

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

September 27, 2016

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Minutes of the Regular Meeting of the Power Authority of the State of New York held via video conference at the Clarence D. Rappleyea Building, 123 Main Street, White Plains, New York at approximately 10:00 a.m.

Members of the Board present were:

John R. Koelmel, Chairman
Eugene L. Nicandri, Vice Chairman
Dr. Anne M. Kress, Trustee
Anthony J. Picente, Jr., Trustee
Tracy McKibben, Trustee

Gil Quiniones	President and Chief Executive Officer
Justin Driscoll	Executive Vice President and General Counsel
Joseph Kessler	Executive Vice President and Chief Operating Officer
Robert Lurie	Executive Vice President and Chief Financial Officer
Ken Lee	Senior Vice President and Chief Information Officer
Parija Soubhagya	Senior Vice President and Chief Risk Officer
Jennifer Faulkner	Senior Vice President – Internal Audit
Kimberly Harriman	Senior Vice President - Corporate and Public Affairs
James Pasquale	Senior Vice President – Economic Development & Energy Efficiency
Kristine Pizzo	Senior Vice President – Human Resources
Bradford Van Auken	Senior Vice President – Operations Support Services & Chief Engineer
Rocco Iannarelli	Senior Vice President – Corporate Affairs
Karen Delince	Vice President and Corporate Secretary
John Canale	Vice President – Procurement
Thomas Concadoro	Vice President and Controller
Ruth Colon	Vice President - Enterprise Shared Services
Keith Hayes	Vice President – Marketing
Joseph Leary	Vice President – Community and Government Relations
Jenny Liu	Vice President – Energy Resource Management
Ethan Riegelhaupt	Vice President – Corporate Communications
Scott Tetenman	Vice President - Finance
Carol Geiger-Wank	Chief of Staff to Chief Operations Officer and Director - Labor
Enrico Montesa	Director - Fuel Planning and Operations
Steven Gosset	Manager - Media Relations
Egle Travis	Manager - Pricing and Energy Market Analysis
Silvia Louie	Senior Project Manager – Executive Office/Public and Regulatory Affairs
Lorna Johnson	Senior Associate Corporate Secretary
Sheila Baughman	Senior Assistant Corporate Secretary
Katherine Rougeux	Project Development Analyst II
Peter Prunty	Director - Infrastructure
Joseph Rivera	Network Architect – Infrastructure
Glenn Martinez	Senior Network Analyst – Infrastructure
Stephen Juris	Fried, Frank LLP
Joshua Roth	Baker Botts LLP
Joseph Perry	Baker Botts LLP
Lynn Neils	Baker Botts LLP

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

Introduction

Chairman Koelmel welcomed the Trustees and staff members who were present at the meeting. He said 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 September 27, 2016 Proposed Meeting Agenda**

Upon motion made by Trustee McKibben and seconded by Trustee Kress, the meeting Agenda was adopted.

Conflicts of Interest

The following Trustees declared conflicts of interest as indicated below and said they would not participate in the discussion or vote as it relates to those matters.

Trustee Kress:

- *Datrose and Express Scripts, Inc. (Item #4e i)*

Trustee Picente:

- *Emergency Energy Control Center - Town of New Hartford, Oneida County (Item #4f ii);*

Chairman Koelmel, Vice Chairman Nicandri and Trustee McKibben declared no conflicts.

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

Mr. Chairman, I move that the Authority conduct an executive session to pursuant to the Public Officers Law of the State of New York sections §105(a)(c) and (f) to discuss:

- *Matters related to a current investigation;*
- *The financial, credit or employment history of a particular person or corporation;*
- *Matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person and corporation; and*
- *Matters which will imperil the public safety if disclosed.*

Upon motion made by Vice Chairman Nicandri and seconded by Trustee Kress, an executive session was held.

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

Mr. Chairman, I move to resume the meeting in Open Session. Upon motion made by Vice Chairman Nicandri and seconded by Trustee Kress, the meeting resumed in open session.

4. CONSENT AGENDA:

Upon motion made by Trustee Picente and seconded by Trustee McKibben, the Consent Agenda was approved.

a. Governance Matters:

i. Approval of the Minutes

The Minutes of the Regular Meeting held on July 26, 2016 were unanimously adopted.

b. Ratemaking:

i. Increase in New York City Governmental Customer Fixed Costs – Notice of Proposed Rulemaking

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to authorize a Notice of Proposed Rulemaking ('NOPR') to increase the Fixed Costs component of the production rates by \$16.6 million or 12.7%, excluding Astoria Energy II ('AE II') plant expenses to be charged in 2017 to the New York City Governmental Customers ('Customers'). AE II plant expenses, although part of the Cost of Service ('COS'), are not subject to this NOPR proceeding as recovery of such costs has been agreed to by contract. The proposal is based on Authority staff's Preliminary 2017 COS.

In addition, the Trustees are requested to direct the Corporate Secretary to file the NOPR with the New York State Department of State for publication in the New York *State Register* in accordance with the requirements of the State Administrative Procedure Act ('SAPA'). This year, the Customers requested that the Authority issue updated Fixed Cost figures at the end of November 2016, along with backup information, that are to be included in the Authority's 2017 budget. The Customers will comment on the updated Fixed Costs component as it is made available per the mutually agreed-upon timeline. Barring any material changes to the Preliminary 2017 Fixed Costs, the 45-day statutory comment period concerning this proposed rate action will close December 5, 2016. If there are any material changes to the originally proposed Fixed Costs, the Authority agreed to extend the public comment period to December 16, 2016 to allow the Customers more time to review the updated Fixed Costs. Upon closure of the aforementioned comment period, Authority staff will take into consideration any concerns raised and return to the Trustees at their January 2017 meeting to seek final adoption of this proposal.

Further, since the proposed Fixed Costs increase exceeds 2.0%, a public forum will be held in accordance with the Authority's policy. A public forum allows the Customers an additional opportunity to voice their concerns regarding the increase in the 2017 Fixed Costs component. Trustee authorization is also requested to direct the Corporate Secretary to provide all appropriate notice for such public forum.

BACKGROUND

In 2005, the Authority and the Customers entered into supplemental agreements for the purchase of electric service through December 31, 2017. These agreements (the 2005 'Long-Term Agreements,' or 'LTAs') replaced prior agreements entered into during the mid-1900s with these Customers. The LTAs established a new relationship between the Authority and the Customers that reflects the costs of procuring electricity in the marketplace managed by the New York Independent System Operator ('NYISO'). The LTAs define specific cost categories with respect to providing electric service and a collaborative process for acquiring resources, managing risks and selecting a cost-recovery mechanism.

The LTAs separate all costs into two distinct categories: Fixed Costs and Variable Costs. Fixed Costs include Operation and Maintenance ('O&M'), Shared Services, Capital Cost, Other Expenses (i.e., certain directly assignable costs) and a credit for investment and other income. Under the LTAs, the Authority must establish Fixed Costs based on COS principles and make changes based on a filing in accordance with SAPA requirements. This year, the Customers have requested that they receive an update to the Fixed Costs proposal closer to the time of the Authority's development of its 2017 budget. Staff has agreed to share updated preliminary 2017 Fixed Costs figures with the Customers by the end of November 2016. At that time, if there are any material changes from the currently proposed O&M and Shared Services Fixed Costs, the Authority will extend the public comment period to December 16, 2016, giving the Customers more time to understand and analyze the revised proposal and to submit comments on the modified Fixed Costs, if warranted.

On July 10, 2008, the Authority and the Customers entered into an agreement ('Agreement') that implemented Article XI of the LTAs concerning the acquisition of long-term resources under a request for proposal ('RFP') process. The RFP resulted in the Authority contracting with Astoria Energy II LLC for the full product toll of a 500 MW combined-cycle unit over a twenty-year period. The full product toll allows the Authority to capture all energy, capacity and ancillary services output of the generating unit for the benefit of the Customers. Under the Agreement, the costs incurred by the Authority are to be included as part of the COS based rate, and, in order to ensure full recovery of all costs related to the full product toll, the Authority may use a true-up mechanism to assess charges for under-recovery and apply credits for over-recovery of costs. The 2017 costs related to the AE II service are \$142.9 million and have been included in the Preliminary 2017 COS but are not subject to this NOPR proceeding and therefore do not require further approval.

In the rate-setting process for the 2017 rate year, the Customers selected an 'Energy Charge Adjustment ('ECA') with Hedging' option as the cost-recovery mechanism. Under this mechanism, all Variable Costs are passed on to the Customers. In other words, the charges for electric service during the rate year are subject to an adjustment based on the difference between the Variable Costs actually incurred to serve the Customers and the Variable Costs recovered by the Authority under its tariffs in the rate year. Costs associated with hedging activities for the purpose of reducing volatility are normally assigned to the Variable Costs upon the Customers' selection of a hedging strategy.

DISCUSSION

Based on the Preliminary 2017 COS, the increase in Fixed Costs is \$16.6 million, or 12.7% higher than the Fixed Costs included in the Final 2016 COS. These Fixed Costs are subject to review under this SAPA proceeding. Contributing to the 12.7% increase in Fixed Costs is a projected \$6.9 million increase in O&M, a \$5.3 million increase in Other Expenses, a \$3.3 million increase in Capital Cost, and a \$1.1 million increase in Shared Services as compared to those levels in the Final 2016 COS.

The increase in O&M is mainly driven by a planned increase in work at the Small Hydro facilities, of which the major projects are the continuation of tainter gate painting and concrete repair at Crescent, roof replacement at the Crescent and Vischer Ferry plants, and rebuilding Unit #1 at Jarvis.

The stated increase in Other Expenses is \$5.3 million in the Preliminary 2017 COS as compared to the Final 2016 COS. However, in the 2016 Final COS, a total one-time \$5.4 million credit to correct historical cost accounting related to Demand Side Management and Load Research Studies was recorded under Other Expenses and issued to the Customers. Not including the one-time \$5.4 million credit recorded last year, Other Expenses were \$8.6 million, indicating a decrease by approximately \$100,000, or 1.2%, in Other Expenses (\$8.5 million) in the Preliminary 2017 COS.

The \$3.3 million increase in Capital Cost is mainly attributable to increases in both fixed and variable debt payments, specifically scheduled principal re-payments, for the 500 MW CCU.

The \$1.1 million increase in Shared Services is due to an overall projected increase in the Authority's Headquarters and Research and Development ('R&D') costs.

Variable Costs are projected to increase by a total of \$67.6 million, or 19.1%, as compared to the Final 2016 COS. Although Variable Costs are not subject to this NOPR, for the Trustees' information, Authority staff has included two new cost elements, the Clean Energy Standard ('CES') charge and the New York Transco cost recovery, within the Preliminary 2017 Variable Costs. The CES charge consists of a Zero Emission Credit ('ZEC') and a Renewable Energy Credit ('REC') charges. These charges have been developed by the New York Public Service Commission to support the adoption of Clean Energy Standard. The CES implements the clean energy goals of the New York State Energy Plan. ZECs are payments made to nuclear plants to support the preservation of existing at risk nuclear zero emissions attributes. Procurement of RECs is based on an obligation to invest in renewable generation resources to serve the Load Serving Entity's retail customers. It is estimated to cost the Customers approximately

\$23.3 million to purchase ZECs and RECs for their load in 2017. New York Transco costs are allocated to the Authority as a Load Serving Entity as part of the NYISO charges in accordance with the New York Transco settlement agreement approved by the Federal Energy Regulatory Commission. The New York Transco Costs for the Customers are estimated to be approximately \$4.0 million in 2017. In addition, it is projected that fuel expenses for Astoria Energy II and the 500 MW CCU will increase by \$29.9 million.

Based on preliminary analyses, Authority staff projects that the overall 2017 production COS, combining the Fixed and Variable Costs, will increase by \$86.4 million, or 13.8%, as compared to the Final 2016 COS.

Under the LTAs, any change in the Fixed Costs component of the Customers' production rates must be done in accordance with a SAPA proceeding. After closure of the comment period concerning the revised proposal, Authority staff will take into consideration any concerns raised and will return to the Trustees to seek final adoption of an appropriate Fixed Costs rate at their January 2017 meeting. Subsequent to such final adoption, staff will incorporate the approved final Fixed Costs and the final Variable Costs that are determined in the rate-setting process with the Customers into new production rates to become effective with the January 2017 billing period.

FISCAL INFORMATION

The adoption of this proposal would result in the Authority recovering the Fixed Costs incurred with the service of these Customers in 2017.

RECOMMENDATION

The Manager – Pricing & Energy Market Analysis and the Vice President – Finance recommend that the Trustees authorize the Corporate Secretary to file a Notice of Proposed Rulemaking in the New York State Register for the adoption of an increase in the Fixed Costs component of the production rates (comprising non-AE II costs) by \$16.6 million to be charged in 2017 to the New York City Governmental Customers.

It is also recommended that the Vice President – Finance, or his designee, be authorized to issue written notice of the proposed action to the affected Customers under the provisions of the Authority's tariffs.

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 Vice President – Finance, or his designee, be, and hereby is, authorized to issue written notice to the affected Customers of this proposed action by the Trustees for a projected \$16.6 million, or 12.7%, increase in the Fixed Costs of serving the New York City Governmental Customers when comparing those costs contained in current rates to 2017 projected costs; and be it further

RESOLVED, That the Authority has entered into supplemental Long-Term Agreements with the New York City Governmental Customers and those agreements

provide for the recovery of Fixed Costs through a rate filing under the State Administrative Procedure Act; and be it further

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

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

ii. **Increase in Westchester County Governmental Customer Rates – Notice of Proposed Rulemaking**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve a Notice of Proposed Rulemaking ('NOPR') to increase the production rates by 8.81%, as compared to 2016 rates for the Westchester County Governmental Customers ('Customers').

In addition, the Trustees are requested to direct the Corporate Secretary to file the NOPR with the New York State Department of State for publication in the New York *State Register* in accordance with the requirements of the State Administrative Procedure Act ('SAPA'). Following the publication of this NOPR in the *State Register*, the 45-day public comment period will begin on October 19, 2016 and close on December 5, 2016.

Further, since the proposed increase includes an increase to the Fixed Costs by more than 2.0%, a public forum will be held in accordance with the Authority's policy. The Trustees' authorization is also requested to direct the Corporate Secretary to provide all appropriate notice for such public forum.

Upon closure of the aforementioned public comment period, Authority staff will take into consideration concerns that have been raised, if any, and return to the Trustees at their January 2017 meeting to seek final adoption of this proposal.

BACKGROUND

The Authority provides electricity to 103 governmental customers in Westchester County, which includes the County of Westchester, school districts, housing authorities, cities, towns and villages. The County of Westchester is the largest single customer, accounting for about one-third of sales.

The basis of providing service is contained in the Supplemental Electricity Agreements ('Agreements') with the Customers. The Agreements were approved by the Trustees at their December 19, 2006 meeting, and were signed by each of the 103 Customers. Among other things, the Agreements permit the Authority to modify the Customers' rates (for Rate Years subsequent to 2007) at any time based on a fully supported pro forma Cost of Service ('COS') subject to Customer review and comment and compliance with the SAPA process; permit the Customers to fully terminate service upon one year's written notice, which, if given, could be effective no earlier than January 1, 2018; and allow the Authority to apply an Energy Charge Adjustment ('ECA') mechanism to the Customers' bills each month.

The current 2016 base production rates were adopted by the Trustees at their March 29, 2016 meeting, when they approved a 2.37% decrease over 2015 rates. Staff is now proposing a 2017 rate increase which is largely due to expected increases over 2016 rates in energy and capacity prices, which are part of the Variable Costs component to be purchased from the New York Independent System Operator ('NYISO') market to serve these Customers. In addition, the Fixed Costs component is also expected to increase.

The Authority's policies and procedures call for a public forum if the Fixed Costs component of the proposed rate increase exceeds 2.0%. Since the proposed increase is greater than 2.0%, Authority staff recommends that a public forum be held. A public forum allows the Customers an additional opportunity to voice their concerns regarding the increase in the proposed 2017 Fixed Costs component.

DISCUSSION

Consistent with the Authority's past rate-making practices and with the rate-setting process set forth in the Agreements, the proposed production rate increase is based on a pro forma COS for next year. The Preliminary 2017 COS for the Westchester Customers is \$36.01 million, compared to \$32.06 million in the Final 2016 COS.

The Variable Costs component is projected to increase from \$30.11 million to \$33.25 million, an approximate \$3.14 million or 10.4% increase as compared to the Final 2016 COS. The primary cost element, energy purchases, is \$25.13 million and accounts for 70% of the total production costs. Although these Customers receive a pro-rated share of energy from the small hydro generation facilities, most of their energy requirements are purchased from the market (in NYISO Zones 'G' (Hudson Valley) and 'A' (Western New York)). The projected 2017 prices for Zone G are expected to be higher than those that were projected for 2016 and incorporated into the rates that are currently in effect. Also contributing to the increase in Variable Costs are two new cost elements, the Clean Energy Standard ('CES') charge and the New York Transco costs. The CES charge consists of a Zero Emission Credit ('ZEC') and a Renewable Energy Credit ('REC') charges. These charges have been developed by the New York Public Service Commission to support the adoption of Clean Energy Standard. The CES implements the clean energy goals of the State Energy Plan. ZECs are payments made to nuclear plants to support the preservation of existing at risk nuclear zero emissions attributes. Procurement of RECs is based on an obligation to invest in renewable generation resources to serve the Load Serving Entity's retail customers. It is estimated to cost the Customers approximately \$1.45 million to purchase ZECs and RECs for their load. New York Transco costs are allocated to the Authority as a Load Serving Entity as part of the NYISO charges in accordance with the New York Transco settlement agreement approved by the Federal Energy Regulatory Commission. The New York Transco Costs for the Customers are estimated to be \$0.25 million in 2017.

As part of the proposed production rate increase, the Fixed Costs component is expected to increase from \$1.95 million to \$2.76 million, an approximate \$810,000 or 41.5% increase as compared to the Final 2016 COS. The proposed net increase is driven by an approximate \$670,000 increase in Operations & Maintenance ('O&M') costs, mainly due to a planned increase in work at the Small Hydro facilities.

The increase in Other Expenses of the Fixed Cost component is \$130,000 in the Preliminary 2017 COS as compared to the Final 2016 COS. However, in the Final 2016 COS, the Customers were issued an approximate credit of \$130,000 to correct historical cost accounting related to Demand Side Management ('DSM'). Although Other Expenses is contributing \$130,000 to the increase in Fixed Costs, the increase in Other Expenses is \$3,000 if not including the DSM credit when making the comparison between the Final 2016 and Preliminary 2017 costs.

Applying current rates to the 2017 Customers' sales forecast results in projected revenues of \$33.09 million, representing an under-collection of \$2.92 million from the Customers. Therefore, staff is proposing an 8.81% increase in base production rates to reflect the rise in the purchased energy costs contained in the currently effective 2016 rates.

Under SAPA, there is a 45-day public comment period on the rate change. At the close of the comment period, Authority staff will review any comments which have been filed and, if warranted, staff will make any necessary changes to the proposed rates to address any concerns raised. Staff will return to the Trustees at their January 2017 meeting to request approval of the final rate modification to become effective with the January 2017 billing period.

FISCAL INFORMATION

The proposed production rates are cost-based, and with the application of the Energy Charge Adjustment mechanism, staff anticipates that the Authority will recover all costs incurred in serving the Customers.

RECOMMENDATION

The Manager – Pricing & Energy Market Analysis and the Vice President – Finance recommend that the Trustees authorize the Corporate Secretary to file a Notice of Proposed Rulemaking in the *New York State Register* for the adoption of a production rate increase applicable to the Westchester County Governmental Customers.

It is also recommended that the Vice President – Finance, or his designee, be authorized to issue written notice of the proposed action to the affected Customers under the provisions of the Authority's tariffs.

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

RESOLVED, That the Vice President – Finance, or his designee, be, and hereby is, authorized to issue written notice to the affected Customers of this proposed action by the Trustees for a projected 8.81% increase in the production rates applicable to the Westchester County Governmental Customers as set forth in the foregoing report of the President and Chief Executive Officer; and be it further

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

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

c. Economic Development

i. Extension of the Economic Development Plan

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

The Trustees are requested to:

- 1) approve an extension, to May 31, 2018, of the Economic Development Plan ('Plan') covering the use of net revenues produced by the sale of Expansion Power ('EP') to provide electric bill discounts in the form of an Industrial Incentive Award ('IIA') to manufacturing companies located in New York State that are at identifiable risks of closure or relocation to another state; and
- 2) authorize submission of such Plan to the Economic Development Power Allocation Board ('EDPAB') to seek its approval.

BACKGROUND

Public Authorities Law ('PAL') §1005 (eighth unnumbered paragraph) directs the Authority to identify 'net revenues' produced by the sale of EP and, further, to identify an amount of such net revenues that will be used solely for IIAs. The Authority is directed in §1005 to identify net revenues available for IIAs no less often than annually. Net revenues are defined by §1005 as any excess of revenues properly allocated to the sales of EP over costs and expenses properly allocated to such sales.

