks across the enterprise.

2.3 Risk Tolerance – predefined limits of risk exposure to Authority’s mission objectives.

2.4 Risk Threshold – early warning metrics or indicators established as intermediate values between the planned outcome and the Risk Tolerance to identify potential risk impacts and trigger a Risk Response.

2.5 Risk Response – action or measure taken in advance of, or after, a risk occurs aimed at achieving the Authority’s mission objectives.

2.6 Strategic Goal – a specific, quantifiable ambition that is set and committed to by an organization in order to achieve its mission and vision.

2.7 Energy Related Hedge Transaction – a contract with an exchange or directly with a counterparty company, establishing the price for future delivery of a specified energy related commodity quantity, or the financially settled equivalent of such future delivery, where such contract offsets an existing risk exposure.

### **3.0 MEMBERSHIP AND ORGANIZATION**

#### **3.1 COMMITTEE COMPOSITION**

The ERMCM shall consist of a minimum of five (5) members, including the Chief Financial Officer ("CFO") and four (4) additional members as appointed annually by the President and CEO.

It shall be chaired by the CFO; or, in the absence of the CFO, another member delegated this responsibility by the CFO.

The Chief Risk Officer ("CRO") is a de facto, non-voting, participant of the ERMCM but shall remain independent. The CRO develops the Risk Management approach and provides risk reports to the ERMCM. The CRO will work with the ERMCM to ensure implementing procedures are maintained to direct Risk Management processes.

The Vice President of Internal Audit, the Energy Resource Management Department and the Controller's Office, each have a standing invitation to attend regular ERMCM meetings but such attendance does not constitute ERMCM membership nor voting rights.

A member of the Risk Management Department shall act as a coordinator to the ERMCM maintaining the meeting schedule, agenda and meeting minutes.

#### **3.2 QUORUM and VOTING**

A quorum shall consist of any three (3) members including the chair; participation may be in-person, by video link or by telephone when reasonable assurance is provided of the identity and ability of such members to participate in the meeting discussion.

Voting on ERMCM matters shall be on a one member-one vote basis. When a quorum is present, the vote of a simple majority of the ERMCM members shall constitute the action or decision of the ERMCM.

#### **3.3 MEETINGS**

All ERMCM meetings shall be scheduled through the Chairperson.

The ERMCM shall meet monthly or as often as it determines to be necessary. The ERMCM may meet with the Board of Trustees, Audit Committee or CEO by telephone or video conference.

The ERMCM may request any other officer, employee, or consultant of the Authority to meet with any members of, or consultants to the ERMCM.



Authority staff shall prepare risk reports to be presented to the ERM C for review as outlined in related procedures or as otherwise requested by the ERM C.

Authority staff shall prepare risk response strategies to be presented to the ERM C for review and approval as outlined in related procedures or as otherwise requested by the ERM C.

Except in the case of an emergency, the suggested notice period for a meeting in person shall be at least ten business days prior to the date of such meeting.

### 3.4 RESPONSIBILITIES

Responsibilities of the ERM C are the following:

- Establish and assess the corporate Risk Profile, Risk Tolerances and Risk Thresholds across the enterprise.
- Ensure adequate resources are being applied to risks including appropriateness of risk ownership and response planning.
- Provide guidance to NYPA management regarding all aspects of Risk Management. Approve written procedures and other governance materials developed to support Risk Management activities to ensure consistency with the Corporate Policy 2-15 – Risk Management.
- Authorize a program for Energy Commodity and Credit Risk Management which may include the use of energy related commodity hedge transactions to offset an existing risk exposure, within appropriate processes and control limits governing their use, to offset a corresponding risk exposure.

Hedge transactions may include physical and financially settled transactions for:

- electrical energy,
- capacity, ancillary services,
- transmission rights and congestion contracts,
- natural gas, natural gas transportation, natural gas locational basis,
- fuel oil,
- traded emissions, environmental attributes, and

- other energy-market products used for generation, the fulfillment of customer load obligations or related requirements.

