

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

**May 19, 2015**

**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 19, 2015 Proposed Meeting Agenda</b>	<b>3</b>	
<b>2. Consent Agenda:</b>	<b>4</b>	
<b>a. Governance Matters</b>	<b>5</b>	
i. Minutes of the Annual Meeting held on March 26, 2015	5	
<b>b. Power Allocations</b>	<b>6</b>	
i. Contract for the Sale of Western New York Hydropower – Transmittal to the Governor	6	2b i-A – 2b i-C
ii. Hydropower Allocation – Extension of Replacement Power Allocation to Niacet Corporation	9	
<b>c. Procurement (Services) Contracts</b>	<b>11</b>	
i. Procurement (Services) Contracts – Consulting Engineering Services for Power Generation, Transmission and Ancillary Facilities – Contract Awards	11	
ii. Procurement (Services) Contracts – On-Call Services – Fair Market Valuation and Procurement Support Services – Contract Awards	14	
iii. Procurement (Services) Contracts – Professional Services – Reliability Standards and Compliance Group – Contract Awards	17	
iv. Procurement (Services) Contract – Professional Services – Ernst & Young LLC – Additional Funding and Contract Extension	20	
<b>NIAGARA</b>		
v. Procurement (Services) Contract – Transmission Life Extension and Modernization Program – Niagara Switchyard – Circuit Breaker – Contract Award	22	
vi. Procurement (Services) Contract – Niagara Power Project Relicensing – Maintenance Services – Project Intakes and Observation Area – Contract Award	25	

<b><u>Subject</u></b>	<b><u>Page No.</u></b>	<b><u>Exhibit</u></b>
vii. Procurement (Construction) Contract – Niagara Power Project Relicensing – Invasive Species Control Habitat Improvement Project – Contract Award	27	
<b>d. Capital Expenditure Authorization Request</b>	<b>29</b>	
i. Niagara Power Project – Robert Moses Spare Generator Step-Up Transformer– Capital Expenditure Authorization Request	29	
ii. Spare 345 kV Dual Usage Shunt Reactor Project – Capital Expenditure Authorization Request	32	
iii. Niagara Power Project – First Buffalo Marina – Winter Mooring Site Relocation – Capital Expenditure Authorization Request and Contract Award	34	
iv. Construction of Nature Center at the Robert Moses State Park – Capital Expenditure Authorization Request and Contract Award	38	
Resolution		
<b>Discussion Agenda:</b>	<b>42</b>	
<b>3. Staff Reports</b>	<b>42</b>	
a. President and Chief Executive Officer	42	3a-A
b. Chief Operating Officer	44	3b-A
c. Chief Financial Officer	46	3c-A
<b>4. Power Allocations and Proceeds</b>	<b>48</b>	
a. Western New York Hydropower Allocations and Notice of Public Hearing Resolution	48	4a-A; 4a-A-1 – 4a-A-3; 4a-B-1 - 4a-B-2
b. Awards of Fund Benefits from the Western New York Economic Development Fund Recommended by the Western New York Power Proceeds Allocation Board Resolution	54	4b-A – 4b-E
<b>5. Collective Bargaining Agreement Between the Authority and Local Unions 2032 and 2104 – International Brotherhood of Electrical Workers – Successor Agreement Resolution</b>	<b>59</b>	<b>5-A</b>

<u>Subject</u>	<u>Page No.</u>	<u>Exhibit</u>
<b>6. Energy Efficiency:</b>	<b>63</b>	
<b>a. Informational Item:</b> Energy Efficiency – NYC Solar Schools – Design, Development and Implementation Program	64	6a-A
<b>b. Procurement (Services) Contract – Energy Efficiency Programs – Roof Mounted Solar Photovoltaic Systems – Phase II – Contract Awards Resolution</b>	65	
<b>7. Motion to Conduct an Executive Session</b>	<b>70</b>	
<b>8. Motion to Resume Meeting in Open Session</b>	<b>71</b>	
<b>9. Next Meeting</b>	<b>72</b>	
<b>Closing</b>	<b>73</b>	

Minutes of the Regular Meeting of the Power Authority of the State of New York held via video conference at the following participating locations at approximately 9:00 a.m.

- 1) New York Power Authority, 123 Main Street, White Plains, NY
- 2) New York Power Authority, 535 Washington Street, Suite 200, Buffalo, New York
- 3) Monroe Community College, 1000 E. Henrietta Road, Rochester, NY

**Members of the Board present were:**

Joanne M. Mahoney, Vice Chair  
Eugene L. Nicandri, Trustee  
Terrance P. Flynn, Trustee  
Dr. Anne M. Kress, Trustee

John R. Koelmel, Chairman - Excused  
Jonathan F. Foster, Trustee - Excused

---

Gil Quiniones	President and Chief Executive Officer
Edward Welz	Chief Operating Officer
Robert Lurie	Executive Vice President and Chief Financial Officer
Justin Driscoll	Executive Vice President and General Counsel
Jill Anderson	Senior Vice President – Public and Regulatory Affairs
Joseph Kessler	Senior Vice President – Power Generation
James Pasquale	Senior Vice President – Economic Development & Energy Efficiency
Kristine Pizzo	Senior Vice President – Human Resources
Rocco Iannarelli	Acting Senior Vice President – Enterprise Shared Services
Karen Delince	Vice President and Corporate Secretary
Joseph Leary	Vice President – Community and Government Relations
Gerard Vincitore	Vice President – Finance
Lori Alesio	Assistant General Counsel – Human Resources and Labor Relations
Carol Geiger-Wank	Director – Labor and Special Projects
Richard Smith	Business and Project Development Director – Niagara
Gregory Jablonsky	Manager – Network Services – Infrastructure
John Giumarra	Senior Account Executive
Silvia Louie	Senior Project Manager – Executive Office/Public and Regulatory Affairs
Glenn Martinez	Senior Network Analyst – Infrastructure
Trevor Smith	Associate Conservation Engineer – Energy Efficiency
Dennis Willette	Conservation Program Engineer – Energy Efficiency
Lauren Magin	Excelsior Engineering Fellow – Energy Efficiency
Lorna Johnson	Associate Corporate Secretary
Sheila Baughman	Assistant Corporate Secretary

---

Trustee Eugene Nicandri presided over the meeting. Corporate Secretary Delince kept the Minutes.

**Introduction**

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

1. **Adoption of the May 19, 2015 Proposed Meeting Agenda**

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

**Conflicts of Interest**

*Vice Chair Mahoney and Trustee Flynn declared conflicts of interest as indicated below and said they would not participate in the discussions or votes as it relates to those matters.*

*Vice Chair Mahoney: C&S Companies, Inc. (Item 2ci).*

*Trustee Flynn: Solar Liberty Energy Systems, Inc. (Item 6b).*

*The items above were not adopted because the conflicts resulted in a failure to attain the required number of votes necessary for their approval.*

*Trustees Nicandri, Foster and Kress declared no conflicts.*

**2. CONSENT AGENDA:**

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

***Acting Chairman Nicandri said since Vice Chair Mahoney was recused from the vote as previously indicated, the Consent Agenda was approved with the exception of C&S Companies, Inc.***

**a. Governance Matters:**

**i. Approval of the Minutes**

The Minutes of the Annual Meeting held on March 26, 2015 were unanimously adopted.



**b. Power Allocations:**

**i. Contract 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 approve the proposed final contract ('Contract') for the sale of Replacement Power ('RP') to WhiteRock Pigments, Inc., the business which is described in Exhibit '2b i-A'; and authorize transmittal of the Contract to the Governor for his review and requested authorization for the Authority to execute the Contract pursuant to Public Authorities Law ('PAL') §1009. The Contract is attached as Exhibit '2b i-B.'

**BACKGROUND**

Under PAL §1005(13), the Authority may allocate and sell directly or by sale for resale, 250 megawatts ('MW') of Expansion Power ('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. Under PAL §1005(13), the Authority may allocate and sell directly or by sale for resale, 490 megawatts ('MW') of Preservation Power ('PP') to businesses located in Jefferson, Franklin and St. Lawrence Counties.

At their meeting on December 16, 2014, the Trustees awarded an allocation of 2,450 kilowatts ('kW') of RP to WhiteRock Pigments, Inc., as described in Exhibit '2b i-A.'

The Trustees also authorized a public hearing, pursuant to PAL §1009 on the Contract to effectuate the sale of power and energy for the allocation to this company.

The Contract before the Board would provide for the sale of this allocation to WhiteRock Pigments, Inc. The sale of this allocation would be made under a direct sale arrangement. Transmission and delivery service would be provided by the company's local utility in accordance with the utility's Public Service Commission-filed delivery service tariff. The following is a summary of some pertinent provisions of the Contract:

- The Contract 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') and the Service Tariff-10 ('ST-10').
- The Contract includes the company's agreed-upon commitments with respect to employment, power utilization and capital investment. The Authority would retain the right to reduce or terminate the 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 customer 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 the direct billing arrangement with the Authority, the Contract form includes 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 company 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 the Contract with WhiteRock Pigments, Inc. and has received its consent to the Contract. The company has also acknowledged application of the appropriate tariff, discussed above, to its allocation.

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 record, to the Governor and other elected officials. Upon approval by the Governor, the Authority may execute the contract.

#### DISCUSSION

As noted above, the Trustees, at their December 16, 2014 meeting, awarded the aforementioned allocation to this company, and also authorized the Corporate Secretary to schedule a public hearing on the Contract.

A public hearing for the WNY Contract was held on April 1, 2015 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 i-C.'

#### RECOMMENDATION

The Manager – Business Power Allocations and Compliance recommends that the Trustees approve the Contract for the sale of Replacement Power to WhiteRock Pigments, Inc. and authorize the transmittal of this Contract to the Governor for his review pursuant to PAL §1009.

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 contract for the sale of Replacement Power to WhiteRock Pigments, Inc. ("Contract"), is in the public interest and in accordance with Public Authorities Law §1009 and should be submitted to the Governor for his review, and that copies of the Contract, 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 Contract in the name of, and on behalf of, the Authority if the Contract is 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 Executive Vice President and General Counsel, to negotiate and execute any and all documents necessary or desirable to implement the Contract with the business 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 Executive Vice President and General Counsel.**

**ii. Hydropower Allocation – Extension of Replacement Power Allocation to Niacet Corporation**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to approve an extension of the 500 kilowatt ('kW') Replacement Power ('RP') allocation previously awarded to Niacet Corporation ('Niacet') for a five-year term ending on June 30, 2020.

**BACKGROUND**

Under PAL §1005(13), the Authority may allocate and sell directly or by sale for resale, 250 MW of Expansion Power ('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 Authority and Niacet are currently parties to a power sale contract that covers four allocations. Three of the allocations (500 kW of EP; 1,000 kW of RP; and 400 kW of RP) are scheduled to expire on June 30, 2020. These three allocations corresponded to a commitment by Niacet to maintain 82 jobs. A fourth allocation – the 500 kW RP allocation currently before the Trustees – is scheduled to expire on July 31, 2015 (the '500 kW RP Allocation'). The 500 kW RP Allocation, which was awarded to Niacet on July 31, 2007, corresponds to a commitment by Niacet to maintain 10 jobs, for a total of 92 jobs associated with Niacet's four hydropower allocations.

**DISCUSSION**

Niacet operates facilities at 400 47<sup>th</sup> Street, Niagara Falls, NY. It is a leading producer of organic salts, including propionates and acetates, serving the food, pharmaceutical and technical industries.

Niacet has requested an extension of the 500 kW RP Allocation. It states that a key component of the cost effectiveness of its Niagara Falls operation is the low-cost power associated with its hydropower allocations, including the 500 kW RP Allocation. Niacet is willing to commit to retaining a total of 92 jobs through June 30, 2020 in exchange for the extension of the 500 kW RP allocation, and is committed to making the capital investments through the term of its allocations as provided in its current contract. Niacet is currently in compliance with its contractual commitments for job creation and capital investment. Accordingly, staff recommends the Trustees approve an extension of the 500 kW RP allocation to Niacet.

**RECOMMENDATION**

The Manager – Business Power Allocations and Compliance recommends that the Trustees approve an extension of Niacet Corporation's 500 kW Replacement Power Allocation for a five-year term ending on June 30, 2020.

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

**RESOLVED, That the Trustees hereby authorize an extension of the 500 kilowatt ("kW") Replacement Power ("RP") allocation awarded to Niacet Corporation ("Niacet") on July 31, 2007, for a five-year term ending June 30, 2020, subject to rates previously approved by the Trustees; and be it further**

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

**c. Procurement (Services) Contracts:**

**i. Procurement (Services) Contracts –  
Consulting Engineering Services for  
Power Generation, Transmission and  
Ancillary Facilities – Contract Awards**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to approve the award of Engineering Services Agreement contracts to the following ten technically qualified companies:

Haider Engineering, PC, Farmingdale, NY  
RCM Technologies, Inc., Pennsauken, NJ  
Genesys Engineering, PC, Pelham, NY  
Mott MacDonald LLC, Westwood, MA  
Realtime Utility Engineers, Inc., Madison, WI  
Greenman-Pedersen, Inc., Montebello, NY  
Altran Solutions Corp., Bordentown, NJ  
C&S Companies, Inc., Syracuse, NY  
Hatch Associates Consultants, Inc., Amherst, NY  
Kleinschmidt Associates PA, PC, Pittsfield, ME

The intended term of each contract will be 4.5 years for a total aggregate amount of \$20 million.

**BACKGROUND**

Section 2879 of the Public Authorities Law, the Authority's Guidelines for Procurement Contracts, and the Authority's Expenditure Authorization Procedures require the Trustees' approval for personal services contracts in excess of \$1 million if low bidder, or \$500,000 if sole-source, single-source or non-low bidder, and whose term exceeds one year in duration.

**DISCUSSION**

The Authority has used external resources to provide for 'on-call, as required' consulting engineering services to support the operation and maintenance of the Authority's hydroelectric, pumped storage and fossil-fuel generation projects, as well as its transmission and other ancillary facilities throughout New York State, when engineering requirements are beyond the resources of existing Authority engineering staff or during emergencies when augmented staffing and services are required. Additionally, the Federal Energy Regulatory Commission ('FERC') requires that Licensees maintain the resources necessary to respond to unusual or changed conditions that may affect public safety. Such external engineering services include, but are not limited to: preparation of engineering and design packages, estimating, scheduling, safety assessments, testing activities, equipment and construction specifications, permits, licenses and procedure preparation.

In response to the Authority's Request for Proposals ('RFP') advertised in the New York State *Contract Reporter* on November 17, 2014, two hundred nineteen (219) companies requested copies of the original bid documents for Bid Inquiry Q14-5758FS, and seventeen (17) proposals were received. After an initial evaluation, two companies were deemed not qualified and removed from consideration.

The remaining 15 companies were evaluated based on professional qualifications and experience of key personnel and backup staff, experience in specific technical areas, size and depth of organization and resources, ability to respond quickly to requests for services, as well as competitive pricing based on

a composite hourly rate calculated for each bidder by the evaluation team, as further set forth in the Award Recommendation documents. Based on the foregoing, staff recommends the award of contracts to ten (10) out of the fifteen (15) firms.

The selection of ten firms will provide the wide range of expertise required to perform the tasks and ensures that adequate skill coverage will be available to the Authority, as needed, supplementing Authority manpower in some areas and providing timely access to specialty skills in others. The on-call contracts for engineering services also provide the Authority with a vehicle for rapid response to a wide variety of emergent tasks, many requiring specialty engineering expertise. Specific tasks will be assigned to the firm that is most qualified, can perform the work economically, and can meet the Authority's schedule constraints.

The new contracts would become effective on or about June 1, 2015 for an intended term of up to 4.5 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, \$20 million. Total commitments and expenditures for the contracts will be tracked against the approved aggregate total. Such contracts will be closely monitored for utilization levels, available approved funding and combined total expenditures.

Minority-Owned Business Enterprise ('MBE') and Women-Owned Business Enterprise ('WBE') participation will also be monitored. The overall goal for M/WBE participation is 15 %, 10 % for MBE participation and 5 % for WBE participation. It should be noted that Haider is a New-York State certified MBE.

#### FISCAL INFORMATION

Funds required will be included in the budget submittal for each year. Payment will be made from the Authority's Capital or Operating Fund.

#### RECOMMENDATION

The Senior Vice President – Operations Support Services and Chief Engineer, the Vice President – Engineering and the Vice President – Procurement recommend that the Trustees approve the award of Engineering Services Agreement contracts, in the total aggregate amount of \$20 million, for a term of 4.5 years, to the following companies:

Haider Engineering, PC, Farmingdale, NY  
RCM Technologies, Inc., Pennsauken, NJ  
Genesys Engineering, PC, Pelham, NY  
Mott MacDonald LLC, Westwood, MA  
Realtime Utility Engineers, Inc., Madison, WI  
Greenman-Pedersen, Inc., Montebello, NY  
Altran Solutions Corp., Bordentown, NJ  
C&S Companies, Inc., Syracuse, NY  
Hatch Associates Consultants, Inc., Amherst, NY  
Kleinschmidt Associates PA, PC, Pittsfield, ME

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 the exception of **C&S Companies, Inc.**, which failed to pass due to the conflict of interest filed by Vice Chair Mahoney.

**RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, the award and funding of the four and one half year Engineering Services Agreement contracts to the firms set forth below, in an aggregate amount of \$20 million, is hereby approved, as recommended in the foregoing report of the President and Chief Executive Officer;**

<u><b>Contractors</b></u>	<u><b>Contract Approval</b></u>
Haider Engineering	Multi-year (4.5-year)
RCM Technologies, Inc.	
Genesys Engineering	<u><b>\$20 million</b></u> (aggregate)
Mott MacDonald LLC	
Realtime Utility Engineers	
Greenman-Pedersen, Inc.	
Altran Solutions Corp.	
C&S Companies, Inc.	
Hatch Associates Consultants, Inc.	
Kleinschmidt Associates PA	
(Q14-5758FS)	

**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 Executive Vice President and General Counsel.**



**ii. Procurement (Services) Contracts –  
On-Call Services – Fair Market  
Valuation and Procurement Support  
Services – Contract Awards**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to approve the award of a three-year contract for the On-Call Fair Market Valuation and Procurement Support Services (the ‘Services’) in the aggregate amount of \$500,000 to the two most technically acceptable bidders: Clearbid Capital LLC and Navigant Consulting, Inc.

**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 personal services contracts exceeding one year or in excess of \$1 million if low bidder, or \$500,000 if sole-source, single-source or non-low bidder.

Fair Market Valuation services have been utilized by the Authority in the past to support valuation, sale, bidding and consultation for disposal of assets in compliance with the Public Authority Accountability Act (‘PAAA’) guidelines.

In 2010, a contract was awarded to support the Poletti Decommissioning project utilizing these services, and each year since 2012 the Authority has awarded an annual contract for these services in support of the Kensico and Vernon Decommissioning projects, as well as the emergency Harlem River transformer replacement. In preparation for other upcoming projects, including the Vernon Decommissioning Request for Proposal (‘RFP’) updates, these Master Service Agreements are required. Past experience has shown that an award to multiple firms allows for a broader selection and availability of skilled personnel to support the varying requirements of projects.

**DISCUSSION**

In response to the Authority’s RFP (Q14-5771FS) advertised in the New York State *Contract Reporter* on November 6, 2014, sixty-seven (67) firms downloaded the bid document. On December 2, 2014, six proposals were received for the Project.

A complete bid review and analysis was conducted by the Evaluation Committee consisting of staff from Project Management, Legal and Procurement departments. Evaluation criteria were based on relevant experience, quality of services (confirmed by references) and hourly rates for Authority required support. All six firms were ranked by assigning a score in each criteria area and then an overall ranking (lower number representing higher rating) was determined using a weighted factor applied across the criteria score.

For successful project execution and implementation, the firms’ experience, particularly with power and utility projects, and proven track record to provide quality services is considered essential and, as such, was weighted most in the scoring system. Based on the review of the written proposals, Clearbid Capital LLC., Navigant Consulting, Inc. and The Brattle Group were the top three ranked firms.

All three of these firms have relevant and good experience in the power and utility industry; successful track records implementing projects of various dollar value, duration and complexity and experience working with City, State or Government agencies. As such, these three firms were further evaluated based on their hourly rates and a total evaluation rank was obtained.

Based on the review of the proposals and the evaluation criteria, an award is recommended to the two most technically acceptable bidders: Clearbid Capital LLC and Navigant Consulting, Inc.

Services under these contracts will be provided on an as-needed basis and/or availability, using the hourly rates.

#### FISCAL INFORMATION

Payments associated with this Project will be made from the Authority's Capital and Operating Funds.

#### RECOMMENDATION

The Chief Operating Officer, the Senior Vice President and Chief Engineer – Operations Support Services, the Vice President – Procurement and the Vice President – Project Management recommend that the Trustees approve the award of a three-year contract for the On-Call Fair Market Valuation and Procurement Support Services (the 'Services') in the aggregate amount of \$500,000 to the two most technically acceptable bidders: Clearbid Capital LLC and Navigant Consulting, Inc.

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

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

**RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures approval is hereby granted to award a three-year Contract for On-Call Fair Market Valuation and Procurement Support Services, in the aggregate total amount of \$500,000, to Clearbid Capital LLC and Navigant Consulting, Inc. as recommended in the foregoing report of the President and Chief Executive Officer**

<u>Contractor</u>	<u>Location</u>	<u>Contract Approval</u>
• Clearbid Capital LLC	- Dobbs Ferry, NY	3-year On-Call Fair Market Valuation and Procurement Services
• Navigant Consulting, Inc.	- New York, NY	
<b>(Q14-5771FS)</b>		<b><u>\$500,000</u> (aggregate)</b>

**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 Executive Vice President and General Counsel.**

**iii. Procurement (Services) Contracts –  
Professional Services – Reliability Standards  
and Compliance Group – Contract Awards**

The President and Chief Executive Officer presented the following report:

**SUMMARY**

The Trustees are requested to approve the award and funding of multi-year services contracts to the firms: Navigant Consulting, Inc., Chicago, IL; Quanta Technology, Raleigh, NC; and KEMA, Inc., Burlington, MA. The awards are to be for a term of up to five years and in an aggregate amount of \$5 million. The intent of the process was to identify consultants to provide professional services to the Authority's Reliability Standards and Compliance ('RSC') Group on an 'as needed' basis. Having multiple firms allows the Authority flexibility in the ultimate selection of a consultant depending on the Authority's needs in various subject matter areas and work management.

**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 personal services contracts in excess of \$1 million if low bidder, or \$500,000 if sole-source or non-low bidder.

The last Reliability Standards and Compliance Group professional services Request for Proposal ('RFP') was issued in 2010.

**DISCUSSION**

The terms of the contracts will be more than one year; therefore, the Trustees' approval is required. All of the contracts will allow the Authority, in its sole discretion, to terminate services without liability other than paying for acceptable services rendered to the effective date of termination.

The issuance of up to five-year contracts is necessitated by both cost and efficiency considerations. Since an assigned matter may extend longer than a year and require consistency in service, it is more efficient to award long-term contracts than to rebid annually.

On January 29, 2015, RFP Inquiry No. Q15-5807MR was published in the New York State *Contract Reporter* seeking consultant services to assist the Authority's RSC Group with meeting the North American Electric Reliability Corporation ('NERC') Reliability Standards imposed with the passage of the Energy Policy Act of 2005 and regulatory initiatives of the Federal Energy Regulatory Commission ('FERC'). Services include, but are not limited to: conducting internal assessments of reliability standards related to the Authority's NERC compliance registries; internal spot check assessments of the Authority's compliance with selected NERC reliability standards; internal reviews of existing documentation prior to self-certifications; preparation and support activities associated with Northeast Power Coordinating Council ('NPCC') audits, spot checks and compliance violation investigations or self-reporting/mitigation plans; and review and update of existing RSC internal controls including compliance assessment processes for pre-audit preparation, on-site audit and post-audit activities, responding to findings and recommendations, and developing compliance training materials.

A total of thirteen (13) professional service firms submitted proposals in response to the RFP for reliability standards consulting services. The RFP sought information on the firms' ability to provide support in a variety of NERC Reliability Standards and related compliance areas relevant to the business of the Authority. Staff evaluated the proposals based on responsiveness to the RFP; cited corporate work

experience; proposed project team experience and expertise; familiarity with NERC and NPCC governance and reliability requirements and criteria; familiarity with NPCC's Compliance Monitoring and Enforcement Program ('CMEP'); familiarity with NPCC's Reliability Criteria applicable to NYPA and working knowledge of NYPA's system, facilities and policies; and hourly rates.