IIAs are to be made in conformance with an economic development plan covering all such 'net revenues.' The Authority submits a Plan to EDPAB, pursuant to Economic Development Law ('EDL') §188, which also provides for EDPAB's approval of the Plan upon its determination that such Plan is consistent with, among other things, the economic development criteria provided for in EDL §§184 and 185 that evaluate applications for certain power.

At its October 26, 2009 meeting, EDPAB approved an Economic Development Plan that allows the use of net revenues from the sale of EP for the calendar years 2008 through and including 2016 to provide electric bill discounts to manufacturing companies located in New York State that are at identifiable risks of closing or relocating to another state.

At its May 21, 2013 meeting, the Trustees, after careful consideration of Pratt Paper (NY), Inc.'s business case, authorized an IIA to Pratt upon determining that the company had demonstrated it met the qualifying criteria for an IIA. The Trustees approved an annual amount of up to \$1 million per year for up to five (5) years.

Pratt operates a paper mill, a corrugated box factory and a sorting facility in Staten Island within Consolidated Edison's service territory. Manufacturing processes represent a substantial portion of Pratt's total electricity consumption; energy costs are a primary consideration for the economic viability of the plant. Pratt's IIA, in the form of a cents-per-kWh price discount applied to a level of annual electric consumption, was approved subject to other appropriate terms and conditions:

- Reevaluation and reduction should Pratt's electric rates decline during the term of the IIA.
- The availability of EP net revenue funding for IIAs, which is in NYPA's sole discretion.
- Appropriate determination(s) by the Trustees that the funding of IIAs in any fiscal year will not have a significant impact on the Authority's finances.

- Approval of an extension of the Plan by EDPAB beyond 2016 to the extent that an IIA to Pratt would extend beyond such year.
- A reduction in the amount of the IIA if Pratt does not meet agreed-upon job commitments (256 full-time employees) at the Staten Island facility.
- An agreement providing for the IIA and which address these and other appropriate terms and conditions in a form satisfactory to the Authority.

DISCUSSION

Upon the Trustee's approval of Pratt's IIA, the Authority executed an agreement with Pratt ('Agreement') providing for the terms and conditions applicable to the Pratt IIA. The Agreement provides for an initial one-year term for the IIA and an extension of the IIA for four subsequent one-year terms at the Authority's discretion subject to conditions specified in the Agreement.

In accordance with the Agreement, Pratt was eligible to receive up to \$1 million for the initial term of the Agreement and began receiving quarterly IIA payments as of June 2013. It has received \$1 million for each of the first three-year terms of the IIA for a total of \$3 million.

At the completion of each annual term, a compliance review and due diligence was performed on the terms and conditions of the Agreement prior to offering each subsequent annual term. Pratt has been compliant for each annual term, most recently employing an average of 278 persons at its facility during the third annual term ending May 2016.

The current Plan allows the use of net revenues from the sale of EP be used for IIAs for the calendar years from 2008 through and including 2016. Therefore, payment of Pratt's IIA beyond December 2016, specifically the last five months of the fourth annual term (January 2017 through May 2017) and the subsequent fifth year (June 2017 through May 2018), requires an extension of the Plan.

Accordingly, the Trustees are requested to approve an extension of the Plan to May 31, 2018. In addition, given that EDPAB must approve the Plan, the Trustees are also requested to authorize submission of such Plan to EDPAB to request its approval of the modified Plan.

FISCAL INFORMATION

Industrial Incentive Awards may be paid only if sufficient net revenues are produced by the sale of EP. Given that such net revenues and associated awards are anticipated in each year's budget, extension of the Plan through May 31, 2018 to accommodate the remainder of Pratt's IIA benefits will not have a significant impact on the Authority's finances.

RECOMMENDATION

The Vice President – Economic Development recommends that the Trustees (1) approve an extension of the Economic Development Plan to May 31, 2018; and (2) authorize the submission of such modified Plan to the Economic Development Power Allocation Board ('EDPAB') to request its approval.

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

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

RESOLVED, That the Authority hereby approves an extension of the Economic Development Plan ("Plan") covering the use of net revenues produced by the sale of Expansion Power to provide electric bill discounts to manufacturers in the form of an Industrial Incentive Award ("IIA") to May 31, 2018, as described in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman or his designee be, and hereby is, authorized to submit the Plan, as modified, to the Economic Development Power Allocation Board ("EDPAB") to request its approval; and be it further

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

ii. **Modification of Western New York Hydropower, Preservation Power Hydropower and Recharge New York Power Customer Agreements and Notice of Public Hearing**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

On August 1, 2016, the New York Public Service Commission ('PSC') issued an order establishing a clean energy standard ('CES') to implement the State Energy Plan's clean energy goals. The PSC's order ('CES Order') establishes a regulatory program that imposes obligations on load serving entities ('LSEs') identified in the CES Order to purchase 'Zero Emission Credits' ('ZECs') and Renewable Energy Credits ('RECs') (the 'CES Program'). As discussed below, an LSE's obligation to purchase RECs is tied to the electric load it serves, and the ZECs purchase obligation relates to the amount of electric load it serves in relation to the total electric load served by all LSEs in the State.

The New York Power Authority ('NYPA' or 'Authority') is not subject to PSC jurisdiction for purposes of the CES Order. However, NYPA supports the State Energy Plan's clean energy goals. Additionally, a State statutory provision, Energy Law ('EL') § 6-104(5)(b), provides that '[a]ny energy-related action or decision of a state agency, board, commission or authority shall be reasonably consistent with the . . . policies and long-range energy planning objectives and strategies contained in the [state energy] plan...'

The PSC is still fine tuning the CES Program and NYPA staff is considering issues relevant to NYPA's participation in the CES Program. Staff will return to the Trustees at a subsequent Trustee meeting to make recommendations concerning the Authority's participation in the CES Program.

If the Authority participates in the CES Program, it will incur substantial costs in connection with the purchase of RECs and ZECs for the customer load for which it serves as LSE. Therefore, Staff is recommending that the Trustees take action at this time to authorize modifications to the forms of customer agreements NYPA uses for the Expansion Power ('EP'), Replacement Power ('RP'), Preservation Power ('PP'), and Recharge New York Power ('RNY Power') Programs. As explained below, these modifications would establish contractual 'pass through' mechanisms for costs the Authority would incur in connection with REC and ZEC purchases for certain new load the Authority would serve under these programs. Accordingly, the Trustees are requested to:

1. Approve a modified form of the current 'Agreement for the Sale of Expansion Power and/or Replacement Power' ('Current EP/RP Agreement Form') for: (1) allocations of EP and RP awarded and made available for sale pursuant to an executed customer agreement on or after this date; and (2) EP and RP allocations awarded prior to this date that have not been considered by the Trustees as part of a customer agreement approved for execution by the Authority pursuant to Public Authorities Law ('PAL') § 1009(3). The proposed modified form of agreement, entitled 'Agreement for the Sale of Expansion Power and/or Replacement Power (CES)' (hereinafter, the 'EP/RP (CES) Customer Agreement') along with the current and still applicable Service Tariff No. WNY-1 ('ST WNY-1'), are attached as Exhibit '4c ii-A.'
2. Approve a modified form of the current of 'Agreement for the Sale of Preservation Power and Energy' ('Current PP Agreement Form') for: (1) allocations of PP awarded and made available for sale pursuant to an executed customer agreement on or after this date; and (2) PP allocations awarded prior to this date that have not been considered by the Trustees as part of a customer agreement approved for execution by the Authority pursuant to PAL § 1009(3). The proposed modified form of agreement, entitled 'Agreement for the Sale of Preservation Power and Energy (CES)' (hereinafter, the 'PP (CES) Customer Agreement'), along with the current and still applicable Service Tariff No. 10 ('ST 10'), are attached as Exhibit '4c ii-B'.

3. Approve a modified form of the current 'Agreement for the Sale of Recharge New York Power and Energy' ('Current RNY Power Agreement Form') for: (1) all allocations of RNY Power awarded and made available for sale pursuant to an executed customer agreement on or after this date; and (2) allocations of RNY Power awarded prior to this date that are not yet available for sale pursuant to an executed RNY Power customer agreement between the Authority and an applicant. The proposed modified form of agreement, entitled 'Agreement for the Sale of Recharge New York Power and Energy (CES)' (hereinafter, the 'RNY Power (CES) Customer Agreement'), along with the current and still applicable Service Tariff No. RNY-1, are attached as Exhibit '4c ii-C.'

The Trustees have previously awarded allocations of EP and RP, and an allocation of PP, to the businesses listed on Exhibits '4c ii-D' and '4c ii-E,' respectively. Assuming that the Trustees approve the new forms of EP/RP (CES) Customer Agreement and PP (CES) Customer Agreement, the Trustees are also requested to authorize a public hearing pursuant to PAL §1009 on:

1. The proposed EP/RP (CES) Customer Agreements finally negotiated with awardees listed on Exhibit '4c ii-D.' The current forms of these Agreements are attached as Exhibit '4c ii-F,' and
2. The proposed PP (CES) Customer Agreement finally negotiated with the awardee listed on Exhibit '4c ii-F.' The current form of this Agreement is attached as Exhibit '4c ii-G.'*

BACKGROUND

On June 25, 2015, the State Energy Planning Board, in accordance with Article 6 of the Energy Law, adopted the State Energy Plan ('SEP'). The SEP's long-term clean energy goals include providing 50% of New York's electricity by renewable energy sources by 2030, and to reducing statewide greenhouse gases by 40% by 2030.

Energy Law ('EL') § 6-104(5)(b) provides that '[a]ny energy-related action or decision of a state agency, board, commission or authority shall be reasonably consistent with the . . . policies and long-range energy planning objectives and strategies contained in the plan...'

By letter dated December 2, 2015, Governor Andrew M. Cuomo, citing EL § 6-104(5)(b), directed the Department of Public Service ('DPS') to commence a proceeding to establish a Clean Energy Standard ('CES') to implement the SEP's clean energy goals.

On August 1, 2016, PSC issued the CES Order adopting a CES for the State. The CES is intended to meet the SEP's clean energy goals by, among other things: (1) increasing the amount of the State's energy generation that comes from renewable energy sources in New York State; and (2) preventing the premature closure of upstate, at risk, zero emission nuclear power plants ('Nuclear Plants'). To accomplish this, the CES Order imposes two obligations on LSE's identified in the CES Order ('Affected LSEs'):

- (1) An obligation to purchase ZECs from the New York State Energy Research Development Authority ('NYSERDA') in an amount representing the Affected LSE's proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the Nuclear Plants (the 'ZEC Purchase Obligation'), pursuant to a program to be designed and implemented by DPS and NYSERDA.

* In two separate CES-related items, the Trustees are being asked to award two new allocations of RP, extend one allocation each EP and RP, and authorize public hearings pursuant PAL § 1009 on the four proposed final customer agreements negotiated with the awardees of these allocations. The underlying form of customer agreements for these allocations is the EP/RP (CES) Customer Agreement the Trustees are being asked to authorize in this item.

The Nuclear Plants will be paid for the ZECs they provide. The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year.

(2) An obligation to support renewable generation resources to serve the Affected LSE's retail customers to be evidenced by the procurement of qualifying RECs in the following proportions of total load served by the Affected LSE for the years 2017-2021 subject the adjustment after a 3-year look-back (the 'REC Purchase Obligation'):

YEAR	% OF LSE LOAD
2017	0.6%
2018	1.1%
2019	2.0%
2020	3.4%
2021	4.8%

The PSC indicates it will adopt increasingly larger percentages of each Affected LSE's total load served for the RECs Purchase Obligation for the years 2022-2030. The REC Purchase Obligation is scheduled to commence on January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year.

DISCUSSION

1. Proposed Modifications to Customer Agreements to Mitigate CES-Related Costs

The Authority is the LSE for, among other load it serves, customer load under the Authority's EP, RP, PP and RNY Power Programs.

In considering the financial impacts to NYPA from participation in the CES Program, it is useful to divide the load NYPA serves under the EP, RP, PP and RNY Power Programs into two general categories: (1) load served under existing customer agreements ('Load Under Contract'); and (2) load NYPA would serve under future allocations, or allocations not yet the subject of an executed customer contract ('Future Load').

The Current EP/RP Agreement Form, Current PP Agreement Form, and Current RNY Power Agreement Form may not allow for the recovery of the Authority's costs for the purchase of ZECs and RECs attributable to Load Under Contract even though such load would be used to calculate NYPA's ZEC Purchase Obligation.

However, NYPA can take steps to recover its costs relating to the purchase of ZECs and RECs attributable to Future Load under the EP, RP, PP and RNY Power programs by modifying these agreements.

To accomplish this, the Trustees are requested to approve the proposed forms of EP/RP (CES) Customer Agreement, PP (CES) Customer Agreement, and RNY Power (CES) Customer Agreement attached hereto as Exhibits '4c ii-A', '4c ii-B', and '4c ii-C.'

If approved, these modified forms of customer agreements would each include a new 'Schedule D' providing for two new charges – (i) ZEC Charge, and (ii) REC Charge (collectively, 'Clean Energy Standard Cost Recovery Charges') – that would effectively provide a pass through to customers of the EP, RP, PP and RNY Power programs of the costs NYPA would incur in connection with the purchase of ZECs and RECs that would be attributable to the individual load of these customers. In summary, the Schedule D provisions would provide:

- the methodology for the determination of the new charges;
- that the REC Charge and ZEC Charge shall be applicable beginning on January 1, 2017 and April 1, 2017, respectively, unless the Authority specifies such charges shall apply commencing on a later date;
- that NYPA reserves the discretion to modify the manner in which it participates in the CES Program;
- that NYPA reserves the discretion to include the ZEC Charge and REC Charge as part of the bills that are rendered pursuant to billing procedures specified in the customer contract or applicable tariff or other procedures established by the Authority;
- that NYPA reserves the right to modify the methodology for determining the ZEC Charge and REC Charge; and
- that the new charges do not limit or otherwise affect the Authority's right to: (a) charge or collect from the customer, or limit or affect the customer's obligation to pay to the Authority, any rate, charge, fee, assessment, or tax provided for under any other provision of the customer agreement, or applicable service tariffs or NYPA's rules; or (b) recover costs relating to the State Energy Plan or the Clean Energy Standard that results in a liability or expense for the Authority due to any law, rule or regulation, or any order or action of any governmental agency or authority.[†]

2. Applicability of the Modified Customer Agreements

Staff proposes to use the proposed form of EP/RP (CES) Customer Agreement for: (1) allocations of EP and RP awarded and made available for sale pursuant to an executed customer agreement on or after this date ('Future EP/RP Allocations'); and (2) EP and RP allocations awarded prior to this date that have not been considered by the Trustees as part of a customer agreement approved for execution by the Authority pursuant to PAL § 1009(3) ('Pending Awarded EP/RP Allocations'). Exhibit '4c ii-D' lists awardees with Pending Awarded EP/RP Allocations.

The proposed form of PP (CES) Customer Agreement would be used for: (1) allocations of PP awarded and made available for sale pursuant to an executed customer agreement on or after this date ('Future PP Allocations'); and (2) PP allocations awarded prior to this date that have not been considered by the Trustees as part of a customer agreement approved for execution by the Authority pursuant to PAL § 1009(3) ('Pending Awarded PP Allocations'). Exhibit '4c ii-E' lists awardees with Pending Awarded PP Allocations.

The proposed form of RNY (CES) Customer Agreement would be used for: (1) all allocations of RNY Power awarded and made available for sale pursuant to an executed customer agreement on or after this date ('Future RNY Power Allocations'); and (2) allocations of RNY Power awarded prior to this date that are not yet available for sale pursuant to an executed RNY Power customer agreement between the Authority and an applicant ('Pending Awarded RNY Power Allocations').

CONTRACT INFORMATION

Exhibits '4c ii-D' and '4c ii-E' list businesses with Pending Awarded EP/RP Allocations and Pending Awarded PP Allocations, respectively. The Authority and these businesses have not yet executed customer agreements covering these allocations. Nor have proposed customer agreements for these allocations been subject to the public review and approval process provided for in PAL § 1009.

[†] Additional non-substantive changes will be made to each of the proposed contract forms to accommodate these modifications.

PAL §1009 requires that when the Authority believes it has reached agreement with a prospective co-party on a contract for the sale of EP, RP, or PP, 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 'reports' 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.

Staff intends to discuss the revised form of customer agreements with the affected businesses listed on Exhibits '4c ii-D' and '4c ii-E.' It anticipates reaching agreement with each of these businesses on a contract substantially similar to those attached as Exhibit '4c ii-F' for the corresponding businesses listed on Exhibit '4c ii-D,' and the contract attached as Exhibit '4c ii-G' for the corresponding business listed on Exhibit '4c ii-E.' Accordingly, assuming the Trustees approve the modified forms of EP/RP (CES) Customer Agreement and PP (CES) Customer Agreement attached hereto as Exhibits '4c ii-A' and '4c ii-B,' the Trustees are requested to authorize a public hearing, pursuant to PAL §1009, on the customer-specific EP/RP (CES) Customer Agreements and PP (CES) Customer Agreement finally agreed upon by NYPA and the businesses, the current forms of which are attached as Exhibits '4c ii-F' and '4c ii-G.'

Subject to the qualification noted below, the proposed modified forms of customer agreements attached as Exhibits '4c ii-F' and '4c ii-G' are consistent with recently-approved customer agreements for the sale of EP, RP, PP and RNY Power. For example, the proposed forms of agreement 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 applicable service tariff. They also include (i) commercially reasonable provisions relating to financial security to reflect a direct billing arrangement between the Authority and the customers, and (ii) provisions authorizing data transfers and addressing other utility-driven requirements which are necessary for efficient program implementation.

The provision of electric service would be subject to enforceable employment, capital investment and power usage commitments. The standard contract form includes annual job and capital investment reporting requirements and a compliance threshold of 90%. If the relevant compliance threshold is not met, 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 current applicable service tariff. Transmission and delivery service would be provided by the local distribution utility in accordance with its PSC-filed service tariffs.

The proposed modified forms of customer agreements differ from the Current EP/RP Agreement Form and Current PP Agreement Form in that they contain provisions for the collection of the REC Charge and ZEC Charge as described above. The REC Charge and ZEC Charge would be in addition to all other fees, assessments and charges provided for in the contracts, applicable service tariffs and Authority rules.

FISCAL INFORMATION

Adoption of the proposed modifications would establish a pass through mechanism for costs associated with the Authority's participation in the CES Program for so-called Pending Awarded EP/RP Allocations, Pending Awarded PP Allocations, Pending Awarded RNY Power Allocations, and Future EP/RP Allocations, Future PP Allocations, and Future RNY Power Allocations.