Such transactions shall be for no more than four (4) years beyond the last day of the month in which the transaction is entered. Transactions of more than four (4) years term, as well as competitive solicitations relating to such transactions require the prior approval of the Board of Trustees.

- Authorize energy related commodity hedge transactions in accordance with the Authority's Risk Management Policy and related implementing procedures.
- Regularly review and reassess the adequacy of this Charter and recommend any proposed changes to the Audit Committee for approval.

#### **4.0 REFERENCES**

Corporate Policy 2-15 – Risk Management

Risk Management Trustee Item - March 21, 2013 Trustee meeting

Audit Committee Charter

Procedure for Energy Commodity & Credit Risk Management

# **Executive Risk Management Committee (ERMC)**

Charter

## 1.0 PURPOSE

The objective of the Executive Risk Management Committee (“ERMC”) is to provide oversight for the management of NYPA’s Risk Profile. The Risk Profile is a representation of the entire portfolio of risk across the enterprise.

The ERMC advises the President and Chief Executive Officer (“CEO”), Executive Management Committee (“EMC”), and Audit Committee of the Board of Trustees in accordance with the Corporate Policy 2-15 – Risk Management 3/21/2013 and the Resolution by the Board of Trustees dated March 21, 2013.

The Board of Trustees has delegated to the ERMC the authority by which NYPA staff may enter into energy commodity related hedge transactions as necessary to offset financial risks to the Authority or its customers.

## 2.0 DEFINITIONS

2.1 Risk Management – An integrated approach to identifying, assessing and addressing areas of uncertainty that could materially impair or enhance achievement of the Authority’s mission objectives.

~~2.2 Risk Dimension – a categorization of risks that aligns with a strategic goal.~~

~~2.3~~ 2.2 Risk Profile – representation of the portfolio of risks across the enterprise. categorized by Risk Dimension.

~~2.4~~ 2.3 Risk Tolerance – predefined limits of risk exposure to Authority’s mission and vision objectives.

~~2.5~~ 2.4 Risk Threshold – early warning metrics or indicators established as intermediate values between the planned outcome and the Risk Tolerance to address-identify potential risk impacts and trigger a Risk Response.

2.62.5 Risk Response – action or measure taken in advance of, or after, a risk occurs aimed at achieving the Authority’s mission objectives.

2.72.6 Strategic Goal – ~~a specific, quantifiable ambition that is set and committed to by an organization in order to achieve its mission and vision. a specific area in which the Authority focuses resources and efforts over the horizon of the strategic plan. The Authority’s Strategic Goals are grouped within three categories of Mission, Stewardship and Accountability that, respectively, define the Authority’s: purpose; intention to maintain and grow entrusted resources; and commitment to responsible leadership.~~

2.7Energy Related Hedge Transaction – a contract with an exchange or directly with a counterparty company, establishing the price for future delivery of a specified energy related commodity quantity, or the financially settled equivalent of such future delivery, where such contract offsets an existing risk exposure.

2.8

### **3.0 MEMBERSHIP AND ORGANIZATION**

#### **3.1 COMMITTEE COMPOSITION**

The ERM C shall consist of a minimum of five (5) members, including the Chief Financial Officer ("CFO") and ~~at least three~~four (4) ~~other additional~~ members as appointed ~~annually from NYPA's Executive Management Committee~~ by the President and CEO.;

It shall be chaired by the CFO; or, in the absence of the CFO, another member delegated this responsibility by the CFO.;

The Chief Risk Officer ("CRO") is a de facto, non-voting, participant of the ERM C but shall remain independent. The CRO develops the Risk Management approach and provides risk reports to the ERM C. The CRO will work with the ERM C to ensure implementing procedures are maintained to direct Risk Management processes.

The Vice President of Internal Audit, the Energy Resource Management Department and the Controller's Office, each have a standing invitation to attend regular ERM C meetings but such attendance does not constitute ERM C membership nor voting rights.

A member of the Risk Management Department shall act as a coordinator to the ERM C maintaining the meeting schedule, agenda and meeting minutes.

#### **3.2 QUORUM and VOTING**

A quorum shall consist of any three (3) members including the chair; participation may be in-person, by video link or by telephone provided when reasonable assurance is provided of the identity and ability of such members to participate in the meeting discussion.