As a result of the review of the proposals, the recommendation is that contracts be entered into with the following firms for professional services on an 'as needed' basis:

1. Navigant Consulting, Inc.
2. Quanta Technology
3. KEMA, Inc.

An aggregate amount of \$5 million is requested for the professional services contracts. Accordingly, these contracts do not obligate the Authority to a specific level of services or expenditures.

If approved by the Trustees, the new contracts would become effective on or about July 1, 2015 for a term of up to five years.

#### FISCAL INFORMATION

Funds required to support contract services are included in the 2015 approved O&M Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years, as tasks are assigned. Payment will be made from the Operating Fund.

#### RECOMMENDATION

The Chief Operating Officer, Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Vice President – Technical Compliance, and the Vice President – Procurement recommend the Trustees' approval of the award of procurement contracts for a term of up to five years, in an aggregate amount of \$5 million, to Navigant Consulting, Inc., Quanta Technology, and KEMA, Inc. to provide professional services to the Authority's Reliability Standards and Compliance ('RSC') Group.

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

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

**RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted for the award and funding of professional services contracts to the firms set forth below, for a term of up to five years, in an aggregate amount of \$5 million, to provide professional services to the Authority's Reliability Standards and Compliance ('RSC') Group as recommended in the foregoing report of the President and Chief Executive Officer;**

<u>CONSULTANT</u>	<u>CONTRACT APPROVAL</u>
<b>Navigant Consulting, Inc.</b> <b>(Chicago, IL)</b> <b>Quanta Technology</b> <b>(Raleigh, NC)</b> <b>KEMA, Inc.</b> <b>(Burlington, MA)</b> <b>(Q15-5807MR)</b>	<b><u>\$5 million</u></b> <b>(Aggregate)</b>

**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 Executive Vice President and General Counsel.**

**iv. Procurement (Services) Contract –  
Professional Services – Ernst & Young LLC –  
Additional Funding and Contract Extension**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to authorize additional funding in the amount of \$2.7 million and an option for a contract extension through June 30, 2016 for the Authority's contract with Ernst & Young LLP ('EY') (No. 4500245948) for assistance in managing the Authority's Internal Audit department and in conducting various audits and assessments.

**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 when the cumulative change-order value of a personal services contract exceeds \$500,000.

At the March, 2014 meeting of the Power Authority's Audit Committee of the Board of Trustees, Executive Management was directed to engage the services of a third-party auditor to manage the Internal Audit department and to provide additional services including managing the execution of outstanding 2013 audits, assessing the 2014 proposed Internal Audit Plan, and determining the resources required to complete the Department's other work plans. A competitive search was initiated and EY's proposal was determined to be most responsive to the Authority's requirements. EY was awarded an interim contract for \$900,000, effective April 28, 2014, with the work to be completed within one year.

Subsequent to the initial April 2014 contract award, the EY contract has been before the Trustees at their July 29, 2014 and October 15, 2014 meetings. At the July meeting, the contract value was increased to \$1.653 million and the contract term was extended to December 31, 2014, to cover the Audit Committee's recommendation to the Trustees to expand EY's support to the Authority by increasing the number of audits to be conducted and by initiating additional EY support activities.

At the October meeting, the Trustees increased the compensation limit to \$3,871,600, including estimated expenses, to cover the costs for an extension of the contract term through June 30, 2015 with an option to extend for an additional six-month period through December 31, 2015.

**DISCUSSION**

At the request of the Audit Committee of the Board of Trustees and Executive Management, EY will continue to assist the Authority's Internal Audit department on the execution of its audit activities during the period July 1, 2015 through December 31, 2015, including the execution of the 2015 Internal Audit Plan and related assessments. These continuing and additional services include EY providing Internal Audit with resources and subject matter expertise support to conduct audits and other activities that would have been performed by various Authority staff who resigned their positions at the Authority. EY will be providing additional internal audit resources and support to assist the newly appointed Chief Audit Executive and other new staff with their transition to the Authority. Additional EY services will include: assistance in development of the 2016 Internal Audit Plan, conducting audits of specific vendor contracts which have been requested by the Authority, and a SCADA Network Discovery Assessment in order to evaluate the security of the Authority's SCADA from an intranet perspective.

The continued need to redirect the focus and skills of the Internal Audit department and to re-staff the department requires these EY activities. The projected cost of these additional services through December 31, 2015 and with an option to extend the contract through June 30, 2016, is \$2.7 million bringing the total contract value to \$6,571,600.

#### FISCAL INFORMATION

Payments associated with these EY services will be made from the Authority's Operating Fund.

#### RECOMMENDATION

The Vice President – Information Technology and Chief Information Officer, the Vice President – Procurement, the Senior Vice President – Internal Audit, and the Executive Vice President and General Counsel recommend that the Trustees approve an option for a contract extension, not to exceed June 30, 2016, and a \$2.7 million increase in the contract value to a not to exceed amount of \$6,571,600, to Ernst & Young LLC for assistance in managing the Authority's Internal Audit department and in conducting various audits and assessments.

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

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

**RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted for an option to extend the procurement (services) contract through June 30, 2016 and a \$2.7 million increase in funding of the contract up to an amount not to exceed \$6,571,600 to Ernst & Young for assistance in managing the Authority's Internal Audit department and in conducting various audits and assessments, as recommended in the foregoing report of the President and Chief Executive Officer;**

<u>O &amp; M</u>	<u>Contract Approval</u>	<u>Completion Date</u>
Ernst & Young LLC (No. 4500245948)		June 30, 2016
Previous Contract Approval	\$ 3,871,600	
Current Authorization Request	<u>2,700,000</u>	
Total Contract Amount	<u>\$ 6,571,600</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 Executive Vice President and General Counsel.**



NIAGARA

**v. Procurement (Construction) Contract –  
Transmission Life Extension and Modernization  
Program – Niagara Switchyard – Circuit Breaker  
– Contract Award**

---

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve a contract award in the amount of \$8,055,265 to ABB Inc. of Raleigh, NC to design, furnish and deliver thirty-one, 230 kV circuit breakers for the Niagara Switchyard Life Extension and Modernization ('LEM') Project as a part of the Transmission LEM Program ('T-LEM').

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.

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

The Niagara Switchyard LEM is a multiyear project within the T-LEM Program and includes upgrades to the 115kV, 230kV and 345kV switchyards. It is estimated to cost \$267 million and is split into two phases as follows:

- Phase 1 is estimated to cost \$154 million and includes engineering, procurement and construction to support upgrades in the 115kV & 230kV switchyards.
- Phase 2 is estimated to cost \$113 million to continue upgrades in the 115kV & 230kV switchyards in addition to engineering, procurement and construction in the 345kV switchyard.

On May 22, 2014, the Trustees approved funding in the amount of \$154 million for Phase 1 of the Niagara Switchyard LEM.

The Oil Circuit Breakers in the Niagara Switchyard are nearing the end of their useful life and have been identified for replacement as a result of internal and external assessments which have identified issues due to aging, increased maintenance and unavailability of spare parts. The Oil Circuit

Breakers will be replaced with SF6 Circuit Breakers at an increased rating consistent with recent equipment upgrades in the switchyard.

### DISCUSSION

In response to the Authority's Request for Proposal (Q14-5779JM) advertised in the New York State *Contract Reporter* on November 25, 2014, twenty-four firms (24) downloaded the bid document; two proposals were received on December 16, 2014 as noted below:

<u>Bidder</u>	<u>Base Price</u>	<u>Evaluated Price</u>
ABB, Inc. Raleigh, NC	\$7,118,306.50	\$8,055,265
Siemens Energy, Inc.* Jackson, MS	\$11,477,900	

During the post-bid period, ABB Inc. indicated that capacitors were required to meet the technical requirements of the specification. ABB Inc. provided revised pricing resulting in a higher price than their base bid.

ABB's evaluated price is within the accuracy of the Authority's Fair Cost Estimate ('FCE') of \$6,900,000. Additionally, ABB Inc. is technically qualified to perform this work and has performed adequately on similar installations at various NYPA facilities. All exceptions taken by ABB Inc. have been resolved.

*\*The Siemens base proposal was 40% higher than the Authority's FCE and 28% higher than the lower-priced bid. As a result, the proposal was precluded from further evaluation.*

### 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 Vice President – Project Management, the Vice President – Engineering, the Vice President – Transmission, the Regional Manager – Niagara, the Vice President – Procurement, and the Project Manager recommend that the Trustees authorize the award of a \$8,055,264.96 contract to ABB Inc. of Raleigh, NC to design, furnish and deliver thirty-one 230 kV Circuit Breakers 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 pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, a contract award in the amount of \$8,055,265 is hereby authorized for design, furnish and delivery of thirty-one 230 kV Circuit Breakers for the Niagara Switchyard Life Extension and Modernization Project, as recommended**

in the foregoing report of the President and Chief Executive Officer;

**Contractor**

**Contract Approval**

ABB, Inc.  
Raleigh, NC

**\$8,055,265**

(Q14-5779JM)

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 Executive Vice President and General Counsel.

**vi. Procurement (Services) Contract –  
Niagara Power Project Relicensing –  
Maintenance Services – Project Intakes  
and Observation Area – Contract Award**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to approve the award of a contract to Turf-Tec of Western New York, located in Lockport, NY, for the continued implementation of maintenance services for the lawn, meadow and shelters at the Niagara Power Project Intakes and Upper Niagara River Observation Area. The contract will be awarded for an amount of \$232,262; the term of the contract will be five years.

**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.

This project will involve the mowing of lawns (approximately 6 acres), meadow cutting (approximately 2.6 acres), fall site cleanup, cleaning of six fishermen's shelters, and general site area maintenance at the Authority's Niagara Power Project Intakes and Upper Niagara River Observation Area site in the City of Niagara Falls, NY. The site is publicly accessible and was recently renovated for improved Americans with Disabilities ('ADA') parking and access as well as landscaped for general aesthetic appeal. The area has been maintained by two different contractors since the improvements were completed as part of the commitments made in the Niagara Power Project Relicensing Settlement Agreement that resulted in a new 50-year license.

**DISCUSSION**

A Request for Quotation ('RFQ'), Q15-5840JR, for the maintenance work was publicly noticed in the New York State *Contract Reporter* on March 10, 2015, and the full RFQ was made available at that time on the NYPA Procurement website. One addendum was issued.

The RFQ was downloaded by thirty (30) firms. Bids were received from the following four firms: Turf-Tec of Western New York (Turf-Tec), Lockport, NY; Gardenville Landscape & Nursery (Gardenville), LLC., West Seneca, NY; Vaillancourt (Vaillancourt), LLC., Clarence, NY; and New York State Industries for the Disabled (NYSID), Albany, NY.

Staff from the Authority's Relicensing and Implementation Division and the Procurement Division evaluated the proposals for technical qualifications and pricing. The Authority's review team was assisted in the technical evaluation by the Authority's Niagara Compliance Implementation Consultant, Gomez and Sullivan Engineers, who assisted the Authority with project management of Niagara Project relicensing implementation projects.

Turf-Tec's pricing for the term of the contract is 6.4% lower than the next lowest bid and, with the exception of the year 2015, Turf-Tec submitted the lowest bid on an annual basis and provided the lowest unit cost for additional (optional) fertilizing and weeding. The technical review focused on cost and experience. Turf-Tec has the requisite experience, equipment, certifications and references, and submitted the necessary paperwork and information requested in the RFQ. Turf-Tec is a Women-owned Business Enterprise registered with New York's Department of State.

It is recommended that the contract be awarded to Turf-Tec. The contract term will be for five years in the total amount of \$232,962.

**FISCAL INFORMATION**

Funding for this contract will be provided as part of an annual recurring O&M budget item to support maintenance of recreational facilities.

**RECOMMENDATION**

The Senior Vice President – Public and Regulatory Affairs recommends that the Trustees authorize the award of a five-year maintenance contract in the amount of \$236,962 for the upkeep of the Niagara Power Project Intakes and Upper Niagara River Observation Area to Turf-Tec of Western New York.

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

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

**RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to award a maintenance contract to Turf-Tec of Western New York in the amount of \$236,962 for the continued upkeep of the lawn and meadow areas of the Niagara Power Project Intakes and Upper Niagara River Observation Area, as recommended in the foregoing report of the President and Chief Executive Officer;**

<b><u>Contractor</u></b>	<b><u>Contract Approval</u></b>
<b>Turf-Tec of Western New York Lockport, NY (Q15-5840JR)</b>	<b><u>\$236,962</u></b>

**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 Executive Vice President and General Counsel.**

**vii. Procurement (Construction) Contract –  
Niagara Power Project Relicensing –  
Invasive Species Control Habitat  
Improvement Project – Contract Award**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to approve the award of a construction contract to Applied Ecological Services of Brodhead, WI, for the continued implementation of the Invasive Species Control Habitat Improvement Project ('HIP'). The contract will be awarded for an amount of \$72,730; the term of the contract will be five years.

**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.

This project will involve treatment of invasive plants by herbicide application and cutting within approximately 346 acres of land as part of the Invasive Species Control HIP at six Habitat Improvement Project sites. The sites are located in and along the upper Niagara River near the cities of Buffalo and Niagara Falls, New York. The initial contract for this project was issued in 2010. Implementation of this HIP is one of the commitments made in the Niagara Power Project Relicensing Settlement Agreement that resulted in a new 50-year license.

**DISCUSSION**

A Request for Quotation ('RFQ'), Q15-5833JR, for the construction work was publicly noticed in the New York State *Contract Reporter* on March 9, 2015, and the full RFQ was made available at that time on the NYPA Procurement website. A pre-bid meeting was held at Buckhorn State Park on March 18, 2015. Three addenda were issued.

The RFQ was downloaded by thirty-nine (39) firms. Bids were received from the following four firms: Applied Ecological Services of Brodhead, WI (AES); Allied Biological of Hackettstown, NJ (Allied); A-Tip Control of Dansville, NY (A-Tip); and Aaron A. Miller Commercial Spraying LLC of Lowville, NY (Miller). One bid was disqualified for not submitting the required forms and information. Evaluated bid prices ranged from \$72,730 to \$153,465.

Staff from the Authority's Relicensing and Implementation Division, Environmental Health and Safety Division, and Procurement Division evaluated the proposals for technical qualifications and pricing. The Authority's review team was assisted in the technical evaluation by staff from Kleinschmidt Associates, whose aquatic and terrestrial biologists were responsible for the design of the HIP, and the Authority's Niagara Compliance Implementation Consultant, Gomez and Sullivan Engineers, who assisted the Authority with project management of Niagara Project relicensing implementation projects.

The technical review focused on means and methods, personnel qualifications, experience, organization, schedule, safety, and quality control. While the Allied, AES and Miller proposals showed that these firms were technically qualified, AES was the lowest qualified bidder. They have worked satisfactorily and diligently as the planting installer for NYPA on the Little Beaver Island, Motor Island, and Frog Island restoration HIPs and the firm offered acceptable means and methods, qualified and experienced personnel with appropriate certifications, adequate organization, and suitable approaches to safety and quality control. Appropriate attention was paid to specified limitations on use of motorized vehicles and other specialized equipment.

It is recommended that the contract be awarded to AES. The contract term will be for five years in the total amount of \$72,730.

FISCAL INFORMATION

Since these expenditures are related to implementing new project commitments in the New License and the Section 401 Water Quality Certificate issued by the New York State Department of Environmental Conservation, payments will be made from the Capital Fund.

RECOMMENDATION

The Senior Vice President – Public and Regulatory Affairs recommends that the Trustees authorize the award of a construction contract for the Invasive Species Control Habitat Improvement Project to Applied Ecological Services in the amount of \$72,730.

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

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

**RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to award a five-year contract to Applied Ecological Services in the amount of \$72,730 for the continued implementation of the Invasive Species Control Habitat Improvement Project, as recommended in the foregoing report of the President and Chief Executive Officer;**

<u>Contractor</u>	<u>Contract Approval</u>
Applied Ecological Services Brodhead, WI (Q15-5833JR)	<u>\$72,730</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 Executive Vice President and General Counsel.**

**d. Capital Expenditure Authorization Request:**

**i. Niagara Power Project – Robert Moses  
Spare Generator Step-Up Transformer –  
Capital Expenditure Authorization Request**

The President and Chief Executive Officer submitted the following report:

**“SUMMARY**

The Trustees are requested to approve capital expenditures in the amount of \$4,065,000 for the design, fabrication, delivery, assembly, testing, and installation of the Robert Moses Spare Dual Voltage Generator Step-Up Transformer ('GSU') at the Niagara Power Project.

The total Capital Expenditure Authorization Request for this Project is \$4,090,000, which includes previously authorized funding in the amount of \$25,000 for preliminary engineering work.

**BACKGROUND**

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.

There is currently only one spare dual voltage GSU for Robert Moses. After a bushing failed on GSU 3 in the fall of 2012, the spare dual voltage GSU was placed into service. It was then exchanged for GSU 5 when that failed in March 2014. This new dual voltage GSU will allow the site to have an additional spare should any of the existing 115 kV or 230 kV units fail.

**DISCUSSION**

The scope-of-work for this project includes the design, fabrication, delivery, assembly, testing, and installation of one (1) 115/230 kV, 150/200/250MVA GSU.

After issuance of a Request for Proposal ('RFP') and a competitive bidding process, an equipment procurement contract for the new spare GSU will be awarded to Smit Transformatoren B.V. (Smit), located in Nijmegen, The Netherlands, in the amount of \$2,695,753 (not including installation), pending Trustee approval of this capital expenditure authorization request. Smit has extensive experience in design and fabrication of large power transformers, has demonstrated knowledge of the scope-of-work and is capable of completing the project. Smit has also performed successfully on other Authority projects and has demonstrated its ability to adhere to schedule and budget. A letter for the recommendation of award to Smit has been presented to Procurement.

In 2016, staff anticipates issuing an RFP for the installation of the new spare GSU, which will occur during a scheduled outage in 2017. The installation of the GSU is for the purpose of gaining operational run time. The anticipated scope-of-work for the installation contract will include the replacement of the deluge fire suppression system and connections to the low voltage Iso-Phase bus and overhead high voltage strain bus.



The total Project cost is estimated at \$4,090,000, as follows:

Preliminary Engineering and Design	\$25,000
Detailed Engineering and Design	\$192,000
GSU Procurement	\$2,835,000
GSU Installation and Niagara Site Support (2017)	\$533,000
Authority Indirect and Direct Expenses	<u>\$505,000</u>
<b>TOTAL</b>	<b><u>\$4,090,000</u></b>

Future-year funding will be included in the Capital Budget request for that year.

#### 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 Vice President – Project Management, the Vice President – Procurement, the Regional Manager – Western New York, and the Project Manager recommend that the Trustees authorize capital expenditures in the amount of \$4,065,000 for the procurement of the Robert Moses Spare Dual Voltage Generator Step-Up Transformer at the Niagara Power 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 Guidelines for Procurement Contracts adopted by the Authority, capital expenditures are hereby approved in the amount of \$4,065,000 for the procurement of the Robert Moses Spare Dual Voltage Generator Step-Up Transformer at the Niagara Power Project, as recommended in the foregoing report of the President and Chief Executive Officer;**

<u>Capital</u>	<u>Expenditure Authorization</u>
<b>Niagara Power Project Robert Moses Spare Dual Voltage Generator Step-Up Transformer</b>	
<b>Previous Authorization</b>	<b>\$ 25,000</b>
<b>Current Request</b>	<b><u>4,065,000</u></b>
<b>Total Amount Authorized</b>	<b><u>\$ 4,090,000</u></b>

**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 Executive Vice President and General Counsel.**

**ii. Spare 345 kV Dual Usage Shunt Reactor Project –  
Capital Expenditure Authorization Request**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to authorize capital expenditures in the amount of \$2.60 million for design, fabrication, delivery, assembly and testing a spare 150 MVAR, 345 kV dual capability shunt reactor for use at the Y49's East Garden City Substation, South Transition Substation and Sprain Brook Substation (herein referred to as the 'Project').

The total Capital Expenditure Authorization Request for this Project is \$3.39 million, which includes previously authorized funding in the amount of \$790,321 for preliminary engineering work.

**BACKGROUND**

In accordance with the Authority's Expenditure Authorization Procedures ('EAPs'), capital expenditures in excess of \$3 million require the Trustees' approval.

Due to service-age, failures from di-electric breakdown have already been observed within the insulated cable systems. Therefore, an extended period of time without the maximum number of voltage reducing elements (reactors) in service would add unacceptable risk to both cable systems, which, under the best of circumstances, are subject to decreasing di-electric strength with age.

**DISCUSSION**

The scope-of-work for this project includes the design, fabrication, delivery, assembly, and testing of one spare 150MVAR, 345 kV dual capability shunt reactor to be used for the Y49's East Garden City, South Transition and Sprain Brook Substations in the event of a failure.

After issuance of a Request for Proposal ('RFP') and a competitive bidding process, an equipment procurement contract for the new spare shunt reactor will be awarded to the most technically qualified bidder, pending Trustee approval of this capital expenditure authorization request. The proposals will be reviewed by the Evaluation Committee based on engineering, quality, terms and conditions, and cost. Upon completion of the evaluation, an award recommendation will be presented to Procurement and approved in accordance with Authority's Guidelines for Procurement Contracts and EAPs.

The work will be performed over a three-year period with design taking place in 2015 and fabrication, delivery, assemble and testing in 2016 through 2017.

The total project cost is estimated at \$3.390 million as follows:

	Previous Authorization (\$000)	Current Request (\$000)	Total Project Estimate (\$000)
Preliminary Engineering/Design (NYPA)	\$ 200.0	\$ 200.0	\$ 400.0
Procurement	\$ 590.3	\$ 2,123.6	\$ 2,713.9
Construction/Installation	\$ 0.0	\$ 115.5	\$ 115.5
Authority Direct & Indirect	\$ 0.0	\$ 160.9	\$ 160.9
<b>Total</b>	<b>\$ 790.3</b>	<b>\$ 2,600.0</b>	<b>\$ 3,390.3</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 Vice President – Project Management, the Vice President – Engineering, the Vice President – Transmission, the Vice President – Procurement and the Regional Manager – Southeast New York recommend that the Trustees authorize capital expenditures in the amount of \$2.60 million for the Spare 345 kV Dual Usage Shunt Reactor 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 Capital Expenditure Authorization Procedures, capital expenditures are hereby approved in the amount of \$2.60 million for the procurement of Spare 345 kV Dual Usage Shunt Reactor, as recommended in the foregoing report of the President and Chief Executive Officer;**

<u>Capital</u>	<u>Expenditure Authorization</u>
<b>Spare 345 kV Dual Usage Shunt Reactor Project</b>	
<b>Previous Authorization</b>	<b>\$ 790,321</b>
<b>Current Request</b>	<b><u>2,600,000</u></b>
<b>Total Amount Authorized</b>	<b><u>\$ 3,390,321</u></b>

**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 Executive Vice President and General Counsel.**

**iii. Niagara Power Project – First Buffalo Marina –  
Winter Mooring Site Relocation – 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 \$4,030,000 and approve the award of a contract to Nichols Long & Moore Construction Corp. of Lancaster, NY ('NLM'), in the amount of \$2,900,694, for a term ending in December 2016, to relocate the winter mooring operations at the First Buffalo Marina (herein referred to as the 'Project').

The total Capital Expenditure Authorization Request for this Project is \$4,605,000, which includes previously authorized funding in the amount of \$575,000 for preliminary engineering work.

To provide the additional time necessary to complete season-critical construction operations prior to winter, interim approval to award the contract (4500258278) in the amount of \$400,000 was authorized by the Chief Operating Officer in accordance with the Authority's Guidelines for Procurement Contracts.

**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.

NYPA purchased the 15.5± acre First Buffalo Marina in 2008 to serve as the winter mooring site for the Authority's ice boom tug vessels and barge. The Authority continues to use a portion of the premises for this purpose. The property is also currently being operated as a recreational marina in the summer months with on-land storage for boats during the winter.

The scope of this project includes the relocation of the Authority's winter mooring operations from the center of the property to a ~1.5 acre parcel at the extreme northern end of the property. The scope of construction work will include:

1. A new ~250' sheet pile seawall including excavation, drilling, installing, and grouting new steel sheet piles and tiebacks;
2. All appurtenances and services required for mooring the vessels, including pedestals for shore power;
3. A new equipment storage building, including a bathroom;
4. Required utilities including electric, water, sewer, etc.;
5. An access road from the main road (Fuhrmann Boulevard) as well as a parking area and fencing around the work area.