RECOMMENDATION

The Vice President - Economic Development recommends that the Trustees:

(1) approve the proposed modified form of EP/RP (CES) Customer Agreement described herein and attached as Exhibit '4c ii-A,' for use for (i) Future EP/RP Allocations, and (ii) Pending Awarded EP/RP Allocations;

(2) approve the proposed modified form of PP (CES) Customer Agreement described herein and attached as Exhibit '4c ii-B,' for use for (i) Future PP Allocations, and (ii) Pending Awarded PP Allocations;

(3) approve the proposed modified form of RNY Power (CES) Customer Agreement described herein and attached as Exhibit '4c ii-C,' for use for (i) Future RNY Power Allocations, and (ii) Pending Awarded RNY Power Allocations; and

(4) authorize the Corporate Secretary to: (1) convene a public hearing on the proposed form of the EP/RP (CES) Customer Agreements finally negotiated with the businesses listed in Exhibit '4c ii-D,' the current forms of which are attached as Exhibit '4c ii-F,' and transmit copies of such proposed EP/RP (CES) Customer Agreements to the Governor and legislative leaders pursuant to PAL §1009; and (2) convene a public hearing on the proposed form of the PP (CES) Customer Agreements finally negotiated with the businesses listed in Exhibit '4c ii-E,' the current forms of which are attached as Exhibit '4c ii-G,' and transmit copies of such proposed PP (CES) Customer Agreements to the Governor and legislative leaders 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 form of "Agreement for the Sale of Expansion Power and/or Replacement Power (CES)" (hereinafter, the "EP/RP (CES) Customer Agreement") attached to the foregoing report of the President and Chief Executive Officer ("Memorandum") as Exhibit "4c ii-A" is approved, and the Authority shall be authorized to use such EP/RP (CES) Customer Agreement for: (1) allocations of Expansion Power ("EP") and Replacement Power ("RP") awarded and made available for sale pursuant to an executed customer agreement on or after the date of this resolution; and (2) EP and RP allocations awarded prior to the date of this resolution that have not been considered as part of a contract that has received approval pursuant to Public Authorities Law ("PAL") §1009(3) prior to the date of this resolution; and be it further

RESOLVED, That the form of "Agreement for the Sale of Preservation Power and Energy (CES)" (hereinafter, the "PP (CES) Customer Agreement") attached to the foregoing report as Exhibit "4c ii-B" is approved, and the Authority shall be authorized to use such PP (CES) Customer Agreement for: (1) allocations

of Preservation Power ("PP") awarded and made available for sale pursuant to an executed customer agreement on or after the date of this resolution; and (2) PP allocations awarded prior to the date of this resolution that have not been considered as part of a contract that has received approval pursuant to PAL § 1009(3) prior to the date of this resolution; and be it further

RESOLVED, That the form of "Agreement for the Sale of Recharge New York Power and Energy (CES)" (hereinafter, the "RNY (CES) Customer Agreement") attached to the foregoing report as Exhibit "4c ii-C" is approved, and the Authority shall be authorized to use such RNY (CES) Customer Agreement for: (1) allocations of Recharge New York ("RNY") Power awarded and made available for sale pursuant to an executed customer agreement on or after the date of this resolution; and (2) RNY Power allocations awarded prior to this date that are not yet available for sale pursuant to an executed RNY Power customer agreement between the Authority and an applicant; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing pursuant to PAL §1009 on the terms of the proposed form of EP/RP (CES) Customer Agreements for the sale of the EP/RP allocations listed on Exhibit "4c ii-D" finally negotiated with the awardees of such allocations, the current forms of which are attached as Exhibit "4c ii-F" (collectively, the "Negotiated EP/RP CES Contracts"), subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing pursuant to PAL §1009 on the terms of the proposed form of PP (CES) Customer Agreements for the sale of the PP allocations listed on Exhibit "4c ii-E" finally negotiated with the awardees of such allocations, the current forms of which are attached as Exhibit "4c ii-G" (collectively, the "Negotiated PP Contracts"), 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 Negotiated EP/RP Contracts and Negotiated PP 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 Negotiated EP/RP Contracts and proposed Negotiated PP 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 this resolution supersedes all prior authorizations, if any, of the Board regarding (i) the notice and holding of public hearings on proposed customer agreements and transmittal of proposed customer agreements, as provided for in PAL § 1009, regarding the allocations identified in Exhibits “4c ii-D” and “4c ii-E,” and (ii) the incorporation of such allocations into any in service Current EP/RP Agreement Form or Current PP Agreement Form; 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.

d. Power Allocations

i. Extension of Western New York Hydropower Allocations

"SUMMARY"

The Trustees are requested to:

1. Approve an extension, through June 30, 2020, of a 1,200 kilowatt ('kW') Expansion Power ('EP') allocation awarded to Buffalo Shredding and Recovery, LLC ('Buffalo Shredding') on June 28, 2011 and scheduled to expire on February 28, 2017 (the '1,200 kW Buffalo Shredding Allocation').
2. Approve an extension, through June 30, 2020, of a 120 kW Replacement Power ('RP') allocation awarded to Graphic Controls Acquisition Corp. ('Graphic Controls') on April 4, 2011 and scheduled to expire on October 31, 2016 (the '120 kW Graphic Controls Allocation').

The Trustees are also requested to authorize a public hearing pursuant to Public Authorities Law ('PAL') §1009 on proposed direct sale contracts for the 1,200 kW Buffalo Shredding Allocation and 120 kW Graphic Controls Allocation, the current forms of which are attached as Exhibit '4d i-A-1' and '4d i-A-2.'

Exhibits '4d i-A-1' and '4d i-A-2' reflect a revised form of customer agreement for the sale of Western New York hydropower (RP and EP). This revised form of customer agreement includes two new charges to the customer – a Zero Emission Credit Charge and a Renewable Energy Credit Charge. These new charges would allow the Authority to recover the costs it would incur relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to customer load associated with the allocations identified above, should the Authority decide to participate in the Clean Energy Standard ('CES') program established by the New York Public Service Commission ('PSC') to implement the clean energy goals of the State Energy Plan ('SEP').

BACKGROUND

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

DISCUSSION

1) Buffalo Shredding

Buffalo Shredding is a metals recycling company that owns and operates a shredding and non-ferrous metals recovery business in Buffalo, Erie County, New York.

The Authority and Buffalo Shredding are parties to a power sale contract that covers the 1,200 kW Buffalo Shredding Allocation which is scheduled to expire on February 28, 2017.

Buffalo Shredding has requested an extension of the 1,200 kW Buffalo Shredding Allocation. It has represented that the 1,200 kW Buffalo Shredding Allocation is critical to the success of its business at the Buffalo facility and an integral part of the cost effectiveness of its Buffalo operation. The company is currently in compliance with its contractual commitments for job creation and capital investments. Buffalo Shredding is willing to agree to extend its commitment to retain a minimum of 22 jobs at the Buffalo facility through June 30, 2020 in exchange for an extension of the 1,200 kW Buffalo Shredding Allocation through such date.

Staff recommends the Trustees approve an extension of the 1,200 kW Buffalo Shredding Allocation through June 30, 2020.

2) Graphic Controls

Graphic Controls owns and operates printing presses whose primary products are casino slot machine tickets and medical device charts. It operates a facility in Buffalo, NY.

The Authority and Graphic Controls are parties to a power sale contract that covers three hydropower allocations. One of the allocations, 130 kW of EP, is scheduled to expire on March 31, 2020 and corresponds to a commitment by Graphic Controls to maintain 290 jobs. A second allocation, 250 kW of RP, is scheduled to expire on June 30, 2020 and corresponds to a commitment by Graphic Controls to maintain 254 jobs.

A third allocation – the 120 kW Graphic Controls Allocation before the Trustees today – is scheduled to expire on October 31, 2016 and corresponds to a commitment to maintain 271 jobs. Graphic Controls has requested an extension of this third allocation. It has indicated all three hydropower allocations are critical to maintaining the competitiveness of its Buffalo operations. The company is currently in compliance with its contractual commitments for job creation and capital investments. Graphic Controls is willing to agree to increase the job commitment associated with an extension of this third allocation and will commit to retain a minimum of 290 jobs at its Buffalo facility through June 30, 2020 in exchange for an extension of the 120 kW Graphic Controls Allocation through such date.

Staff recommends that the Trustees approve an extension of the 120 kW Graphic Controls Allocation through June 30, 2020.

CONTRACT INFORMATION

The Authority is in the process of discussing the proposed hydropower sales contracts with Buffalo Shredding and Graphic Controls and anticipates receiving approval of contracts substantially similar to the forms attached as Exhibits '4d i-A-1' and '4d i-A-2.' Accordingly, the Trustees are requested to authorize a public hearing, pursuant to PAL §1009, on the EP/RP (CES) Customer Agreement forms for Buffalo Shredding and Graphic Controls attached as Exhibit '4d i-A-1' and '4d i-A-2,' respectively.

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.

Subject to the qualification noted below, the general form of the proposed EP/RP (CES) Customer Agreement 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 contract forms, including the Authority's RNY Power Program contracts.

The provision of electric service for all hydropower allocations are subject to enforceable employment, capital investment and power usage commitments. The standard contract form includes annual job and capital investment reporting requirements and a compliance threshold of 90%. If the relevant compliance threshold is not met, 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 the customer's local electric distribution utility.

Finally, the proposed EP/RP (CES) Customer Agreement differs from the previous form of WNY Customer Agreement in that it contains provisions for the collection of two new charges from EP and RP customers: (i) a Zero Emission Credit ('ZEC') Charge; and (ii) a Renewable Energy Credit ('REC') Charge. These charges are intended to allow the Authority to collect costs associated with ZEC and REC purchases attributable to customer load served by the Authority under the EP/RP (CES) Customer Agreement resulting from the Authority's participation in the CES Program. The REC Charge and ZEC Charge would be in addition to all other fees, assessments and charges provided for in the proposed form of agreement, applicable service tariffs and Authority rules and regulations. The REC Charge and ZEC Charge would be subject to assessment beginning January 1, 2017 and April 1, 2017, respectively.

RECOMMENDATION

The Manager – Business Power Allocations and Compliance recommends that the Trustees approve an extension of the (1) 1,200 kW Buffalo Shredding Allocation through June 30, 2020, and (2) 120 kW Graphic Controls Allocation through 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, through June 30, 2020, of the 1,200 kilowatt ("kW") allocation of Expansion Power ("EP") awarded to Buffalo Shredding and Recovery, LLC ("Buffalo Shredding") on June 28, 2011, subject to rates previously approved by the Trustees, and further subject to commitments by Buffalo Shredding to, among other things, retain at least 22 jobs at its Buffalo, NY facility through the term of the extended 1,200 kW EP allocation; and be it further

RESOLVED, That the Trustees hereby authorize an extension, through June 30, 2020, of the 120 kilowatts ("kW") allocation of Replacement Power ("RP") awarded to Graphic Controls Acquisition Corp. ("Graphic Controls") on April 4, 2011, subject to rates previously approved by the Trustees, and further subject to commitments by Graphic Controls to, among other things, retain at least 290 jobs at its Buffalo, NY facility through the term of the extended 120 kW RP allocation; and be it further

RESOLVED, That the extensions of the allocations provided for herein is contingent upon the execution of contract documents containing such terms and conditions determined by the Senior Vice President – Economic Development and Energy Efficiency and the Executive Vice President and General Counsel or their respective designees to be appropriate to effectuate such extensions including, but not limited to, the commitment related to base employment levels by the customers; 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 (i) proposed form of the direct sale contract for the sale of EP finally negotiated with Buffalo Shredding, and (ii) proposed form of the direct sale contract for the sale of RP finally negotiated with Graphic Controls, the current forms of which are attached as Exhibit “4d i-A-1” and “4d i-A-2” (the “Contracts”), subject to rates, charges and assessments 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.

ii. **Municipal and Rural Electric Cooperative Industrial Economic Development Program – Allocation to the Village of Westfield**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to approve a 150 kW allocation of hydropower under the Municipal and Rural Electric Cooperative Industrial Economic Development Program ('IEDP') to the Village of Westfield.

BACKGROUND

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

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

As of August 2016, more than 20 MW have been allocated. The Village of Westfield has submitted an application for power under the Program for consideration by the Trustees.

DISCUSSION

An application has been submitted by the Village of Westfield to the Authority on behalf of The Original Crunch Roll. The Original Crunch Roll is a food manufacturing company that was founded in 2016. The company manufactures a product called the 'Crunch Roll,' a snack item. Its current sales markets are food service establishments, sports arenas, and recreation venues throughout upstate New York.

The company intends to build a new production facility that will allow it to meet the current demand and produce an adequate amount of inventory to meet future demand. There are no existing facilities.

The total amount being invested in this project exceeds \$3,000,000. Upon startup of the new facility, all production and shipping will be done at the new Westfield location. The Original Crunch Roll has also considered locations in Canada, other locations in New York, as well as Ohio, Oklahoma, and Georgia. The building to be acquired is 15,630 square-feet and is an existing building that will be upgraded for manufacturing and office space for the company. The capital investment includes the acquisition of the building, renovations, equipment and startup costs. The bulk of the \$3,000,000 investment stems from the purchase and installation of equipment.

The estimated monthly peak demand at the new facility is 200 kW with estimated monthly energy use of 45,000 kWh. The schedule for new jobs creation is 24 jobs in 2016, increasing to a total of 48 jobs by the end of 2017. All jobs are considered to be full-time (more than 30 hours per week). The company anticipates adding a second shift within six months of opening the facility.

The Chautauqua County Industrial Development Agency has approved a PILOT plan and, additionally, has approved loans in the amount of \$500,000 for equipment, building improvements, and working capital.

NYPA IEDP guidelines classify The Original Crunch Roll's proposal as an eligible new business because the company qualifies as a manufacturer that is opening a new facility in the Village of Westfield's service territory. Under the program, the first 100 kW allocated will be 100% hydropower; any additional kW will be 50% hydropower and 50% incremental power, making this IEDP allocation award 150 kW.

It is recommended that the Trustees approve an allocation of 150 kW of Municipal and Rural Electric Cooperative Industrial Economic Development Program power to the Village of Westfield on behalf of The Original Crunch Roll. For businesses with 1-100 jobs before construction, the IEDP Guidelines require that a minimum of 25 jobs per MW of allocated hydropower be attained. This allocation exceeds the aforementioned guidelines.

RECOMMENDATION

The Vice President - Economic Development recommends that the Trustees approve the allocation of 150 kW of hydropower under the Municipal and Rural Electric Cooperative Industrial Economic Development Program to the Village of Westfield in accordance with the above report.

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

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

RESOLVED, That the Trustees hereby approve the allocation of 150 kW of hydropower to the Village of Westfield under the Municipal and Rural Electric Cooperative Industrial Economic Development Program as set forth in the foregoing report of the President and Chief Executive Officer; and be it further

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

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

e. Procurement (Services) Contracts:

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

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve the award and funding of the multiyear procurement (services) contracts listed in Exhibit ‘4e i-A,’ as well as the continuation and/or funding of the procurement (services) contracts listed in Exhibit ‘4e i-B,’ in support of projects and programs for the Authority’s Business Units/Departments and Facilities. Detailed explanations of the recommended awards and extensions, including the nature of such services, the bases for the new awards if other than to the lowest-priced bidders and the intended duration of such contracts, or the reasons for extension and the projected expiration dates, are set forth in the discussion below.

BACKGROUND

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

The Authority’s Expenditure Authorization Procedures (‘EAPs’) require the Trustees’ approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts in excess of \$3 million, as well as personal services contracts in excess of \$1 million if low bidder, or \$500,000 if sole-source, single-source or non-low bidder.

The Authority’s EAPs also require the Trustees’ approval when the cumulative change- order value of a personal services contract exceeds \$500,000, or when the cumulative change-order value of a non-personal services, construction, equipment purchase, or non-procurement contract exceeds the greater of \$1 million or 25% of the originally approved contract amount not to exceed \$3 million.

DISCUSSION

Awards

The terms of these contracts will be more than one year; therefore, the Trustees’ approval is required. Except as noted, all of these contracts contain provisions allowing the Authority to terminate the services for the Authority’s convenience, without liability other than paying for acceptable services rendered to the effective date of termination. Approval is also requested for funding all contracts, which range in estimated value from \$25,000 to \$15 million. Except as noted, these contract awards do not obligate the Authority to a specific level of personnel resources or expenditures.

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

Extensions

Although the firms identified in Exhibit ‘4e i-B’ have provided effective services, the issues or projects requiring these services have not been resolved or completed and the need exists for continuing these contracts. The Trustees’ approval is required because the terms of these contracts will exceed one

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

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

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

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

Business Services

Corporate Finance

The contracts with **Navigant Consulting, Inc. and Nexant, Inc.** would provide for transmission and electric rate consulting services to the Authority, including but not limited to, the following four general areas: 1) Transmission Revenue Requirement analysis, annual true-up process for a formulaic rate, Return on Equity analysis and preparing/supporting testimony for filings to the Federal Energy Regulatory Commission ('FERC') or other governing entity; 2) rate development / design / evaluations and analyses of the Authority's customer sectors in connection with the sale of its electric commodity; 3) general rate, pricing, power contract evaluations, market analysis and support services; and 4) assistance in reviewing delivery rate case filings, including revenue requirement and cost allocation to the Authority's governmental customers. To that end, bid documents (**Q16-6072JMT**) were developed by staff and were downloaded electronically from the Authority's Procurement website by 73 firms / entities, including those that may have responded to a notice in the New York State *Contract Reporter*. Four bids were received and evaluated, as further set forth in the Award Recommendation documents. Based on a thorough review and assessment of each bidder's respective qualifications, experience and expertise, as well as hourly rates, staff determined that none of the bidders demonstrated the requisite criteria to cover all four areas of requested services, given the diversity of anticipated projects. Staff therefore recommends the award of contracts to two firms, Navigant and Nexant on the basis of 'best value', which optimizes quality, cost and efficiency. The award of contracts to these two firms, whose experience, expertise and strengths complement each other, would provide the best value to the Authority; together these firms meet all the bid requirements and possess the high level, breadth and depth of required experience and expertise, thereby ensuring the Authority of adequate quality resources, as needed. It should be noted that one of these firms has provided satisfactory services under an existing contract for such work. The new contracts would become effective on or about October 1, 2016, for an intended term of up to five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate total amount expected to be expended for the term of the contracts, \$3.6 million. Such contracts will be monitored for utilization levels, available approved funding and combined total expenditures.

Commercial Operations

Fuel Planning & Operations

The contract with **Saybolt LP ('Saybolt') (FD-2016-01)** would provide for independent petroleum inspection and other related services in connection with the delivery, transfer and storage of various types of distillate fuel oil within the New York Harbor and Long Island areas. Such services include, but are not limited to, the inspection, measurement and testing of bulk oil deliveries and transfers made via barge, tanker, pipeline or truck to the Authority's electric generating stations and/or oil storage facilities situated within the aforementioned areas for the Richard M. Flynn, 500 MW and Astoria Energy II power plants. The resulting data on oil quantity and quality provides the basis for both paying for oil delivered and assessing penalties for non-conforming oil, as well as for providing evidence of compliance with environmental quality regulations. Since the existing contract for such services expires at the end of the year, and the need for such services is ongoing, staff developed a new Request for Proposals (**QFS-2016-01**). Seven firms were invited to bid, in addition to those that may have responded to a notice in the New York State *Contract Reporter*. Six proposals were received and evaluated. Based on each firm's unit pricing for the required services and forecasted demand / projected usage, staff calculated the total costs for providing such services (including a mixture of delivery modes and quantities for each mode of delivery or activity) for each of the bidders. Based on the foregoing and as further set forth in the Award Recommendation documents, staff recommends the award of a contract to Saybolt, the lowest evaluated price bidder, which is qualified to perform the services, is fully responsive to the Authority's bid requirements and has provided satisfactory services under an existing contract for such work. The new contract would become effective on or about January 1, 2017 for an intended term of up to three years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the term of the contract, \$132,000.

Economic Development & Energy Efficiency

Energy Efficiency

The contracts with **Millennium Maintenance & Electrical Contractors, Inc. ('Millennium')** and **Threetech Electric, Inc. ('Threetech') (Q16-6052AT; PO#s TBA)** would provide for electrical installation or replacement services of sample and warranty energy efficient lighting fixtures and/or appurtenances at various Customer facilities (e.g., schools and government buildings) located throughout the five boroughs of New York City and Westchester County, on an 'as needed' basis, as part of the Authority's Energy Services Program. Bid documents were developed by staff and were downloaded electronically from the Authority's Procurement website by 72 firms / entities, including those that may have responded to a notice in the New York State *Contract Reporter*. Three proposals were received and evaluated, as further set forth in the Award Recommendation documents. While all three bidders were determined to be technically qualified and met the bid requirements, staff recommends the award of contracts to two firms, Millennium and Threetech, based on their reasonable and competitive pricing. It should be noted that both of the recommended firms have provided satisfactory services under prior / existing contracts for such work. The award of contracts to two firms is recommended in order to ensure the availability of resources to accommodate the potential volume and/or scheduling of work that may be requested, as well as to address any potential conflict of interest or performance issues. The new contracts would become effective on or about October 1, 2016, for an intended term of up to four 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, \$1.125 million. Such contracts will be monitored for utilization levels, available approved funding and combined total expenditures. It should be noted that both firms are NYS-certified Minority-owned Business Enterprises ('MBEs'). It should also be noted that all costs will be recovered by the Authority.

Due to the need to commence services, interim approval was obtained to award a contract to **Ohm's Electrical Corp. ('Ohm's') (4500274867)**, effective August 24, 2016, in the amount of \$1,386,206, subject to the Trustees' ratification and approval, in accordance with the Authority's

Guidelines for Procurement Contracts and EAPs. The contract provides for electrical installation services to support the implementation of an energy efficient lighting upgrade project for the Port Authority of New York and New Jersey at John F. Kennedy International Airport, as part of the Authority's Energy Services Program. Bid documents (**Q15-5971MC**) were developed by staff and were downloaded electronically from the Authority's Procurement website by 64 firms / entities, including those that may have responded to a notice in the New York State *Contract Reporter*. Three proposals were received and evaluated, as further set forth in the Award Recommendation documents. Staff recommends award of a contract to **Ohm's**, the lowest evaluated price bidder, which is qualified to perform these services, meets the bid requirements and has provided satisfactory services under a prior contract for such work. The intended term of the contract is up to two years, subject to the Trustees' approval, which is hereby requested. (In the interest of transparency, it should be noted that the anticipated contract term set forth in the original bid documents was one year; a subsequent reassessment of the project prior to finalization of the contract award concluded that a two-year term was more realistic. Accordingly, a Post-Bid Addendum was issued to the three bidders, who confirmed that they would maintain their original bid pricing without adjustment for the extended contract term.) Approval is also requested for the total amount expected to be expended for the term of the contract, \$1,386,206. It should be noted that Ohm's is a NYS-certified Woman-owned Business Enterprises ('WBE'). It should also be noted that all costs will be recovered by the Authority.