Voting on ERM C matters shall be on a one member-one vote basis. When a quorum is present, the vote of a simple majority of the ERM C members shall constitute the action or decision of the ERM C.

#### **3.3 MEETINGS**

All ERM C meetings shall be scheduled through the Chairperson.

The ERM C shall meet monthly or as often as it determines to be necessary. The ERM C may meet with the Board of Trustees, Audit Committee or CEO by telephone or video conference.

The ERM C may request any other officer, employee, or consultant of the Authority to meet with any members of, or consultants to the ERM C.

Authority staff shall prepare ~~periodic~~-risk reports to be presented to the ERM for review as outlined in related procedures or as otherwise requested by the ERM.

Authority staff shall prepare risk response strategies to be presented to the ERM for review and approval as outlined in related procedures or as otherwise requested by the ERM.

Except in the case of an emergency, the suggested notice period for a meeting in person shall be at least ten business days prior to the date of such meeting.

### 3.4 RESPONSIBILITIES

Responsibilities of the ERM are the following:

- Establish and assess the corporate Risk Profile, ~~Risk Dimensions~~, Risk Tolerances and Risk Thresholds across the enterprise.
- Ensure adequate resources are being applied to risks including appropriateness of risk ownership and response planning.
- Provide guidance to NYPA management regarding all aspects of Risk Management. Approve written procedures and other governance materials developed to support Risk Management activities to ensure consistency with the Corporate Policy 2-15 – Risk Management.
- Authorize a program for Energy Commodity and Credit Risk Management which may include the ~~non-speculative~~-use of energy related commodity hedge transactions to offset an existing risk exposure, within appropriate processes and control limits governing their use, to offset a corresponding risk exposure.

Hedge transactions may include physical and financially settled transactions for:

- electrical energy,
- capacity, ancillary services,
- transmission rights and congestion contracts,
- natural gas, natural gas transportation, natural gas locational basis,
- fuel oil,

<b>New York Power Authority</b>	<b>Executive Risk Management Committee</b>	
<b>Charter</b>	<b>Revision 0</b>	<b>Revision Date: 03/21/13</b>

- traded emissions, environmental attributes, and
- other energy-market products used for generation, the fulfillment of customer load obligations or related requirements.

Such transactions shall be for no more than four (4) years beyond the last day of the month in which the transaction is entered. Transactions of more than four (4) years term, as well as competitive solicitations relating to such transactions require the prior approval of the Board of Trustees.

- Authorize energy related commodity hedge transactions in accordance with the Authority's Risk Management Policy and related implementing procedures.
- Regularly review and reassess the adequacy of this Charter and recommend any proposed changes to the Audit Committee for approval.

#### **4.0 REFERENCES**

Corporate Policy 2-15 – Risk Management

Risk Management Trustee Item - March 21, 2013 Trustee meeting

Audit Committee Charter

Procedure for Energy Commodity & Credit Risk Management



**Procurement (Services) Contracts – Awards**  
**(For Description of Contracts See "Discussion")**

**EXHIBIT "2I-A"**  
**May 22, 2014**

<b><u>Plant Site</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>
OPERATIONS SUPPORT SERVICES - PROJECT MGMT	<b>GREENMAN-PEDERSEN, INC.</b> Babylon, NY (HQ) Albany, NY (Branch Office) <b>(4600002789)</b>	04/30/14	Provide for consulting and inspection services relating to the application of paints and other NACE certified coatings to Authority equipment, structures and infrastructure	04/29/19	B/P	\$100,000  *Note: represents total for up to 5-year term		<b>\$5,000,000*</b>
OPERATIONS SUPPORT SERVICES - PROJECT MGMT	<b>O'CONNELL ELECTRIC COMPANY, INC.</b> Victor, NY <b>(4500244895)</b>	05/01/14	Provide for breaker installation and related work, as part of the T-LEM Program at the STL/FDR Project	04/30/17	B/C	\$500,000  *Note: represents total for up to 3-year term		<b>\$10,818,950*</b>
OPERATIONS SUPPORT SERVICES - PROJECT MGMT	<b>O'CONNELL ELECTRIC COMPANY, INC.</b> Victor, NY <b>(4500245184)</b>	05/09/14	Provide for site preparation and related work for the 765 kV Auto-Transformer Replacement Project at Massena Substation	05/08/16	B/C	\$250,000  *Note: represents total for up to 2-year term		<b>\$5,190,480*</b>