This relocation will facilitate the conveyance of the remaining property, comprising approximately 14 acres, to Erie Canal Harbor Development Corporation in support of the continuing economic development in Western New York. Staff anticipates presenting this conveyance to the Trustees for approval at their September 2015 meeting.

DISCUSSION

The Authority issued a Request for Proposal (Q15-5836MR) in the New York State *Contract Reporter* on March 10, 2015. On April 9, 2015, the following four proposals were received:

<u>Bidder</u>	<u>Location</u>	<u>Gross Lump Sum with Selected Options</u>
Nichols Long & Moore	Lancaster, NY	\$2,900,694.00
Mark Cerrone, Inc.	Niagara Falls, NY	\$3,073,476.25
Edbauer Construction	West Seneca, NY	\$3,668,351.25
Pinto Construction	Buffalo, NY	\$4,353,025.55

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

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

An additional \$66,000 above the bid amount is included for rip rap placement, including subgrade preparation and filter bedding material and the sampling, analyzing, and disposing of hazardous waste.

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

This project is scheduled to be substantially completed by the end of 2015. However, due to the season-critical construction operations associated with this project, including the installation of a sheet pile seawall, a contract term of approximately twenty months, through December 2016, is requested.

Engineering, Procurement, Construction, Direct and Indirect Costs

The Trustees are also requested to approve capital expenditures for engineering, construction and Authority direct and indirect costs as follows:

	Previous Authorization (\$000)	Current Request (\$000)	Total Project Estimate (\$000)
Preliminary Engineering	155	0	155
Detailed Engineering and Design	335.5	297	632.5
Procurement and Construction	0	3,335	3,335
Authority Direct/Indirect	84.5	398	482.5
<b>Total</b>	<b>575</b>	<b>4,030</b>	<b>4,605</b>

FISCAL INFORMATION

Payment associated with this project will be made from the Authority's Capital Fund. Future funding for 2016 will be included in the Capital Budget request for that year.

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Vice President – Project Management, the Vice President – Procurement, the Project Manager and the Regional Manager – Western New York recommend that the Trustees authorize capital expenditures in the amount of \$4,030,000 and approve the award of a contract to Nichols Long & Moore Construction Corp. of Lancaster, NY ('NLM'), in the amount of \$2,900,695, to relocate the winter mooring operations at the First Buffalo Marina.

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 amount of \$4,030,000, for the First Buffalo Marina Winter Mooring Site Relocation Project, as recommended in the foregoing memorandum of the President and Chief Executive Officer;**

<u>Capital</u>	<u>Expenditure Authorization</u>
<b>Niagara Power Project Winter Mooring Site Relocation</b>	
<b>Previous Authorization</b>	<b>\$ 575,000</b>
<b>Current Request</b>	<b><u>4,030,000</u></b>
<b>Total Amount Authorized</b>	<b><u>\$ 4,090,000</u></b>

**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 Nichols Long & Moore Construction Corp. of Lancaster, NY ('NLM'), in the amount of \$2,900,694 for a term ending in December 2016, for the First Buffalo Marina Winter Mooring Site Relocation Project, as recommended in the foregoing memorandum of the President and Chief Executive Officer;**

<u>Contractor</u>	<u>Contract Approval</u>
<b>Nichols Long &amp; Moore Construction Corp. Lancaster, NY</b>	<b><u>\$2,900,694</u></b>

**(4500258278)**

**AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chair, the President and Chief Executive Officer, the Chief Operating Officer and all**

**May 19, 2015**

**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 Executive Vice President and General Counsel.**



**iv. Construction of Nature Center at the Robert Moses State Park –  
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 \$12,112,200 for the engineering and construction of a New Nature Center at the Robert Moses State Park ('RMSP') of St. Lawrence County (the 'Project'). The Trustees are also requested to approve the award of a two-year contract in the amount of \$7.687 million, from the above capital fund, to Bette & Cring, LLC of Watertown, New York ('B/C') for the Construction of the Project.

Previous funding in the amount of \$1.55 million has been approved by the President and Chief Executive Officer for preliminary engineering and site preparation (deconstruction) and detailed design.

An interim award (4500258964) in the amount of \$250,000 was also approved by the Chief Operating Officer to start preconstruction and mobilization activities. This early funding will allow the project to break ground in early June and complete critical site construction work such as deep excavations, pile driving and foundations prior to adverse weather conditions.

**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. Also, in accordance with the Authority's Expenditure Authorization Procedures, the award of construction contracts exceeding \$3 million require the Trustees' approval.

Under the FERC-approved Recreation Plan for the St. Lawrence Project, NYPA is required to provide a Nature Center at RMSP. This facility has been operated as part of the State Park by the New York Office of Parks, Recreation and Historic Preservation ('OPRHP') for many years. The original Nature Center building was lost to a fire in March 2010, and in the fall 2010, OPRHP notified NYPA of its intention to cease operating the Nature Center as a result of mandatory layoffs required of the Agency. NYPA decided that it would prefer to continue the Nature Center operations because 1) the Nature Center is believed to be an important community asset for the area near the St. Lawrence Project, and 2) discontinuing the Nature Center would require a modification to the Approved Recreation Plan, potentially requiring addition of an alternate recreational opportunity to stand in place of the Nature Center. Since late 2010, the Nature Center has operated out of a temporary space (trailers) with NYPA's support.

The New Nature Center building will support the continuation of the Nature Center's mission as a center of recreational and educational activities within the park, but in a more modern state-of-the-art facility, to provide learning opportunities in indoor/outdoor natural science education for the public, schools, and community groups.

The prominent spaces of the Nature Center will consist of the Main Lobby, the Class Room and the Exhibits Space. The main themes of the Nature Center will reflect the four major habitats found within the park. The Wetland/Marsh habitat will be displayed in the lobby, while the remaining three habitats, The River, The Woodlands and The Meadows will be the focus of the exhibits in the large exhibit space. The new building will also serve as the offices and headquarters of the Friends of Robert Moses State Park, incorporating an equipment rental and trail send-out station.

The consultant, Stieglitz Snyder Architecture, along with its sub-consultants, led the effort of detail design for the other building engineering disciplines and will serve as the engineer of record. The Nature Center will be constructed with Green Building Design principles in order to achieve LEED Silver Certification. Sustainable building design features will include geothermal heat pumps for cooling and

heating, outside air intake heat recovery, rainwater reclamation system, outdoor rain gardens, efficient lighting systems and general material selection for enhanced indoor environmental quality.

## DISCUSSION

In response to an advertisement, issued on January 15, 2015, in the New York State *Contract Reporter* for the Construction of the New Nature Center, Inquiry Q15-5803FS, three proposals were received on March 2, 2015. A post-bid addendum was issued on March 16, 2015 to include the New Pump House Construction, with final pricing received on March 27, 2015. Contractors and lump-sum bid pricing, along with the evaluated ranking, are indicated below:

<u>Ranking</u>	<u>Bidder</u>	<u>Base Bid Price</u>	<u>Base Bid Price with Addendum</u>
1	Bette & Cring, LLC Watertown, NY	\$7,076,000	\$7,687,000
2	Murnane Building Contractors, Inc. Plattsburg, NY	\$6,682,200	\$7,105,900
3	Northland Associates, Inc. Liverpool, NY	\$7,373,160	N/A

The proposals were reviewed by an Evaluation Committee consisting of staff members from the Engineer of Record (Stieglitz Snyder) and Authority staff from Engineering, Procurement and Project Management.

In addition to the overall cost of the project, factors taken into consideration in the evaluation process included: compliance with the request for proposal, technical approach for performing the work, proposed project organization, experience of the bidder providing construction services, quality and experience of key project personnel, previous experience with projects similar to a nature center, past performance and the Authority's knowledge and experience with each bidder.

Other than the fill-in pricing information of the Request for Quotation ('RFQ') line items, Northland Associates, Inc. ('Northland') did not provide any of the documentation or data required to be submitted with the proposal. Since Northland's pricing was the highest of the three bidders, coupled with a non-responsive proposal, they were excluded from further evaluation. An in depth evaluation was performed on the remaining two bidders.

Murnane Building Contractors, Inc. ('Murnane') has provided sufficient information with their proposal to demonstrate adequate experience in general building construction. For this specific application, however, Murnane lacks the level of experience required in the construction of nature centers or similar facilities to meet the Authority's standards for this project.

By contrast, Bette & Cring, LLC (B/C) has presented in their proposal an impressive record and demonstrations of numerous completed projects of similar theme as the RMSP Nature Center, including their recently constructed Nature Center at Tupper Lake. B/C also stands out as a leader in a sustainable building construction as evidenced by their extensive list of LEED-certified construction projects including a LEED Platinum certified building, a major achievement. A further relevant evaluation factor is their experience in construction of geothermal heating and cooling which is the core of the energy efficient systems to be installed at the RMSP Nature Center. Accordingly, although not the lowest priced proposal, B/C was evaluated as the most qualified.

Construction completion is scheduled by end of 2016.

The capital expenditure authorization request is comprised of the following:

Engineering and Design	\$ 917,700
Construction/Installation	\$ 9,557,700
Authority Indirect and Direct Expenses	<u>\$ 1,636,800</u>
<b>TOTAL</b>	<b>\$ 12,112,200</b>

#### FISCAL INFORMATION

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

#### RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Vice President – Project Management, the Vice President – Engineering, the Vice President – Procurement, the Vice President – Project and Business Development, the Project Manager and the Regional Manager – Northern New York recommend that the Trustees authorize capital expenditures in the amount of \$12,112,200, and approve the award of a two-year contract to Bette & Cring, LLC in the amount of \$7.687 million, for the construction of the New Nature Center at the Robert Moses State Park of St. Lawrence County.

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 in the amount of \$12,112,200 are hereby authorized in accordance with, and as recommended in, the forgoing report of the President and Chief Executive Officer;**

<u>Capital</u>	<u>Expenditure Authorization</u>
New Nature Center Robert Moses State Park	<u>\$12,112,200</u>

**AND BE IT FURTHER RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted to award a two-year contract to Bette & Cring, LLC of Watertown, New York in the amount of \$7.687 million for the Construction of the New Nature Center at the Robert Moses State Park of St. Lawrence County as recommended in the foregoing report of the President and Chief Executive Officer;**

Contractor

Contract Approval

Bette & Cring, LLC  
(Watertown, New York)  
(4500258964)

\$7.687 million

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 proceeds of tax-exempt obligations to be issued by the Authority, all expenditures 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 issued for such project expected to be \$12.112 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 Executive Vice President and General Counsel.

**DISCUSSION AGENDA:**

**3. Staff Reports**

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

President Quiniones provided the following report on the Authority's performance for April 2015 (Exhibit "3a-A"):

**Performance Scorecard**

*As of April 2015, five of the eight Performance Measures have met or exceeded their targets. Both of the Financial Management measures (Debt Coverage Ratio and O&M Budget Performance) met their targets, as well as the Energy Services MMBTUs Saved and the Environmental Incidents measures. The Energy Efficiency Investment in State Facilities performance measure is below target. The Authority was ahead of its target at the beginning of the year, but fell below it due to timing issues with construction activities. However, staff is confident that the target will be met by the end of the year.*

*Generation Market Readiness and DART Rate (days away, restricted or transferred) measures are significantly below the year-to-date ("YTD") target. The Generation Market Readiness YTD measure has been impacted by several factors including an unexpected repair at the Astoria 500 MW plant; a tube failure at the B-G Unit 1; and ice conditions at the St. Lawrence/FDR Power Project. Although the DART rate performance measure met its monthly target, it did not meet the YTD target. NYPA has established a very conservative target for the DART rate measure which is well below the Bureau of Labor Standards Rate. To date, there have been nine injuries that are classified as meeting the DART criteria. Staff continues to work towards meeting this target, focusing on leading indicators and proactive management to enhance the Authority's performance.*

**Strategic Planning**

*Since the last Board meeting, the Authority has made substantial progress in establishing the governance and management structure that will help ensure the successful implementation of its Strategic Plan. To this end, NYPA has formed a Project Management Office, or PMO, to help the strategic initiative leaders and to report on the progress as contrasted with the Plan. Mr. Doug McMahon has been hired as Vice President of Strategy. He will report to the Chief Strategy Officer, Mr. Robert Lurie, and also work closely with Ms. Janis Archer, Director of Strategy Management. Mr. McMahon has been involved in NYPA's strategic plan at its onset, as leader of the team from PA Consulting that facilitated and advised NYPA throughout the strategic planning process. Mr. McMahon will also be finalizing the metrics that will be used to assess performance of the Plan and each of its parts and to provide clarity to NYPA's staff and the Board on what the*

*Authority is trying to achieve through its strategic initiatives. An executive-level Strategic Management Committee has also been formed and will have overall governance responsibility for the Plan, including resource allocation, revisions to the Plan, as necessary, and overseeing the performance of each of the initiatives.*

*In addition, in April, as part of the annual strategic planning cycle, approximately 35 members of the Authority's management team were tasked to refresh the Strategic Plan. The team challenged the initial assumptions that were made when the Plan was initiated eighteen months ago; brainstormed new opportunities; and identified barriers and risks to achieving the Plan. The team is now in the process of organizing and prioritizing the output of those sessions and will report to Board at a future meeting.*

### **Risks**

*President Quiniones said, while the search for the new Chief Risk Officer is underway, the Authority's management team continues to advance its risk management efforts towards leading practices. The team has made substantial progress on the three major work streams.*

*First, the Authority's efforts to link risk and strategy have been very successful starting with the strategic risk lab, followed by the strategic planning off-site session in April. These activities focused on identifying and managing the opportunities, challenges, barriers and specific risks events faced by NYPA in the achievement of its strategic vision. Risk and Strategy groups are currently working together to ensure that the outputs of these activities are used in into the critical management processes of the organization, including budgeting, performance management and enterprise risk management.*

*Second, the Authority's Executive Risk Management Committee continues with the important work of developing risk "appetite" and "tolerance" statements to clarify and communicate the amount and types of risks the Authority is willing or unwilling to take in order to meet its strategic vision. The executive leadership team will be providing input to the draft statement provided by the ERM after which it will be presented to the Trustees in order to ensure appropriateness of the boundaries being expressed by management.*

*Third, the Standing Committee, formed to ensure alignment and coordination of risk and control activities has begun to meet with the goal of ensuring that no gaps or duplication of efforts exists between the various risk functions. The Committee will be led by the Chief Risk Officer and its membership includes Internal Audit, Ethics and Compliance, Technical Compliance, Internal Controls and Enterprise Risk.*

*President Quiniones said the Trustees will be informed of the output of these efforts at a future meeting.*

**b. Report of the Chief Operating Officer**

Mr. Joseph Kessler, Senior Vice President of Power Generation, provided highlights of the Chief Operating Officer's report to the Trustees (Exhibit "3b-A").

**Generation Market Readiness**

*Mr. Kessler said, as reported by President Quiniones, the Authority did not meet its target for Generation Market Readiness. However, the three incidents which affected that measure have been resolved and the Authority is prepared for the summer demands.*

**Performance Summary**

*There were four significant forced outages in April:*

- B-G Unit 3 – Rotor cracks discovered during a maintenance outage created a forced outage as of December 5, 2014. Early estimate for repairs and return to service was July 2015. Staff was challenged to meet a June 1, 2015 completion date for the repairs in order to ensure summer readiness. They collaborated with vendors, other operating sites and support services and the unit was returned to service on May 12th, nineteen days ahead of schedule.*
- St. Lawrence Power Project units continued to be hampered by extreme ice conditions throughout the month; this resulted in the equivalent of 14.5 forced outage hours for the Plant. In total, there were 125.9 equivalent forced outage hours due to ice problems, year-to-date.*
- Gilboa Unit 1 had a tube failure on the thrust and lower guide bearing heat exchanger in March. The unit was returned to service on April 7th.*
- Astoria 500 MW Unit 7A needed repairs on the generator end-shield. This resulted in 210.7 forced outage hours.*

**Transmission**

*There were no Transmission events during the month of April.*

**Environmental Incidents**

*There were four reportable environmental incidents in April:*

- Vernon GT – a hose clamp failed resulting in 70 gallons of oil being released.*
- Plattsburgh Substation – oil was released from CT 226.*
- Clark Energy Center – a capacitor failed, releasing 2 gallons of oil.*

- *A SPDES excursion occurred at Niagara at the Robert Moses Plant south drainage.*

*The oil releases were contained and did not get into the environment.*

#### **Safety**

- *The NYPA DART (Days Away, Restricted or Transferred) Rate for April is 0.75. For the year, the DART Rate is 1.71 compared to the target of 0.78.*
- *The Operations' DART Rate for April is 1.16. For the year, the DART Rate is 2.28 compared to the target of 1.08.*
- *There was one lost time incident in April that affected the DART rate.*

#### **Summer Preparedness**

*All sites have completed maintenance and calibration in preparation of peak summer loads. The peak summer load forecast by the NYISO is 33,567 MW; the Authority is prepared for its part in meeting this forecast.*

#### **Strategic Initiatives**

*At the last Strategic Planning meeting, Operations learned that the initiatives were not being effectively communicated to the operating sites. To that end, the Operations leadership visited some of the sites with the view to re-orient the staff on the status of the strategic initiatives. The team received positive feedback and offers of help from the staff.*

*As part of the strategic initiative, Operations continue its employee engagement, working with the Process Efficiency group on the "5-S Program" with the goal to make sure that the sites are operating efficiently.*



**c. Report of the Chief Financial Officer**

Mr. Robert Lurie presented highlights of the Chief Financial Officer's report to the Trustees (Exhibit "3c-A").

**Financial Summary**

**Net Income**

- *The Authority had a net loss of \$1.9 million for the month of April, which was \$15.9 million below the budget due to a lower net margin on sales (\$26.9 million), partially offset by lower operating expenses. The margins on market-based sales continue to be lower than budgeted due to lower energy prices and 14% lower hydro production.*
- *Net income for the year-to-date was \$6.6 million, which was \$63.8 million lower than budgeted due to lower hydro production (\$48.2 million), and lower energy prices on market sales (\$44.9 million), partially offset by lower O&M and other expenses (\$34.9 million). Lower production resulted from low precipitation in the Great Lakes and a less than normal winter ice thaw. Variances in O&M and other expenses were primarily due to timing differences in expenditures.*

**Hydro Generation and Energy Price Forecast**

*The Authority's actual hydro generation results are well below its forecast at the start of the year; it is closer to the long-term average. Authority staff believes that the hydro generation will increase and be higher than the long-term average throughout 2016. Also, actual energy prices are well below the budget and, for the balance of this year, energy prices are expected to stay below the budget.*

**Year-End Net Income Projection & Debt Service Coverage**

*Net income for the year is projected to be \$61 million which is \$145 million lower than the budget. This is primarily due to the lower hydro generation and lower energy prices. Authority staff is studying ways to control operating expenses and boost its net income projections for the year and will provide a report in that regard to the Board in July.*

*In response to a question from Vice Chair Mahoney, Mr. Lurie said when preparing the budget, the revenue is budgeted at the expected value of the hydro generation forecast. However, going forward, staff will prepare a revenue budget forecast that is more conservative and will provide staff's recommended budget projection to the Board in the near future.*

*Responding to further questioning from Vice Chair Mahoney, Mr. Lurie said the experts forecast hydro flows based on a variety of factors, the most important being the actual observed levels in the Great Lakes; and the timing of when that flows down into the Authority's hydro plants can be affected by a number of short-term factors. Since staff is providing a one-year budget proposal to the Board as opposed to a five- or ten-year forecast, staff will be more conservative with their projections for that one-year period and budget at a lower level. Mr. Lurie added that the Authority is conservative with the "expense" side of the budget in order have some flexibility to reduce the budget, if necessary. And he ended by saying that staff will review the hydro forecasting methods with a view to provide a revenue estimate that is more conservative and also provide a more accurate range of possible outcomes when preparing the budget. In response to still further questioning from Vice Chair Mahoney, Mr. Lurie said that it has been approximately ten years since the Authority had hydro generation at the levels as budgeted.*

*In response to a question from Trustee Flynn, Mr. Lurie said the degree to which the actual generation came in below budget was extremely below the expected values. Based on the factors that the experts used to forecast hydro generation, the Authority expected the generation to be higher than the actual levels. President Quiniones added that at the July meeting of the Board staff will provide information on the variances in the forecast to include hydro flows and prices and also changes that the Authority will be implementing in order to have a better budgeting and forecasting process.*

*Responding to a question from Acting Chairman Nicandri, Mr. Lurie said the Authority does adjust the budget adopted by the Trustees and is currently in the process of making adjustments. The plan for reforming the budget will be presented to the Board at its next meeting. Trustee Kress requested that, going forward, staff provides budget projections for the past ten years mapped against the actual hydro generation and energy price and margin so that the Board can get a historical view of the Authority's generation and budget projections. And Trustee Flynn requested that an explanation be provided as to the role of the experts and whether their role is paramount in the overall decision-making process of the budget.*

**4. Power Allocations and Proceeds:**

**a. Western New York Hydropower Allocations and Notice of Public Hearing**

The President and Chief Executive Officer submitted the following report:

**"SUMMARY"**

The Trustees are requested to approve the following hydropower allocations: (1) 400 kilowatts ('kW') of Expansion Power ('EP') to North American Hoganas, Inc. ('NAH'), an existing Authority customer located in Niagara County; (2) 1,840 kW of EP to Just Greens, LLC ('Just Greens'), which is proposing the construction of a new facility in Erie County, and (3) 700 kW of EP to Cummins Inc. ('Cummins') which is proposing a project in Chautauqua County, as further described herein and in Exhibits '4a-A' and '4a-A-1' through '4a-A-3.' Combined, the allocations would support capital expansion totaling \$82.6 million and the creation of 56 jobs in Western New York ('WNY').

The Trustees are also requested to authorize a public hearing pursuant to Public Authorities Law ('PAL') §1009 on proposed direct sale contracts for Just Greens and Cummins, the current forms of which are attached as Exhibit '4a-B-1' and '4a-B-2.'

NAH is an existing hydropower customer with a contract that has already been subject to the public review and approval process of Public Authorities Law §1009. The existing contract provides that additional allocations (and associated commitments) may be added to the contract. Accordingly, there is no need for the public hearing and other process in connection with the proposed allocation for NAH.

**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 Replacement Power ('RP') to businesses in the State located within 30 miles of the Niagara Power Project, provided that the amount of power allocated to businesses in Chautauqua County on January 1, 1987 shall continue to be allocated in such county.

Each application for an allocation of EP and RP 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 ('ESD'), the Buffalo Niagara Enterprise, Niagara County Center for Economic Development ('NCCED'), and Erie County Industrial Development Agency ('ECIDA') to coordinate other economic development incentives that may help bring economic development 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

### Background

At this time, 9,795 kW of unallocated EP and 29,213 kW of unallocated RP is available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).

### North American Hoganas, Inc.

NAH's Niagara Falls facility is the former Pyron Corporation facility, founded in 1940. Hoganas AB, the world's largest supplier of iron powder, purchased the facility in 2000. The Niagara Falls facility is the oldest metal powder manufacturer in America.

The iron powder produced at NAH is used for brake pad applications, auto parts, food fortification, food preservation and water treatment. The Niagara Falls facility is the world's only supplier of hydrogen reduced sponge iron powder. This operation has remained in Niagara Falls because of hydropower allocations from NYPA and the close proximity of other materials needed for production.

NAH is looking to build two 5,000-square-foot pre-fab metal facilities on existing site-owned property. It is requesting 1,300 kW of hydropower, and would invest at least \$3 million in the project and create ten high-paying jobs as a result of the project.

The buildings would be used to expand iron power-related operations, refine copper scrap into copper powder to be used as an additive for auto parts, and acid wash powder to remove manganese for use in water treatment. Construction would start this spring with operations beginning in June 2015.

The job creation ratio for the proposed allocation of 400 kW is 25 new jobs per MW. This ratio is below the historic average of 29 new jobs per MW based on allocations made during the past five years. The total project investment of \$3 million would result in a capital investment ratio of \$7.50 million per MW. This ratio is below the five-year historic average of \$24.3 million per MW.

Staff recommends an allocation of 400 kW of EP be awarded to NAH Hoganas in support of an investment of \$3 million and the creation of ten new jobs at its Niagara Falls facility, as further detailed in Exhibits '4a-A' and '4a-A-1.'