Human Resources & Enterprise Shared Services ('ESS')

HR – Benefits

The Authority offers a comprehensive healthcare benefit package to its union and salaried / management employees. Since the current agreements for Third Party Administrative ('TPA') services for the Authority's healthcare benefit programs are expiring on December 31, 2016, the Employee Benefits Group, assisted by its benefits consultant, Buck Consultants, sought proposals (**Q16-6019MR**) from providers of TPA services for the Authority's self-insured major medical, hospitalization, prescription drug (including an Employer Group Waiver Plan, 'EGWP', for Medicare-eligible retirees), dental and vision care plans, and related flexible spending accounts, as well as short-term disability and specific and aggregate stop loss applicable to medical and prescription drug benefits. Prospective bidders were invited to submit proposals for any or all categories of the aforementioned services for the Authority's various employee groups and retirees, with eligible participants including active and retired Salaried employees, members of the International Brotherhood of Electrical Workers ('IBEW') and the Utility Workers' Union of America ('UWUA'), as well as retired members of Teamsters' Local 887. The potential number of enrollees offered such coverage is approximately 3,300 (active employees and retirees). Bid documents were developed by staff and were downloaded electronically from the Authority's Procurement website by 46 firms / entities, including those that may have responded to a notice in the New York State *Contract Reporter*; one additional firm obtained the bid documents from an alternate source. Proposals were received from ten firms for one or more service categories set forth in the bid documents. Buck Consultants assisted Authority staff in evaluating the data submitted in the proposals. After an initial review of all bids received, four firms were invited for finalists' presentations / meetings; conference calls were conducted with the incumbents for dental and vision care. Bidders were invited to present their proposals in detail and to provide any additional data that were requested during the meetings. Such meetings also afforded Authority staff the opportunity to meet the respective account representatives and to clarify any outstanding questions or issues. A more detailed evaluation and analysis of the proposals and clarifications provided during the finalists' meetings were subsequently performed, as further set forth in the Award Recommendation documents.

Based on the aforementioned detailed evaluation and analysis of all the proposals, presentations and evaluation criteria, staff recommends the award of contracts to the following four firms:

UnitedHealthcare Services, LLC ('UHC'), Express Scripts, Inc. ('ESI'), Delta Dental of New York, Inc. ('Delta Dental') and Davis Vision, Inc. ('Davis Vision') to provide for TPA services for the Authority's healthcare benefit programs on a self-insured basis. Services would be provided as follows:

(1) UHC would continue to provide TPA services for the major medical program for the Authority's active

and retired Salaried, IBEW and UWUA employees, as well as for retired Teamsters, and the flexible spending account program for active Salaried, IBEW and UWUA employees; under the new contract, UHC would also provide TPA services for hospitalization for the aforementioned active employee and retiree groups; (2) ESI would provide for TPA services for the prescription drug program for active and retired Salaried, IBEW and UWUA employees, as well as Teamster retirees; (3) Delta Dental would continue to provide TPA services for the dental program for all active employees; and Davis Vision would provide TPA services for the optional vision care program for active Salaried employees only. No contract awards are recommended at this time for short-term disability or stop loss, as a result of this Request for Proposals ('RFP'); these services will be reevaluated. Since some of the new contracts will cover additional employee / retiree groups and/or will not be awarded to the incumbent provider, a transition period is required to set up plans and program files prior to the commencement of actual TPA services on January 1, 2017. In order to allow sufficient lead time for the vendor/s to prepare for open enrollment as well as the January 1 implementation date, interim approval was obtained to provide for vendor notification of award effective September 1, 2016. The Trustees are requested to ratify and approve award of the subject contracts for an intended term of up to five and one-third years (including the preparatory / transition period commencing at the time of vendor notification), subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the term of the contracts: \$9,400,000 for UHC (4500276445), \$1,350,000 for ESI (4500276426), \$450,000 for Delta Dental (4500276429) and \$25,000 for Davis Vision (4500276433). It should be noted that these amounts do not include actual claims funding. It should also be noted that healthcare benefit programs for The Canal Corp. are handled separately and therefore were not included in this RFP.

HR – Contingent Staffing

The Authority strives to maintain an appropriate staffing complement of full-time employees committed to achieving its business objectives, however a portion of its staffing needs may be filled through the short-term use of temporary staff (e.g., to meet peak work demands, staff augmentation, project delivery and/or to obtain a unique skill set or knowledge not currently available in the Authority's workforce on a temporary basis). The departments, disciplines or areas of expertise that may require temporary staffing include, but are not limited to, the following non-technical areas: administrative and project coordination; audit, risk management and business process review; communications; finance, budget and accounting; human resources; knowledge management; procurement; and strategy and analysis. The Authority has an immediate need to utilize such temporary staff to fill resource gaps and to support the integration of the Canal Corp. Additionally, as the Authority's permanent workforce grows to support expanding areas, such as Smart Grid and Cyber Security, the 'temp-to-perm' option will facilitate any such warranted conversions. Bid documents were developed by staff and were downloaded electronically from the Authority's Procurement website by 256 firms / entities, including those that may have responded to a notice in the New York State *Contract Reporter*; three additional firms obtained the bid documents from an alternate source. Forty-seven bids were received and evaluated on the quality of the proposal, recruitment staff and their qualifications, hourly billing rates (labor rate plus mark-up), quality of submitted resumes, experience within the tristate area, recruitment process and acceptance of the Authority's commercial terms and conditions, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to the following 15 firms: **ASR International Corp., Datrose, Eclaro International, Inc. ('Eclaro'), Infinity Consulting Solutions, Inc., Kforce, Inc., LanceSoft, Inc., Mindlance, Inc., Monroe Staffing Services, Inc., Nexus Staffing, Inc. ('Nexus'), Rangam Consultants, Inc. ('Rangam'), Reinhard-Madison Approach Staffing dba Madison Approach Staffing, Inc. ('Madison'), Solomon Page Group, LLC, TTI of USA, Inc., vTech Solution, Inc., and WisEngineering, LLC.** The new contracts would become effective on or about October 1, 2016, for an intended term of up to five years (three-year award with an option to extend for up to two additional years), subject to the Trustees' approval, which is hereby requested. (All such contracts would be coterminous, regardless of the start date.) Approval is also requested for the aggregate total amount expected to be expended for the initial three-year term of the contracts, \$15 million. Such contracts will be monitored for utilization levels, available approved funding and combined total expenditures. It should

be noted that Datrose, Eclaro and Nexus are NYS-certified MBEs, Madison is a NYS-certified WBE, and Rangam and WisEngineering are NYS-certified as both MBEs and WBEs.

ESS – Corporate Support

The Authority owns and operates the Clarence D. Rappleyea Building, which is served by six traction elevators installed by Otis Elevator Company when the building was constructed in 1981; the attached garage is served by two additional traction elevators. The original elevator controls were replaced by Kone Corporation in 1996. The building has experienced an escalation in elevator down-time and maintenance costs due to control failures over the past two years. Staff determined that a modernization project is required, which will include, but not be limited to, replacement of the obsolete controls, brakes and cables, resulting in improved performance as well as reduced down-time and operating expenses. Since Kone no longer manufactures these controls, essentially rendering them obsolete, bid documents (**Q16-6070HM**) were developed by staff and were downloaded electronically from the Authority's Procurement website by 26 firms / entities, including those that may have responded to a notice in the New York State *Contract Reporter*. Five proposals were received and evaluated, as further set forth in the Award Recommendation documents. The Evaluation Committee interviewed the three lowest-priced bidders as well as local public sector building operators. Authority staff also visited a local 19-story building where Otis is completing an elevator modernization with positive results. Based on the foregoing, staff also determined that it is preferred industry practice to award both the modernization and the maintenance contracts to the same vendor for single point responsibility. Based on the foregoing, staff recommends the award of two contracts to Otis, the lowest-priced bidder, which is technically qualified and meets the bid requirements. Due to the need to commence services, interim approval was obtained to award the elevator modernization contract to **Otis Elevator Company ('Otis') (4500276397)** effective September 1, 2016, in the initial award amount of \$100,000, subject to the Trustees' ratification and approval, in accordance with the Authority's Guidelines for Procurement Contracts and EAPs. The Trustees are hereby requested to ratify and approve award of the subject contract for an intended term of up to two years, as well as the aggregate total amount expected to be expended for the term of this contract, \$2,285,352 (comprising \$2,203,445 for modernization work, \$55,500 for maintenance during modernization, \$22,000 for options and \$4,407 for Performance and Payment Bonds). Staff also recommends the award of a second contract to Otis (PO# TBA) for post-modernization maintenance services, to commence upon testing and acceptance of the entire elevator modernization project, currently estimated to be approximately September 2018. The intended term of the second contract is up to five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the term of the contract, \$210,048.

The contract with **Predator Pest Control, Inc. ('Predator') (Q16-6071RM; PO# TBA)** would provide for comprehensive pest control services for the Authority's Clarence D. Rappleyea Building, garage and grounds. To that end, bid documents were developed by staff and were downloaded electronically from the Authority's Procurement website by 33 firms / entities, including those that may have responded to a notice in the New York State *Contract Reporter*. Seven proposals were received and evaluated, as further set forth in the Award Recommendation documents. The three lowest evaluated price responsive bidders were invited for interviews and were evaluated in greater detail. Staff recommends the award of a contract to Predator, on the basis of 'best value' that optimizes quality, cost and efficiency among responsive and responsible offerers; its proposal meets the bid requirements and is the most competitive of the technically acceptable bidders. Predator demonstrated proficiency with LEED-compliant Integrated Pest Control Management programs, relevant experience with both typical/routine as well as specialty pest control scopes, and has the required resources available to perform the work; furthermore, feedback from the firm's references was very positive and indicated a high level of customer satisfaction. The contract would become effective on or about October 1, 2016, for an intended term of up to five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the term of the contract, \$175,000.

Due to the need to commence services, interim approval was obtained to award a contract to **Salary.com, LLC (4500275701)**, effective August 1, 2016, in the initial not-to-exceed award amount of \$16,500, subject to the Trustees' ratification and approval, in accordance with the Authority's Guidelines for Procurement Contracts and EAPs. The contract provides for a cloud-based compensation data analytics and survey management system and related services. The Authority utilizes several survey sources to market-price positions externally. The survey management system automates the job analysis process to maintain competitiveness and provides analysis tools and reporting capability to provide additional information for senior management. Bid documents (**Q16-6059RM**) were developed by staff and were downloaded electronically from the Authority's Procurement website by 78 firms / entities, including those that may have responded to a notice in the New York State *Contract Reporter*. Five proposals were received and evaluated, as further set forth in the Award Recommendation documents. The initial evaluation determined that the two highest-priced bidders proposed custom-built solutions and were not considered further. The remaining three firms were invited to make presentations and were evaluated in greater detail. Based on the foregoing, staff recommends the award of a contract to Salary.com, the lowest-priced bidder, which is qualified to provide such services, meets the bid requirements and has provided satisfactory services under an existing contract for such work. The Trustees are hereby requested to ratify and approve award of the subject contract for an intended term of up to five years, as well as the total amount expected to be expended for the term of the contract, \$82,500.

Information Technology ('IT')

Due to the need to commence services in order to meet the Authority's 'Day 1' (January 1, 2017) operational responsibility requirement with respect to The Canal Corp., interim approval was obtained to award a contract to **Time Warner Cable, Inc. ('TWC', now Spectrum Management Holding Company LLC) (4500274843)**, effective August 1, 2016, in the initial not-to-exceed award amount of \$120,000, subject to the Trustees' ratification and approval, in accordance with the Authority's Guidelines for Procurement Contracts and EAPs. The subject contract, issued pursuant to a procurement contract for statewide comprehensive telecommunications services let by the New York State Office of General Services, provides for Wide Area Network ('WAN') infrastructure, connectivity, communications and support services for business functions at multiple locations of the Canal Corporation throughout the state. This WAN connectivity is essential to the Canal Corp. and the Authority in order to enable ongoing electronic connectivity in support of all IT network data and communications systems supporting the Canal Corp.'s business functions. The Authority's IT Infrastructure Group was tasked with designing a network infrastructure that would accommodate the network and communications required for all of the existing and anticipated future Canal Corp. locations throughout the state. It should be noted that TWC currently provides the Authority's operational and business network backbone communications services between all major Authority locations. This WAN will provide connectivity to the Authority's White Plains data center, as well as the currently identified Canal Corp. locations, allowing Authority and Canal Corp. employees to easily communicate with each other and to gain access to key IT systems, applications and data for all supporting work groups. The Trustees are hereby requested to ratify and approve award of the subject contract for an intended term of up to seven years, as well as the total amount expected to be expended for the term of the contract, \$1,091,000.

Utility Operations

Project Management

The Authority currently owns and maintains an Energy Control Center ('ECC') and an existing Emergency Energy Control Center ('EECC'), both of which are located at the Frederick R. Clark Energy Center ('CEC') in Marcy, New York. There is a need for a new EECC to serve as a backup to the primary ECC in the event that the ECC becomes or is expected to be rendered inoperable for an extended period of time due to a natural or manmade disaster. The intent of this project is to develop a new alternate EECC in close proximity to the CEC in order to facilitate rapid relocation of operating staff, yet distant enough to protect the EECC from simultaneous service interruption. To that end, the Authority has

recently secured a site at the New Hartford Business Park in Oneida County, New York. Bid documents **(Q16-6062MR)** for architectural / engineering and design services for the new EECC, including assistance with the bid process and construction management through project closeout, were developed by staff and were downloaded electronically from the Authority's Procurement website by 161 firms / entities, including those that may have responded to a notice in the New York State *Contract Reporter*. Twelve proposals were received and evaluated, as further set forth in the Award Recommendation documents. Of this number, five firms were invited for interview by the Authority and were evaluated in greater detail. Based on the thoroughness of its proposal (which was most responsive to and met all the bid requirements), the depth of its team, its strength in the required disciplines, extensive control room and data center design experience, ability to meet schedule requirements, competitive pricing and satisfactory performance under prior / existing contracts with the Authority, staff recommends the award of a contract to WSP on the basis of 'best value', which optimizes quality, cost and efficiency. Due to the need to commence services, interim approval was obtained to award a contract to **WSP USA Corp. ('WSP') (4600003196)**, effective August 18, 2016, in the initial award amount of \$100,000, subject to the Trustees' ratification and approval, in accordance with the Authority's Guidelines for Procurement Contracts and EAPs. The Trustees are hereby requested to ratify and approve award of the subject contract for an intended term of up to three years, as well as the total amount expected to be expended for the term of the contract, \$630,000 (which includes \$105,000 for commissioning services that may be added.)

Extensions and/or Additional Funding Requests:

**Economic Development & Energy Efficiency
and
Information Technology**

The contract with **LoadSpring Solutions, Inc. ('LoadSpring') (4500262861)** provides for offsite Oracle Primavera hosting services, including initial transfer of the Authority's existing Primavera project scheduling and contract management relational database management software/system to a private secure cloud-based server environment, report development and user training, as well as specialized consulting/application services for enhanced reporting and system functionality, as needed. The original award, which was competitively bid, became effective on October 1, 2015 for an initial term of up to one year, in the amount of \$272,530. An additional \$67,200 was subsequently authorized in accordance with the Authority's EAPs. (It should be noted that the Request for Proposals had sought pricing for an intended term of up to five years, which included four additional years of cloud-based hosting services and support, which the bidders provided. At the time of the original contract award, staff recommended that such extension be sought upon successful completion of the initial system transfer and launch of the private server, acceptance of the cloud-based hosting solution by the Authority and satisfactory performance by LoadSpring during the first year.) A four-year extension of the subject contract is now requested to provide for the continuation of cloud-based hosting services and support, as well as additional application services and implementation of LoadSpring's recommendations resulting from an onsite review and assessment performed at the Authority's request earlier this year. The current contract amount is \$339,730; staff anticipates that additional funding in the amount of \$583,000 will be required for the extended term. The Trustees are requested to approve extension of the subject contract through September 30, 2020, as well as the additional funding requested, thereby increasing the total approved contract value to \$922,730.

Law

The contract with **Gibson, Dunn & Crutcher LLP ('Gibson Dunn') (4500238151)** provides for legal counsel and representation services in connection with certain confidential ongoing matters. The original contract, which was awarded as the result of a competitive search, became effective on October 1, 2013, in the amount of \$500,000. Cumulative additional funding in the amount of \$500,000 and a short-term interim extension were subsequently authorized in accordance with the Authority's Procurement Guidelines and EAPs. At their meeting of October 15, 2014, the Trustees approved a two-

year extension of the subject contract through September 30, 2016, as well as additional funding in the amount of \$1 million. These confidential ongoing matters have resulted in additional requests for information and other related services. Gibson Dunn has established credibility with all parties during the past three years and it is both beneficial and efficient for the Authority to maintain the status of these relationships through Gibson Dunn's continued counsel and representation services. Based on the ongoing, active federal investigation being conducted by the U.S. Department of Justice ('DOJ') and Gibson Dunn's role as the Authority's legal interface with the DOJ, coordinating the Authority's formal records production and witness appearances in connection with subpoenas and related requests, as well as advising the Authority while providing legal strategy relating to various processes, an additional two-year extension is now requested. The current contract amount is \$2 million; staff anticipates that no additional funding will be required for the extended term. The Trustees are requested to approve the additional two-year extension through September 30, 2018, with no additional funding requested.

Utility Operations

Project Management and STL

The contract with **Barrett Paving Materials, Inc. ('Barrett') (4500271086)** provides for the upgrade and repaving of Barnhart Island Road in Massena, NY, as part of the St. Lawrence Main Access Road Tunnel to Dam Rehabilitation, which is a Joint Works Agreement Project with Ontario Power Generation. The original award was for Phase I, which was competitively bid and became effective on April 15, 2016 for a term of up to one year, in the amount of \$933,765. A change order in the amount of \$85,500 was subsequently issued for additional work related to the replacement of a main culvert pipe under the road. The original plan called for Phase II of this project to be competitively bid in 2017. However, based on recently emergent unsafe road conditions, as well as a projected Joint Works funding underrun, in addition to cost savings due to the contractor already being onsite and current pricing, staff recommended that an initial portion of Phase II work (for an estimated cost of up to \$2 million) be accelerated and added to the existing contract. Interim approval to proceed as well as additional funding in the amount of \$914,500 was authorized in accordance with the Authority's Procurement Guidelines and EAPs, increasing the scope of work for 2016 under the existing contract to include the Main Road from the Barnhart Island Bridge up to the main security gate (1.88 miles). The current contract amount is \$1,933,765; additional funding in the amount of \$1,085,500 is now requested in order to complete the additional work for the initial accelerated portion of Phase II. The Trustees are requested to ratify and approve the requested funding for the subject contract, thereby increasing the total approved contract value to \$3,019,265. It should be noted that approximately 50% of the total cost will be reimbursed to the Authority by Ontario Power Generation per the Joint Works Agreement.

FISCAL INFORMATION

Funds required to support contract services for various Business Units/Departments and Facilities have been included in the 2016 Approved Operations Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years. Payment will be made from the Operating Fund.

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

RECOMMENDATION

The Senior Vice President – Operations Support Services and Chief Engineer, the Senior Vice President – Power Generation, the Senior Vice President – Economic Development & Energy Efficiency, the Senior Vice President – Human Resources and Enterprise Shared Services, the Senior Vice President and Chief Information Officer, the Assistant General Counsel – Contracts, Licensing & Environmental, the Vice President – Environment, Health & Safety, the Vice President – Project

Management, the Vice President – Procurement, the Vice President – Engineering, the Vice President – Enterprise Shared Services, the Vice President – Energy Services Implementation, the Vice President – HR & Organizational Development, the Vice President – Finance, the Director – Total Compensation & HRIS, the Director – Fuel Planning & Operations, the Regional Manager – Western New York, the Regional Manager – Northern New York, the Regional Manager – Central New York and the Regional Manager – Southeastern New York recommend that the Trustees approve the award of multiyear procurement (services) contracts to the companies listed in Exhibit '4e i-A' and the extension and/or funding of the procurement (services) contracts listed in Exhibit '4e i-B,' for the purposes and in the amounts discussed within the item and/or listed in the respective exhibits.

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

The following resolution, as submitted by the President and Chief Executive Officer, was adopted with Trustee Kress being recused from the vote as it relates to Datrose and Express Scripts, Inc.

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award and funding of the multiyear procurement services contracts set forth in Exhibit “4e i-A,” attached hereto, are hereby approved for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the contracts listed in Exhibit “4e i-B,” attached hereto, are hereby approved and extended for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing report of the President and Chief Executive Officer; and be it further

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

ii. **Procurement (Services) Contracts –
Professional Services – Reliability
Standards and Compliance Group –
Additional Funding Request**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to approve an increase in the spending authorization limit for the current contracts (Navigant Consulting, Inc. – 4600002980, KEMA, Inc. – 4600002981, and Quanta Technology – 4600002982) to provide professional services to the Authority's Reliability Standards and Compliance ('RSC') Group. The current spending authorization limit for these contracts is in the aggregate amount of \$5.5 million. The Trustees are requested to authorize an increase in the spending authorization limit by \$4.0 million for an aggregate amount of \$9.5 million.