♦ **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) Contracts – Awards**  
(For Description of Contracts See "Discussion")

**EXHIBIT "2I-A"**  
**May 22, 2014**

<b><u>Plant Site</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></u> <b><u>Contract Type<sup>2</sup></u></b></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>
OPERATIONS SUPPORT SERVICES - EH&S	<b>TRC ENVIRONMENTAL CORP.</b> Windsor, CT ( <b>Q14-5615</b> ; PO# TBA)	07/01/14 (on or about)	Provide for Relative Accuracy Test Audits (RATA) of Continuous Emissions Monitoring Systems at SENY sites	06/30/19	B/S			<b>\$663,500*</b>
						*Note: represents total for up to 5-year term		
OPERATIONS SUPPORT SERVICES - EH&S	<b>Q14-5581; 6 awards:</b>  <b>1. ALLSTATE POWER VAC, INC.</b> Rahway, NJ  <b>2. ENVIRONMENTAL PRODUCTS &amp; SERVICES OF VERMONT, INC.</b> Glenmont, NY  <b>3. MILLER ENVIRONMENTAL GROUP, INC.</b> Calverton, NY  <b>4. NATIONAL VACUUM CORP.</b> Niagara Falls, NY  <b>5. OP-TECH ENVIRONMENTAL SERVICES, INC.</b> East Syracuse, NY  <b>6. WRS ENVIRONMENTAL SERVICES, INC.</b> Yaphank, NY (PO#s TBA)	06/01/14 (on or about)	Provide for on-call emergency spill response, clean-up and disposal services, as needed	05/31/19	B/S			<b>\$15,000,000*</b>
						*Note: represents aggregate total for up to 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) Contracts – Awards**  
(For Description of Contracts See "Discussion")

**EXHIBIT "2I-A"**  
**May 22, 2014**

<b><u>Plant Site</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>
OPERATIONS SUPPORT SERVICES - EH&S	<b>Q13-5541; 6 awards:</b>  <b>1. AECOM TECHNICAL SERVICES, INC.</b> New York, NY  <b>2. ARCADIS OF NEW YORK, INC.</b> White Plains, NY  <b>3. KLEINFELDER EAST, INC.</b> Newburgh, NY  <b>4. KLEINSCHMIDT ASSOCIATES, PA, PC</b> Pittsfield, ME  <b>5. LOUIS BERGER &amp; ASSOCIATES, PC</b> New York, NY  <b>6. TRC ENVIRONMENTAL CORP.</b> New York, NY (PO#s TBA)	06/01/14 (on or about)	Provide for on-call general environmental services	05/31/19	B/P			<b>\$4,000,000*</b>

\*Note: represents aggregate total for up to 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) Contracts – Extensions and/or Additional Funding**  
**(For Description of Contracts See "Discussion")**