### Just Greens, LLC

Just Greens, known generally through the trade name of its operations, 'AeroFarms,' currently operates seven vertical farms worldwide and is currently constructing what will be its eighth vertical farm in Newark, NJ. Vertical farming is year-round hydroponic vegetable food production in multi-story greenhouses. The company can grow more than 230 varieties of baby leafy greens, herbs and micro greens.

Just Greens is planning to build a 68,000-square-foot, \$32.6 million facility on 12 acres that would be among the world's largest and most advanced vertical farms, to produce, process and package a variety of green-leafy vegetables in the Lackawanna Business Park. Just Greens is requesting 3,995 kW to support the project.

The company would produce, process and package 1.7 million pounds, annually, of clean, pesticide and herbicide free leafy-greens, including baby lettuce mixes, arugula, baby kale and more than a dozen other varieties of products to be sold to retailers and food service companies locally and especially in southern Ontario, Canada.

Construction is projected to start in October 2015 with operations beginning in May 2016 and full capacity operations in December 2016. A total of 36 jobs would be created over three years. The facility is being designed with plans for future expansion, jobs and investment.

At least \$32.6 million would be invested in the project estimated to be allocated as follows: \$10.04 million for construction, site development and real estate; \$14.58 million for equipment and \$8 million in other costs and miscellaneous expense.

Low-cost hydropower is the key to project location. Just Greens is also considering Atlanta, Camden, NJ, Toronto, Suitland, MD and Worcester, MA for the project and has incentive offers and power cost ideas from some of these locations. It projects the cost of electricity as a percentage of production at the new facility to be 30%.

Just Greens is also working with Empire State Development and the Erie County Industrial Development Agency for support and incentives related to this project.

The job creation ratio for the proposed allocation of 1,840 kW is 20 new jobs per MW. This ratio is below the historic average of 29 new jobs per MW based on allocations made during the past five years. The total project investment of \$32.6 million would result in a capital investment ratio of \$17.72 million per MW. This ratio is below the five-year historic average of \$24.3 million per MW.

Staff recommends that an allocation of 1,840 kW of EP be awarded to Just Greens in support of an investment of \$32.6 million and the creation of 36 new jobs at its proposed new facility in Lackawanna, as further detailed in Exhibits '4a-A' and '4a-A-2.'

#### Cummins Inc.

The Cummins Jamestown Engine Plant (located in the Village of Lakewood in Chautauqua County) has been in operation since 1974. The facility started as a component plant 41 years ago, but has grown to its current state, which consists of two assembly lines and nine machining lines. The assembly lines produce three different diesel engine displacements and the machining lines produce blocks and heads, camshafts and crankshafts. Cummins currently employs 1,407 employees at this plant.

Cummins is looking to replace its supplier for 15 liter blocks (currently purchased from a company in Germany) by converting 40,000 square-feet of warehouse/storage space at its facility into a new machine line. Cummins has requested 2,740 kW of hydropower.

By law, a total of 19,732 kW of EP is available for allocation to eligible applicants in Chautauqua County. Currently, nine companies are receiving 14 allocations totaling 19,032 kW. At this time, 700 kW is available for allocation.

The Cummins project, which would be done in phases, would start in June 2015 with the facility completed by March 2016. Certain operations/production would begin in September 2015. A total of ten new, well-paid jobs would be created over three years.

A minimum of \$47 million would be invested in the project estimated to be allocated as follows: \$39.370 million for machinery; \$2.750 million for facility preparation/construction; \$1.880 million for installation and \$3 million for tooling.

Cummins is also working with Empire State Development and the Chautauqua County Industrial Development Agency for support and incentives related to this project.

The job creation ratio for the proposed allocation of 700 kW is 14 new jobs per MW. This ratio is below the historic average of 29 new jobs per MW based on allocations made during the past five years. The total project investment of \$47 million would result in a capital investment ratio of \$67.14 million per MW. This ratio is above the five-year historic average of \$24.3 million per MW.

Staff recommends that an allocation of 700 kW of EP be awarded to Cummins Inc. in support of an investment of \$47 million and the creation of ten new jobs at its Lakewood-based facility, as further detailed in Exhibits '4a-A' and '4a-A-3.'

#### Contract Information

The Authority is in the process of discussing the proposed hydropower sales contracts with Just Greens and Cummins and anticipates receiving approval of a contract substantially similar to the form attached as Exhibits '4a-B-1' and '4a-B-2.' Accordingly, the Trustees are requested to authorize a public hearing, pursuant to PAL §1009, on the contract forms attached as Exhibit '4a-B-1' and '4a-B-2.'

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

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 the 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 contracts forms, including the Authority's Recharge New York Power Program contracts.

The provision of electric service for all hydropower allocations are subject to enforceable employment and usage commitments. The standard contract form includes annual job reporting requirements and a job compliance threshold of 90%. Should actual jobs reported by any company receiving a hydropower allocation fall below the compliance threshold, the Authority has the right to reduce the allocation on a pro-rata basis as provided for in the contract.

The recommended allocations would be sold 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 or New York State Electric & Gas in accordance with its Public Service Commission-filed service tariffs.

#### RECOMMENDATION

The Vice President – Marketing, recommends that the Trustees approve the following hydropower allocations: (1) 400 kW of Expansion Power ('EP') to North American Hoganas, Inc.; (2)

1,840 kW of EP to Just Greens LLC; and (3) 700 kW of EP to Cummins Inc., as further described herein and in Exhibits '4a-A' and '4a-A-1' through '4a-A-3.'

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

***Mr. Keith Hayes, Vice President of Marketing, provided highlights of staff's recommendation to the Trustees. In response to a question from Trustee Flynn, Mr. Hayes said North American Hoganas is a manufacturer of pure iron powder and is located in the City of Niagara Falls, Just Greens processes organic leafy green vegetables and is located in Lackawanna, and Cummins is an engineering company located in the Village of Lakewood.***

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

**RESOLVED, That allocations of (1) 400 kilowatt ("kW") of Expansion Power ("EP") to North American Hoganas, Inc.; (2) 1,840 kW of EP to Just Greens, LLC and (3) 700 kW of EP to Cummins Inc., as detailed in the foregoing report of the President and Chief Executive Officer and Exhibits "4a-A" and "4a-A-1" through "4a-A-3" be, and hereby are approved; 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 EP finally negotiated with Just Greens, LLC and Cummins Inc. (the "Contracts"), the current forms of which are attached as Exhibit "4a-B-1" and "4a-B-2," subject to rates previously approved by the Trustees; and be it further**

**RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit a copy 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 in connection with the proposed Contracts, 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 and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.



**b. 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 make awards of Fund Benefits from the Western New York Economic Development Fund to PLSIII LLC dba We Care Transportation, Buffalo Niagara Enterprise, Inc., and Cambria Asphalt Products, Inc., the eligible applicants listed in Exhibit '4b-A,' as discussed in more detail below, and authorize the other actions described herein with respect to such applicants and recommended awards.

**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. Generally, Fund Benefits are disbursed as reimbursement for expenses incurred by an Eligible Applicant for an Eligible Project. Occasionally, Fund Benefits are disbursed in advance for proposed eligible expenditures to be incurred by the Eligible Applicant for an Eligible Project when NYPA determines this approach is appropriate for a project, NYPA has authorized the approach in advance, and proposed expenses can be appropriately documented.

At least 15% percent of Fund Benefits must be dedicated to eligible projects which are 'energy-related projects, programs and services,' which are '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 Preservation Power ('PP') for revitalization of the 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 '4b-B.'

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 2015 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

At its April 27, 2015 meeting, the WNYPPAB considered applications from (1) Buffalo Niagara Enterprise, Inc. ('BNE') seeking \$65,836 in Fund Benefits, and (2) Cambria Asphalt Products, Inc. ('CAP') seeking \$121,200. WNYPPAB's staff analyzed the applications and made recommendations to WNYPPAB based on eligibility requirements and Program Criteria. Copies of the recommendation

memoranda provided to WNYPPAB for BNE and CAP are attached as Exhibits '4b-D' and '4b-E,' respectively. The applications themselves have also been made available to the Trustees for review. WNYPPAB recommended that these applicants receive awards in the amounts indicated on Exhibit '4b-A.'

About a year earlier, at its April 28, 2014 meeting, the WNYPPAB considered an application from PLSIII LLC, whose business operation is known as 'We Care Transportation,' seeking \$2,994,000 in Fund Benefits. WNYPPAB staff analyzed this application and made the recommendation reflected in the memorandum to WNYPPAB attached as Exhibit '4b-C.' The We Care Transportation application itself has also been made available to the Trustees for review. WNYPPAB recommended that this applicant receive an award in the amount indicated on Exhibit '4b-A.' The We Care Transportation project was subject to the State Environmental Quality Review Act ('SEQRA'). It is WNYPPAB's practice not to forward its recommendation to the Trustees for action on a project subject to SEQRA until the SEQRA process is completed. The SEQRA process for We Care Transportation has run its course and the WNYPPAB's recommendation is now before the Trustees.

Since the We Care Transportation application was before the WNYPPAB for consideration, the following information about the project has changed:

- The start date of the project is March 1, 2015
- The finish date of the project is October 15, 2015
- The total project cost is \$14,657,073

Based on information provided in the applications before the Trustees, the proposed projects would directly create or retain approximately 307 jobs in Western New York. The total to be expended on the proposed projects is expected to be approximately \$15.5 million.

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. Award contracts may include scheduled payments keyed to commitment milestones, such as employment creation and retention. In addition, staff anticipates that Award Contracts will contain provisions for periodic audits of the successful applicants 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 an applicant fails to maintain agreed-upon commitments, relating to, among other things, employment levels and/or project element due dates.

## RECOMMENDATION

The Vice President – Marketing recommends that:

- (1) the Trustees accept the recommendations of the Western New York Power Proceeds Allocation Board ('WNYPPAB') and make an award of Fund Benefits to the applicants PLSIII LLC dba We Care Transportation, Buffalo Niagara Enterprise, Inc., and Cambria Asphalt Products, Inc., and in the amounts identified in Exhibit '4b-A,' conditioned upon an agreement to be negotiated with the applicants on the final terms and conditions that would be applicable to the awards to be contained in an Award Contract approved by the President and Chief Executive Officer and approved by the 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 ('ESD'), be authorized to negotiate with the applicants concerning such final terms and conditions that will be applicable to the awards; and

- (3) the Senior Vice President – Economic Development and Energy Efficiency, or his designee, be authorized to execute on behalf of the Authority an Award Contract for the awards listed on Exhibit '4b-A' subject to the foregoing conditions.

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

***Mr. Keith Hayes provided highlights of staff’s recommendation to the Trustees. In response to a question from Trustee Flynn, Mr. Hayes said Cambria Asphalt Products will be retaining six jobs and creating one new job. We Care Transportation is retaining 200 jobs and creating 100 additional new jobs. There are no new jobs being created or retained by Buffalo Niagara Enterprise. In total, 206 jobs will be retained and 100 new jobs will be created.***

***In response to a question from Trustee Kress, Mr. Hayes said the contracts contain provisions to the effect that the awards are dispersed over a period of time and there is a compliance review with respect to the job commitments. Mr. Pasquale added that the contracts for the WNY fund benefits are similar to the Authority’s hydropower allocation contracts. Therefore, the awards are tied to the job numbers and the Authority performs compliance reviews at certain milestones to make sure the recipients are living up to their commitments. President Quiniones added that if the recipients are not living up to their commitments, the Authority have drawback provisions in the contracts for non-compliance.***

***In response to a question from Acting Chairman Nicandri, Mr. Hayes said the labor market study includes the following key components: Availability of labor, quality of labor, workforce development, skills gap, under-employment, labor-management relations, payroll, and other costs.***

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 an award of Fund Benefits from the Western New York Economic Development Fund (“Fund”) to PLSIII LLC dba We Care Transportation, Buffalo Niagara Enterprise, Inc., and Cambria Asphalt Products, Inc., the eligible applicants listed in Exhibit “4b-A,” in the amounts indicated;**

**NOW THEREFORE BE IT RESOLVED, That the Authority hereby accepts the recommendations of the WNYPPAB and authorizes the award of Fund Benefits to the applicants and in the amounts listed in Exhibit “4b-A,” conditioned upon an agreement between the Authority and the applicants on the final terms and conditions that would be applicable to the awards and set forth in written award contracts (“Award Contracts”)**

between the Authority and the applicants approved by the President and Chief Executive Officer and approved by the 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 the applicants concerning such final terms and conditions that will be applicable to the award; 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 an Award Contract for the awards listed on Exhibit “4b-A” subject to the foregoing conditions; and be it further

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

**5. Collective Bargaining Agreement Between the Authority and Local Unions 2032 and 2104 – International Brotherhood of Electrical Workers – Successor Agreement**

The President and Chief Executive Officer submitted the following report:

**"SUMMARY"**

The Trustees are requested to approve the Collective Bargaining Agreement ('Agreement') dated April 1, 2011, between the Authority and Local Unions 2032 and 2104 of the International Brotherhood of Electrical Workers ('IBEW'), AFL-CIO (Exhibit '5-A'). The term of the Agreement, if approved, will have an effective date of April 1, 2011 and will expire on March 31, 2019. It covers employees at the Authority's Blenheim-Gilboa Pumped Storage Project ('B-G'), Frederick R. Clark Energy Center ('Clark'), Niagara Power Project ('Niagara') and St. Lawrence/FDR Power Project ('St. Lawrence').

**BACKGROUND**

The Authority and the IBEW have been parties to collective bargaining agreements since 1961. This Agreement is the successor general agreement negotiated between the parties following the expiration of the 2006 labor contract.

After three and half years of negotiating without resolution, the Union filed for Impasse in September 2014. With the assistance of the Director of Conciliation from the Public Employment Relations Board, the parties were able to reach an agreement on a successor collective bargaining agreement.

The Authority's negotiating committee that participated in the impasse process and achieved this agreement was chaired by Edward Welz, Chief Operating Officer. The committee also consisted of Carol Geiger-Wank, Director, Labor and Special Projects, Edward Rider, Northern NY Regional Manager, Lori Alesio, Assistant General Counsel, Human Resources and Labor Relations; and Daniel Rizzi, outside counsel. The IBEW had representatives from both locals and from each facility where the IBEW represents employees at the Authority. Johnathan Johnson, the IBEW attorney, chaired the union's negotiating committee.

Agreement on a new contract was reached on March 31, 2015, four-years after the expiration of the 2006-2011 agreement. As a consequence, this new Agreement will become effective retroactive to April 1, 2011, pending Trustee Approval. The Agreement reached by the Authority's and the Union's negotiating committee was ratified by the Union membership on May 8, 2015.

**DISCUSSION**

The term of the Agreement runs from April 1, 2011 through March 31, 2019.

**I. Wage Increases**

The Agreement provides for a \$4,000 non-pensionable lump-sum payment to be paid to employees on payroll on the contract ratification date on a pro-rata basis.

The Agreement provides for a general wage increase 3.5% effective April 1, 2014; 2.0% effective April 1, 2015; 2.0% effective April 1, 2016; 2.5% effective April 1, 2017 and 2.5% effective April 1, 2018. There was no negotiated wage increase for the years 2011 through 2013.

## II. Medical and Other Benefits

The parties' built upon escalating employee monthly health insurance contribution amounts for benefits beginning in 2015 and continuing throughout the contract term as follows:

<u>Year</u>	<u>Individual / Family</u>
Upon Ratification	\$1,000 / \$1,600
1/1/16	\$1,000 / \$2,500
1/1/17	\$1,300 / \$3,300
1/1/18	\$1,400 / \$3,500

In addition, the parties adopted all benefits that are required to be provided by the Patient Protection and the Affordable Care Act ('PPACA'). Should legislation change the current elements of this law, either party may request to meet and negotiate the cost of those changes.

Other benefit plan changes include escalating co-payments for office visits and services, as well as increases in prescription drug. The parties also agreed to increased coverage levels in annual dental maximum limits, and short- and long-term disability coverage. Domestic partner benefits were extended to cover bereavement leave, and domestic partners will be eligible for retiree medical coverage, under certain conditions.

Combined, these and other negotiated medical plan improvements will generate annual benefits-related costs savings of over \$3.6 million over the contract term.

## III. Retiree Medical Coverage

The Agreement also provides significant changes in the area of retiree medical benefits.

Current employees who retire after January 1, 2018 may change their coverage type from individual to family one time during retirement, and pay the difference between the annual family and individual plan contribution.

Effective January 1, 2019, current employees who retire will pay 50% of the difference between the medical contribution for NYPA's main benefit plan and any other Plan. Also, effective January 1, 2019, current employees who retire shall be subject to the same plan terms as active employees.

In addition, agreement was also achieved for new hires that will now require 15 years of service to be eligible for retiree medical benefits. These individuals will also pay 50% of the same premium contribution as active employees, be subject to the same plan terms as active employees, and may not change their coverage type or add new or different dependents.

While the combined changes to retiree benefits do not generate annual benefits-related costs savings during the contract term, they are expected to generate average annual cost savings of approximately \$3.7 million post contract term due to lower annual required contributions to the Other Postemployment Benefits ('OPEB') Trust.

## IV. Union Release Time

Significant changes were also made to the union officer release time provision of the Agreement. The current arrangement will remain in place until November, 2016. Thereafter, the Union Officers will remain on full release; however, the parties eliminated the Authority's responsibility relating to premium pay for those positions. In addition, the 'upgrading and backfilling' to the leadership positions for short-term absences has been eliminated while adding more prescriptive language for the leadership's accountability and access to the facility.

V.       Apprentice Program

The parties also committed to work together to revitalize the Apprentice Program to maintain a highly skilled craft workforce to operate its business effectively. Increases in tuition reimbursement were also achieved in this contract.

FISCAL INFORMATION

The 2014 retro wage increase and 2015 lump-sum payments amount to \$3.63 million. The general wage increases for the 2015 - 2019 period are consistent with the Authority's long-term financial forecast. The estimated incremental annual costs are:

2015 - \$2.6 million  
2016 - \$3.6 million  
2017 - \$4.8 million  
2018 - \$6.1 million

Payments will be made from the Operating Fund.

RECOMMENDATION

The Chief Operating Officer, the Executive Vice President – Power Generation and the Vice President – Transmission recommend that the Collective Bargaining Agreement reached between the Authority and Local Unions 2032 and 2104 of the International Brotherhood of Electrical Workers, AFL-CIO, be approved by the Trustees.

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

***Ms. Carol Geiger-Wank, Director of Labor Relations, provided highlights of staff's recommendation to the Trustees. President Quiniones said he wanted to commend Mr. Welz for his leadership in finalizing the agreement and also the other departments in the Authority – Human Resources, Legal, Finance, Public and Governmental Affairs and Communications – for their teamwork during the negotiations. He also thanked the leadership of the Union and said he looked forward to working productively with them, going forward. Acting Chairman Nicandri agreed and said he would also like to congratulate the employees that are going to be the beneficiaries of the agreement which he believed was well-earned and appreciated.***

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

**RESOLVED, That the Director, Labor and Special Projects be, and hereby is, authorized on behalf of the Authority to execute a Collective Bargaining Agreement with Local Unions 2032 and 2104 of the International Brotherhood of Electrical Workers, AFL-CIO, covering specified operating and maintenance employees of the Blenheim-Gilboa Pumped Storage Project, Frederick R. Clark Energy Center, Niagara Power Project and St. Lawrence/FDR Power Project, with changes to that**



Agreement as described in the foregoing report of the President and Chief Executive Officer and attached summary (Exhibit "5-A"), subject to approval of the form thereof by the Chief Operating Officer and the 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 Executive Vice President and General Counsel.

**6. Energy Efficiency**

Mr. James Pasquale, Senior Vice President of Energy Efficiency, introduced the next three presenters on the agenda. He said these young engineers are members of NYPA's Energy Efficiency ("EE") Department and have been leading NYPA's efforts with the City of New York to implement Photovoltaic projects on an expedited basis.

**Trevor Smith**

Trevor is a graduate of Drexel University and first joined the EE Department as a COOP student in March of 2009. Upon his graduation in June of 2010 with a degree in Mechanical Engineering & Mechanics Trevor was hired full-time by NYPA. The Authority is happy to have Trevor on staff.

**Lauren Magin**

Lauren is a May 2014 graduate of Clarkson University with a degree in Mechanical Engineering, and an Excelsior Fellow. The Excelsior Fellowship program offers bright NYS college graduates interested in a career in public service a two-year placement at a NYS agency or Authority. Lauren joined the EE Department in September 2014 and has been supporting the Authority's work in NYC. Next month, Lauren will be transferred to NYPA's Albany office to gain experience with the Upstate market and operation.

**Dennis Willette**

Dennis is currently a Conservation Program Engineer in the EE Department. He is a 2005 graduate of Syracuse University with a degree in Mechanical Engineering. As part of Dennis' development plan for 2014/2015, he requested the opportunity to manage a work group. When the expedited Photovoltaic ('PV') project with the City arose in the fall of 2014, a work group was formed consisting of Dennis as lead along with Trevor Smith and Lauren Magin.

Dennis will be presenting the PV discussion item on today's agenda following a brief presentation by Trevor and Lauren.

a. **INFORMATIONAL ITEM:**  
**Energy Efficiency – NYC Solar Schools –**  
**Design, Development and Implementation Program**

*Mr. Trevor Smith, Associate Conservation Engineer, and Ms. Lauren Magin, Excelsior Engineering Fellow, made a presentation to the Board regarding the energy efficiency measure for the design, development and implementation of 100 megawatts ('MW') of rooftop solar energy over the next ten years, on an expedited schedule, on city-owned buildings, primarily, New York City schools. These systems will be wholly-owned by the customer (Exhibit '6-A'). Mr. Smith continued that NYPA's Energy Efficiency department, in collaboration with the NYC Department of Citywide Administrative Services ('DCAS'), agreed to install approximately 6.25 MW of rooftop solar panels at 24 sites by April 2016; two additional sites were completed by 'Earth Day' in April 2015.*

*Ms. Lauren Magin outlined the construction development of the project. She said in April 2015, with the assistance and cooperation of agencies such as the Public Design Commission, Department of Buildings, Department of Education, Electrical Advisory Board and Consolidated Edison, the first school, with more than 600 panels and 200 kilowatts ("kW") of power and the second, with 1700 panels and 500 kW of power, were completed on schedule.*

*To date, three other schools are completed or in construction; six schools have permits and expect to begin construction soon, and the remaining fifteen locations are in the design phase. Once completed, the project would have facilitated the installation of 15,000 solar panels.*

*The environmental impact of the project would reduce greenhouse gas emissions. The project also supports Governor Cuomo's goals of increasing clean energy in New York State and demonstrates the importance of government incentives and initiatives in increasing clean energy resources.*

**b. Procurement (Services) Contract –  
Energy Efficiency Programs –  
Roof Mounted Solar Photovoltaic Systems –  
Phase II – Contract Awards**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to authorize the award of contracts (as described below) to three (3) firms to furnish design services, labor, material, and supervision for the turn-key installation of Solar Photovoltaic ('PV') Power arrays in New York City and statewide.

The aggregate total for all three proposed awards is \$48 million and the term of each contract will be five years. These three (3) contracts will be used to support the Authority's Energy Efficiency Programs ('EEP'), and funding for these contracts will be allocated from existing approved EEP funding. This funding will generally be recovered directly from EEP participants.

Phase I of the two phases included in this RFP has been awarded following Trustee approval at the March 2015 meeting.

**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. In accordance with the Authority's Expenditure Authorization Procedures, the award of non-personnel services or equipment contracts in excess of \$3 million require the Trustees' approval.

In November of 2014, the City of New York Department of Citywide Administrative Services ('DCAS') requested the Power Authority's Energy Efficiency Department's assistance in the implementation of 6 MW of roof-mounted PV systems on 24 New York City Schools located throughout the five boroughs. This request was expedited due to partial funding from NYSEDA which required all systems be fully operational and exporting power to the grid by April of 2016. Designs at nine (9) of the schools were initiated immediately, exhausting an existing solar PV contract with the Authority. The balance of the 15 expedited NYC schools, and additional capacity to implement PV across New York State, including other projects in New York City, necessitated the solicitation of the subject Request for Proposals ('RFP') (Q14-5789RH). The RFP was divided into biddable phases with Phase I addressing the remaining expedited NYC schools, and Phase II, the remaining PV work statewide.

Phase I of this RFP accommodated the City's accelerated timeline to implement the remaining 15 schools with an estimated installed capacity of 4 MW. Trustee approval to award two (2) contracts for Phase I was sought and received at their March 2015 meeting.