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 May 19, 2015 meeting of the Board of Trustees, the Trustees approved the award of procurement contracts for a term of up to five years, in an aggregate amount of \$5 million, to Navigant Consulting, Inc., KEMA, Inc., and Quanta Technology to provide professional services to the Authority's RSC Group.

Subsequent to this initial 2015 award, in July 2016 the Vice President of Technical Compliance requested an initial change-order for the amount of \$500,000. In accordance with the Authority's EAPs, this request was reviewed by the Vice President of Procurement and approved by the Chief Operating Officer on August 1, 2016.

DISCUSSION

These contracts are approaching the funding ceiling approved with approximately 3.5 years remaining in the terms of the contracts. At the time these contracts were awarded, the scope and extent of consulting services required to support the RSC Group in transitioning the Authority's Reliability Standards Compliance Program from Version 3 to Version 5 of the North American Electric Reliability Corporation ('NERC') Critical Infrastructure Protection ('CIP') Reliability Standards, was not distinct or evident due to significant changes imposed on NYPA by NERC CIP Version 5 and the fact that NERC was continuing to make substantive changes to these Reliability Standards.

In addition to the services provided to successfully support the Authority's Reliability Standards Compliance Program in its transition to NERC CIP Version 5 prior to its enforcement date of July 1, 2016, these contracts have been essential to the success of the Authority's program as they provide the necessary resources and subject matter expertise for the management and completion of several critical overlapping compliance management activities such as, but not limited to:

1. The implementation of the required changes to comply with the NERC CIP-014 Physical Security Reliability Standard;
2. The management consultation required for the NERC Functional Registration matters associated with the Bulk Electric System ("BES") Exclusion Exception Requests;

3. The updates to the Operations Technology Disaster Recovery business processes and governance;
4. The support required for a successful participation in NERC 2016 GridEx III Exercise; and
5. The completion of the assessments for Blackstart and Systems Restoration.

The continued support from these professional service contracts is imperative to ensure that the Authority maintains its strong NERC Reliability Standards compliance posture and is well-positioned to prepare for external regulatory audits in 2017 and to manage existing and new NERC Reliability Standards obligations over the next 3.5 years.

FISCAL INFORMATION

Funds required to support contract services, where applicable, will be included in the budget submittals for the remaining years of these contracts. Payments will be made from the Operating Fund.

RECOMMENDATION

The Vice President – Technical Compliance and the Vice President – Procurement recommend the Trustees' approval to increase the spending authorization limit for the aforementioned contracts by \$4.0 million for an aggregate amount of \$9.5 million to provide professional services to the Authority's Reliability Standards and Compliance 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 a \$4.0 million increase in funding up to an aggregate amount of \$9.5 million for the procurement (services) contracts to provide professional services to the Authority's Reliability Standards and Compliance Group, as recommended in the foregoing report of the President and Chief Executive Officer;

<u>Contractors</u>	<u>Contract Approval</u>	
Navigant Consulting, Inc. 4600002980	Original approval:	\$ 5,000,000
	Initial change order:	\$ 500,000
KEMA, Inc. 4600002981	Present change order:	\$ 4,000,000
Quanta Technology 4600002982	Total contract approval:	\$ 9,500,000

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

iii. **Procurement (Services) Contract –
PV-20 Submarine Cable Replacement Project –
Request for Additional Funds and
Change Order Authorization**

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

The Trustees are requested to approve an increase in the funding for the three-year contract with LS Cable & System (4500264592), of South Korea, for the PV-20 Submarine Cable Replacement Project ('PV-20 Project'), in the amount of \$12,000,000 for a total contract amount of \$58,708,461. The requested increase includes a Change Order in the amount of \$6,170,027.95 for deferral of transition station demolition to 2018, additional Horizontal Directional Drilling ('HDD'), winter storage of the HDD equipment, North American Electric Reliability Corporation ('NERC') Critical Infrastructure Protection ('CIP') security upgrades, and the implementation of an Aquatic Invasive Species Management Plan ('AISMP'), necessitated by site conditions requiring an alternate drilling option and additional permit conditions. Additional funds in the amount of \$5,829,972.05 are being requested should the field work require further modifications. The increase in the authorized amount for the contract is inclusive of the requested Change Order and for additional materials, installation, testing and commissioning services in support of the project, should any additional emergent conditions requiring mitigation arise.

BACKGROUND

In accordance with the Authority's Expenditure Authorization Procedures, Change Orders in excess of \$3 million require the Trustees' approval.

At their September 29, 2015 meeting, the Trustees approved the Capital Expenditure Authorization Request ('CEAR'), estimated at \$68.7 million, and the award of a multi-year contract to LS for the PV-20 Project in the amount \$46,708,461. The CEAR requires no additional funding as a result of this request.

DISCUSSION

The existing 115 kV PV-20 circuit connects NYPA's Plattsburgh Substation in Beekmantown, NY to the Vermont Electric Power Company ('VELCO') Sand Bar Substation in Milton, VT. The circuit is comprised of a combination of 115 kV overhead line sections, 115 kV fluid-filled submarine cable sections, and 230 kV nitrogen-filled high pressure pipe-type cable section.

The PV-20 transitions to oil-filled submarine cables when it reaches the Cumberland Head Transition Station and then continues on the Lake Champlain bottom for approximately 1.7 miles where it emerges at the Grand Isle terminal in Vermont. The submarine cable portion consists of four (1 spare) original 500 kcmil cables installed in 1958, and three additional 1000 kcmil cables installed in 1970. The terminations at either end of the cable are virtually identical. This project will replace and dispose the existing seven (7) cables with four (4), single core 3553 kcmil XLPE submarine cables (3 phase conductors and 1 spare), to be installed at 230 kV rated insulation and operated at 115 kV, including the replacement of existing terminal structures with new terminal structures.

A memorandum of understanding between NYPA and VELCO was entered into on September 18, 2013 wherein NYPA and VELCO agreed to pursue the Project on a 50%-50% cost basis.

The following additional work and contract option were necessitated following the issuance of the contract to LS Cable & System:

- NYPA and VELCO exercised the contract option to defer transition station demolition to 2018 for mitigation strategy in the event of a premature cable failure.
- Horizontal Directional Drilling constructability and 'frac-out' concerns were raised by LS's subcontractor, Caldwell Marine, with respect to the original HDD plan. Frac-out is an undesirable condition where drilling mud is released through fractured bedrock into the surrounding rock and sand and travels toward the surface. In order to eliminate the constructability concerns and reduce the frac- out risk and potential impacts to the environment, an alternate drilling option was developed and accepted by NYPA and VELCO. This resulted in an increased drilling cost as the drill rig has to be placed further inland to avoid interference with existing transmission lines.
- Due to space limitations and to prevent extensive outages, the Cumberland Head Transition Station is being relocated, resulting in additional cost for the increased length of the submarine cables.
- Security requirements were upgraded to be NERC-CIP compliant, resulting in additional engineering, materials and implementation costs.
- The implementation of an Aquatic Invasive Species Management Plan was unforeseen and a condition mandated by the VT 248 permit.

In order to allow sufficient funding, should the field work require further modifications (i.e., Turbidity Monitoring Plan, Storm Water Pollution Prevention Plan, Steel Structures, Additional Oversight), an additional \$5.8 million above the revised contract value is requested.

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 Acting Vice President – Project Management, the Senior Vice President – Transmission, the Vice President – Procurement, and the Project Manager, recommend that the Trustees approve a \$12 million increase to the authorized amount for the contract awarded to LS Cable & System, which includes a Change Order in the amount of \$6,170,027.95.

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 authorize the increase in the contract awarded to LS Cable & System of South Korea, from approximately \$46,708,461 to \$58,708,461, which includes a Change Order in the amount of \$6,170,027.95, to fund additional scope, materials, installation, testing and commissioning services in support of the project, as recommended in the foregoing report of the President and Chief Executive Officer;

<u>Contractor</u>	<u>Contract Approval</u>
LS Cable & System South Korea (4500264592)	3 years
Change Order Request	\$ 6,170,027.00
Additional Funding Request	<u>5,829,972.05</u>
Total Request	\$12,000,000.00
Previous Authorization	<u>46,708,461.00</u>
Total Contract Award	<u>\$58,708,461.00</u>

AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things 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) Contracts –
Energy Efficiency Program – Electric Vehicle
Supply Equipment – Contract Award**

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The Trustees are requested to authorize the award of a 5-year contract to EV Connect Inc. ('EV Connect') of Los Angeles, CA to provide Electric Vehicle Supply Equipment ('EVSE' or 'charging stations'), including optional installation and networking services, for an amount not to exceed \$4 million. The contract will be used under the Authority's existing Energy Efficiency Program for projects in support of the Governor's Charge NY Initiative (the 'EVSE Projects'). The Charge NY Initiative aims to create a statewide network of up to 3,000 EVSE in New York State by 2018.

These EVSE Projects will be implemented under the Energy Efficiency Program using funds previously approved by the Trustees. Project costs will be recovered directly from the participants.

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-personal services or equipment contracts in excess of \$3 million require the Trustees' approval.

The Energy Efficiency Program provides energy efficiency, clean energy technologies and sustainability services to customers meeting the eligibility criteria under Public Authorities Law, Section 1005. Energy efficiency services include audits, design, engineering, procurement, and installation services related to a wide variety of energy technologies and renewables, including the installation of EVSE.

DISCUSSION

A request for proposals ('RFP') was advertised in the New York State *Contract Reporter* on June 30, 2016 and posted on the Authority's Procurement website on July 1, 2016, for the design, fabrication, delivery, installation, start-up, and service of EVSE at various locations throughout New York State. In response to the RFP, four proposals were received by the July 26, 2016 deadline. Two Addenda were issued in response to prospective bidder questions and requests for clarifications.

A committee with representatives from Energy Services Implementation, Integrated Grid and Procurement evaluated the proposals. The proposals were evaluated based on the following technical criteria as well as compliance with the commercial terms and conditions of the RFP:

- Experience managing similar EVSE projects
- Knowledge of EVSE technologies and best practices
- Compliance with industry standards issued by the Society of Automotive Engineers ('SAE') and Underwriters Laboratories ('UL')
- Compliance with NYPA's networking data requirements
- Costs for EVSE equipment, design, installation labor, networking and extended warranty

Upon evaluation of the proposals, the committee reached the conclusion that EV Connect was the lowest qualified bidder and the most compliant to NYPA's specifications and commercial requirements.

FISCAL INFORMATION

No increase in fiscal authorization is being requested for the Energy Efficiency Program at this time. The funding for the EVSE Projects will be provided from the Authority's operating funds and/or from the proceeds of the Authority's Commercial Paper Notes or other financing instruments, as deemed appropriate. All Authority costs, including overheads and the costs of advancing the funds, will be recovered.

A value contract in the sum not to exceed \$4 million with a term of five years is recommended based on an estimated installation of 300 (ten percent of the state's goal) networked EVSE with full installation services. Given that some customers will opt for non-networked EVSE and to self-install the equipment, the total contract value may be lower. The total contract price will be determined after NYPA has executed agreements with customers for the EVSE projects.

RECOMMENDATION

The Executive Vice President and Chief Commercial Officer, the Senior Vice President – Economic Development and Energy Efficiency, the Vice President – Procurement, and the Vice President – Integrated Grid recommend that a contract award be made to EV Connect, Inc., in an amount not to exceed \$4 million, and a term of five years, to provide Electric Vehicle Supply Equipment ('EVSE' or 'charging stations') in support of the Charge NY initiative.

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 five-year contract to EV Connect, Inc. in an amount not to exceed \$4 million, to provide Electric Vehicle Supply Equipment ('EVSE' or "charging stations") at various locations throughout New York State in support of the Governor's Charge NY initiative:

<u>Contractor</u>	<u>Contract Approval</u>
EV Connect, Inc. Los Angeles, CA	5 years
Q16-6086MH	<u>\$4 million</u> (aggregate)

AND BE IT FURTHER RESOLVED, That the Trustees hereby authorize the President and Chief Executive Officer, the Chief Operating Officer, the Senior Vice President – Economic Development and Energy Efficiency, the Vice President – Integrated Grid, and/or such officer designated by the President and Chief Executive Officer to execute agreements and other documents by the Authority and the Energy Efficiency Program participants, to execute agreements and other documents with contractors, these 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 projects under the Energy Efficiency Program that support the Governor's Charge NY Initiative ("EVSE Projects"); 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, as appropriate, to finance the EVSE Projects; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Commercial Officer and all other officers of the Authority are, and each of them hereby authorized on behalf of the Authority to do any 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.

SENY

**v. Procurement (Services) Contract –
Southeast New York – Small Clean Power Plants –
Operations and Maintenance Support Services –
Contract Award**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve the award of a competitively bid contract to NAES Corporation ('NAES') of Issaquah, Washington, in the amount of \$38 Million, to provide services in support of the Southeast New York ('SENY') Small Clean Power Plants ('SCPPs') facilities. NAES will provide the labor, management, technical support and regulatory compliance for the SCPPs.

BACKGROUND

Section 2879 of the Public Authorities Law and the Authority's Guidelines for Procurement Contract require the Trustees' approval for procurement contracts involving services to be rendered for a periods in excess of one year. Also, in accordance with the Authority's Expenditure Authorization Procedures, the award of contracts exceeding \$3 million require the Trustees' approval.

The SCPPs' management requires a contractor to supply the labor force needed to staff the facilities. The labor consists of management and local union labor to support the facilities' operations, maintenance and regulatory compliance of 10 GE LM6000 Gas Turbines located in six facilities operated by a central control room.

The term of this agreement will be five years starting January 1, 2017 through December 31, 2021. NAES is a worldwide operating company and also the incumbent contractor, which has held the contract since inception of the SCPP, winning all of the competitive bids for this contract.

DISCUSSION

In response to the Authority's Request for Proposal (Q16-6036JT) advertised in the New York State *Contract Reporter* on April 13, 2016, five proposals were received to provide the services requested for the SENY SCPPs facilities.

The proposals were reviewed by an Evaluation Committee consisting of the SCPP Director of Operations, Operations Manager, SENY Procurement Manager and WPO Procurement Specialist. The SENY Regional Manager concurred with the selection.

The disqualified bidders lacked the experience in the area of operating GE LM6000; the costs associated with their bids were non-competitive – reasons varied from mark-up on labor and materials to large incentives and transition costs to the new contractor. They generally did not have the expertise or corporate support needed to maintain the high level of operating excellence the Authority currently experience with NAES.

FISCAL INFORMATION

Funding and payments associated with this contract will be budgeted and accounted for under the SCPPs O&M Recurring Budget.

RECOMMENDATION

The Senior Vice President – Power Generation, the Regional Manager – SENY Operations, the Director of Operations – SCPPs and the Vice President – Procurement recommend that the Trustees approve the award of a five-year contract to NAES Corporation of Issaquah, WA in the amount of \$38 million for operation and maintenance services for the Southeast New York ('SENY') Small Clean Power Plant facilities.

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 to NAES Corporation of Issaquah, WA in the amount of \$38 million, is hereby authorized to provide operations and maintenance services at the Southeast New York Small Clean Power Plants;

<u>Contractor</u>	<u>Contract Approval</u>
NAES Corporation Issaquah, WA	<u>\$38,000,000</u>

Inquiry: Q16-6036JT

AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer, 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 and all agreements, certificates and other document to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

f. Real Estate

**i. Lease of Office Space –
30 South Pearl Street, Albany, NY**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

At their July 26, 2016 meeting, the Trustees authorized negotiation of, and entry into, a lease with PS Associates, L.P. ('Landlord') for approximately 12,000 square-feet of office space located on the fifth floor at 30 South Pearl Street, Albany NY ('30 South Pearl Street') to serve as the headquarters for the New York Canal Corporation ('Canal Corporation'). Subsequently, the number of staff projected to be based at the Canal Corporation headquarters increased significantly, necessitating the acquisition of additional office space. The Trustees are now requested to authorize negotiation of, and entry into, a lease with the Landlord for the entire fifth floor, comprising approximately 17,100 rentable square-feet.

BACKGROUND

The Authority's Expenditure Authorization Procedures governing real estate require the Trustees' approval for the acquisition of lease interests in real property where the annual rent exceeds \$100,000. Staff projects that the rent for the additional square footage will exceed \$100,000.

Pursuant to Part TT of Chapter 54 of the Laws of 2016 ('Part TT'), the New York State Canal Corporation ('Canal Corporation'), a New York State Thruway Authority ('Thruway Authority') subsidiary, will be continued and reconstituted as a subsidiary corporation of the Power Authority, and certain powers, duties and obligations relating to the New York State Canal System will be transferred from the Thruway Authority to the Power Authority, as provided for in Part TT (collectively, the 'Canal Transfer').

Canal Corporation's headquarters staff presently maintains offices at the Albany location of the Thruway Authority. In response to the above-referenced legislation, it is necessary to relocate these employees to new office space prior to the transfer of authority on January 1, 2017.

DISCUSSION

The terms of the new lease have not yet been finalized; however, after preliminary discussion with the Landlord, it is anticipated that the term will be for 10 years, at a per-square-foot rental rate not to exceed \$22.00 psf, together with build-out costs in excess of the Landlord's contribution, plus the cost of furnishings, parking charges and standard Tax and Operation and Maintenance costs. The Authority will incur no brokerage fees in this transaction. The rental rates and other charges set out above are competitive with similar space in the Albany area.

Although the Canal Transfer is not effective until January 1, 2017, earlier occupancy is required to allow sufficient time for installation of IT and security equipment, furniture, etc. by Authority staff.

FISCAL INFORMATION

Funds required for the rent will come from the Authority's Operating Fund.

RECOMMENDATION

The Vice President – Enterprise Shared Services recommends that the Trustees approve the negotiation of, and entry into, a lease with PS Associates, L.P. for the entire fifth floor, comprising approximately 17,100 square-feet, at 30 South Pearl Street, Albany NY.

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 President and Chief Executive Officer and the Vice President – Enterprise Shared Services be, and hereby are, authorized to enter into a lease with PS Associates, L.P. for approximately 17,100 square-feet of office space located on the fifth floor at 30 South Pearl Street, Albany NY to serve as the headquarters for the New York Canal Corporation, as substantially set forth herein, subject to approval of lease documents by the Executive Vice President and General Counsel or his designee; and be it further

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

RESOLVED, that the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer, the Senior Vice President – Wholesale Commercial Operations 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. **Acquisition of Real Property –
Emergency Energy Control Center –
Town of New Hartford, Oneida County**

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The Trustees are requested to authorize the acquisition, by purchase or eminent domain, of approximately 3 acres of real property located in the Town of New Hartford, County of Oneida, from New Hartford Office Group, LLC ('Owner'), as more particularly shown on the attached Exhibit '4f ii-A,' for a sum not to exceed Thirty Thousand (\$30,000.00) Dollars per acre. The real property will serve as the site of the new Emergency Energy Control Center ('EECC').

BACKGROUND

The Authority's Expenditure Authorization Procedures governing real estate require the Trustees' approval for the acquisition of a fee interest in real property where the fair market value exceeds \$10,000.

NYPA's current EECC is located within the Marcy 765 kV switchyard, approximately 900 feet from the Clark Energy Center ('CEC') building which houses the primary Energy Control Center ('ECC'). The Marcy 765 kV switchyard has been identified by North American Electric Reliability Corporation ('NERC') and the Electric Power Research Institute as a critical electric power facility on the United States grid. The close proximity of the existing EECC and the ECC, however, represents operational and security vulnerability.

Originally, the EECC was designed strictly as an emergency back-up for the main Control Room located in the CEC building. Although the existing EECC independently replicates the functions performed in the main control center, its close proximity to the primary ECC raises the possibility of common failure due to the same catastrophic event. Physical and biological threats near the CEC could render both control rooms unusable. The current EECC is extremely limited in space and is inadequate for all support and administrative personnel. In addition, there is no space for a security console or CEC Alternate Emergency Operations Center ('EOC') in the existing EECC.

NYPA's Internal Audit Report #IS001218 (DEC, 2001) recommends that the 'Transmission Business Unit management should revisit the location of the EECC and also develop a Disaster Recovery Plan that is coordinated with the Disaster Recovery Plans of IT and Power Generation that maintain systems and infrastructure critical to the continuity of the Authority's business.'

NERC's Reliability Readiness Evaluation Positive Observations/Recommendations (DEC 2007) recommends: 'review and implement, as appropriate, moving the back-up control center to another location to enhance survivability and sustainability of operations.'

NERC's standards require the transition period between the loss of primary control center functionality and the time to fully implement the backup functionality to be less than, or equal to, two hours.