**EXHIBIT "2I-B"**  
**May 22, 2014**

<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>
EXECUTIVE OFFICES	<b>ERNST &amp; YOUNG LLP</b> New York, NY <b>4500231450</b>	05/02/13	Provide for consulting and auditing services requested by the Autho- rity's Trustees	07/31/14	B/P	\$757,000	\$365,000	<b>\$757,000*</b>
						*Note: includes originally approved amount of \$365,000 + an additional \$392,000 authorized per the EAPs; <b>NO ADDITIONAL FUNDING REQUESTED</b>		
OPERATIONS SUPPORT SERVICES - PROJECT MGMT	<b>NAES CORP.</b> Issaquah, WA <b>4500133069</b>	11/29/06	Provide for the operation and maintenance of the NYC DEP's East Delaware and Neversink hydroelectric facilities	06/30/16	B/S	\$17,910,956	\$15,589,379	<b>\$21,919,957*</b>
						*Note: includes \$17,959,957 previously approved by the Trustees <b>+ CURRENT INCREASE OF \$3,960,000</b> <b>All direct and administrative overhead costs will be reim- bursed to the Authority by the City of New York, acting through the NYC DEP.</b>		
OPERATIONS SUPPORT SERVICES - PROJECT MGMT	<b>NORTHLINE UTILITIES LLC</b> Au Sable Forks, NY <b>4500232210</b>	05/21/13	Provide for services in connection with the Alcoa Transmission Line Relo- cation Project	08/31/14	B/C	\$2,498,728	\$1,602,389	<b>\$2,498,728*</b>
						*Note: represents originally approved amount of \$2,135,916 + an additional \$362,812 authorized per the EAPs <b>NO ADDITIONAL FUNDING REQUESTED</b>		
OPERATIONS SUPPORT SERVICES - PROJECT MGMT	<b>POWER ENGIN- EERING INC.</b> Irvine, CA <b>4500232540</b>	06/07/13	Provide for post-upgrade mechanical testing and analysis for Unit 11 at LPGP, Niagara Project	06/06/15	B/P	\$722,648	\$475,637	<b>\$1,283,444*</b>
						*Note: includes originally approved amount of \$774,098 <b>+ CURRENT INCREASE OF \$509,346</b>		

♦ **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; C= Competitive Search; S= Sole Source; Si = Single Source  
2 **Contract Type:** P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; L= Legal Service

# President & Chief Executive Officer Report

---






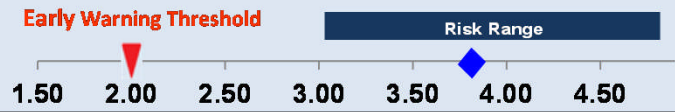











**Gil Quiniones**

**May 22, 2014**

Board of Trustees Meeting

# NYPA Overall Performance

April 2014

Goal	Measure	Year-to-Date 2014			Year 2015 Risk Range
		Status	Target	Actual	
Maintain Infrastructure	Generation Market Readiness (%)		99.40	99.78	<div> <div>Early Warning Threshold (Pending Review)</div> <div>Risk Range</div> </div> 
	Transmission System Reliability (%)		97.05	97.10	<div> <div>Early Warning Threshold</div> <div>Risk Range</div> </div> 
Financial Management	Debt Coverage (Ratio)		3.10	3.65*	<div> <div>Early Warning Threshold</div> <div>Risk Range</div> </div> 
	O&M Budget Performance (\$ Millions)		115.1	103.5	<div> <div>Risk Range</div> <div>  Year-to-Date Actual   Risk Threshold </div> <div>Projected risk ranges to be reported quarterly</div> </div>
Energy Services	MMBTU's Saved		84.8	99.1	
	Energy Efficiency Investment in State Facilities (\$ Millions)		12.9	17.0	
Workforce Management	Retention (# of Touchpoints)		187	174*	<div> <div>Corporate Performance</div> <div> <div>Status</div> <div>  Meeting or Exceeding Target   Below Target   Significantly Below Target </div> </div> </div>
Safety Leadership	DART Rate (Index)		0.78	1.35	
Environmental Responsibility	Environmental Incidents (Units)		11	8	



**Edward Welz**  
Chief Operating Officer

TO: NYPA BOARD OF TRUSTEES

FROM: EDWARD WELZ, CHIEF OPERATING OFFICER

DATE: MAY 8, 2014

SUBJECT: MONTHLY REPORT FOR THE BOARD OF TRUSTEES

\*\*\*\*\*

This report covers performance of the Operations group in April 2014.

## **Operations**

### *Plant Performance*

Systemwide net generation<sup>1</sup> was 1,967,242 MWh (megawatt-hours<sup>2</sup>) for April which is below the projected net generation of 2,062,786 MWh. For the year, net generation was 8,199,375 MWh which is below the projected target of 8,557,793 MWh.