Phase II, for which approval is now being sought, will allow for the timely installation of 16 MW of additional solar PV systems in six (6) NY Regions: Western, Central, Northern, South Eastern, NYC, and Long Island. The intent of these regional awards is to make multiple contractors available to implement future projects as they are requested by eligible program participants. Contractors will be assigned projects as they become available by an Assignment Committee based upon cost, current workload, and current contract utilization levels.

## DISCUSSION

The EEP provides energy efficiency services to customers meeting the eligibility criteria under NYS Public Authorities Law ('PAL'), Section 1005. Energy efficiency services provided through the EEP include audits, energy master planning and retro commissioning, design, construction management, construction trade management and turn-key implementation services, operation and maintenance, and other related energy efficiency or sustainability services.

On December 3, 2014, the Authority advertised a RFP, No. Q14-5789RH, in the New York State *Contract Reporter* soliciting firms interested in providing roof-mounted PV systems throughout New York State. As a result of that advertisement and invitations to bid, one-hundred and twenty seven (127) firms downloaded the RFP from the Authority's website. Twenty (20) firms attended the mandatory bidders' conference held on December 18, 2014 to review the proposed scope-of-work and provide an opportunity for potential bidders to ask questions and seek clarification.

The following are the regions, as defined in the RFP, for which respondents were requested to provide regional pricing:

- Region 1: Western – All counties west of Wayne, Ontario, and Steuben counties.
- Region 2: Central – Counties east of the western region, and east of St. Lawrence, Herkimer, Otsego, and Delaware counties
- Region 3: Northern – All counties east of the central region, and north of Sullivan, Ulster, and Dutchess counties
- Region 4: Southeastern – All counties south of the northern region, and north of Bronx County
- Region 5: NYC – Bronx, Kings, Queens, New York, and Richmond counties
- Region 6: Long Island – Nassau and Suffolk counties

On January 14, 2015, ten (10) firms submitted bids for the RFP. The bids were evaluated based on a number of technical criteria, commercial requirements, and cost that included but was not limited to: relevant technical experience with regional permitting requirements; fees; practical knowledge of PV systems; and their financial security.

The Authority's evaluation committee which comprised of Authority staff from Energy Efficiency, Customer Energy Solutions and Procurement reviewed and evaluated the proposals. The evaluation criteria used to score each proposal was established prior to the receipt of bids. Each region was scored individually.

Of the ten (10) firms that submitted proposals, only four (4) provided regional pricing outside of New York City. The committee evaluated these four (4) proposals and recommended awards based on the best combination of cost, qualifications, references and the resources required to support the EEP. Based on the evaluations further set forth in the recommendation award documents for the Energy Efficiency program, the committee recommended the award of a total of three (3) contracts as detailed below.

### WESTERN, NORTHERN, CENTRAL and SOUTH EASTERN REGIONS:

Solar Liberty Energy Systems, Inc. headquartered in Williamsville, NY, Standard Solar, Inc. headquartered in Rockville, MD and Montante Solar Inc. headquartered in Buffalo, NY, were the lowest-priced evaluated and technically qualified bidders. The proposals highlighted a detailed and technical approach to the proposed scope-of-work. The committee agreed that of the ten (10) proposals, Solar Liberty Energy Systems, Inc., Standard Solar, Inc., and Montante Solar Inc. provided highly detailed technical proposals for the scope-of-work. All recommended awardees offer full service design,

installation, and interconnection of solar electric systems and have been in business for more than ten years.

#### NEW YORK CITY AND LONG ISLAND REGIONS:

Solar Liberty Energy Systems, Inc., and Standard Solar, Inc. were the lowest-priced evaluated and technically qualified bidders. The proposals highlighted a detailed and technical approach to the proposed scope-of-work. The committee agreed that of the ten (10) proposals, Solar Liberty Energy Systems, Inc. and Standard Solar, Inc. provided highly detailed technical proposals for the scope-of-work. All recommended awardees offer full service design, installation, and interconnection of solar electric systems.

#### FISCAL INFORMATION

No additional funding is requested at this time to fund the Authority's energy efficiency projects offered under the EEP beyond the current total program funding of \$950 million. Of these funds, \$48 million, in aggregate, will be allocated to the contracts with the three (3) firms listed in this item. The funding will be provided from the proceeds of the Authority's Commercial Paper Notes and/or the Operating Fund. In addition, projects may be funded, in part, with monies from the Petroleum Overcharge Restitution ('POCR') funds. Funding will be allocated as projects are assigned based on each firm's performance and workload, subject to the Approval Limits for Execution of Commitments in the Authority's Expenditure Authorization Procedures. All Authority costs, including Authority overheads and the costs of advancing funds, will be recovered as is consistent with other Energy Efficiency Programs.

#### RECOMMENDATION

The Senior Vice President – Economic Development and Energy Efficiency, the Vice President – Energy Efficiency and the Vice President of Procurement recommend that three contract awards, in the aggregate amount of \$48 million and up to a five-year term, for the turn-key installation of Solar Photovoltaic Power arrays in New York City and statewide be allocated to the following bidders: Solar Liberty Energy Systems, Inc., Standard Solar, Inc., and Montante Solar Inc.

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

***Mr. Dennis Willette, Conservation Program Engineer, provided highlights of staff's recommendation to the Trustees.***

***President Quiniones said the team did a tremendous job in meeting a tight construction schedule for the roof-mounted solar photovoltaic systems at twenty-four NYC schools. He said they were creative in the way that they conducted the work on an on-going basis in order to complete the project. President Quiniones then mentioned that, as part of Governor Cuomo's vision to reform energy, the Authority is part of the K-Solar Program, and, partnering with the New York State Department of Education, has offered to assist all 698 school districts across the state to implement a program to install solar photovoltaic panels and incorporate solar energy into the schools' Science and Math curriculum with the view to nurture clean energy across the state. He continued that approximately 300 school districts have signed on to partner with the Authority to implement these projects.***

*In response to a question from Trustee Kress, Mr. Willette said all of the firms have to maintain the “WMBE” requirements that the Authority include in its contracts. As part of their bid, the companies have to include a plan as to how they intend to comply with the requirement.*

*In response to a question from Trustee Flynn, Corporate Secretary Delince said although the Trustees will not be able to vote on the contract for Solar Liberty Energy Systems, Inc., there were two additional contracts to be voted on at this meeting. In response to further questioning from Trustee Flynn, Mr. Willette said the Trustees will be voting on the contracts in the amount of \$32 million for Standard Solar and Montante Solar for all regions; and Montante Solar for all regions outside New York City and Long Island.*

The following resolution, as submitted by the President and Chief Executive Officer, was adopted with the exception of **Solar Liberty Energy Systems, Inc.**, which failed to pass due to the conflict of interest filed by Trustee Flynn.

**RESOLVED, That the Trustees authorize the President and Chief Executive Officer, the Chief Operating Officer, the Senior Vice President – Economic Development and Energy Efficiency and the Vice President – Energy Efficiency or such officer designated by the President and Chief Executive Officer to execute agreements and other documents between the Authority and Energy Efficiency Program (“EEP”) participants and to execute agreements and other documents with contractors, such agreements having such terms and conditions as the executing officer may approve, subject to the approval of the form thereof by the Executive Vice President and General Counsel, to facilitate the implementation of the EEP; and be it further**

**RESOLVED, That in accordance with the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, an aggregate \$48 million be allocated from previously approved funding for contracts to furnish all design services, labor, material, and supervision for the turn-key installation of Solar Photovoltaic (“PV”) Power arrays both in New York City and Statewide, as outlined below:**

<u>Commercial Paper Program/Operating Fund/POCR</u>	<u>Ceiling</u>	<u>Termination Date</u>
Solar Liberty Energy Systems, Inc., Williamsville, NY	<u>\$48 million</u> (Aggregate)	May 19, 2020

**Standard Solar, Inc.,  
Rockville, MD**

**Montante Solar Inc.  
(excluding NYC)  
Buffalo, NY**

**(Q14-5789RH)**

**AND BE IT FURTHER RESOLVED, That the Authority's Commercial Paper Notes, Series 1, Series 2 and Series 3, and Operating Fund monies may be used to finance Energy Efficiency Program costs; and be it further**

**RESOLVED, That the Vice President – Energy Efficiency is authorized to determine which projects will be deemed to be energy efficiency projects within the meaning of Section (7) of Part P of Chapter 84 of the Laws of 2002 (the "Section (7) POCR Legislation") to be funded, in part, with Petroleum Overcharge Restitution ("POCR") Funds allocated pursuant to the Section (7) POCR Legislation; and be it further**

**RESOLVED, That POCR funds allocated to the Authority by the Section (7) POCR Legislation may be used to the extent authorized by such legislation, in such amounts as may be deemed necessary or desirable by the Senior Vice President – Economic Development and Energy Efficiency and the Vice President – Energy Efficiency to finance projects within the Statewide Energy Efficiency Program; and be it further**

**RESOLVED, That the Chairman, the Vice Chair, the President and Chief Executive 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 certificates, agreements and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**



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

*Mr. Chairman, I move that the Authority conduct an executive session pursuant to the Public Officers Law of the State of New York section §105 to discuss an ongoing investigation, contract negotiations, labor negotiations, and matters leading to the promotion or demotion of a particular person.* Upon motion made and seconded an Executive Session was held.

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

***Mr. Chairman, I move to resume the meeting in Open Session.*** Upon motion made and seconded, the meeting resumed in Open Session.

9. **Next Meeting**

The next meeting of the Trustees will be held on **July 30, 2015 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 Acting Chairman at approximately 10:30 a.m.

Karen Delince  
Corporate Secretary

May 19, 2015

# **EXHIBITS**

**For**

**May 19, 2015**

**Regular Meeting**

**Minutes**

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	WhiteRock Pigments, Inc.	RP	Tonwanda	Erie	12/16/2014	2,450	101	101	\$130,000,000	7 Years

---

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  
WHITEROCK PIGMENTS, 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 WhiteRock Pigments, Inc. (“Customer”), with offices at 1768 E. 25<sup>th</sup> Street, Cleveland, OH, 44114. 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 December 16, 2014, the Authority’s Board of Trustees (“Trustees”) approved a 2,450 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 December 16, 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 December 16, 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

WhiteRock Pigments, Inc.  
1768 E. 25<sup>th</sup> Street  
Cleveland, OH 44114

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:

**WHITEROCK PIGMENTS, 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: WhiteRock Pigments, Inc. Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Replacement Power	2,450	4000 River Road, Tonawanda, NY 14150	December 16, 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 one hundred and one (101) 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 \$130,000,000 to renovate and furnish the Facility (the “Capital Investment”). The Capital Investment for the Facility is expected to consist of the following specific expenditures:

Equipment, Machinery, Installation:	\$85,000,000
Miscellaneous:	\$45, 000,000

<b><u>Total Capital Investment:</u></b>	<b><u>\$130,000,000</u></b>
---	-----------------------------

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than December 16, 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>

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

*New York State Power Authority  
Public Hearing*

---

*Wednesday, April 1, 2015  
April 01, 2015*

---



**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 040115pas.txt*

*Min-U-Script® with Word Index*

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

New York State Power Authority

Wednesday, April 1, 2015

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

Niagara Power Project Visitors' Center

5777 Lewiston Road

Lewiston, New York 14092

Patricia A. Schreier

1     SPEAKERS :

2

MS. DELINCE ..... 3,8

3

MS. CRUZ BROWN ..... 5

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

1 MS. DELINCE: Good afternoon. This is a public  
2 hearing required by law and authorized by the New York  
3 Power Authority's Board of Trustees on the proposed  
4 direct sale contract for the sale of hydropower to  
5 WhiteRock Pigments, Inc.

6 My name is Karen Delince and I'm the Authority's  
7 Corporate Secretary.

8 New York State Public Authorities Law, Section  
9 1009, sets forth procedures for executing certain  
10 contracts negotiated by the Authority.

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

18 In addition, notice appeared in the following  
19 newspapers, once a week, for the four weeks leading up  
20 to this hearing, Niagara Gazette, Buffalo News, Buffalo  
21 Business First, Lewiston Porter Sentinel, Albany Times -  
22 Union, Dunkirk Observer.

23 The public was also given access to the proposed

1 contract on the Authority's website and at the  
2 Authority's White Plains office during the 30 day period  
3 prior to today's hearing.

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

7 The next step in the process set forth in Section  
8 1009 will be for the NYPA Trustees to reconsider the  
9 proposed contract, in light of public comments.

10 Once the Trustees have completed their final  
11 review, the contract will be forwarded to the Governor  
12 for his consideration and approval.

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

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

21 The record of the hearing will remain open for any  
22 additional comments through close of business, Thursday,  
23 April 2nd.



1 Additional comments should be mailed, faxed or  
2 e-mailed to the Corporate Secretary at 123 Main Street,  
3 11-P, White Plains, New York, 10601 or (914)390-8048 or  
4 secretarys.office@nypa.gov.

5 At this point I would like to introduce Maribel  
6 Cruz Brown, the Authority's Business Power Allocations  
7 and Compliance Manager, who will provide additional  
8 details on the proposed direct sale contract.

9 Thank you.

10 MS. CRUZ BROWN: Thank you, Ms. Delince. Good  
11 afternoon. My name is Maribel Cruz Brown and I'm the  
12 manager of Business Power Allocations and Compliance  
13 within the Economic Development and Energy Efficiency  
14 Department at the New York Power Authority.

15 I'm here today to present a summary of the proposed  
16 contract with WhiteRock Pigments, Inc., (WhiteRock) for  
17 the direct sale of Replacement Power - hydropower that  
18 is generated here at the Authority's Niagara Power  
19 Project.

20 Under Public Authorities Law Section 1005  
21 Subsection 13, the Authority may allocate and sell  
22 directly or by sale-for-resale, 250 MW of Expansion  
23 Power, known as EP, and 445 MW of Replacement Power,

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

6 At its meeting on December 16, 2014, the Power  
7 Authority Board of Trustees approved a hydropower  
8 allocation to WhiteRock in return for commitments made  
9 to expand its business in Western New York.

10 Specifically, WhiteRock, a producer of Titanium  
11 dioxide (TiO<sub>2</sub>) pigment is planning to construct a new  
12 140,000 square foot production plant on 50 acres of  
13 vacant land along the Niagara River in the Town of  
14 Tonawanda in Erie County. WhiteRock was awarded 2,450  
15 kilowatts of Replacement Power in support of this  
16 project for a term of seven years. WhiteRock has  
17 committed to spend \$130 million and create 101 new jobs.

18 To summarize some of the pertinent provisions of  
19 the proposed contract, first, the contract provides for  
20 the direct billing of all hydropower supply charges, all  
21 New York Independent System Operator charges and taxes.

22 The contract includes WhiteRock's agreed upon  
23 commitments with respect to employment and capital

1 investment and retains the Authority's right to reduce  
2 or terminate the allocation if employment, power  
3 utilization or capital investment commitments are not  
4 met.

5 For example, the contract includes an annual job  
6 reporting requirement and a job compliance threshold of  
7 90 percent. Should WhiteRock's average annual  
8 employment fall below the compliance threshold of  
9 90 percent of the employment commitment, the Authority  
10 has the right to reduce the allocation on a pro-rated  
11 basis.

12 The contract compels the company to perform an  
13 energy audit at the facility at least once within five  
14 years, helping to ensure that the customer uses the  
15 hydropower efficiently. Additionally, to accommodate  
16 nonpayment risk that could result from the direct  
17 billing arrangement, the contract includes commercially  
18 reasonable provisions concerning the Authority's ability  
19 to charge late payment fees and to require deposits in  
20 the event of the customer's failure to make payment for  
21 any two monthly bills. These contract provisions are  
22 consistent with other Authority direct sale contracts,  
23 including the Recharge New York sales contracts.

1           The contract will serve the allocation in  
2           accordance with the Authority's Service Tariff WNY-1  
3           which specifies the rates and other terms applicable to  
4           all EP and RP allocations. The Service Tariff specifies  
5           a three year rate phase-in to a target rate based on the  
6           rate of the authority's other hydropower program -  
7           Preservation Power - to ultimately ensure consistency  
8           among the Authority's three hydropower programs.  
9           Transmission and delivery service for this allocation  
10          will be provided by National Grid in accordance with the  
11          utility's Public Service commission approved delivery  
12          service tariff.

13           As Ms. Delince stated earlier, the Authority will  
14          accept your comments on the proposed contract until the  
15          close of business on Thursday, April 2, 2015. I will  
16          now turn the hearing back to Ms. Delince.

17           MS. DELINCE: Thank you, Ms. Cruz Brown. We  
18          will recess now and reconvene when the speakers arrive.

19                           (recess)

20           MS. DELINCE: The April 1st, 2015 public  
21          hearing of the proposed Direct Sale Contract to  
22          WhiteRock Pigment, Inc., is now officially closed. As I  
23          previously stated, the record of the hearing will remain

1 open for additional comments through close of business,  
2 Thursday, April 2nd.

3 Thank you and good night.

4  
5 (Hearing closed at 6:30 p.m.)  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

1 STATE OF NEW YORK  
2 COUNTY OF ERIE

3 I, Patricia A. Schreier, a Notary Public in and for  
4 the State of New York, do hereby certify:

5 That the witness, whose testimony appears herein  
6 before, was, before the commencement of his testimony, duly  
7 sworn to testify the truth, the whole truth and nothing but  
8 the truth; that such testimony was taken pursuant to notice at  
9 the time and place herein set forth; that said testimony was  
10 taken down in shorthand by me and thereafter under my  
11 supervision transcribed into the English language, and hereby  
12 certify the foregoing testimony is a full, true and correct  
13 transcription of the shorthand notes so taken.

14 I further certify that I am neither counsel for nor  
15 related to any parties to said action, nor in anywise  
16 interested in the outcome thereof.

17 IN WITNESS WHEREOF, I have here unto subscribed my  
18 name this 3rd day of April, 2015.

19  
20  
21  
22  
23  


Notary Public  
State of New York

	8:18	8:22;9:5	3:1,6;5:10;8:13,16,	fall (1)
\$	Assembly (3)	comments (5)	17,20	7:8
\$130 (1)	3:15,16,16	4:9,22;5:1;8:14;9:1	delivery (2)	faxed (1)
6:17	audit (1)	commercially (1)	8:9,11	5:1
A	7:13	7:17	Department (1)	fees (1)
	Authorities (2)	commission (1)	5:14	7:19
	3:8;5:20	8:11	deposits (1)	final (1)
	Authority (7)	commitment (1)	7:19	4:10
ability (1)	3:10;5:14,21;6:7;	7:9	details (1)	Finance (1)
7:18	7:9,22;8:13	commitments (3)	5:8	3:15
accept (1)	Authority's (11)	6:8,23;7:3	Development (1)	First (3)
8:14	3:3,6;4:1,2;5:6,18;	committed (1)	5:13	3:11,21;6:19
access (2)	7:1,18;8:2,6,8	6:17	dioxide (1)	five (1)
3:23;4:4	authorized (1)	Committee (2)	6:11	7:13
accommodate (1)	3:2	3:15,17	direct (7)	following (1)
7:15	average (1)	company (1)	3:4;5:8,17;6:20;	3:18
accordance (2)	7:7	7:12	7:16,22;8:21	foot (1)
8:2,10	awarded (1)	compels (1)	directly (1)	6:12
acres (1)	6:14	7:12	5:22	forth (2)
6:12		completed (2)	Dunkirk (1)	3:9;4:7
addition (2)	B	4:5,10	3:22	forwarded (1)
3:18;4:19		Compliance (4)	during (1)	4:11
additional (4)	back (1)	5:7,12;7:6,8	4:2	four (1)
4:22;5:1,7;9:1	8:16	concerning (1)		3:19
Additionally (1)	based (1)	7:18	E	
7:15	8:5	consideration (1)		G
afternoon (2)	basis (1)	4:12	earlier (1)	
3:1;5:11	below (1)	consistency (1)	8:13	Gazette (1)
agreed (1)	7:11	8:7	Economic (1)	3:20
6:22	7:8	consistent (1)	5:13	generated (1)
Albany (1)	billing (2)	7:22	Efficiency (1)	5:18
3:21	6:20;7:17	construct (1)	5:13	given (2)
allocate (1)	7:21	6:11	efficiently (1)	3:23;4:4
5:21	bills (1)	continue (1)	7:15	Good (3)
allocated (2)	7:21	6:4	e-mailed (1)	3:1;5:10;9:3
6:3,4	Board (2)	contract (16)	5:2	Governor (2)
allocation (5)	3:3;6:7	3:4;4:1,9,11;5:8,	employment (4)	3:13;4:11
6:8;7:2,10;8:1,9	Brown (4)	16:6;19,19,22;7:5,12,	6:23;7:2,8,9	Grid (1)
Allocations (3)	5:6,10,11;8:17	17,21;8:1,14,21	Energy (2)	8:10
5:6,12;8:4	Buffalo (2)	contracts (3)	5:13;7:13	
along (1)	3:20,20	3:10;7:22,23	ensure (2)	H
6:13	Business (7)	copy (1)	7:14;8:7	
among (1)	3:21;4:22;5:6,12;	4:16	EP (3)	hearing (14)
8:8	6:9;8:15;9:1	Corporate (2)	5:23;6:3;8:4	3:2,11,12,20;4:3,4,
amount (1)	businesses (2)	3:7;5:2	Erie (1)	5,14,19,21;8:16,21,
6:2	6:1,3	County (3)	6:14	23;9:5
annual (2)		6:3,5,14	event (1)	helping (1)
7:5,7	C	create (1)	7:20	7:14
appear (1)	capital (2)	6:17	example (1)	hydropower (7)
4:19	6:23;7:3	Cruz (4)	7:5	3:4;5:17;6:7,20;
appeared (1)	certain (1)	5:6,10,11;8:17	executing (1)	7:15;8:6,8
3:18	3:9	customer (1)	3:9	
applicable (1)	Chair (2)	7:14	expand (1)	I
8:3	3:15,17	customer's (1)	6:9	
approval (1)	charge (1)	7:20	Expansion (1)	Inc (3)
4:12	7:19		5:22	3:5;5:16;8:22
approved (2)	charges (2)	D		includes (3)
6:7;8:11	6:20,21		F	6:22;7:5,17
April (4)	Chautauqua (2)	day (1)	facility (1)	including (1)
4:23;8:15,20;9:2	6:3,5	4:2	7:13	7:23
arrangement (1)	close (3)	December (1)	failure (1)	Independent (1)
7:17	4:22;8:15;9:1	6:6	7:20	6:21
arrive (1)	closed (2)	DELINCE (7)		indicate (1)