At their meeting on March 29, 2016, the Trustees approved the acquisition of property located at the former Griffiss Air Force Base in the City of Rome, Oneida County, to serve as the EECC site. However, further investigation revealed the existence of subsurface utilities and easements, and, together with the site's significant building and setback restrictions, resulted in a determination that the site was unsuitable for the project. A new property search commenced.

DISCUSSION

Real Estate staff investigated several potential locations for the EECC facility and determined that the property located on Woods Park Drive in the Town of New Hartford best met the criteria established for the facility site. The site is approximately 20 minutes from CEC and meets the aforementioned time requirement. After initial negotiations with the Owner, the parties agreed on a per-acre cost of \$30,000. Staff believes that this represents fair market value for the property. The subject parcel comprises approximately 3 acres; the precise acreage will be established by a survey to be carried out upon the Trustees' approval of the acquisition and after final negotiation with the Owner.

Acquisition of the property is subject to completion of appropriate due diligence, including verification of title and environmental testing.

FISCAL INFORMATION

Funds required for the property acquisition will come from the Authority's Capital Fund.

RECOMMENDATION

The Senior Vice President – Transmission and the Vice President – Enterprise Shared Services recommend that the Trustees approve the acquisition of approximately 3 acres of real property located in the Town of New Hartford, County of Oneida, from New Hartford Office Group, LLC for a sum not to exceed Thirty Thousand Dollars per acre.

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 Trustee Picente being recused from the vote.

RESOLVED, That pursuant to the provisions of Article 5, Title 1 of the Public Authorities Law, the Trustees hereby approves the acquisition, by purchase or eminent domain, of approximately 3 acres real property, shown on the map attached hereto as Exhibit "4f ii-A," from New Hartford Office Group, LLC for a sum not to exceed Thirty Thousand Dollars (\$30,000) per acre; hereby finds and determines that such real property is required for a public use and hereby determines that such real property is reasonably necessary for the pending Emergency Energy Control Center Project; and be it further

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

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on

behalf of the Authority to do any and all things 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. **Acquisition of Real Property –
102 Avenue of the Stars –
Town of Blenheim, Schoharie County**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to authorize the acquisition, by purchase or eminent domain, of approximately 15.48 acres of improved real property located at 102 Avenue of the Stars, Town of Blenheim, County of Schoharie, from Vincenzo and Antonio Cascetta ('Owners'), for \$230,000, plus any appurtenant closing costs and adjustments. The real property, more particularly shown on the attached Exhibit '4f iii-A,' is improved by a single-family residence and will serve as the residence for the Park Manager of Mine Kill State Park ('Mine Kill').

BACKGROUND

The Authority's Expenditure Authorization Procedures governing real estate require the Trustees' approval for the acquisition of a fee interest in real property where the fair market value exceeds \$10,000.

Mine Kill was established pursuant to the Recreation Use Plan adopted in conjunction with the 1969 Federal Energy Regulatory Commission license for the operation of the Blenheim-Gilboa Pumped Storage Project. Pursuant to an Operating Agreement dated March 14, 1998, Mine Kill is operated and maintained by the New York State Office of Parks, Recreation and Historic Preservation ('OPRHP') on behalf of the Authority. Under the terms of the Operating Agreement, the Authority agreed to provide the use of an existing house on the Project property to serve as the Park Manager's residence. That house, which is over 150 years old, is no longer suitable for a residence and the Authority seeks a replacement.

DISCUSSION

Initially, the construction of a new residence on existing Authority property was considered. An RFP issued requesting quotes for the construction elicited a single bid of \$508,000, which was deemed exorbitant. New construction would have resulted in significant disruption to the Authority's Visitor's Center property, as well as to existing trails and other infrastructure.

While considering alternatives to the issuance of a new RFP, Real Estate staff became aware of the listing of the property at 102 Avenue of the Stars, within walking distance of Mine Kill State Park. The property is well-suited for the residence of the Park Manager and family. The asking price for the property was \$270,000; however, staff was able to negotiate a substantially reduced purchase price of \$230,000 and entered into a contract subject to approval by the Trustees.

In order to alleviate local concern that the property will be removed from the tax rolls, staff will seek to enter into agreements for Payment in Lieu of Taxes ('PILOT') with the appropriate municipalities.

FISCAL INFORMATION

Funds required for the property acquisition will come from the Authority's Capital Fund.

RECOMMENDATION

The Vice President – Enterprise Shared Services and the Resident Manager – Central New York recommend that the Trustees approve the acquisition, by purchase or eminent domain, of approximately 15.48 acres of real property located at 102 Avenue of the Stars, Town of Blenheim, County of Schoharie, from Vincenzo and Antonio Cascetta for \$230,000.

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 provisions of Article 5, Title 1 of the Public Authorities Law, the Trustees hereby approve the acquisition, by purchase or eminent domain, of approximately 15.48 acres of real property located at 102 Avenue of the Stars, Town of Blenheim, County of Schoharie, shown on the map attached hereto as Exhibit “4f iii-A,” from Vincenzo and Antonio Cascetta, for \$230,000 and hereby finds and determines that such real property is required for a public use; and be it further

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

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things 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. **Acquisition of Flooding Easement –
Nickerson Park Campground –
Town of Gilboa, Schoharie County**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to authorize the acquisition, by purchase or eminent domain, of a permanent flooding easement, together with a permanent, non-exclusive access easement, over, on, and across certain real property presently owned by Douglas and Donna Brown in the Town of Gilboa, County of Schoharie, known as Nickerson Park Campground, as more particularly shown on the attached Exhibit '4f iv-A.' The proposed easements will encumber approximately 3.45 acres, out of 94.28 ± acres of real property in support of the Blenheim-Gilboa Pumped Storage Power Plant ('B-G Project').

BACKGROUND

The Authority's Expenditure Authorization Procedures governing real estate require the Trustees' approval for the acquisition of a fee interest in real property where the fair market value exceeds \$10,000.

The subject property is located on the western bank of the Schoharie Creek, just upstream from the Authority's Lower Reservoir, and is part of a larger parcel commonly referred to as Nickerson Park Campground. As a requirement of its Federal Energy Regulatory Commission ('FERC') license for operation of the B-G Project, the Authority is required to maintain ownership or control of real property up to 900.5 feet above sea level, the elevation required to accommodate the maximum operating level of the Reservoir in the event of a maximum flooding event. To meet this obligation, the Authority owns, or has maintained flooding easements across the Nickerson Park Campground. However, the catastrophic flooding caused by Hurricane Irene in 2011 eroded the stream bank to such an extent that the Authority's existing property rights no longer meet this elevation requirement. The Authority also finds it necessary to acquire a permanent easement to insure ingress and egress rights to access the stream bank area.

ADDITIONAL BACKGROUND

The owners of the Nickerson Park Campground are currently plaintiffs against the Authority in a lawsuit claiming, among other things, trespass by virtue of the potential of the reservoir reaching full pond level thereby allowing water to encroach further west within the creek bed, but outside of the present B-G Project boundary. In addition, the Browns, through their attorney, have also filed a letter with FERC stating that the Authority did not previously acquire sufficient rights to control its Project boundary.

DISCUSSION

The flooding easement to be acquired will resolve the elevation issues caused by Hurricane Irene. The access easement will allow normal patrol of the B-G Project boundary. An independent appraisal will be obtained to determine the fair market value of the permanent easements. The Browns will be offered the appraised value.

FISCAL INFORMATION

Funds required for the property acquisition will come from the Authority's Capital Fund.

RECOMMENDATION

The Vice President – Enterprise Shared Services and the Regional Manager – Central New York recommend that the Trustees approve the acquisition, by purchase or eminent domain, of a permanent

flooding easement on real property, presently owned by Douglas and Donna Brown, in the Town of Gilboa, County of Schoharie, known as Nickerson Park Campground.

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 provisions of Article 5, Title 1 of the Public Authorities Law, the Trustees hereby approve the acquisition, by purchase or eminent domain, of the real property, presently owned by Douglas and Donna Brown, in the Town of Gilboa, County of Schoharie, known as Nickerson Park Campground, shown on the map attached hereto as Exhibit “4f iv-A;” and hereby finds and determines that such real property is required for a public use; and be it further

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

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

g. Finance

**i. New York Power Authority Other
Post-Employment Benefit Funds:
Selection of International Equity –
Value Investment Managers**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to approve the award of multiyear procurement contracts to Lazard Asset Management LLC ('Lazard') of New York, NY and Wellington Management Co. LLP ('Wellington') of Boston, MA for professional investment management services in connection with the Authority's Other Post-Employment Benefits ('OPEB') Trust Fund.

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. Moreover, the Authority's Expenditure Authorization Procedures 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 terms of the contracts considered herein are for more than one year and, in some cases estimated to exceed the dollar thresholds over the term of the agreement; therefore, the Trustees' approval is required.

OPEB Trust

The international equity-value portion of the OPEB Trust Fund is currently managed by two portfolio managers: Thomas White, with assets under management of \$16 million and Lazard, with assets under management of \$47 million. The agreements with Thomas White and Lazard are scheduled to expire in accordance with their terms on November 28, 2016 and December 9, 2016, respectively.

Certain Governmental Accounting Standards Board ('GASB') standards[‡] issued in 2004 require governmental employers to account for other post-employment benefit ('OPEB') liabilities on an 'accrual' basis (i.e., as the benefits are earned during the working career of the employee) rather than on a 'pay-as-you-go' basis, where costs are recorded as the benefits are paid during the employee's retirement years. OPEBs may include medical, prescription drug, dental, vision, life and other long-term care benefits for retirees and eligible beneficiaries. Similar GASB standards for pensions have existed since 1994. The Authority began reporting its OPEB obligations in this manner in 2002. The GASB rules do not mandate funding of the accrued OPEB obligations, only a recognition of the accrued OPEB liability on the employer's financial statements. If left unfunded, however, the amount of the unfunded liability could significantly impact the employer's overall financial condition and its credit rating with an attendant impact on the cost of debt financing.

At their July 31, 2007 meeting, the Trustees (1) approved the creation of the Power Authority of the State of New York Other Post-Employment Benefits Trust (the 'Trust'); (2) adopted the Trust Investment Policy Statement; (3) appointed a Trustee Custodian and (4) approved an initial \$225 million funding plan. Subsequently, in October 2011, the Trustees approved an on-going annual funding plan for the OPEB Trust and certain amendments to the Investment Policy Statement clarifying diversification and credit quality standards.

[‡] These standards include Statement No. 43 – Financial Reporting for Post-employment Benefit Plans Other Than Pension Plans and Statement No.45 – Accounting and Financial Reporting by Employers for Post-employment Benefits Other than Pensions.

As of June 30, 2016, the market value of assets held in the OPEB Trust Fund totaled approximately \$497 million, of which \$326 million were invested in equities, \$135 million were invested in equity securities, and \$30 million were invested in real estate investment trust securities. When compared to the actuarial accrued liability of \$637 million (as of December 31, 2015), this represents a funding level of 78%.

DISCUSSION

On May 12, 2016, staff solicited proposals for professional international equity investment management services for the Other Post-Employment Benefits ('OPEB') Trust Fund by notice to a number of firms providing such services and advertisement in the New York State *Contract Reporter*. On or before June 3, 2016 the Authority received a total of fifteen proposals.

Authority staff, with the support of its financial advisor, NEPC, LLC ('NEPC'), evaluated each proposal, taking into consideration quantitative and qualitative criteria. From a quantitative standpoint, staff evaluated historical performance; various risk metrics (including, but not limited to, each manager's standard deviation, Sharpe Ratio, tracking error and Information Ratio), and the schedule of fees. From a qualitative standpoint, firms were evaluated based on team duration and experience, investment style and research capabilities. After conducting an extensive review and analysis of each proposal, Authority staff, with the concurrence of NEPC, invited the three firms with the top tier rankings to give oral presentations. The three firms were incumbent Lazard, Wellington and Boston Partners. Based on the above criteria, portfolio diversification benefits evaluation and oral presentations, the following firms were identified to have the highest overall rankings to manage the international equity-value assets in the OPEB Fund: Lazard and Wellington. These firms have identified M/WBE firms to fulfill the M/WBE goal requirements as set forth in the RFPs.

Lazard is an incumbent manager for the OPEB Trust Fund with a relative valuation approach rooted in identifying securities with sustainable or improving financial productivity, yet trading at an attractive price. Since retaining Lazard in 2011, the manager has achieved consistent relative outperformance to the market and maintained stability among its investment team. It is recommended that the Authority retain Lazard to manage \$31.5M in assets.

Wellington would serve as a diversifying complement to Lazard, exhibiting negative alpha correlations with Lazard in the past. In addition, Wellington's contrarian investment approach has a tendency to focus on a security's price first and wait for the overlooked fundamentals to be realized by the market later on. This manager has demonstrated sound risk adjusted returns and down market protections in the past. It is recommended that the Authority award Wellington \$31.5M in assets to manage.

Boston Partners has an approach similar to Lazard's 'bottom-up' stock selection method, delivered good performance versus the benchmark and scored well across a number of measured criteria. However, the combination of Lazard (rather than Boston Partners) with Wellington offers a portfolio with a higher return and more consistent alpha generation, with lower projected risk measures due to their negative alpha correlation.

It is recommended that Lazard and Wellington be awarded five-year contracts, with asset allocations as noted below, subject, however, to early termination at any time by the Authority on 60 days' notice. The allocation amounts are based on the assets' ending market value as of June 30, 2016 and will be adjusted proportionally for the actual asset value on the transition date of the assets.

Asset Allocations (in \$millions)	
Lazard	31.5
Wellington	<u>31.5</u>
Total	<u>63.0</u>

FISCAL INFORMATION

The fees for the recommended investment managers are expected to be approximately 85 basis points (a basis point is equal to 1/100th of 1%, or 0.01%) dependent on the amount of assets under management, subject to negotiation, and will be paid from the OPEB Fund.

RECOMMENDATION

The Deputy Treasurer recommends the Trustees' approval of the award of multiyear service contracts to Lazard Asset Management LLC and Wellington Management Co. LLP.

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

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award of the multiyear investment management service contracts to Lazard Asset Management LLC of New York, NY and Wellington Management Co. LLP of Boston, MA for professional investment management services in connection with the Authority's Other Post-Employment Benefits Trust Fund, as recommended in the foregoing report of the President and Chief Executive Officer, is hereby approved and the execution of such contracts by the Executive Vice President and Chief Financial Officer or the Treasurer, subject to the approval of the form thereof by the Executive Vice President and General Counsel, on behalf of the Authority is approved; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer, the Executive Vice President and Chief Financial 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.

h. Collective Bargaining

**i. Collective Bargaining Agreement Between
the Authority and Local Union 1-2, Utility
Workers Union of America –
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 July 16, 2006, between the Authority and Local Union 1-2 of the Utility Workers Union of America ('UWUA'). The term of the Agreement, if approved, will have an effective date of January 18, 2009 and will expire on December 31, 2019. It covers employees at the Authority's Southeast New York ('SENY') Poletti facility which includes the 500 MW Plant.

BACKGROUND

The Authority and the UWUA have been parties to collective bargaining agreements since 1982. This Agreement is the successor general agreement negotiated between the parties following the expiration of the 2009 labor contract.

After several years of negotiating without resolution, the Union filed for Impasse in October 2015. 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, Chief of Staff to the COO and Director of Labor; Tim Zandes, SENY Regional Manager; Lori Alesio, Assistant General Counsel, Human Resources & Labor Relations; Galina Nisman, SENY Facility Labor Relations Manager; and Gary Dellaverson, Outside Counsel. The UWUA had representatives from its regional leadership team, as well as the NYPA employee and elected Chairman, Russell Ross.

Agreement on a new contract was reached on July 6, 2016. As a consequence, this new Agreement will become effective retroactive to January 18, 2009, pending Trustee Approval. The Agreement reached by the Authority's and the Union's negotiating committee was ratified by the Union membership on August 2, 2016.

DISCUSSION

The term of the Agreement runs from January 18, 2009 through December 31, 2019.

I. Wage Increases

The Agreement provides for a \$3,500 non-pensionable lump-sum payment to be paid to UWUA employees on payroll on the contract ratification date on a pro-rata basis.

The Agreement provides for a general wage increase of 3.5% effective January 1, 2010; 3.5% effective January 1, 2014; 2.0% effective January 1, 2015; 2.0% effective January 1, 2016; 2.5% effective January 1, 2017; 2.5% effective January 1, 2018; and 2.5% effective January 1, 2019.

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>
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

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 significant annual benefits-related costs savings over the contract term.

III. Retiree Medical Coverage

The Agreement also provides significant changes in retiree medical benefits.

Current employees who retire after December 31, 2019 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 December 31, 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, December 31, 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, the impact of the changes to both the IBEW and UWUA contracts 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 Post-employment Benefits ('OPEB') Trust.

FISCAL INFORMATION

The 2010 - 2016 retro wage increase and 2016 lump-sum payments shall not exceed \$1.1 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:

2010 - \$71,217.60
2011 - \$69,310.79
2012 - \$68,645.21
2013 - \$79,108.20
2014 - \$161,336.03
2015 - \$229,713.69
2016 - \$283,950.13

Payments will be made from the Operating Fund.

RECOMMENDATION

The Executive Vice President and Chief Operating Officer - Utility Operations and the Executive Vice President - Power Supply recommend that the Collective Bargaining Agreement between the Authority and Local Union 1-2 of the Utility Workers Union of America ('UWUA') be approved by the Trustees.

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

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

RESOLVED, that the Chief of Staff & Director of Labor be, and hereby is, authorized on behalf of the Authority to execute a Collective Bargaining Agreement with Local Union 1-2, Utility Workers Union of America, Local 1-2, covering specified operating and maintenance employees of the Charles Poletti Project and other facilities and properties maintained by the Authority at, or in, connection with such project, with changes to that Agreement as described in the foregoing report of the President and Chief Executive Officer and attached summary (Exhibit "4h i-A"), subject to approval of the form thereof by the Chief Operation Officer and Executive Vice President and General Counsel; and be it further

RESOLVED, that the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, 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:

5. Strategic Initiatives:

a. Report of the President and Chief Executive Officer

President Quiniones provided highlights of the Authority's performance for the month of August (Exhibit "5a-A").

Strategic Initiatives

President Quiniones provided an update on the six strategic initiatives related to NYPA's 2020 Strategic Vision -- Customer Solutions, Smart Generation & Transmission, Asset Management, Process Excellence, Knowledge Management and Workforce Planning. He said that with the exception of Customer Solutions and Knowledge Management, staff is on track with preparation of the 2016 Business Plans which should be completed by the end of the year.

Customer Solutions - Staff had to make some adjustments to this initiative. The team has been working hard to accelerate the process -- rebooting the Business Plan to get more business, close deals / contracts -- so that the business can break-even in 2019 and grow rapidly thereafter. President Quiniones said that he has been involved in the team meetings on this initiative and is satisfied that the Authority is headed in the right direction.

In response to a question from Chairman Koelmel, President Quiniones said the plan was to break even by 2019; however, after two years of implementation it was evident that the trajectory was not going to meet that original plan.

Responding to further questioning from Chairman Koelmel, President Quiniones said that marketing and customer acquisition were part of the underlying issues for the setback. The Authority was not booking as many contracts and deals as expected. Staff is now in the process of making more changes, booking deals and contracts, and, more recently, building a micro-grid at the Empire Plaza, an \$80 - \$100 million contract. President Quiniones added that staff is also in the process of working with other customers on similar projects. He is therefore optimistic that the deadline will be met by the end of the year.

Knowledge Management - The plan is to create a form of "google NYPA" by organizing the Authority's formal and informal information so that current and future employees can search relevant information easily and quickly. However, this project had to be put on hold as NYPA addressed cyber security issues.

Communities of Practice - NYPA has formed interest groups called "Communities of Practice" where employees from different departments voluntarily meet to discuss topics of interest in order to advance their knowledge of that topic. This form of knowledge sharing is relatively new and NYPA has to determine how to drive more enthusiasm and activity in this area to make it useful. Ms. Christine Pizzo and her team are working on this new venture.

In response to a question from Trustee McKibben, President Quiniones said the Communities of Practice is cross-functional areas of interest where different groups of employees can come together to address diverse issues.

In response to a question from Chairman Koelmel, President Quiniones said the Authority has deliverables set forth in the NYPA 2020 Business Plans for each year through 2020, and he is comfortable that the Authority will achieve the goals and deliverables set forth in the Plan for 2016 by the end of the year.

Key Accomplishments

1) The Marcy-South Series Compensation Project, which is part of the Smart Generation & Transmission initiative, is the application of Smart Grid technology called "series compensation" to the Authority's 345 kV transmission line which spans from Utica to the lower Hudson Valley. By applying this technology, that transmission line can now carry 440 megawatts more power from upstate to downstate. This project was completed on schedule and on budget. President Quiniones thanked the team from Project Development, Operations, Licensing and also Ms. Daniella Piper, the Project Manager who led the effort on this project.