The fleet availability factor<sup>3</sup> was 86.45 percent in April, and was 91.19 percent for the year. Generation Market Readiness factor<sup>4</sup> was 99.97 percent in April, which is better than the monthly target of 99.40 percent. Year-to-date Generation Market Readiness factor was at 99.78 percent, which is above the annual target of 99.40 percent.

There were no significant forced outages<sup>5</sup> in April.

Generation Net Revenue in April was \$16.0 million with a loss of revenue of \$1,500. For the year, net revenue was \$174.0 million while revenue loss is \$0.75 million.

Niagara River flows in April were below the historical average and are expected to be at or below normal levels for most of the year. St. Lawrence River flows for April were below forecast levels. River flows are expected to be below historical levels for most of the year.

### *Transmission Performance*

Transmission Reliability<sup>6</sup> was 95.54 percent in April which was below the target of 97.02 percent. Year-to-date transmission reliability is 97.10 percent, above the target of 97.05 percent.

There were two significant unplanned transmission events<sup>7</sup> to report in April. The MSU-1 line was taken out on emergency for 52 hours to replace a Massena CCVT shortly after being restored from an initial trip. The MSC-7040 Line was forced out of service for 57 hours that was initiated by a cross trip from the MSU line due to a contractor error and remained out for the CCVT replacement.

### *Safety*

The NYPA DART (Days Away, Restricted or Transferred) Rate for April is 1.54. For the year, the DART Rate is 1.35 compared to the target of 0.78.

The Operations DART Rate for April is 2.37. For the year, the DART Rate is 2.00 compared to the target of 1.08.

There were two lost time incidents in April that met the DART criteria. In the Western region there was an incident attributed to a February injury that was declared lost time due to medical follow up in April. This will be recorded under February's lost time injuries.

The Central Region had one recordable lost time injury in April 2014. While tightening bolts, a journeyman mechanic experienced shooting pain and discomfort from his upper left arm through the elbow and to the wrist. The employee's physician wrote the employee out of work until an MRI could be completed and reviewed. The MRI was negative and the employee was diagnosed with tendonitis. This injury is considered a lost time recordable because the employee was written out of work for 10 days. This injury was reported late due to the MRI test and results review.

For the year, there have been 7 injuries that resulted in lost time and met the DART criteria.

### *Environmental*

There were no reportable incidents in April.

For the year, there have been eight incidents. The annual target is 32 incidents.



## *Life Extension and Modernization Programs*

### Transmission LEM

T-LEM is a multiyear program that will upgrade the Authority's existing transmission system to maintain availability, increase reliability, and ensure regulatory compliance. The Program encompasses Authority transmission assets in the Central, Northern, and Western Regions. The Program is estimated to cost \$726 million and is comprised of several projects:

- St. Lawrence Breaker & Relay Replacement:
  - STL Breaker Installation: An interim award has been issued to O'Connell Electric for construction activities during the period 2014 – 2016. A Trustee Item is being presented at the May meeting seeking contract approval.
  - STL Breaker Procurement: Contract issued to HVB for procurement of circuit breakers. Fabrication of the circuit breakers is ongoing.
  - 100MVAR Capacitor Banks: Award issued to Cooper Power Systems. CH2M is working on the final design package.
- CEC Autotransformer/Reactor Refurbishment:
  - One auto-transformer and one reactor will be refurbished in 2014.
  - On April 23, while ABB was placing vacuum on Auto-Transformer 1X, the tank wall failed resulting in external and internal damage. ABB is investigating the incident and analyzing the extent of damage to provide recommended course of action.
- Massena Substation Reactor Refurbishment:
  - Two reactors will be refurbished July – October 2014.
- NIA, BG & CEC Relay Replacements:
  - The project team continues to design, procure equipment and install relays.
- Massena Substation Autotransformer Replacement:
  - The spare auto-transformer has arrived at Massena Substation. A revised schedule indicates return to service on June 2014.
  - Remaining auto-transformers are scheduled for delivery and installation in 2014 – 2015. At this time, one bank is planned to be installed in 2014 with the other in 2015.
  - An interim award for site prep of Banks #1 & 2 has been awarded. A Trustee Item is being presented at the May meeting seeking contract approval.
- Tower Modeling:
  - Tower modeling of the weathering steel structures and grillage was completed.
- Tower Painting:
  - Tower painting proposals were received and are being evaluated for work at STL starting in 2015.
- NIA, STL, CEC & BG Switchyard LEM & STL Substation LEM:

- The project team has assessed switchyard and substation equipment and determined the priority of equipment replacements.
- Project Plans have been issued for review.
- Trustee Items are being drafted. A CEAR for the NIA Switchyard LEM is being presented at the May Trustee meeting seeking partial funding.
- PV-20 Submarine Cable Replacement:
  - Preliminary engineering activities are ongoing by CHA in collaboration with VELCO.

### LPGP LEM

The assembly of the third and fourth turbines commenced in Mitsubishi Hitachi Power Systems America's (MHPS's) facility located in Japan. The components for the fifth turbine are in various stages of fabrication and are nearing completion by MHPS's sub-contractor, Litostroj, located in Slovenia. The fabrication of the sixth turbine at MHPS's two new facilities has commenced: Japan Steel Works, located in Japan, is fabricating the runner crown and blades; Voestalpine, located in Austria, is fabricating the blades.

The refurbishment work and re-assembly of Unit 5 is completed and commissioning is underway. Due to the need to replace the shaft on Unit 5, the return to service date has been moved to early June. The fabrication of two additional sets of spare shafts has commenced, and one of the sets of shafts will be expedited in order to have it delivered in time for the next unit outage, Unit 7.

During the post unit upgrade mechanical testing on Unit 11, several deficiencies were discovered and the testing was not completed. The main issues that need to be addressed are: the overheating of the rotor pole connections and the unit vibrations at speed no load and a potential shaft miss-alignment. It was decided by the Project team that it would be in our best interest to take another outage for Unit 11 to address these issues. As a result, the outage for the third unit, Unit 7, will be postponed so resources can be concentrated on the commissioning of Unit 5 and address the Unit 11 issues simultaneously. The generator contractor, Andritz, will be replacing the rotor pole connections in an outage that is planned in May. The turbine contractor, MHPS, will be investigating the vibration issue and will be checking the bearings and shaft alignment during the May outage as well. The LPGP LEM program is scheduled to be completed in 2020.

### *Technical Compliance – NERC Reliability Standards*

#### Enforcement Actions – Northeast Power Coordinating Council (NPCC):

NYPA has three (3) minimal risk possible violation being processed pursuant to NYPA's participation in a NERC-sponsored enforcement pilot program (see RAI section below).

#### Internal Investigation of Possible Violations:

In April, two new investigations were initiated. Five (5) investigations, relating to various requirements, are currently in progress.

#### New Bulk Electric System (BES) Definition:

In June 2013, FERC approved a request for a one-year delay in the implementation of the new BES Definition from July 1, 2013 to July 1, 2014. Based on the new BES Definition, a number of NYPA owned assets have been identified that may require NYPA's registration as Transmission Operator (TOP) and Transmission Planner (TP). NYPA staff has been engaging the NYISO, NY Transmission Owners and Alcoa in discussions about these possible impacts and the development of the Reliability Standards Compliance Management Agreements for these new BES assets. Beginning on July 1, 2014, NYPA will submit to NERC, via a NERC on-line software tool, the new BES assets and the applicable BES exclusions and exceptions requests. NYPA must demonstrate compliance with the applicable reliability standards for its new BES assets by July 1, 2016.

#### Critical Infrastructure Protection (CIP) Standards - Version 5:

On November 21, 2013 the Federal Energy Regulatory Commission (FERC) approved the CIP Version 5 reliability standards and the implementation plan. NYPA's cyber asset classification assessment surveys required pursuant to the new standards will be completed by June 2014. In April, the survey of the St. Lawrence Power Project facilities and substations was completed. The results of the surveys will be used to confirm the scope, costs, and schedule of the implementation plan NYPA will need to execute to demonstrate compliance with the revised standards by April 1, 2016.