4:14 <b>introduce (1)</b> 5:5 <b>investment (2)</b> 7:1,3	<b>Means (1)</b> 3:16 <b>meeting (1)</b> 6:6 <b>met (1)</b> 7:4 <b>miles (1)</b> 6:1 <b>million (1)</b> 6:17 <b>Minority (2)</b> 3:14,16 <b>monthly (1)</b> 7:21 <b>MW (2)</b> 5:22,23		<b>Project (3)</b> 5:19;6:2,16 <b>proposed (8)</b> 3:3,23;4:9;5:8,15; 6:19;8:14,21 <b>pro-rated (1)</b> 7:10 <b>provide (1)</b> 5:7 <b>provided (3)</b> 3:12;6:2;8:10 <b>provides (1)</b> 6:19 <b>provisions (3)</b> 6:18;7:18,21 <b>public (8)</b> 3:1,8,23;4:4,9; 5:20;8:11,20	<b>review (1)</b> 4:11 <b>right (2)</b> 7:1,10 <b>risk (1)</b> 7:16 <b>River (1)</b> 6:13 <b>RP (2)</b> 6:1;8:4
<b>J</b>		<b>P</b>		<b>S</b>
<b>January (1)</b> 6:4 <b>job (2)</b> 7:5,6 <b>jobs (1)</b> 6:17 <b>Johnson (1)</b> 4:16		<b>payment (2)</b> 7:19,20 <b>percent (2)</b> 7:7,9 <b>perform (1)</b> 7:12 <b>period (1)</b> 4:2 <b>pertinent (1)</b> 6:18 <b>phase-in (1)</b> 8:5 <b>pigment (2)</b> 6:11;8:22 <b>Pigments (2)</b> 3:5;5:16 <b>Plains (3)</b> 4:2,6;5:3 <b>plan (1)</b> 4:13 <b>planning (1)</b> 6:11 <b>plant (1)</b> 6:12 <b>please (1)</b> 4:15 <b>pm (1)</b> 9:5 <b>point (1)</b> 5:5 <b>Porter (1)</b> 3:21 <b>Power (13)</b> 3:3;5:6,12,14,17, 18,23,23;6:2,6,15; 7:2;8:7 <b>present (1)</b> 5:15 <b>Preservation (1)</b> 8:7 <b>president (1)</b> 3:13 <b>previously (1)</b> 8:23 <b>prior (2)</b> 3:11;4:3 <b>Pro (1)</b> 3:13 <b>procedures (1)</b> 3:9 <b>process (1)</b> 4:7 <b>producer (1)</b> 6:10 <b>production (1)</b> 6:12 <b>program (1)</b> 8:6 <b>programs (1)</b> 8:8		
<b>K</b>	<b>N</b>		<b>R</b>	
<b>Karen (1)</b> 3:6 <b>kilowatts (1)</b> 6:15 <b>known (2)</b> 5:23;6:1	<b>name (2)</b> 3:6;5:11 <b>National (1)</b> 8:10 <b>negotiated (1)</b> 3:10 <b>New (9)</b> 3:2,8;5:3,14;6:9, 11,17,21;7:23 <b>News (1)</b> 3:20 <b>newspapers (1)</b> 3:19 <b>next (1)</b> 4:7 <b>Niagara (4)</b> 3:20;5:18;6:2,13 <b>night (1)</b> 9:3 <b>nonpayment (1)</b> 7:16 <b>notice (3)</b> 3:12,12,18 <b>NYPA (1)</b> 4:8		<b>rate (3)</b> 8:5,5,6 <b>rates (1)</b> 8:3 <b>reasonable (1)</b> 7:18 <b>recess (2)</b> 8:18,19 <b>Recharge (1)</b> 7:23 <b>reconsider (1)</b> 4:8 <b>reconvene (1)</b> 8:18 <b>record (3)</b> 4:19,21;8:23 <b>reduce (2)</b> 7:1,10 <b>remain (2)</b> 4:21;8:23 <b>Replacement (3)</b> 5:17,23;6:15 <b>reporter (1)</b> 4:17 <b>reporting (1)</b> 7:6 <b>require (1)</b> 7:19 <b>required (1)</b> 3:2 <b>requirement (1)</b> 7:6 <b>requires (1)</b> 3:11 <b>respect (1)</b> 6:23 <b>result (1)</b> 7:16 <b>retains (1)</b> 7:1 <b>return (1)</b> 6:8	<b>sale (6)</b> 3:4,4;5:8,17;7:22; 8:21 <b>sale-for-resale (1)</b> 5:22 <b>sales (1)</b> 7:23 <b>Secretary (2)</b> 3:7;5:2 secretarysoffice@nypagov (1) 5:4 <b>Section (3)</b> 3:8;4:7;5:20 <b>sell (1)</b> 5:21 <b>Senate (1)</b> 3:14 <b>Senate's (2)</b> 3:13,14 <b>sent (1)</b> 3:13 <b>Sentinel (1)</b> 3:21 <b>serve (1)</b> 8:1 <b>Service (5)</b> 8:2,4,9,11,12 <b>set (1)</b> 4:7 <b>sets (1)</b> 3:9 <b>seven (1)</b> 6:16 <b>shall (1)</b> 6:4 <b>sheet (1)</b> 4:15 <b>sign-in (2)</b> 4:14,16 <b>Speaker (1)</b> 3:15 <b>speakers (1)</b> 8:18 <b>Specifically (1)</b> 6:10 <b>specifies (2)</b> 8:3,4 <b>spend (1)</b> 6:17 <b>square (1)</b>
<b>L</b>		<b>O</b>		
<b>land (1)</b> 6:13 <b>late (1)</b> 7:19 <b>law (3)</b> 3:2,8;5:20 <b>Leader (2)</b> 3:14,16 <b>leading (1)</b> 3:19 <b>least (1)</b> 7:13 <b>length (1)</b> 4:18 <b>Lewiston (1)</b> 3:21 <b>light (1)</b> 4:9 <b>located (1)</b> 6:1 <b>Lorna (1)</b> 4:16	<b>Observer (1)</b> 3:22 <b>office (2)</b> 4:2,6 <b>officially (1)</b> 8:22 <b>once (3)</b> 3:19;4:10;7:13 <b>one (2)</b> 4:5,17 <b>open (2)</b> 4:21;9:1 <b>Operator (1)</b> 6:21 <b>oral (2)</b> 4:13,19			
<b>M</b>				
<b>mailed (1)</b> 5:1 <b>Main (1)</b> 5:2 <b>Manager (2)</b> 5:7,12 <b>Maribel (2)</b> 5:5,11 <b>may (2)</b> 4:18;5:21				



6:12 <b>State (1)</b> 3:8 <b>stated (2)</b> 8:13,23 <b>statement (2)</b> 4:13,15 <b>statements (2)</b> 4:18,20 <b>step (1)</b> 4:7 <b>Street (1)</b> 5:2 <b>Subsection (1)</b> 5:21 <b>summarize (1)</b> 6:18 <b>summary (1)</b> 5:15 <b>supply (1)</b> 6:20 <b>support (1)</b> 6:15 <b>System (1)</b> 6:21	6:14 <b>Town (1)</b> 6:13 <b>transcript (1)</b> 4:5 <b>Transmission (1)</b> 8:9 <b>Trustees (4)</b> 3:3;4:8,10;6:7 <b>turn (1)</b> 8:16 <b>two (1)</b> 7:21	<b>www.nypagov (1)</b> 4:6	5:23	
		<b>Y</b>	<b>5</b>	
		<b>year (1)</b> 8:5 <b>years (2)</b> 6:16;7:14 <b>York (7)</b> 3:2,8;5:3,14;6:9, 21;7:23	<b>50 (1)</b> 6:12	
			<b>6</b>	
			<b>6:30 (1)</b> 9:5	
			<b>9</b>	
	<b>U</b>	<b>1</b>	<b>90 (2)</b> 7:7,9 <b>914390-8048 (1)</b> 5:3	
	<b>ultimately (1)</b> 8:7 <b>Under (1)</b> 5:20 <b>Union (1)</b> 3:22 <b>up (1)</b> 3:19 <b>upon (1)</b> 6:22 <b>uses (1)</b> 7:14 <b>utility's (1)</b> 8:11 <b>utilization (1)</b> 7:3	<b>1 (1)</b> 6:4 <b>1005 (1)</b> 5:20 <b>1009 (2)</b> 3:9;4:8 <b>101 (1)</b> 6:17 <b>10601 (1)</b> 5:3 <b>11-P (1)</b> 5:3 <b>123 (1)</b> 5:2 <b>13 (1)</b> 5:21 <b>140,000 (1)</b> 6:12 <b>16 (1)</b> 6:6 <b>1987 (1)</b> 6:4 <b>1st (1)</b> 8:20		
<b>T</b>	<b>V</b>			
	<b>vacant (1)</b> 6:13			
	<b>W</b>			
<b>table (1)</b> 4:16 <b>target (1)</b> 8:5 <b>Tariff (3)</b> 8:2,4,12 <b>taxes (1)</b> 6:21 <b>Temp (1)</b> 3:14 <b>term (1)</b> 6:16 <b>terminate (1)</b> 7:2 <b>terms (1)</b> 8:3 <b>Therefore (1)</b> 3:12 <b>three (2)</b> 8:5,8 <b>threshold (2)</b> 7:6,8 <b>Thursday (3)</b> 4:22;8:15;9:2 <b>Ti02 (1)</b> 6:11 <b>Times (1)</b> 3:21 <b>Titanium (1)</b> 6:10 <b>today (1)</b> 5:15 <b>today's (1)</b> 4:3 <b>Tonawanda (1)</b>	<b>Ways (1)</b> 3:16 <b>website (1)</b> 4:1 <b>week (1)</b> 3:19 <b>weeks (1)</b> 3:19 <b>Western (1)</b> 6:9 <b>White (3)</b> 4:2,6;5:3 <b>WhiteRock (8)</b> 3:5;5:16,16;6:8,10, 14,16;8:22 <b>WhiteRock's (2)</b> 6:22;7:7 <b>within (3)</b> 5:13;6:1;7:13 <b>WNY-1 (1)</b> 8:2 <b>written (2)</b> 4:15,18	<b>2</b>		
		<b>2 (1)</b> 8:15 <b>2,450 (1)</b> 6:14 <b>2014 (1)</b> 6:6 <b>2015 (2)</b> 8:15,20 <b>250 (1)</b> 5:22 <b>2nd (2)</b> 4:23;9:2		
		<b>3</b>		
		<b>30 (2)</b> 4:2;6:1		
		<b>4</b>		
		<b>445 (1)</b>		



# **President & Chief Executive Officer Report**

**Gil Quiniones**

**May 19, 2015**

# NYPA Overall Performance

## April 2015

Goal	Measure	Year-To-Date 2015			Year 2016 Risk Range
		Status	Target	Actual	
Maintain Infrastructure	Generation Market Readiness (%)		99.40	98.16	
	Transmission System Reliability (%)		97.83	98.57	
Financial Management	Debt Coverage (Ratio)		2.70	2.71	
	O&M Budget Performance (\$ Millions)		137.6	120.2	
Energy Services	MMBTU's Saved		21.0	50.2	
	Energy Efficiency Investment in State Facilities (\$ Millions)		13.8	13.1	
Workforce Management	Retention (# of Touchpoints)		100	235*	
Safety Leadership	DART Rate (Index)		0.78	1.71	
Environmental Responsibility	Environmental Incidents (Units)		11	9	

\*Quarterly measure. Actual as of Q1.

TO: NYPA BOARD OF TRUSTEES

FROM: EDWARD WELZ, CHIEF OPERATING OFFICER

DATE: MAY 12, 2015

SUBJECT: MONTHLY REPORT FOR THE BOARD OF TRUSTEES

\*\*\*\*\*

This report covers performance of the Operations group in April 2015.

## **Operations**

### *Plant Performance*

Systemwide net generation<sup>1</sup> in April was 1,801,657 MWh (megawatt-hours<sup>2</sup>) which is below the projected net generation of 2,206,897 MWh. For the year, net generation was 7,880,145 MWh which is below the projected target of 9,166,497 MWh.

The fleet availability factor<sup>3</sup> in April was 81.86 percent year-to-date, and was 85.67 percent for the year. Generation Market Readiness factor<sup>4</sup> in April was 97.26 percent year-to-date, which is lower than the target of 99.40 percent. Year-to-date Generation Market Readiness factor was at 98.16 percent, which is below the annual target of 99.40 percent.

There were four significant forced outage<sup>5</sup> events in April:

1. Gilboa Unit 3 remained in a forced outage from December 5, 2014 because of cracks discovered in the main rotor ledge.
2. St. Lawrence Power Project units continued to be hampered by extreme ice conditions throughout the month. This resulted in the equivalent of 14.5 forced outage hours for the plant. In total, there were 125.9 equivalent forced outage hours due to ice problems through the year.
3. Gilboa Unit 1 had a tube failure on the thrust and lower guide bearing heat exchanger in March. The unit returned to service on April 7.
4. Astoria 500MW Unit 7A needed repairs on the generator end shield. This resulted in 210.7 forced outage hours.

Generation Net Revenue in April was \$28.8 million with lost revenue of \$0.2 million. Year-to-date net revenue was \$121.2 million while revenue loss was \$0.9 million.

Niagara River flows in April were slightly above the historical average and will be above normal levels during the year. St. Lawrence River flows for April were below historical levels but are expected to be above the average flow as the year progresses.

### *Transmission Performance*

Transmission reliability<sup>[i]</sup> in April was 98.46 percent, which was below the monthly target of 98.63 percent. Year-to-date transmission reliability is 98.57 percent, above the target of 97.83 percent.

There were no significant unplanned transmission outages in April.

### *Safety*

The NYPA DART (Days Away, Restricted or Transferred) Rate for April is 0.75. For the year, the DART Rate is 1.71 compared to the target of 0.78.

The Operations DART Rate for April is 1.16. For the year, the DART Rate is 2.28 compared to the target of 1.08.

There was 1 lost time incidents in April that met the DART criteria.

For the year, there have been 9 injuries that resulted in lost time and met the DART criteria.

### *Environmental*

There were four reportable incidents in April:

1. At Vernon GT, a hose clamp failed resulting in 70 gallons of oil being released.
2. At Plattsburgh Substation, a couple of gallons of oil were released from CT 226.
3. At Clark Energy Center, a capacitor failed releasing 2 gallons of oil.
4. A SPDES excursion occurred at Niagara at the Robert Moses Plant south drainage.

For the year, there have been 9 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:** Trustees authorized funding for Phase 1 in the amount of \$67.8 million (total \$110 million) at the December 2012 meeting.
  - Commissioning for PCB 1724 ongoing.
  - Station Service transformers and 480V switchgear 4A & 4B on order.
- **STL Remote Substations and Switchyard LEM (CPR 558, 1162, and 1163)**
  - Adirondack Sub work will be included in the MA1 rebuild package.
  - Engineering for replacement of Adirondack breakers OCB 102 and 202 in progress.
  - Engineering for Station Service Upgrade at Plattsburgh in progress.
  - RFP is being assembled for storm water drainage improvement.
- **NIA Protective Relay Replacement (CPR 209):** Trustees authorized funding for Phase 1 in the amount of \$25.9 million (total \$52 million) at the December 2012 meeting.
  - NIA Packard 195, Bay10 Relay/1NR, Gibson 198, Gardenville 180/ Panel 9NR & Bay 18:
    - Relay replacement outage in progress Bay 10 Relay/1NR, Gibson 198 (4/6/2015-6/14/2015).
    - Replacement of the Packard 194 relay with a 311L is planned for the 3rd quarter 2015.
- **NIA Switchyard LEM:** Trustees authorized funding for Phase 1 in the amount of \$154 million (total \$266.9 million) at the December 2012 meeting.
  - **NIA DC Distribution Upgrade:** RCMT issued 60% drawings and 90% drawings are being reviewed.
  - 800MVA auto-transformer design/fabrication is in process.
  - 115kV circuit breaker contract awarded; kick off meeting was held on 1/16/15
  - 230kV circuit breaker recommendation to be presented at the May Trustee meeting.
  - 115kV trenching and conduit installation is in progress.
  - Engineering for Tubular Bus, Disconnect Switches, and MODS by RCMT in progress.

- **CEC Switchyard LEM:**
  - CEAR and award for 765 kV circuit breakers approved by Trustees.
- **CEC Auto-Transformer/Reactor Refurbishment:**
  - Reactor 1A, 1C, 1X completed.
  - Reactor 1B in progress.
  - Change Order issued to ABB to repair Auto-Transformer 1X to address the damage caused by ABB as well as legacy issues discovered during the inspection. The unit is expected to return to CEC by December 31.
- **Massena Substation Reactor Refurbishment:**
  - Refurbishment of (2) reactors is planned for 2015.
    - Reactor 1X outage: 8/3/15 – 10/2/15.
    - Reactor 1B to be worked on under Clearance 55202 (MSC7040 line) from 10/3/15 - 10/25/15.
- **PV-20 Submarine Cable Replacement:**
  - RFP issued 2/18/15.
  - Bid walk down completed on 3/12/15.
  - Proposals received for cable removal; evaluation in progress.
- **BG & CEC Relay Replacements:**
  - The project team continues to design, procure equipment, and install relays.
- **Massena Substation Autotransformer Replacement:**
  - All auto-transformers have been delivered to Massena; installation in progress.
  - Bank 2 is planned to return-to-service in May 22, 2015; Bank 1 return-to-service will be in 2016.
- **Tower Painting:**
  - Painting started in the Northern NY region and is expected to run through November 2015.

### LPGP LEM

The fourth unit outage (Unit 2) commenced one week sooner than originally planned on March 25, 2015 (coordinated with a planned feeder outage) and the unit dis-assembly work was completed by the Plant staff as scheduled. The sand blasting of the stay vanes and ring is underway; the unit return to service date is November 10, 2015.

The rotor from Unit 2 was visually inspected when it was placed in the Assembly Bay and it appears to have signs of overheating in a number rotor poles and jumpers as previously reported; approximately four rotor poles will either be sent out for refurbishment or replaced with spares.

The “stop work order” that was issued to Andritz Hydro Corporation for the motor-generator refurbishment contract back in May 2013 is still in effect due to quality issues encountered with the new stator coils and concerns with the performance of new rotor poles that they designed and furnished in the first unit, Unit 11 as previously reported. Since such time, Andritz re-analyzed their design of the

rotor poles that they installed in the first unit (Unit 11) and concluded that it does not meet the design intent. A meeting is scheduled with Andritz for May 7<sup>th</sup> to discuss the remedy of the Unit 11 rotor poles and to possibly re-start the contract work with design changes and quality control improvements.

The fourth runner (to be installed in Unit 2) has been delivered and the fifth and sixth runners are presently being assembled in MHPSA's facility located in Japan (which is typical for all runners). The fabrication of the seventh runner components have been completed by the Litostroj foundry located in Slovenia and are in transit to MHPSA's facility. The components for the eighth runner are in various stages of fabrication at the Litostroj foundry and will be inspected in May.

The fourth set of wicket gates arrived on site and the fabrication of the fifth set of wicket gates is underway. The third set of spare shafts was delivered and the fabrication of three additional spare sets of shafts was released. MHPSA has recently identified a potential "financial situation" with the forging foundry Hyunjin, located in South Korea, who furnished the first three sets of spare shafts. MHPSA ordered the fourth spare set of shafts from Hyunjin and will be ordering the fifth and sixth spare set of shafts from a new forging foundry, Taewoong also located in South Korea given the circumstance with Hyunjin as a precaution. NYPA's QA staff will be inspecting the Taewoong facility in May.

The time frame between the future unit outages has been condensed in order to maintain the completion of the LPGP LEM program in 2020 as originally planned.



### *Technical Compliance – NERC Reliability Standards*

#### Enforcement Actions – Northeast Power Coordinating Council (NPCC)

During the reporting period, no new possible violations of the North American Electric Reliability Corporation (NERC) Reliability Standards were reported to the NPCC. There is one (1) possible violation being processed under NERC's risk-based enforcement program for self-logging of minimal risk issues.

#### Internal Investigation of Possible Violations

No new investigations were initiated in April. There are seven (7) open investigations.

#### New Bulk Electric System (BES) Definition

As stated in earlier reports, the Federal Energy Regulatory Commission (FERC) approved the new Bulk Electric System (BES) definition and that NYPA has nearly 50 newly identified BES elements that will be subject to the NERC reliability standards in July 2016. NYPA continued its participation in meetings with the NYISO and the other NY Transmission Owners to assess new state-wide functional registration and compliance management impacts and actions pursuant to the new BES definition. NYPA is taking a position that since it does not operate most of its newly identified BES assets, in a NERC functional model sense, that it will not be registered as a TOP.

In April, NYPA continued to engage the New York Independent System Operator (NYISO) and other NY Transmission Owners in discussions to add some of NYPA's newly identified BES elements to their list of controlled assets for Transmission Operator (TOP) compliance purposes. NYPA, NYISO, and NYSEG representatives met on April 20, 2015 to discuss the possibility of the NYISO accepting TOP and TP compliance accountability for the NYPA Plattsburgh to Saranac 115 kV transmission line and Plattsburgh 115 kV capacitor banks 5 and 6. Follow-up discussions with the NYISO are anticipated to occur in May 2015. NYPA staff anticipates finalizing this process by July 1, 2015.

NYPA continues to work closely with Alcoa in the development of a joint exception request to exclude the Moses-Alcoa 115 kV transmission lines from the BES. In April, RSC staff and consultants continued to work closely with Alcoa to finalize the power flow analysis and exclusion exception summary documentation. It is anticipated the exclusion exception request will be submitted to NPCC for evaluation in late May/early June 2015.

NYPA staff continued discussions with NY Transmission Owners to reach agreements that clarify the roles and responsibilities for compliance management for the Transmission Owner (TO) standards related to NYPA assets operated and maintained by others. NYPA's discussions with these organizations also focused on reaching agreements, before April 2016, for managing compliance with the Version 5 of the Critical Infrastructure Protection (CIP) cyber security standards for assets owned by NYPA but that reside in facilities owned by others.

### Critical Infrastructure Protection (CIP) Standards - Version 5

As stated in previous reports, NYPA's CIP Version 5 (V5) Implementation Project team continued to execute the transition plan. The compliance teams are working closely with internal stakeholders in the following areas:

- Categorization of NYPA's Bulk Electrical System (BES) facilities and BES Cyber Systems and the supporting compliance evidence,
- Development and implementation of CIP V5 software specifications documentation for Critical Information Management Systems (CIMS), Access Information Management System (AIMS), and MAXIMO applications,
- Review and update of the existing CIP policies and procedures,
- Initiation of a plan for NYPA's Medium Impact microprocessor-based relays,
- Implementation of the physical security controls at NYPA's BES facilities, and
- Monitor all CIP regulatory changes and lessons learned.

As part of NPCC's CIP V5 Outreach program, NPCC will be conducting a CIP V5 transitions assessment of our progress in moving from a Version 3 to Version 5 compliance posture. NYPA is scheduled for an assessment in September 15-17, 2015. The assessment is an opportunity for NYPA to validate its approach and implement any recommendations for adjustments made by NPCC.

Execution of the Transition plan and the NPCC CIP V5 assessment will enable NYPA to demonstrate compliance with the new standards by the April 1, 2016 enforcement date.

### Physical Security Standard

FERC approved the new physical security standard (CIP-014-1 – Physical Security) on November 20, 2014 and it will become effective October 1, 2015.

In April, NYPA continued to attend meetings with the NYISO and New York Transmission Owner planning staffs to help facilitate the development of a modeling methodology to ensure consistency across New York State in the assessment and identification of transmission facilities that will be subject to this standard. Those facilities that are identified from the modeling studies will be subject to other requirements including a vulnerability assessment and a documented security plan that must be reviewed and updated every 30 months.

## Energy Resource Management

### *NYISO Markets*

In April, Energy Resource Management (ERM) bid 2.13 million MWh of NYPA generation into the NYISO markets, netting \$25.8 million in power supplier payments to the Authority. Year-to-date net power supplier payments are \$235.7 million.

### *Fuel Planning & Operations*

In April, NYPA's Fuels Group transacted \$9.5 million in natural gas and oil purchases, compared with \$23.5 million in April 2014. Year-to-date natural gas and oil purchases are \$141.1 million, compared with \$209.2 million at this point in 2014. The total -\$68.0 million decrease is due to the lower cost of fuel and / or fuel consumption at the Astoria Energy II Plant (-\$23.4 million), 500-Mw Combined Cycle Plant (-\$26.9 million), and Richard M. Flynn Power Plant (-\$11.5 million), and Small Clean Power Plants (-\$6.2 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.