2) The New York Energy Manager opened last month. This is a control center tracking the energy usage of about 3400 public buildings across the state. Approximately 1100 of those buildings are tracked on a "real-time" basis, streaming information about their energy usage. This is a means to optimize the buildings' energy use and create an open database that technology providers, utilities and the New York ISO, can use to create new products and services. He added that the Authority received an award from the DOE for Smart Grid application. GreenTech Media, a leading magazine in clean technology, also gave the Authority an award for the Energy Manager project;

3) The HR Mosaic Goals Module is a software tool for performance management and goal setting. This module will integrate all HR functions through Mosaic and align them to NYPA's 2020 Strategic vision.

In response to a question from Chairman Koelmel, Ms. Pizzo said that focus groups are currently gathering information on employee engagement concentrating on a targeted group, e.g. employees with one to five years of service or high performers. In addition, HR plans to conduct an employee survey at the end of next year.

Key Issues for NYPA

1. The state's PSC issued an Order that by 2030 all electricity supply sources in New York must come from renewable energy. Through its hydroelectric power plants, the Authority currently has 23% renewable energy. NYPA is well-positioned to participate in the development and investment of large-scale renewable wind solar power and the building and development of associated transmission systems to renewable sources from their remote locations to the load center. He said that this is a new business opportunity for NYPA which will help achieve the goals of the state.

2. Reforming the Energy Vision

There are opportunities available for the Authority's Customer Solutions business under the state's Reforming the Energy Vision Program. The electric system is undergoing a fundamental change; therefore, more distributed energy resources, e.g. solar panels and electric cars, on the distribution level and at customer premises and buildings are available. The Authority is uniquely positioned to participate in that business since it has been doing energy efficiency projects for the past two decades, participating in demand-side management, energy information, building micro grids, and engaging in customer-sided renewable projects. This will just be an expansion and growth of the Authority's energy efficiency business.

Canal Corporation

The Authority continues to work on the integration of the Canal Corporation ("Canal"). This needs to be done effectively and efficiently, and in a manner that will not detract the Authority's focus from implementing the NYPA 2020 Strategic Plan. To that end, President Quiniones said he needs to make sure that management's focus is not diluted as they work on Canal's integration into NYPA, while, at the same time, implementing the Authority's Strategic Plan and seizing opportunities that the Clean Energy Standard and the Reforming the Energy Vision program are presenting to the Authority.

6. Enterprise Risk Management:

a. Report of the Chief Risk Officer

Mr. Soubhagya Parija provided highlights of the report to the Trustees. (Exhibit "6a-A")

Top Enterprise Risks Update

There are no significant changes in NYPA's risk profile at this time. Enterprise Risk ("ER") is focusing on making sure that the action plans generated for the risk assessments are being managed properly and implemented. To that end, ER is working in a cross-functional manner to put mitigation strategies in place. Working with concerned risk owners - the executive sponsors of the risks - ER has developed key risk indicators associated with each of the top enterprise risks and will track the movement of those risks.

Key Risk Management Activities

- Phase I of the Reputational Risk Management project have been completed with Reputational Risk for NYPA being defined. As far as Phase II, ER has identified some key stakeholder groups and, with the assistance of Kim Harriman, is now working with cross-functional teams to define the desired reputational risk for these stakeholder groups.

- ER has been working with the teams assigned to Canal's integration into NYPA to identify risks associated with the transfer. There are some risks with meeting the deadline for the transfer of Canal's assets. ER will also identify risks on a forward-looking basis.

- ER is also working closely with the Commercial Operations team to implement the Commodity Risk Management program that was recently approved. In addition, ER is tracking all three aspects of Business Resiliency -- emergency action plans, incident response and business continuity programs -- and the focus has been to make it more action orientated. An "Active Shooter" drill was conducted with the assistance of the Chief Operations Officer and his team. This drill was very successful, with many lessons learned from the local law enforcement, which will be implemented in future drills.

- ER has been working closely with external stakeholders such as the Large Public Power Council ("LPPC"); the Senior Director of Enterprise Risk chairs the Risk Appetite Working Group of LPPC. ER has also shared its Key Risk Indicators (KRIs) with member organizations and they have been very appreciative of the support.

b. Financial Report

Mr. Robert Lurie provided highlights of the financial report to the Trustees (Exhibit "6b-A").

Net Income YTD August 2016

- Net Income for the eight months ended August 2016 was \$50.4 million, which was \$24.2 million higher than the budgeted \$26.2 million. A major factor impacting results was the timing of the contribution to the State. The budget assumed a \$25 million contribution in June. This contribution will be considered by the Board early next year.
- Excluding this contribution, Net Income for the year-to-date was \$0.9 million lower than budgeted primarily due to a lower net margin on sales (\$27.4 million) and unbudgeted expenses related to the Canal Corp. funding agreement (\$31.3 million), substantially offset by lower operating expenses (\$52.4 million) and higher income on the Authority's investment portfolio (\$5.7 million, primarily mark-to-market gain due to lower than anticipated market interest rates). Margins on market-based sales were lower than budgeted due to lower prices resulting in lower market revenue at Niagara and St. Lawrence. Operating expenses reflected underspending in several programs including Western NY Economic Development and Workforce Development in addition to less than expected O&M spending due to timing.
- Net income for the month of August was \$16.4 million which was \$6.8 million higher than the budgeted 9.6 million. The month included a higher net margin on sales (\$16.6 million) partially offset by unbudgeted expenses related to the Canal Corp. (\$7 million) and a mark-to-market loss on the Authority's investment portfolio (\$2.1 million, higher market interest rates in August). Net margins were higher due to higher prices on market sales and higher transmission revenues.

Mr. Lurie said the Authority is running at a Net Income of about \$50 million compared to the budget of \$26 million, the main reasons being that:

- 1) The Authority had assumed that it would be making a full year voluntary contribution to the state. It made a contribution of about \$70 million in the first quarter of the year; however, when the state budget was passed, no further contribution from NYPA was included in that budget. Consequently, NYPA will not be making that \$25 million contribution to the state for the balance of the year. NYPA now has the funding obligation for Canal that will offset that non-contribution to date through August (\$37 million). That amount represents the reimbursements that the Authority made to the Thruway Authority for their operation of Canal during the period from April 1 to December 31. In addition, a small amount of integration expenses was incurred in moving the management of Canal from the Thruway to NYPA's responsibility.
- 2) A drop in energy prices reduced the Authority's margin from energy sales in the wholesale market. Through August, on a year-to-date basis, the Authority is still \$36 million down from the budget; and
- 3) Offsetting those negative factors, the Authority has been under-running its O&M budget by over \$50 million; staff expects most of that to reverse by the end of the year.

In response to a question from Chairman Koelmel, Mr. Lurie said that on the downside, the Authority has a gross margin decline versus budget of about \$48 million. On the plus side, the Authority has additional transmission revenue that it is expecting from the successful prosecution of the settlement of its rate case and some reduction in expenses on the transmission side. The Authority is projecting that before the funding of Canal, it expects about \$43 million in Net Income.

Mr. Lurie said that the funding requirement for Canal is about \$75 million for reimbursement of Thruway expenses. Even though a portion of that \$75 million is reimbursing Thruway for some of its capital expenses, it is treated as an expense because the Authority does not actually own that asset as

yet therefore it cannot capitalize on any of that expense. In addition, the Authority expects \$14 million of integration expenses through the balance of the year.

Financial Outlook and Proposed Targets

In terms of O&M, Mr. Lurie said that the Authority expects a total of \$89 million to affect the Authority's P&L in 2016 relating to Canal. In addition, staff expects about \$17 million of integration expenses that it can capitalize. This is largely IT expenses that will be incurred to make the Authority ready for running Canal post-January 1. The total cash expense for 2016 would be \$106 million through the end of this year.

Mr. Lurie continued that staff has not completed the budget for 2017. He said, before Canal, the Authority projected it would have about \$158 million in Net Income from its core energy business. The Authority expects Canal-related integration expenses will total \$27.6 million of which more than \$17 million would be related to O&M expenses. The Authority is expecting that the operating and maintenance expense for running Canal would be \$68 million. In addition to that, there would be capital expenses of \$54 million; ongoing cash flow expenses would be \$123 million.

The Authority's P&L in 2017 would total \$86 million. This means that the forecast, including the integration expenses and assuming no voluntary contribution, would be \$49 million Net Income.

Mr. Lurie said that Net Income in 2015 was about \$80 million, which was reasonable. In 2016, the Authority will assume integration expenses and have already paid voluntary contribution to the state in the first quarter; this is going to produce a negative Net Income for 2016. Net Income for 2017 will be below the target for 2017. This is attributable, in large part, to the increase in Canal expenses.

Mr. Lurie said that the target for Economic Value Added ("EVA") is "zero" which means that the Authority is fully recovering all its operating expenses, cost of capital, capital outlays and the fixed charge coverage ratio. He said that in 2015 the EVA was acceptable; in 2016 it was below target and in 2017 the cash flow projection improved. However, although the Authority met the rating agency's target, it is below its Net Income target.

Mr. Lurie added that there are also pressures in the Authority's core energy business that are going to cause the results to decline over a period of time absent further action. He said this is largely because the Authority's sales of power capacity into the wholesale market will be less profitable over that time because of increases in supply of power in the market. However, there will be new wind plants coming online to benefit the Authority's renewables target statewide, as well as new natural gas fire power plants that will have an effect on capacity prices. Based on the metrics, the Authority's Net Income will be close to zero, and will be below its target fixed charge coverage ratio in 2019 and 2020.

In response to a question from Chairman Koelmel, Mr. Lurie said that based on the financial Metrics (2015-2017) and proposed targets, the Authority cannot afford the ongoing level of expenses associated with Canal. The Authority therefore, has to find a way to "tighten its belt" and take actions in its core business, as well to try to improve its forecast over the four-year period in order to maintain its bond rating.

In response to comments from Chairman Koelmel, Mr. Lurie reiterated that, based on the projections, some combination of actions across Canal and the Authority's core business will need to be taken in order for the Authority to be able to return to a healthy, steady, financial state.

Trustee Kress opined that although the integration seemed manageable when it was \$97 million, with the other pressures that the Authority has on its core business, in addition to the initial transition costs, which will bring that number up considerably, is a growing concern.

Chairman Koelmel opined that executing the longer-term vision and ensuring that the Authority maintains the strength of its Balance Sheet and overall position for the organization to continue to be a leader in the industry and achieve its 2020 vision was not a certainty given the market realities dynamics that has been presented to the Board. He said there is no question that the Canal integration creates significant incremental pressures that were not anticipated. He ended by saying that he is aware that the staff is focused and working hard on the issues and the Authority has the Board's full support in terms of the challenges it has to deal with for the Canal integration.

Trustee McKibben opined that what is most important for the Authority is protecting its core business, the strategic vision that has been set, the goals that are already set for execution over the next several years and not jeopardizing its ability to execute them; and, in addition to the foregoing, not jeopardizing the Authority's outstanding credit rating. Therefore, the key issue is figuring out how the Authority can protect its core business in light of this new responsibility.

Mr. Lurie said that the Authority is developing a menu of actions that would, in some combination, deal with the issues; thereafter, staff will come back to the Board for further action.

7. Operations

a. Utility Operations Report

Mr. Joseph Kessler provided an update of the Utility Operations' activities to the Trustees (Exhibit "7a-A").

Performance Measures

Generation Market Readiness

Generation Market Readiness factor in August was 99.91%, which is higher than the target of 99.40%. Year-to-date Generation Market Readiness factor was at 99.74%, which is above the annual target of 99.40%.

- There was one significant forced outage event in August:
 - At Niagara, RMNPP Unit 2 remains in a forced outage since July 7th due to a fire in the stator. The unit is expected to return to service by December 1st.

Mr. Kessler said that the Authority met its objectives despite the failure at the Niagara Project that did not impact the Generation Market Readiness measure.

In response to a question from Chairman Koelmel, Mr. Kessler said that the failure at the Niagara Project did not affect the measures because the Authority has 13 generators to meet its installed capacity. He said the Authority would get charged forced outage hour; however, it will be able to provide the load for which it has installed capacity.

Transmission Reliability

Transmission reliability in August was 92.03%, which was below the monthly target of 99.27%. Year-to-date, transmission reliability is 94.49%, which is below the target of 95.79%.

- There was one significant unplanned transmission outage in August.
- The Authority did not meet its objective for Transmission Reliability and that was due to a fault on the Y49 cable, the 26-mile cable that runs through the Long Island Sound. It was put back into service on September 20th. This did not create any capacity issues; however, the Authority will not meet its reliability measure for this month, and, consequently, will not meet the target for scheduled and forced outage hours charged.

Environmental

- There were no major incidents for the month of August. A Potential Transmission failure at Niagara resulted in an oil spill, which is reportable. To date, there have been 12 reportable incidents; the annual target is 32 incidents.

Safety

The DART (Days Away, Restricted or Transferred) Rate for August was 1.49 which did not meet the target of 0.78. The Year-to-Date DART Rate was 0.80 which did not meet the target of 0.78.

- There were two lost time incidents in August that met the DART criteria.

- Year-to-Date, there have been 9 injuries that resulted in lost time and met the DART criteria.

Key issues

Y49 cable

As part of the Asset Management Initiative, Operations plans to take a comprehensive view of the Y49 Cable because of the faults on this line. Under President Quiniones' direction, Operations will be conducting a life cycle analysis of the Y49 Cable with a view to correct possible inherent design issues.

UWUA Contract

The Authority now has a ratified contract with the Union. Mr. Kessler pointed out that this is the first time since 2009 that the Authority has no employees that are without a contract.

Canal Integration

Mr. Kessler said the Operations group continues to provide support for the Canal integration into NYPA.

In response to a question from Chairman Koelmel, Mr. Kessler said that Operations is creating capacity and will be able to sustain the support of Canal at the present time. Operations is also working closely with Ms. Kimberly Harriman to make sure it has contracts in place to off-set staffing needs. He said that despite the challenges, Operations is meeting its deadlines for the Canal integration.

Operations -- Looking Ahead

Mr. Kessler said that taking into account the challenges ahead, Operations' goal is to be more dynamic and flexible. To that end, the Operations team was charged with taking a comprehensive view of the entire organization to align its functions, focusing on four key areas: Technical Support, Compliance, Operational Excellence, and Generation and Transmission. Operations is taking a look at the scope of those functions in order to make sure that, with the use of the most modern technology, it is getting the best from those assets.

In response to a question from Chairman Koelmel, Mr. Kessler said Operations is working on realignment issues and the organizational changes it plans to implement. To date, Mr. Phil Toia has been assigned to Power Supply and a candidate for the Vice President of Project Management will be announced shortly. He continued that the other key area that Operations is focusing on is transmission. The maintenance and operations of the Clark facility and the Authority's transmission line, 1400 circuit miles, is continuing. Operations is also working with staff from the Commercial Operations group to review the transactions and make sure that those transactions can evolve into higher level engineering.

Chairman Koelmel held that although the Canal integration is important, as the group attempts to balance its core functions with the integration, the Board's expectation is that the team will continue to deliver on the core metrics with continued strong execution of the core function which are important to the Authority's customers and constituents.

b. Commercial Operations Report

Ms. Jenny Liu provided an update of Commercial Operations' activities to the Trustees (Exhibit "7b-A").

Wholesale

In August, the Authority experienced a week-long heat wave which resulted in an increase in energy prices. The average energy price closed at about \$43 per megawatt/ hour compared to \$40 per megawatt/hour in July. With the increase in August prices, the Authority was able to close the year-to-date budget gap by three percent. With energy prices continuing to be low, the Authority's revenues are currently down by 14 percent compared to budget.

Natural gas prices have remained low, about 15.7 percent. NYPA continues to benefit from the low natural gas prices for its fossil fuel fleet which are generating about \$54.5 million in reduced fuel costs compared to budget.

With prices continuing to fluctuate, NYPA has already locked in about 70 percent of its portfolio and has realized about \$20.8 million in positive settlements to date.

In response to a question from Chairman Koelmel, Ms. Liu said that from a budget perspective, the Authority's revenues are expected to be on target given the fact that it had an upswing in August and was able to reduce some of the gap by about three percent. However, year-to-date the Authority is still about 14 percent down which it would like to make up during the remainder of the year, but prices continue to be low.

In response to a question from Trustee McKibben, Ms. Liu said that, including the month of August, the Authority's revenue increased by three percent compared to what was reported by staff in June.

Transmission Business Development

The Authority's proposal for a new 345 kV line in Western New York has passed the first phase of the New York ISO assessment. The Authority is now waiting for the PSC to give the New York ISO the go-ahead for the next phase. The Authority will continue to work with NYSEG on this proposal and expects that the New York ISO will make the award in the first quarter of 2017.

With regards to the AC transmission process, the New York ISO recently issued its draft report and all six of NYPA's proposals were deemed viable and sufficient. If the PSC confirms the need, the Authority expects the New York ISO to make the award in the fourth quarter of 2017.

President Quiniones added that these projects fit in his presentation earlier regarding future opportunities for NYPA in large-scale renewable and transmission projects. He said the Authority submitted two bids, one in Western New York and the other in Central New York. If the Authority and its partners win these two bids, these are going to be big project development opportunities for the Authority in the transmission business.

In response to a question from Vice Chair Nicandri, President Quiniones said that because of the retirement of the two coal plants in Western New York, Dunkirk and Huntley, there is a need to reinforce the grid. He said the Authority, among other competitors, has proposed projects that will improve the transmission in those regions. In addition, these projects will help to unclog the bottleneck that exists today and bring excess power to those regions. He added that the Authority has partnered with a private developer, LS Power, in Central New York, and with an investor-owned utility, New York State Electric and Gas, in Western New York, for the proposed projects.

Economic Development

Economic Development -- the Authority has allocated about 748 megawatts of energy, securing approximately 400,000 jobs and \$33 billion in capital investments. With regards to energy efficiency, the Authority is expecting to under-collect by about \$6.3 million; the Authority projected to under-collect by about \$6.5 million.

Grants and Other Initiatives -- the Authority expects about \$6.2 million in projects to support energy efficiency and renewable goals across the state. In August, the New York Energy Manager facility was opened and the Authority has already registered and connected more than one thousand buildings across the state to collect data and analyze their energy usage. This is going to create opportunities for NYPA as it gathers data and analyzes that data to help some of the buildings that are connected to the Authority.

In response to a question from Trustee McKibben, Ms. Liu said the Authority had expected to under-collect the fees for services it rendered under the energy efficiency program. Nevertheless, the Authority is hoping that with the New York Energy Manager and some of the other initiatives such as the transmission initiative, it will be able to funnel some of the work from those initiatives into the energy efficiency category.

In response to a question from Chairman Koelmel, Ms. Liu reiterated that the Authority expected to under-collect for energy efficiency projects and will continue to under-collect, as projected. She said that the under-collection is as a result of fees that the Authority was expecting from energy efficiency projects in the amount of \$140 million.

Ms. Liu ended by saying that by the end of the year the Authority is expecting to spend about \$21.6 million compared to \$30 million which was approved in the budget for spending. President Quiniones added that, as indicated earlier in his report, the Authority's Customer Solutions business Plan for this year was originally expected to make an investment at a loss of \$30 million. The Authority is doing some adjustments to the Plan in order to accelerate the curve towards a break-even point and growing the business.

c. Information Technology Report

i. First 100-Day Plan Overview

Mr. Ken Lee provided an overview of his first 100-Day Plan to the Trustees. He said his goal is to help NYPA build the utility of the future and to be known for innovation, secure and reliable information technology ("IT") operations utilizing new capabilities, data security and technology. IT will support the Authority's strategic initiatives and needs of the Business Units by building an analytics team, and looking for opportunities to increase the Authority's revenue and reducing costs. He said that as IT got more involved in smart generation and transmission projects as well as asset management, he discovered that this platform could be used to accelerate delivery of its use cases for 2016 around analytics. He continued that he has changed the operating model of the team to a "plan," "build," and "run" model, which will allow IT to organize its resources and quickly respond to the demands of the Authority's business, as well as work well with the strategy teams in each of the Strategic Initiatives. The team is working to deliver the 2016 objectives around enterprise search for knowledge management, and is looking at new technologies like "block-chain" and predictive analytics to advance the Authority as a utility of the future.

IT is also working with other utilities such as Con Edison, the New York ISO and other New York state agencies to develop plans around a concept of mutual aid to share resources to restore electric service to the Authority's customers in the event of a storm. There are opportunities to improve IT's capabilities around the protection and detection of threats.

Challenges

Raising IT's Maturity - IT has to work with the Business Units to meet the targets of the Strategic Initiatives. This is a challenge because of the high demand. Part of the solution is prioritizing the demands and working with the leadership team to help the IT team understand the business case for each initiative.

Canal Integration - This is a high priority project, and will continue to be a priority for IT through 2017 and 2018.

Cyber Security -- There are new risks associated with the build-out of new business capabilities. The team is working on projects to appropriately manage the risks associated with the new capabilities and to increase IT's maturity around cyber security. IT has contracted with an organization which monitors the network and devices to assist the Authority in the defense and protection of its systems and information.