#### Physical Security Standard

On March 7, 2014, FERC issued an order (RD14-6) directing NERC to develop and submit for approval within 90 days a new reliability standard to address physical security risks and vulnerabilities related to the reliable operation of the Bulk Power System. The new standard will require owners and operators of Bulk Power System assets to perform a three-step process to identify critical facilities, assess physical security threats and vulnerabilities risks to such facilities, and implement appropriate security plans to protect against physical attacks that may compromise the operability or recovery of such facilities. Generally, the standard is intended to apply to transmission substations and their associated primary control centers that, if rendered inoperable or damaged as a result of a physical attack, could result in instability, uncontrolled separation, or cascading within an interconnection. This new standard is currently in development and is expected to be filed with FERC for approval by June 5, 2014. NYPA staff is closely monitoring the development of this standard with APPA and LPPC members, is assessing the applicability and impacts to NYPA's facilities, and is regularly updating management.

#### NERC Reliability Assurance Initiative (RAI):

NYPA, along with other generation and transmission companies in North America, including Large Public Power Council (LPPC) and American Public Power Association (APPA) members, has been actively supporting the NERC and NPCC in moving this important program forward. In April, NYPA continued to participate in an NPCC pilot program to test enforcement tools for processing minimal risk violations of the standards. NYPA is the only registered entity of over 350 in the

NPCC region participating in the pilot program. Similar pilot programs are being conducted in several regions across the country to establish the basis for a more risk-based, continent-wide compliance monitoring and enforcement process.

## Energy Resource Management

### *NYISO Markets*

In April, Energy Resource Management (ERM) bid 2.23 million MWh of NYPA generation into the NYISO markets, netting \$46.8 million in power supplier payments to the Authority. Year-to-date net power supplier payments are \$405.7 million.

### *Fuel Planning & Operations*

In April, NYPA's Fuels Group transacted \$23.5 million in natural gas and oil purchases, compared with \$26.5 million in April 2013. Year-to-date natural gas and oil purchases are \$209.1 million, compared with \$129.9 million at this point in 2013. The total \$79.2 million increase is mainly due to the higher cost of fuel and/or fuel consumption at the Astoria Energy II Plant (\$30.1 million), 500-MW Combined Cycle Plant (\$40.3 million), and Richard M. Flynn Power Plant (\$12.2 million), which was offset by a decrease at the Small Clean Power Plants (-\$3.4 million).

## GLOSSARY

---

<sup>1</sup> **Net Generation** – The energy generated in a given time period by a power plant or group of plants, less the amount used at the plants themselves (station service) or for pumping in a pumped storage facility. Preliminary data in the COO report is provided by Accounting and subject to revision.

<sup>2</sup> **Megawatt-hour (MWh)** – The amount of electricity needed to light ten thousand 100-watt light bulbs for one hour. A megawatt is equal to 1,000 kilowatts and can power about 800 homes, based on national averages.

<sup>3</sup> **Availability Factor** – The Available Hours of a generating unit over the Period Hours (hours in a reporting period when the unit was in an active state). Available Hours are the sum of Service Hours (hours of generation), Reserve Shutdown Hours (hours a unit was not running but was available) and Pump Hours (hours a pumped storage unit was pumping water instead of generating power).

<sup>4</sup> **Generation Market Readiness Factor** – The availability of generating facilities for bidding into the New York Independent System Operator (NYISO) market. It factors in available hours and forced outage hours that drive the results.

<sup>5</sup> **Significant Unplanned Generation Events** – Those events (forced or emergency outages of individual generator units) of duration greater than 72 hours, or have a total repair cost of greater than \$75,000, or result in greater than \$50,000 of lost revenues.

<sup>6</sup> **Transmission Reliability** - A measurement of the impact of forced and scheduled outages on the statewide system's ability to transmit power.

<sup>7</sup> **Significant Unplanned Transmission Events** – Those events (forced or emergency outages of individual transmission lines) which directly affect the reliability of the state's transmission network, or affect the availability of any component of the state's transmission network for greater than 8 hours, or that have a repair cost greater than \$75,000.