**NY Power  
Authority**

# **Chief Financial Officer Summary Report**

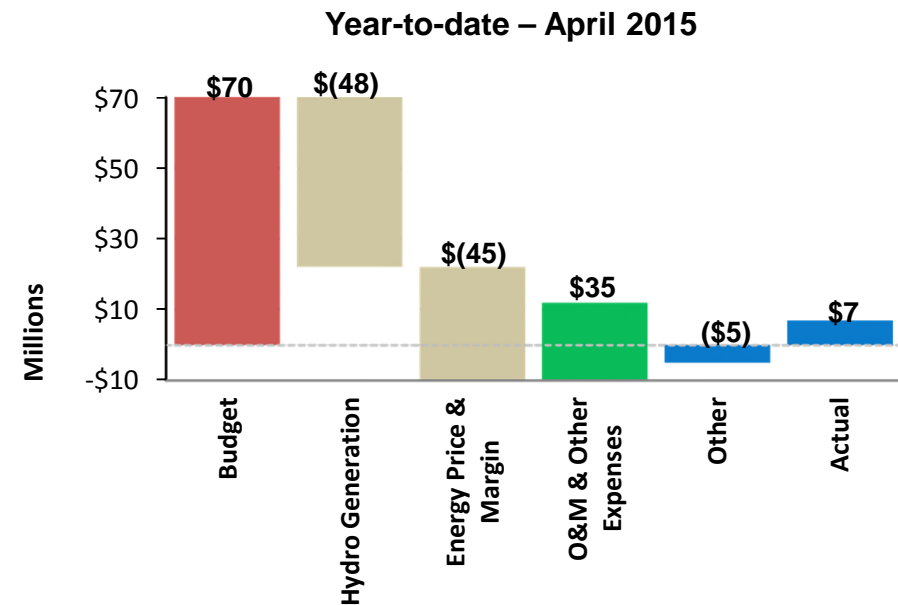
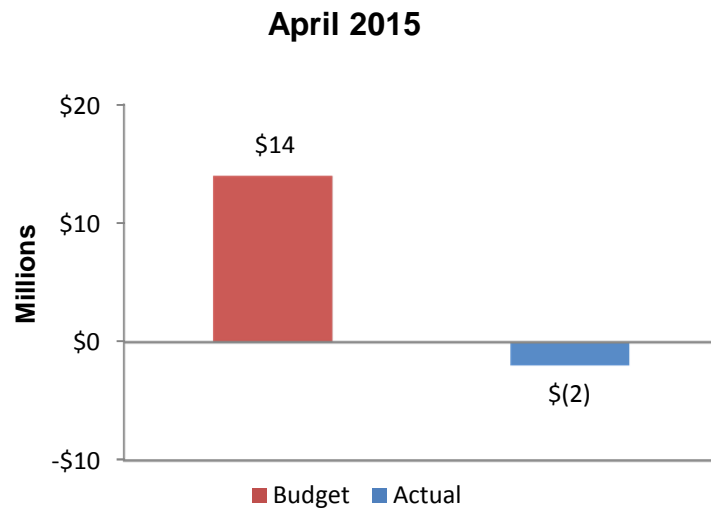
---

**Four Months Ended  
April 30, 2015**



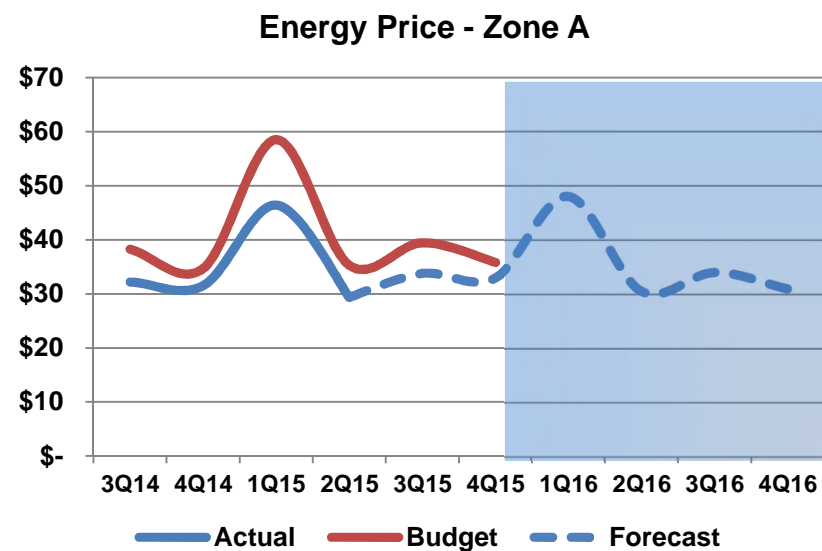
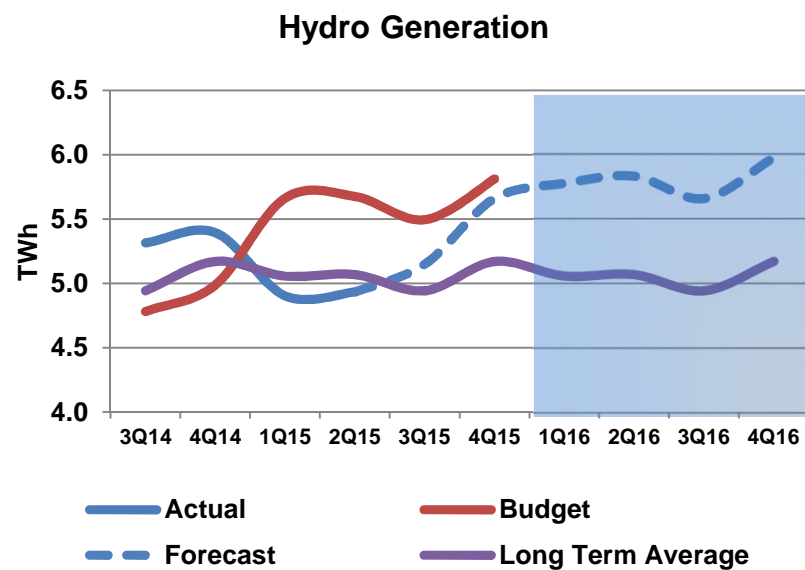
## Net Income

- The Authority had a net loss of \$1.9 million for the month of April, which was \$15.9 million worse than the budget due to a lower net margin on sales (\$26.9 million), partially offset by lower operating expenses.
- Net income for the year to date was \$6.6 million, which was \$63.8 million lower than budgeted due to lower hydro production (\$48.2 million), and lower energy prices on market sales (\$44.9 million), partially offset by lower O&M and other expenses (\$34.9 million). Lower production resulted from low precipitation and a less than normal winter ice thaw.



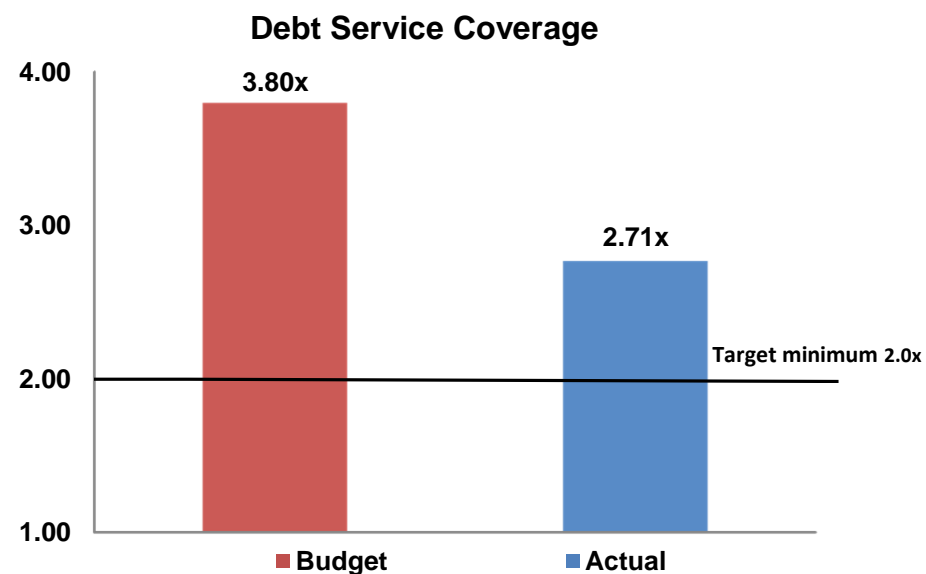
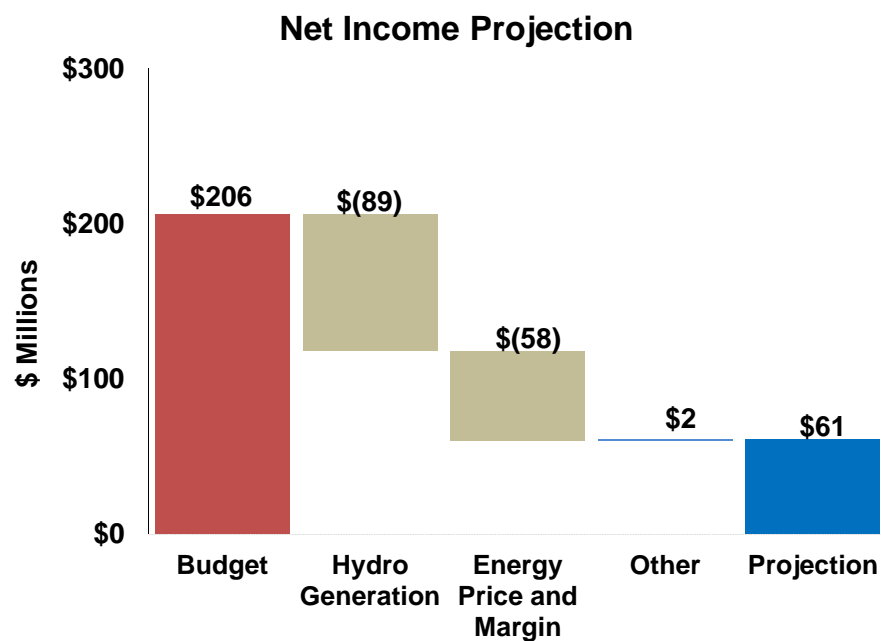
## Hydro Generation and Energy Price Forecast

- Increased hydro volume expected towards the end of 2015 and for 2016
- Niagara prices forecasted to remain below budget in 2015



## Year-End Net Income Projection & Debt Service Coverage

- Net income for the year is projected to be \$61 million, \$145 million lower than the budget primarily due to the aforementioned lower hydro production and lower energy prices





New York Power Authority  
Recommendations for Western New York Hydropower Allocations

Exhibit "A"  
May 19, 2015

Exhibit Number	Company Name	Program	City	County	Base Jobs <sup>(1)</sup>	New Jobs	Estimated Capital Investment	New Jobs Avg. Wage & Benefits	Power Requested (kW)	Power Recommended (kW)	Contract Term
A-1	North American Hoganas, Inc.	EP	Niagara Falls	Niagara	58	10	\$3,000,000	\$83,000	1,300	400	7 Years
A-2	Just Greens, LLC	EP	Lackawanna	Erie	0	36	\$32,620,132	\$33,269	3,995	1,840	7 Years
A-3	Cummins Inc.	EP	Lakewood	Chautauqua	1,407	10	\$47,000,000	\$73,500	2,740	700	7 Years
<b>Totals</b>						<b>56</b>	<b>\$82,620,132</b>			<b>2,940</b>	

(1) Represents employment at time of application or, in the case of existing customer, the higher of existing employment or the highest contract employment commitment

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

<b>Company:</b>	North American Hoganas, Inc. ("NAH")
<b>Project Location:</b>	City of Niagara Falls
<b>County:</b>	Niagara
<b>IOU:</b>	National Grid
<b>Business Activity:</b>	Manufacturer of pure iron powder
<b>Project Description:</b>	NAH is looking to expand by constructing two 5,000-square-foot facilities to (1) more effectively clean iron powder for water treatment applications, and (2) begin to process copper powders.
<b>Existing Allocation(s):</b>	4,000 kilowatts ("kW") (Expansion Power), 1,000 kW (Replacement Power)
<b>In Compliance:</b>	Yes (jobs, investment, and power utilization)
<b>Power Request:</b>	1,300 kW
<b>Power Recommended:</b>	400 kW
<b>Job Commitment:</b>	
<b>Current:</b>	58 jobs
<b>New:</b>	10 jobs
<b>New Jobs/Power Ratio:</b>	25 jobs/per megawatt ("MW")
<b>New Jobs - Avg. Wage and Benefits:</b>	\$83,000
<b>Capital Investment:</b>	\$3 million
<b>Capital Investment/MW:</b>	\$7.50 M/per MW
<b>Other ED Incentives:</b>	None
<b>Summary:</b>	A long-time customer, NAH is looking to expand to improve its iron powder business and begin processing of copper powders. While this expansion could occur at NAH's Pennsylvania facility, NAH believes a low cost power allocation will help secure this project at the Niagara Falls facility, creating 10 new jobs. If the expansion is successful, the project could result in more growth and additional jobs.

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

<b>Company:</b>	Just Greens, LLC ("Just Greens")
<b>Project Location:</b>	City of Lackawanna
<b>County:</b>	Erie
<b>IOU:</b>	National Grid
<b>Business Activity:</b>	Processor of organic leafy-green vegetables
<b>Project Description:</b>	Just Greens, generally known as "AeroFarms," is proposing to build a 68,000-square-foot facility on 12 acres in the Lackawanna Business Park to produce, process and package a variety of green-leafy vegetables that is expected to be among the world's largest and most advanced vertical farms..
<b>Existing Allocation(s):</b>	None
<b>Power Request:</b>	3,995 kilowatts ("kW")
<b>Power Recommended:</b>	1,840 kW
<b>Job Commitment:</b>	
<b>Current:</b>	0 jobs
<b>New:</b>	36 jobs
<b>New Jobs/Power Ratio:</b>	20 jobs/per megawatt ("MW")
<b>New Jobs - Avg. Wage and Benefits:</b>	\$33,269
<b>Capital Investment:</b>	\$32.6 million
<b>Capital Investment/MW:</b>	\$17.72 M/per MW
<b>Other ED Incentives:</b>	Support from Empire State Development and Erie County Industrial Development Agency
<b>Summary:</b>	With the cost of electricity 30% of total production, low cost power remains the key component in attracting Just Greens to Western New York. The company is considering five other locations in the United States and Canada, many of which are offering attractive incentive packages. A state and local incentive package including low cost hydropower could land this facility in Lackawanna. Just Greens has also indicated the initial facility is being designed with plans for future expansion.

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

<b>Company:</b>	Cummins Inc. ("Cummins")
<b>Project Location:</b>	Village of Lakewood
<b>County:</b>	Chautauqua County
<b>IOU:</b>	National Grid
<b>Business Activity:</b>	Diesel Engine Manufacturing Plant
<b>Project Description:</b>	Cummins is planning to reconfigure 40,000 square feet of existing storage space to install a new machine line to increase production of 15 liter ("L") engine displacements.
<b>Existing Allocation(s):</b>	None
<b>Power Request:</b>	2,740 kilowatts ("kW")
<b>Power Recommended:</b>	700 kW
<b>Job Commitment:</b>	
<b>Current:</b>	1,407 jobs
<b>New:</b>	10 jobs
<b>New Jobs/Power Ratio:</b>	14 jobs/per megawatt ("MW")
<b>New Jobs - Avg. Wage and Benefits:</b>	\$73,500
<b>Capital Investment:</b>	\$47 million
<b>Capital Investment/MW:</b>	\$67.14 M/per MW
<b>Other ED Incentives:</b>	Support from Empire State Development under the Excelsior Program, and the sales tax incentives from the Chautauqua County IDA.
<b>Summary:</b>	Cummins is looking to replace its Germany-based supplier of 15L blocks by reconfiguring its engine plant to install a new machining line to produce the blocks in house. A state incentive package, including low cost hydropower, could help locate this expansion in New York rather than Mexico.

---

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  
JUST GREENS, 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 Just Greens, LLC (“Customer”), with offices at \_\_\_\_\_. 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 19, 2015, the Authority’s Board of Trustees (“Trustees”) approved a 1,840 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 19, 2015, 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 19, 2018 (*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

[\_\_\_\_\_]

Just Greens, LLC

[\_\_\_\_\_]

[\_\_\_\_\_]

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:

**JUST GREENS, 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: Just Greens, LLC Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Expansion Power	1.840	2303 Hamburg Turnpike Lackawanna, NY 14218 [TEMPORARY]	May 19, 2015	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 thirty- six (36) 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 \$32,620,132 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment for the Facility is expected to consist of the following specific expenditures:

Equipment:	\$14,580,132
Real Estate, Site Preparation & Development	\$ 11,040,000
Miscellaneous:	\$ 7,000,000

**Total Capital Investment:** **\$32,620,132**

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than March 26, 2018 (*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> .....	<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 (2013)	Measuring Year - 1 (2012)
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  
CUMMINS 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 Cummins Inc., (“Customer”) with offices at 4720 Baker Street Extension, Lakewood, New York, 14750. 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 19, 2015, the Authority’s Board of Trustees (“Trustees”) approved a 700 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 19, 2015, 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 19, 2018 (*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

Cummins Inc.  
4720 Baker Street Extension  
Lakewood, New York 14750  
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:

**CUMMINS 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: Cummins Inc. Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Expansion Power	700	4720 Baker Street Extension, Lakewood, NY 14750	May 19, 2015	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 one thousand four hundred seventeen (1,417) 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 \$47,000,000 to renovate and furnish the Facility (the “Capital Investment”). The Capital Investment for the Facility is expected to consist of the following specific expenditures:

Machinery:	\$39,370,000
Facility Upgrades:	\$ 2,750,000
Tooling:	\$ 3,000,000
Install:	\$ 1,880,000

**Total Capital Investment:** **\$47,000,000**

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than May 19, 2018 (*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>

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

Western NY Power Proceeds Allocation Board

Exhibit "A"  
May 19, 2015

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	PLSIII LLC dba We Care Transportation	Buffalo	Erie	Western NY	CNG Fleet Conversion	Business Investment	\$1,000,000	\$14,657,073	200	100
2	Buffalo Niagara Enterprise, Inc.	Buffalo	Erie	Western NY	Labor Market Study	Other - Workforce Study	\$65,836	\$241,919	N/A	N/A
3	Cambria Asphalt Products, Inc.	Cambria	Niagara	Western NY	Natural Gas Pipe Installation	Business Investment	\$72,750	\$606,000	6	1
<b>Total:</b>							<b>\$1,138,586</b>	<b>\$15,504,992</b>	<b>206</b>	<b>101</b>

**Total Jobs Created & Retained: 307**

---

## Western NY Power Proceeds Allocation Board

---

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 NY Power Proceeds Allocation Board

### Western New York Economic Development Fund Recommendation Memo

Exhibit "C"  
May 19, 2015

Applicant Name:	PLSIII LLC dba We Care Transportation	REDC Region:	WNY
Project Type:	Business Investment	County:	Erie
Industry:	Para-Transit	Locality:	Buffalo
Amount Requested:	\$2,994,000	Start Date:	7/1/2014
		Finish Date:	3/15/2015
<b>RECOMMENDED OFFER</b>			
Recommended Total Award:	\$1,000,000		
Total Project Cost:	\$14,970,000		
% of Project Cost Recommended:	7%		
<b>REGIONAL IMPACT MEASUREMENTS</b>			
Number of Jobs Retained:	200		
Number of Jobs Created:	100		
Average Salary of Jobs:	\$30,000		
Indirect Jobs Created			
Other Impact			
<b>PROJECT DESCRIPTION</b>			
<p>We Care Transportation is one of the largest providers of transportation to the physically handicapped, the elderly and the ailing in Western New York. Aside from offering a much needed service to the Western New York Community, it is also one of the largest employers of residents of the most distressed area in the City of Buffalo. Faced with rising insurance and fuel costs, this company is seeking to lower its fuel costs in order to avoid dissolving the paratransit aspect of the company all together. In an effort to lower its operating costs, We Care has designed a plan to switch to a CNG fleet of vehicles, retrofit its maintenance garage to accommodate those vehicles and build a CNG filling station. We Care has the opportunity to respond to new RFP's that are looking to secure transportation services in parts of WNY where those services do not currently exist. If We Care can lower operational and fuel costs it will be able to preserve enough revenue to invest in expanding the their fleet to cover those underserved territories.</p>			



## Western NY Power Proceeds Allocation Board

### Western New York Economic Development Fund Recommendation Memo

#### **BASIS FOR RECOMMENDATION**

We Care serves patients in Western New York that do not have the ability to transport themselves to and from healthcare appointments (especially Medicaid and Medicare patients). Without We Care, this already underserved population will be further impacted. The Western New York Economic Development Fund has an opportunity to assist in turning a massive negative for both the WNY economy and the community into a major positive economically (via 100 new jobs created), while at the same time preserving an important member of the business community.

PLSIII aka We Care Transportation has presented the WNYPPAB with a project budget totaling \$14,657,073. The recommendation to the WNYPPAB is that this project be granted an incentive of \$1 million to assist the company with lowering the total project cost. It is also recommended that this grant be paid upon the completion of this project and that the funds be directed toward the purchase and installation of machinery & equipment estimated to total \$1,951,220. It is anticipated that no funding would be provided for vehicles or vehicle upgrades.



## Western NY Power Proceeds Allocation Board

### Western New York Economic Development Fund Recommendation Memo

Exhibit "C"  
May 19, 2015

Applicant Name:	PLSIII LLC dba We Care Transportation	REDC Region:	WNY
Project Type:	Business Investment	County:	Erie
Industry:	Para-Transit	Locality:	Buffalo
Amount Requested:	\$2,994,000	Start Date:	7/1/2014
		Finish Date:	3/15/2015
<b>RECOMMENDED OFFER</b>			
Recommended Total Award:	\$1,000,000		
Total Project Cost:	\$14,970,000		
% of Project Cost Recommended:	7%		
<b>REGIONAL IMPACT MEASUREMENTS</b>			
Number of Jobs Retained:	200		
Number of Jobs Created:	100		
Average Salary of Jobs:	\$30,000		
Indirect Jobs Created			
Other Impact			
<b>PROJECT DESCRIPTION</b>			
<p>We Care Transportation is one of the largest providers of transportation to the physically handicapped, the elderly and the ailing in Western New York. Aside from offering a much needed service to the Western New York Community, it is also one of the largest employers of residents of the most distressed area in the City of Buffalo. Faced with rising insurance and fuel costs, this company is seeking to lower its fuel costs in order to avoid dissolving the paratransit aspect of the company all together. In an effort to lower its operating costs, We Care has designed a plan to switch to a CNG fleet of vehicles, retrofit its maintenance garage to accommodate those vehicles and build a CNG filling station. We Care has the opportunity to respond to new RFP's that are looking to secure transportation services in parts of WNY where those services do not currently exist. If We Care can lower operational and fuel costs it will be able to preserve enough revenue to invest in expanding the their fleet to cover those underserved territories.</p>			



## Western NY Power Proceeds Allocation Board

### Western New York Economic Development Fund Recommendation Memo

#### **BASIS FOR RECOMMENDATION**

We Care serves patients in Western New York that do not have the ability to transport themselves to and from healthcare appointments (especially Medicaid and Medicare patients). Without We Care, this already underserved population will be further impacted. The Western New York Economic Development Fund has an opportunity to assist in turning a massive negative for both the WNY economy and the community into a major positive economically (via 100 new jobs created), while at the same time preserving an important member of the business community.

PLSIII aka We Care Transportation has presented the WNYPPAB with a project budget totaling \$14,657,073. The recommendation to the WNYPPAB is that this project be granted an incentive of \$1 million to assist the company with lowering the total project cost. It is also recommended that this grant be paid upon the completion of this project and that the funds be directed toward the purchase and installation of machinery & equipment estimated to total \$1,951,220. It is anticipated that no funding would be provided for vehicles or vehicle upgrades.



# Western NY Power Proceeds Allocation Board

## Western New York Economic Development Fund Recommendation Memo

Exhibit "D"  
May 19, 2015

Applicant Name:	Buffalo Niagara Enterprise, Inc.	REDC Region:	WNY
Project Type:	Other-Workforce Study	County:	Erie
Industry:	Not-for-Profit	Locality:	City of Buffalo
Amount Requested:	\$65,836	Start Date:	July 2015
		Finish Date:	March 2016
<b>RECOMMENDED OFFER</b>			
Recommended Total Award:	\$65,836		
Total Project Cost:	\$241,919		
% of Project Cost Recommended:	27 %		
<b>PROJECT BUDGET-</b> Each component below includes costs related to production, project management and administrative support.			
<b>Use of funds</b>	<b>Amount</b>	<b>Source of Funds</b>	<b>Amount</b>
Availability of Labor	\$21,385	Potential: National Grid	\$120,000
Quality of Labor	\$26,665	Potential: BUDC	\$28,042
Workforce development	\$49,567	Potential: Buffalo Building Trades	\$28,041
Skills Gap	\$21,385	WNYPPAB	\$65,836
Underemployment	\$44,451		
Labor/ Management Relations	\$42,395		
Payroll Costs	\$19,241		
Other Labor Costs	\$16,830		
<b>Total:</b>	<b>\$241,919</b>	<b>Total:</b>	<b>\$241,919</b>
<b>REGIONAL IMPACT MEASUREMENTS</b>			
Number of Jobs Retained:	0		
Number of Jobs Created:	0		
Average Salary of Jobs:	N/A		
Indirect Jobs Created:	0		



## Western NY Power Proceeds Allocation Board

### Western New York Economic Development Fund Recommendation Memo

Other Impact:	The project will identify strengths, skill sets, costs etc. in the regional labor market that can be promoted for the attraction of firms to the area. The goal of the project is to better position the region to meet the challenges of the future through a well-trained labor force.
<b>PROJECT DESCRIPTION (Adapted from Application)</b>	
<p>In 2010, the Buffalo Niagara Enterprise, Inc. ("BNE") released a comprehensive labor market study called <i>Buffalo Niagara 2010 Who's Your Economy?</i>. The six-month study was conducted by the University of Buffalo Regional Institute ("UBRI") and assessed the region's labor market to yield insights on strategies for attracting new businesses to the region, improving workforce training and aligning labor supply and demand.</p> <p>This project will update and expand upon the body of work completed in 2010 with a focus on emerging trends and developments, implications for labor demand, workforce readiness, regional economic competitiveness and growth. This work will engage experts and stakeholders representing employers, workforce development groups, organized labor and human resources, to provide insights on scope and research approach.</p> <p>Headquartered in Buffalo, the geographic scope of BNE's work will be the eight counties of Western New York, with an in-depth look at county-by-county comparisons for selected analyses, including differences in labor force size and composition, workforce skill and educational attainment levels, the generation of new labor, wages and other payroll costs.</p> <p>More broadly, the study will include the following key components:</p> <ul style="list-style-type: none"><li>• Availability of Labor</li><li>• Quality of Labor</li><li>• Workforce Development</li><li>• The Skills Gap</li><li>• Underemployment</li><li>• Labor/Management Relations</li><li>• Payroll and Other Costs</li></ul>	
<b>OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED</b>	





## Western NY Power Proceeds Allocation Board

### Western New York Economic Development Fund Recommendation Memo

ESD:	\$ N/A	NYPA:	\$ N/A
IDA:	\$ N/A	Other: N/A	\$
<b>PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED</b>			
<b>TYPE</b>	<b>AMOUNT</b>	<b>STATUS</b>	
ESD: For 12 other projects (2000-2009)	\$3,282,000	Closed	

#### **BASIS FOR RECOMMENDATION**

The availability of current and local labor data is critical when responding to labor related questions from prospective companies. BNE uses labor data in nearly every attraction project the organization manages. Because BNE makes the information available on its website, it has realized hundreds of page views for the 2010 UBRI study since July 2013. The 2010 edition of the UBRI study was also cited in a report done by The Partnership for the Public Good, Cornell University College of Architecture, Art, and Planning and the Buffalo Municipal Housing Authority.

An updated labor market assessment will provide workforce development organizations an in-depth analysis of short and long-term job projections by target industry, the number of graduates the region's schools produce to fill these jobs, potential gaps that exist between demand for labor and supply, and typical career pathways for the region's seven high-growth target industries. It will also provide the number underemployed workers in the region, and demonstrate the kinds of skills, educational levels and experience such workers offer potential employers. This information will allow workforce development organizations to determine what types of training will be necessary for the region's workforce to fill the jobs expected in the future.

#### **DISBURSEMENT TERMS**



## Western NY Power Proceeds Allocation Board

### **Western New York Economic Development Fund Recommendation Memo**

It is anticipated that Fund Benefits would be used to reimburse the applicant for the Skills Gap (\$21,385) and Underemployment (\$44,451) sections of a new labor market study. (The Underemployment section was last updated in 2006 and funded by NYS at a cost of \$100,000). Funds would be disbursed in lump sum as reimbursement upon project completion and as evidenced by attainment of a final copy of the Regional Labor Market Assessment, a final copy of the Wage and Salary Report and other documentation verifying project expenditures of approximately \$241,919.



# Western NY Power Proceeds Allocation Board

## Western New York Economic Development Fund Recommendation Memo

Exhibit "E"  
May 19, 2015

Applicant Name:	Cambria Asphalt Products, Inc.	REDC Region:	WNY
Project Type:	Business Investment	County:	Niagara
Industry:	Manufacturing	Locality:	Town of Cambria
Amount Requested:	\$121,200	Start Date:	June 2015
		Finish Date:	August 2015
<b>RECOMMENDED OFFER</b>			
Recommended Total Award:	\$ 72,750		
Total Project Cost:	\$ 606,000		
% of Project Cost Recommended:	12%		
<b>PROJECT BUDGET-</b>			
<b>Use of funds</b>	<b>Amount</b>	<b>Source of Funds</b>	<b>Amount</b>
Installation of pipeline to CAP's property	\$531,000	Committed: NYSEG	\$21,000
Installation of metering & connection to M & E	\$ 75,000	Committed: Cambria Asphalt	\$151,500
		Potential: M& T Line of Credit	\$312,300
		WNYPPAB	\$121,200
<b>Total:</b>	<b>\$606,000</b>	<b>Total:</b>	<b>\$606,000</b>
<b>REGIONAL IMPACT MEASUREMENTS</b>			
Number of Jobs Retained (Cambria Asphalt Products, Inc.):	2		
Number of Jobs Created (Cambria Asphalt Products, Inc.):	1		
Number of Jobs Retained (Shelby Stone Trucking - affiliate):	4		
Average Salary of Jobs:	\$42,485		
Indirect Jobs Created:	0		
Other Impact:			



## Western NY Power Proceeds Allocation Board

### Western New York Economic Development Fund Recommendation Memo

#### PROJECT DESCRIPTION (Adapted from Application)

Cambria Asphalt Products, Inc. (CAP) is a produces hot mix asphalt products for the greater Niagara County Area. CAP supplies high quality asphalt roadway products to local municipalities and contractors. CAP currently uses high cost, low efficiency waste oil as a heating fuel to dry stone aggregate for producing hot mix asphalt. CAP plans to install a new natural gas pipeline to its Lockport Junction Road facility that will permit the company to:

- Lower costs to produce hot mix asphalt, making CAP more price competitive;
- Replace difficult to source waste oil with more abundant natural gas, which may reduce lost sales opportunities when waste oil supplies are low;
- Improve plant emissions.

The project will consist of pipeline installation across a number of properties to CAP's facility, and costs related to metering and connection to the company's machinery and equipment.

#### OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED

ESD:	\$ N/A	NYPA:	\$ N/A
IDA:	\$ N/A	Other: N/A	\$

#### PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED

TYPE	AMOUNT	STATUS

#### BASIS FOR RECOMMENDATION



## Western NY Power Proceeds Allocation Board

### Western New York Economic Development Fund Recommendation Memo

The profitability of small manufacturing companies is strongly dependent on the efficiency of operations. The project that has been proposed by CAP is expected to lower production costs, thus improving the company's competitiveness. CAP is among the few hot mix asphalt producers in WNY not currently using natural gas as a heating element. The proposed pipeline would serve to enhance productivity and growth potential, create sustainability, and ultimately increase profits. As natural gas burns cleaner than waste oil, the project will also help reduce emissions. Finally, the project will support the creation and retention of jobs in WNY.

#### **DISBURSEMENT TERMS**

It is anticipated that Fund Benefits would be used to reimburse the applicant for a portion of costs associated with the installation of pipeline to CAP's property. Funds would be disbursed in lump sum as reimbursement upon project completion, as evidenced by documentation verifying (i) project completion, (ii) project expenditures of approximately \$606,000, and (iii) the retention of six jobs and the creation of one job.

**March 31, 2015**

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

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

**And**

**LOCAL UNIONS 2032 and 2104, INTERNATIONAL**

**BROTHERHOOD of ELECTRICAL WORKERS,**

**A.F.L.- C.I.O.**

The Negotiating Committees of the Power Authority of the State of New York and Local Unions 2032 and 2104 of the International Brotherhood of Electrical Workers, AFL-CIO, after extensive negotiations and with the assistance of a PERB mediator, have reached agreement, subject to the ratification of the memberships of the Local Unions and the approval of the Power Authority's Trustees and the IBEW International office, on all of the following changed terms which will be incorporated in the successor collective bargaining agreement whose term shall run from April 1, 2011 through March 31, 2019.

**TERMS**

**1) Wage Increases and Lump Sum Payment (Article VII)**

Wage rates shall be increased as follows effective on the below-listed dates for employees on the payroll on the contract ratification date and thereafter:

4/1/14	3.50%
4/1/15	2.00%
4/1/16	2.00%
4/1/17	2.50%
4/1/18	2.50%

A non-pensionable lump sum payment in the gross amount of four thousand (\$4,000) dollars shall be paid on a pro-rata basis to employees on the payroll on the contract ratification date.

*The lump sum amount an eligible employee shall receive will depend upon the period of time he/she was employed during the 4-year interim period (4/1/11 through 3/31/15). For example, an employee who was on the payroll for the entire 4-year period (48-months) will receive the full \$4000 gross non-pensionable payment (48/48 x \$4000); if he/she was on the payroll for two years, he/she will receive \$2000 (24/48 x \$4000); if he/she was on the payroll for 10 months, he/she will receive \$833.33 (10/48 x \$4000); and so on.*

- 2) Annual employee health insurance contribution amounts shall be changed as follows:

<u>Year</u>	<u>Individual / Family</u>
After ratification	\$1,000 / \$1,600
1/1/16	\$1,000 / \$2,500
1/1/17	\$1,300 / \$3,300
1/1/18	\$1,400 / \$3,500

- 3) Annual (out of network) health insurance deductible amounts shall be changed as follows:

<u>Year</u>	<u>Individual / Family</u>	
After ratification	\$400 / \$1,200	(no deductibles for in network), except \$50 annual home health- HIGH 1-1)
1/1/16	\$500 / \$1,500	
1/1/17	\$600 / \$1,800	
1/1/18	\$700 / \$2,100	

- 4) Annual (out of network) per person/family out of pocket maximum amounts, shall be changed as follows:

<u>Year</u>	<u>Individual / Family</u>
After ratification	\$800 / \$2,200
1/1/17	\$900 / \$2,400

- 5) Health Insurance PPO Co-Pays shall be changed as follows:

<u>Year</u>	
After ratification	\$25
1/1/16	\$25
1/1/17	\$25
1/1/18	\$30

- 6) Health Insurance RX Co-pays shall be changed as follows:

<u>Year</u>	
After ratification	\$8 - \$25 - \$40, 2.5x mail order
1/1/16	\$8 - \$25 - \$45, 2.5x mail order

- 7) Increase health insurance waiver Opt-Out amount from \$600 to \$1,500.

- 8) Increase hearing aids maximum amount from \$1,000 every three years to \$1,500 every three years.

- 9) Eliminate second surgical opinion requirement.

- 10) Increase maximum dental benefit amount from \$1,500 to \$2,000. Demonstration of student status no longer required.

- 11) Increase maximum monthly long term disability benefit from \$2,000 to \$3,000.

- 12) Increase the weekly short term disability benefit from 50% of the employee's basic wage up to a maximum weekly benefit of \$500.
- 13) Remove "Working Spouse Rule".
- 14) NYPA will provide all benefits required to be provided by PPACA.
- 15) If NYPA elects to change the third party administrator of the NYPA Plan, NYPA agrees to provide the Union with notice and the opportunity to consult respecting such change.
- 16) Include the following into the Benefits Book:

**Med-24:**

**Services and Supplies not covered:**

**Remove "Charges for immunizations and medical exams or tests not necessary for the treatment of a covered injury, sickness or pregnancy."**

**Remove "charges for routine well baby care".**

**Add "The following services shall be covered consistent with PPACA."**

- Bacteria screening, urine, pregnant women 12-16 weeks
- Abdominal Aortic Aneurysm screen -
- Basic metabolism test "general health panel"
- Bone mineral density tests
- Chlamydia screening
- Cholesterol test
- Colonoscopy and Sigmoidoscopy
- Fecal blood testing
- Gonorrhea screening
- Hemoglobin and Hematocrit testing
- HIV screening
- HPV screening
- Immunizations
- Lead screening
- Mammograms
- PAP smear
- Physical exam
- Birth Control
- Prenatal and postpartum visits
- Prostate test "PSA" testing
- Rh screen
- Rubella screening
- Syphilis infection screening
- Type 2 Diabetes screening
- Well child visits -
- Diet counseling
- Obesity screening and counseling
- Osteoporosis screening
- Cervical cancer screening
- Congenital Hypothyroidism screening for newborns
- Routine obstetrical / gynecological exam



- Tobacco screening, counseling, cessation interventions and addiction prescription
- Vision coverage
- Counseling for women with breast cancer
- Phenylketonuria
- Screen for inherited enzyme disease –
- Kids depression
- Sickle Cell testing
- Fluoride, chemoprevention supplement
- Breast feeding instruction

**In Network In-Patient Hospital**

No Charge – Surgery, Anesthesiology, Radiology, Visit-consultation

**In Network Out Patient Services**

Surgical Procedures	\$25
Mental Health	\$25
Substance abuse – diagnosis	\$25
Advance Radiology	\$25
Cardiac & Pulmonary Rehab	\$25

**Other**

Ambulance	\$50
Emergency Room	\$45 – waived if admitted
Urgent Care	\$30
No more mandatory second opinion	

(See Preventative Care – See United Health Care Material)

If the PPACA is repealed, or the foregoing list of preventive care items is changed by law to add to, delete from, or modify such list, upon written request, either party may request to meet and negotiate a change in cost.

**17)** Increase tuition reimbursement benefit from \$1,500 to \$3,500.

**18)** Establish Labor Management Committee to discuss how to revitalize and improve the current Apprentice Program.

**19)** Establish meal allowance at \$23 and eliminate hot meal requirement.

**20)** Change “Washington’s Birthday” to “Presidents’ Day”.

**21)** Changes to retiree health insurance are reflected in the attached document.  
See Attachment 1.

**22)** The “death in family” benefit of Article VIII, Section 17(a) shall be extended to NYPA qualified domestic partners.

23) Changes to Union Release time clause are reflected in the attached document.  
See Attachment 2.

The foregoing reflects the parties' final and complete agreement.


By:

  
New York Power Authority





By:

  
Local Union 2104, IBEW

By:

  
Local Union 2032, IBEW











Retiree Health Insurance

Current Employees

Current employees who retire after 1/1/19 shall pay nothing for the NYPA Plan, but if enrolled in another plan, shall pay 50% of the difference between the NYPA plan and his/her other plan.

Current employees who retire after 1/1/19 shall be subject to the same plan terms (deductibles, co-pays, out-of-pocket expenses, RX co-pays, etc.) as active employees.

Current employees who retire after 1/1/18 may change their coverage type from individual to family coverage or add new or different dependents (e.g., spouse, new spouse, children) a maximum of one (1) time, if the retiree pays the difference between the annual family and individual plan contribution.

If after a life-changing event the retiree moves from family to single plan coverage, the contribution will be adjusted to an individual plan.

After contract ratification, an active employee with a covered domestic partner will have that specific partner continued to be covered during retirement.

Employees Hired After Contract Ratification Date

Employees hired after the contract ratification date, upon retirement, shall pay 50% of the same premium contributions as active employees.

Employees hired after the contract ratification date, upon retirement, shall be subject to the same plan terms (deductibles, co-pays, out-of-pocket expenses, RX co-pays, etc.) as active employees

Employees hired after the contract ratification date, upon retirement, may not change their coverage type (e.g., individual, family), and may not add new or different dependents (e.g., spouse, new spouse, children). *If, after a life changing event, the retiree moves from family to single coverage, the contribution will be adjusted to 50% of the individual plan.*

Employees hired after the contract ratification date shall be eligible for retiree insurance after 15 years of NYPA service.

## **UNION RELEASE TIME**

Recognizing the need to resolve disputes expeditiously and at the lowest level possible, and in order to provide day-to-day open communications between management and labor, the Power Authority authorizes Local 2032 and Local 2104 to designate one official each to act as full-time representative for their local union in dealings with the Authority.

The individual designated will remain on the Power Authority payroll at the rate of pay equal to ten percent (10%) above the highest bargaining unit rate applicable to the current contract. Effective November 1, 2016, or earlier if either of the two current incumbents vacates their position, the Union shall reimburse the Authority pursuant to a periodic invoice for the difference between the designated individual's wage rate and the highest bargaining unit wage rate applicable to the current contract, plus 10%. The individual will continue to receive negotiated salary increases and benefits and will also continue to accrue seniority. Timesheets for this employee should be sent to the project where the individual was assigned when elected to the union office. The designated individuals agree to be available to meet with management upon request, and such requests shall not be unreasonably denied. Payment will be for forty hours only (no overtime.)

Since this representative will devote full time to union-management relations, s/he will be based out of the respective local union office and all expenses associated with this office and the full-time position will be the responsibility of the union. Expenses previously reimbursed by the Authority in connection with the union-management meetings will continue to be reimbursed on the same basis. The full-time union official will be given access to any of the projects upon reasonable notice to the respective Regional Manager or VP Transmission or his/her designee of the need to do so. Such requests shall not be unreasonably denied consistent with business operations.

Normally, there will not be a substitute to fill in for the full-time official when he is on vacation or short term sick leave. In the event of a long term absence, the Power Authority would be willing to discuss the need for a replacement. Additionally, should a serious problem develop during the absence of the full-time official, the Authority may call upon the Union for assistance by providing another official to help resolve the problem.

When an individual no longer holds the union office designated, s/he will be returned to work in his/her classification upon written request.

In consideration of the foregoing, the Union recognizes the Authority's assumption of the cost of this program and agrees to the basic principle prompting this action.



# NYC Solar Schools

Design, Development & Implementation Program

August 7, 2015

Lauren Magin - Trevor Smith - Mike Rivera - Dennis Willette - Jeff Carey

# Timeline:

September

October

November

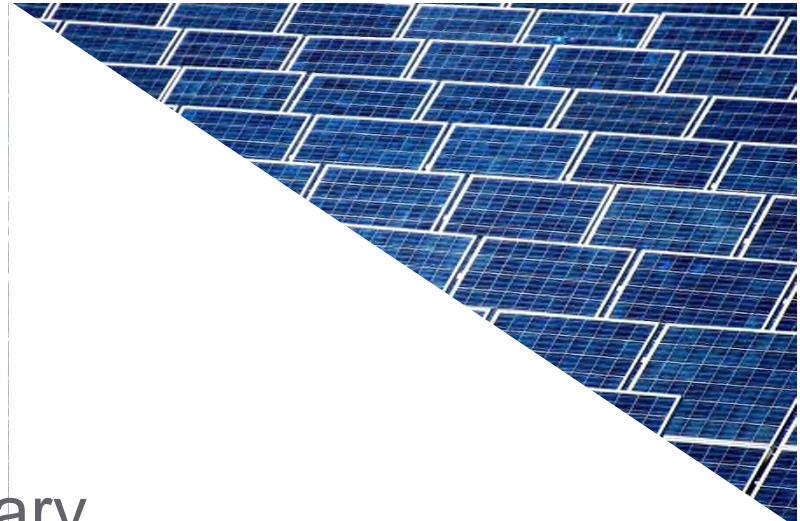
December

January

February

March

April



# Timeline:

>September

October

November

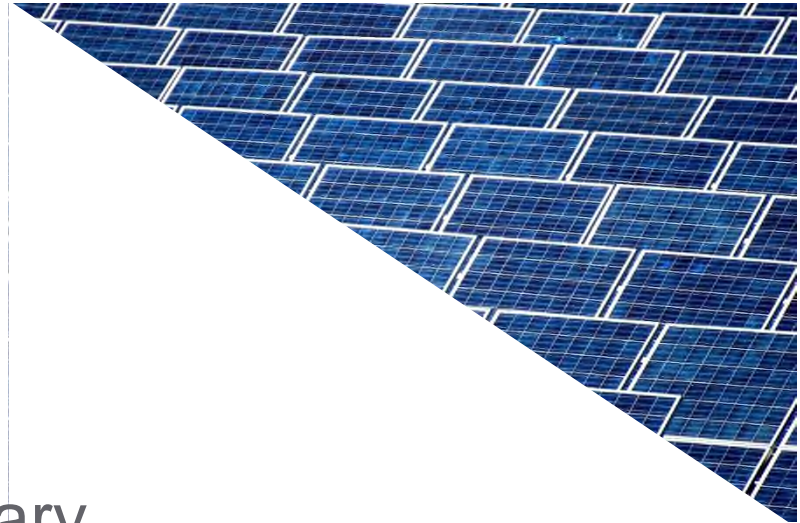
December

January

February

March

April





August 7, 2015



4

**Mayor de Blasio commits to  
*80% reduction* of greenhouse  
gas emissions by 2050 as part  
of “*One City Built to Last*”**

NYC DOE Solar Schools PV



**NY Power  
Authority**



# Timeline:

September

>**October**

November

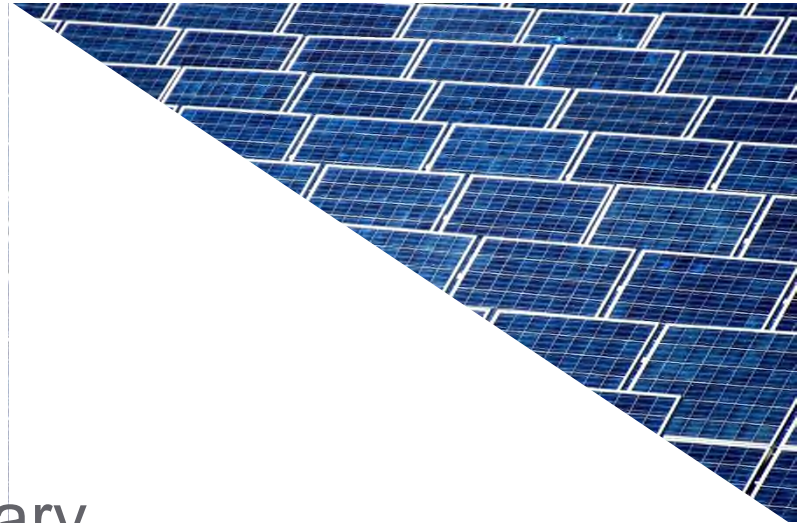
December

January

February

March

April



August 7, 2015



6

***24 Schools* throughout NYC  
were selected to receive 6.25 MW  
of total installed solar capacity**





August 7, 2015

7



## Timeline:

September

October

**>November**

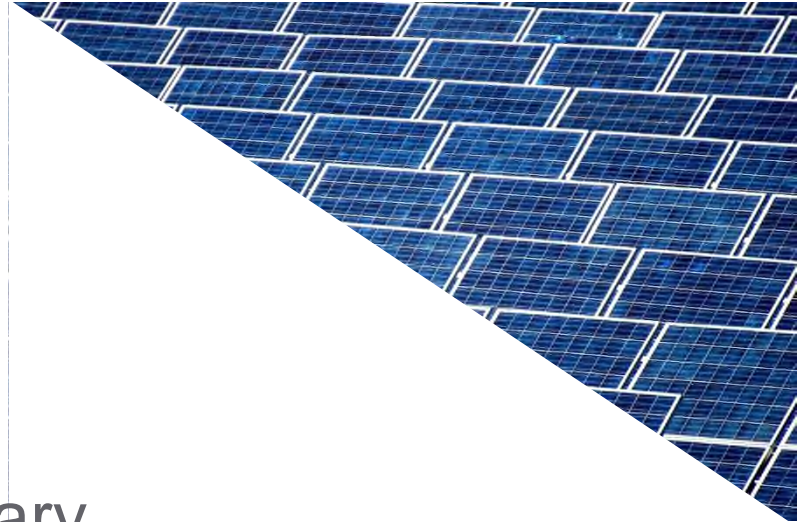
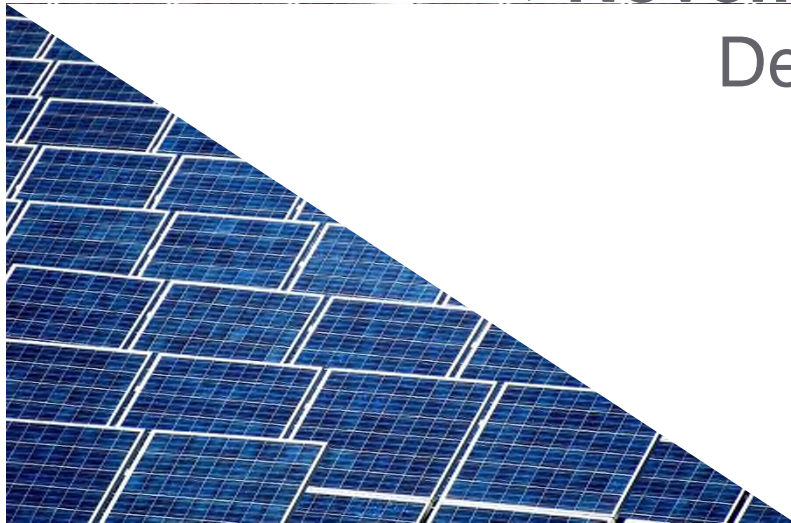
December

January

February

March

April





## The Work Begins...

Public De  
ConEd Interconne  
Request f  
Approval  
Warranties  
Walkthrough  
Custodial Permits  
Board Approval  
Updates  
Customer Meetings  
Construction Meetings  
on Commitment  
Hub

NYSERDA Grant  
Trustee Approval  
Contract A  
Initial Custom  
AHERA Departm