In response to a question from Vice Chair Nicandri, Mr. Lee said that the Authority's cyber security team is involved with industry organizations such as the Large Public Power Council and other state agencies, as well as consultants, discussing best practices for cyber security, tools, and information sharing in order to help the team understand where the threats of tomorrow are as well as managing today's risks.

Expected Output - Align IT and OT

With the support of the Operations group and the use of predictive analytics, the team will be able to anticipate and resolve problems in the Authority's operations.

Mr. Lee ended by saying that IT is working towards a successful Day One for the Canal integration into NYPA. In addition, IT will be drafting an initial version of a Strategic Technology Plan to align the network's services for three of the six strategic initiatives; the other three to be completed in 2017.

In response to a question from Chairman Koelmel, Mr. Lee said his biggest surprise has been the IT staff. He said he had some expectations when he came on board and the team has started to take the steps necessary to put them in a position to succeed. They have exceeded his expectations and, as a result, he believes that he will be able to move faster in helping to mature the Authority's IT organization.

d. Public and Regulatory Affairs Report

i. First 100-Day Plan Overview

Ms. Kimberly Harriman provided an overview of her first 100-Day Plan to the Trustees. She said as Senior Vice President for Corporate and Public Affairs her areas of responsibility include Regulatory Affairs; Communications; Government and Community Affairs; and Environmental Justice and Sustainability. She is also tasked with reviewing the aforementioned functional areas and determining what parts can be improved, reinforced or refocused.

Regulatory

With respect to Regulatory Affairs, the Authority needs to take a proactive stance and be a leader in engaging its regulatory partners to promote NYPA initiatives.

Ms. Harriman opined that, based on 16 years of regulatory experience, she recognizes that people are most effective when they are part of the beginning of a process. Therefore, NYPA should position itself, both at a state and a federal level, to be at the table of creation and have an input in the initial processes. By doing so, it can leverage opportunities and drive outcomes based on what needs to be achieved.

Communications

The Communications group comprises a multi-faceted team working on graphic design, TV and production, and the press. The group discussed a communications strategy to identify what is the best medium to reach target individuals, stakeholders, other utilities and the Authority's customer base. There are multiple audiences for each of the Authority's initiatives that the group communicates with, and the goal is to do it effectively.

Community and Government Affairs

With respect to community and government relations, the Authority partners with the communities that host its facilities and assets at St. Lawrence, Niagara, Blenheim-Gilboa and the Small Clean Power Plants in NYC. They are the Authority's partners in achieving the greater good for the economic drivers within their localities as well as for the state, in general.

The group is looking at how NYPA's 2020 Strategy is changing the nature of its relationship with these communities and how to make sure it is engaging them to be consistent with the initiatives. The goal is to have them on board to be partners in the Authority's success, and the group wants to assure that it is driving that goal.

Environmental Justice

With respect to Environmental Justice, the group is looking at ways to reinvigorate that program. It will identify all of the Business Units within NYPA that should be focusing on EJ issues. As projects are defined, they should first identify if there is an EJ issue and, if so, how it can be included in the decision-making process and drive the best outcome. The Environmental Justice group will be included at the initial stages of projects within the Business Units to help them identify EJ issues and the best way to incorporate their concerns into the decision-making process so that the projects, with the assistance of community stakeholders, has the best chance of success.

Sustainability

Based on a recommendation from the Audit Department, the group has identified improvement opportunities. The first is creating a Sustainability Plan, and second, making sure that members within the business functions accept the Plan. The goal is to have an interdepartmental sustainability community. In addition, the group plans to come to the Board of Trustees with a proposal for a sustainability budget so that they can ensure they have prioritization for those projects in order to achieve the goals in the Sustainability Plan.

In response to a question from Chairman Koelmel, Ms. Harriman said NYPA and its employees are the Sustainability group's customers. The team's role, therefore, is to take some of the best practices seen in the industry with respect to organizational sustainability and work in partnership with Operations and the other Business Units within NYPA to identify where it can improve sustainability and engage them to be active partners in the achievement of the group's Sustainability Plan.

e. Power Allocations and Proceeds

i. Western New York Hydropower Allocations

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The Trustees are requested to approve the following hydropower allocations:

- (1) an allocation of 400 kilowatts ('kW') of Replacement Power ('RP') to GEICO, which is proposing to expand its current operations located in the Town of Amherst; and
- (2) an allocation of 1,000 kW of RP to CI Filing Systems LLC ('CI Filing'), which is proposing to expand its manufacturing operations from New Jersey to the Town of Tonawanda (Erie County).

The allocations, which are described in further detail in Exhibits '7e i-A', '7e i-A-1', and '7e i-A-2', would support capital investment of at least \$13.9 million and the creation of at least 380 jobs in Western New York ('WNY').

The Trustees are also requested to authorize a public hearing pursuant to Public Authorities Law ('PAL') §1009 on the two proposed direct sale contracts for GEICO and CI Filing, the current forms of which are attached as Exhibits '7e i-B-1' and '7e i-B-2'. Exhibits '7e i-B-1' and '7e i-B-2' reflect the revised form of customer agreement for the sale of Western New York hydropower (RP and Expansion Power ('EP')) the Trustees have been asked in a separate item to approve (referred in there and herein as the 'EP/RP (CES) Customer Agreement').

This revised form of customer agreement includes two new charges to the customer – a Zero Emission Credit Charge and a Renewable Energy Credit Charge. These new charges would allow the Authority to recover the costs it would incur relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to customer load associated with the allocations identified above should the Authority decide to participate in the Clean Energy Standard ('CES') program established by the New York Public Service Commission ('PSC') to implement the clean energy goals of the State Energy Plan ('SEP').

BACKGROUND

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

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

The Authority works closely with business associations, local distribution companies and economic development entities to garner support for the projects to be recommended for allocations of Authority hydropower. Discussions routinely occur with National Grid, Empire State Development, Buffalo Niagara Enterprise, the Niagara County Center for Economic Development and the Erie County Industrial

Development Agency 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 the recommended allocation.

DISCUSSION

Background

At this time, 24,770 kW of unallocated EP and 56,340 kW of unallocated RP are available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).

GEICO

Founded in 1936, GEICO first targeted an insurance customer base of U.S. government employees and military personnel. Today, the company has grown to provide insurance to a wide range of customers with more than 13 million automobile policies in force that insures over 22 million vehicles. GEICO is the second largest private passenger auto insurer in the United States and employs more than 30,000 employee-associates. The company maintains 14 major offices nationwide to provide 24-hour service to clients.

GEICO located its Northeast Operations Center in the Hamlet of Getzville within the Town of Amherst in Erie County in 2005.

GEICO is seeking to expand its current operations in Erie County. It is currently receiving 1,300 kW of Expansion Power at its 300 Crosspoint Parkway facility. The expansion project would occur at 150 Crosspoint Parkway. The new site would be an 86,000-square-foot facility located next door to GEICO's current site.

GEICO has requested an allocation of 400 kW and determined this need based on operational characteristics at its current facility and operations expected at the new facility.

GEICO would lease the property and make capital improvements to prepare the site for its intended use as a call center similar to the current operations at the existing site. Operations would consist of the sales, service, and underwriting of private passenger automobile insurance policies. The new call center would enhance the company's ability to grow in Western New York and is expected to be operational before the end of 2016.

The three-year project cost is estimated to be at least \$6 million. It includes the installation of information technology equipment consisting of network servers, switches, personal computers, security access devices, and cameras.

GEICO indicates that at least 300 new jobs (average \$47,244 salary/benefits) would be created within the first three years. The jobs would be customer service representatives, supervisors and managers. GEICO's long-term plan is to eventually employ at least 800 persons at the expanded facility.

Empire State Development awarded a \$4 million Economic Development Program Grant in support of the expansion project.

The job creation ratio for the proposed allocation of 400 kW is 750 new jobs per MW. This ratio is well above the historic average of 28 new jobs per MW based on allocations made during the past six years. The total project investment of at least \$6 million would result in a capital investment ratio of \$15 million per MW. This ratio is below the five-year historic average of \$23.5 million per MW.

Staff recommends an allocation of 400 kW of RP be awarded to GEICO in support of its proposed expansion, which includes a capital investment of at least \$6 million and the creation of at least 300 new jobs at its facility in the Town of Amherst, as further detailed in Exhibits '7e i-A' and '7e i-A-1.'

CI Filing Systems LLC

Founded in 1982 in a small, 1,600-square-foot facility with a few employees, CI Filing has grown to occupy an enormous factory and warehouse in Totowa, New Jersey, employing roughly 150 employees while producing custom-made index tabs, file folders, file backs and legal dividers.

A costly lease at its New Jersey facility, coupled with more favorable economic factors in Western New York, has given CI Filing an opportunity to expand its operations to the Town of Tonawanda (Erie County) at two locations: (1) a 55,000-square-foot facility at 1136 Military Road, which would be used for manufacturing operations; and (2) a 41,000-square-foot facility at 860 Ontario Street, which would be used for warehousing and distribution. This is a campus-like setting as the buildings are less than .2 miles (1,000 feet) apart.

CI Filing has requested a 1,210 kW allocation of hydropower in exchange for creating at least 80 new jobs (\$37,938 average salary/benefits) and investing at least \$7.9 million (\$3,150,000 at 860 Ontario and \$4,766,000 at 1136 Military Road). The jobs would be created in the first and second years of operation.

CI Filing would lease the Military Road facility and purchase the building on Ontario Street. Current plans call for renovation/construction to begin in January 2017, with partial relocation of equipment and machinery beginning in July 2017. The move includes the relocation of printing presses, tabbing equipment, collator/binding machines, cutters/die cutters and folder presses.

CI Filing projects to increase sales by 25% and go from two to three shifts once the expanded WNY facility is fully operational by October 2018. It plans to expand in phases and begin partial operations prior to July 2017.

CI Filing has options other than relocating to WNY. Empire State Development has awarded CI Filing up to \$800,000 in support of the expansion project under its Excelsior Jobs Program.

The job creation ratio for the proposed allocation of 1,000 kW is 80 new jobs per MW. This ratio is well above the historic average of 28 new jobs per MW based on allocations made during the past six years. The total project investment of at least \$7.9 million would result in a capital investment ratio of \$7.9 million per MW. This ratio is below the five-year historic average of \$23.5 million per MW.

Staff recommends an allocation of 1,000 kW of RP be awarded to CI Filing Systems LLC in support of its proposed relocation and expansion, which includes a capital investment of at least \$7.9 million and the creation of at least 80 new jobs at its facilities in the Town of Tonawanda, as further detailed in Exhibits '7e i-A' and '7e i-A-2.'

CONTRACT INFORMATION

The Authority is in the process of discussing the proposed hydropower sales contracts with GEICO and CI Filing and anticipates receiving approval of a contract substantially similar to the form attached as Exhibits '7e i-B-1' and '7e i-B-2,' respectively. Accordingly, the Trustees are requested to authorize a public hearing, pursuant to PAL §1009, on the contract form for GEICO and CI Filing attached as Exhibits '7e i-B-1' and '7e i-B-2,' respectively.'

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 is authorized to execute the contract.

Subject to the qualification noted below, the form of proposed WNY (CES) Customer Agreement 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 contract forms, including the Authority's RNY Power Program contracts.

The provision of electric service for all hydropower allocations are subject to enforceable employment, capital investment and power usage commitments. The standard contract form includes annual job and capital investment reporting requirements and a compliance threshold of 90%. If the relevant compliance threshold is not met, 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 the customer's local electric distribution utility.

Finally, the proposed EP/RP (CES) Customer Agreement differs from the previous form of WNY Customer Agreement in that it contains provisions for the collection of two new charges from EP and RP customers: (i) a Zero Emission Credit ('ZEC') Charge; and (ii) a Renewable Energy Credit ('REC') Charge. These charges are intended to allow the Authority to collect costs associated with ZEC and REC purchases attributable to customer load served by the Authority under the EP/RP (CES) Customer Agreement resulting from the Authority's participation in the CES Program. The REC Charge and ZEC Charge would be in addition to all other fees, assessments and charges provided for in the proposed form of agreement, applicable service tariffs and Authority rules and regulations. The REC Charge and ZEC Charge would be subject to assessment beginning January 1, 2017 and April 1, 2017, respectively.

RECOMMENDATION

The Vice President - Economic Development, recommends that the Trustees (1) approve an allocation of 400 kW of RP to GEICO, and (2) an allocation of 1,000 kW of RP to CI Filing as further described herein and in Exhibits '7e i-A,' '7e i-A-1' and '7e i-A-2.'

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

Mr. Keith Hayes provided highlights of staff's recommendation to the Trustees. He said that GEICO plans to bring 300 jobs in the region which equates to 750 jobs per megawatt versus a historical average of 28 jobs per megawatt; and CI filing plans to bring 80 new jobs which is 80 jobs per megawatt versus 28 jobs per megawatt which is also an historical value. These two businesses will therefore have a significant impact on the economy of Western New York.

In response to a question from Chairman Koelmel, Mr. Hayes said the allocations to these companies are "historical" when compared to all of the Authority's power allocations.

In response to a question from Vice Chairman Nicandri, Mr. Hayes said the allocations meet the criteria that the State Controller set out in their audit and also the Authority's own standards.

Upon motion made by Trustee Picente and seconded by Trustee Kress, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That (i) an allocation of 400 kilowatts ("kW") of Replacement Power ("RP") to GEICO, and (ii) an allocation of 1,000 kW of RP to CI Filing Systems LLC, as detailed in the foregoing report of the President and Chief Executive Officer and Exhibits "7e i-A," "7e i-A-1," and "7e i-A-2," be and hereby are approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing pursuant to Public Authorities Law ("PAL") §1009 on the terms of the proposed form of the direct sale contracts for the sale of RP finally negotiated with GEICO and CI Filing Systems LLC (the "Contracts"), the current forms of which are attached as Exhibits "7e i-B-1" and "7e i-B-2," respectively, 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.

f. Economic Development

**ii. Western New York Workforce
Training Center - Funding Request**

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

The Trustees are requested to authorize up to \$15 million in 2016-2017 for development of the Western New York Workforce Training Center ('Center') to be located at 683 Northland Avenue, on the East Side in Buffalo, NY. These funds will be provided under grant agreement(s) with the Buffalo Urban Development Corporation ('BUDC') in support of energy-related projects as authorized under Public Authorities Law Section 1005(17)(a). The funding will support high performance and sustainable building programs in a world-class training facility to be utilized by the New York Power Authority ('NYPA' or 'the Authority') for recruiting new talent into the industry as well as internal training for employees. The Center and the Northland Beltline Corridor area redevelopment, as a whole, is expected to result in economic development for the City of Buffalo and surrounding areas, and enhanced quality of life and employment opportunities for city and area residents.

BACKGROUND

Under Public Authorities Law ('PAL') §1005(17)(a), the Authority may finance and design, develop, construct, implement, provide and administer energy-related projects, programs and services for any public entity within the state. NYPA's funding will be provided to the Center, pursuant to the provisions of PAL §1005(17)(a), for the purposes of financing a high performance and sustainable building program. NYPA funds shall be used solely for payment of approved planning, design and implementation costs incurred in connection with the renovation and retrofitting of the facility through the incorporation of high performance and sustainable construction techniques and related equipment.

Initial budget estimates indicate that the total renovation of the Center will cost approximately \$40 million. This includes renovation of the core and shell, environmental abatement, design services, and a design and construction contingency. In addition to the Authority's \$15 million contribution, other committed sources of funding include \$17 million from the Empire State Development ('ESD'), in addition to the cost of purchasing the building and an initial operating subsidy (equaling \$29 million total), and a National Grid brownfield grant (\$300,000). Other potential sources of funding (in progress but not yet committed) include Historic Preservation Tax Credits, U.S. Economic Development Assistance, NYSEDA (for high performance features), and Brownfield Tax Credits. These sources, as well as other potential funding opportunities, are being pursued to ensure there is no deficit. The operating budget for the Center is expected to lead to full sustainability within five years. ESD has allocated some funds to cover possible operating budget gaps in the initial years.

Energy and manufacturing companies require highly skilled employees that are proficient in mathematics, computing, mechanics, and other technical skills that traditional high schools, community colleges, and vocational training programs may not currently provide due to historic trends away from a technically-focused curriculum. To address this gap, NYPA and ESD have formed a team and committed funds to develop a regional center to address the skilled workforce needs of the energy and manufacturing industries in Western New York, in line with the German dual training model which combines practical on-the-job training with more broad-based education. The Center will be designed to:

1. Meet the Authority's skilled-trades employee needs (existing and new employees);
2. Meet the need for skilled energy and manufacturing employees in the region, generally;
3. Offer programs that enable students to earn transferable credits (specifically within the State University of New York ('SUNY') system) and build upon a career path;
4. Allow access to state-of-the-art classroom and equipment;

5. Provide training in 'soft skills' to enable long-term employment; and
6. Position the Western New York region as a source of highly trained employees (and, in turn, reinforce economic development in the region).

The energy and manufacturing industries are facing similar skills gaps throughout New York State. Nearly 10% of Authority employees are currently eligible for retirement, and another 30% (more than 500 employees), many of which are in technical skilled trades positions, will become eligible within the next ten years. The Center for Energy Workforce Development ('CEWD') estimates that nearly half of the electric power generation, transmission and distribution workforce throughout the U.S. may need to be replaced in the coming years due to baby boomer retirements. In New York State alone, there is a projected demand to fill approximately 7,000 energy career-related positions over the next ten years, such as line workers, plant or field operators, technicians, engineers, pipefitters and welders (according to the 2015 CEWD Demand Report).

At their September 2013 meeting, the Trustees, as part of an Informational Item, were briefed on the Center and some of the benefits the Authority provides in Western New York. Governor Andrew M. Cuomo included a focus on preparing the workforce of today and tomorrow as part of his 2013 State of the State Policy Book, and on July 15, 2015, unveiled plans for the Western New York Workforce Training Center to be located at 683 Northland Avenue, in approximately 100,000 square-feet of space on Buffalo's East Side. The initiative creates two co-located training facilities – an Advanced Manufacturing Training Center and a Utility of the Future & Clean Energy Training Center – combined into one space accounting for the many synergies between the industries. As a centerpiece of the Authority's workforce planning strategic initiative, the Center will help ensure a robust and diversified workforce of highly trained, skilled workers ready to meet the challenges of the 21st-century electric utility and advanced manufacturing industries.

The Authority has signed two Memorandums of Understanding ('MOU's') to support the development of the Center. The first was entered into among the Authority, NYSERDA, ESD, National Grid, Rochester Gas & Electric ('RG&E'), and New York State Gas & Electric ('NYSEG') in September 2014, agreeing to work together on the proposed Center. The second was executed in April 2016 among the Authority, ESD and BUDC outlining expectations for the development of the Center.

Initial steps (led by ESD and/or BUDC) in the development process have been undertaken. BUDC, the City of Buffalo's not-for-profit development agency, awarded a contract to Watts Architectural & Engineering for design and programming in March 2016. BUDC also issued a solicitation for a construction management firm and received 10 proposals in July 2016. ESD issued a solicitation for a team to operate the Center and received proposals in July 2016; bids are under review and an award is expected in fall 2016. Current schedules project the Center's construction process to begin in early 2017 and commence operation by mid- 2018.

The initiative represents a first-of-its-kind public-private training partnership with multiple state entities such as the Authority, ESD, and various local SUNY colleges and universities, local government (City of Buffalo), and private industry, including the local utilities. Programs offered at the Center will include credit-bearing certificates and two-year degrees, resulting in jobs such as electrician, plant operator, lineman, mechanic, machinist, welder, technician, and many others. Three local SUNY institutions – Alfred State College, Erie Community College, and Buffalo State College – as well as other public and private academic partners, will work together to offer stackable curriculum for highly needed jobs in the energy and manufacturing fields.

The development of the Center supports the Authority's workforce planning strategic initiative and will allow NYPA to better address the pending retirements and changing skill requirements. Workforce development has become increasingly important with the implementation of the Governor's Reforming the Energy Vision initiative which will fundamentally transform the way electricity is distributed and used in New York State. The Center will enable the Authority and other utilities to prepare for the rapid

integration of innovative technology into existing operations, and serve as a source of highly skilled talent for entry level positions, leaving the industry far better prepared to address the challenges ahead.

DISCUSSION

The grant(s) that would be provided for the Center will be for the purposes of financing this energy-related project and will be used solely for payment of approved planning, design and implementation costs incurred in connection with the renovation and retrofitting of the building through the incorporation of high performance and sustainable construction techniques and related equipment. The Center will provide the Authority with the following benefits:

1. Priority space to be utilized for training existing employees (allowing for continual job training and upskilling of current employees);
2. Support for the Workforce Planning strategic initiative;
3. Address pending retirements;
4. Pipeline of highly-qualified candidates with the ability to address rapid integration of innovative technology; and
5. Increased awareness of NYPA in the community and support for industry-wide training efforts.

Staff will continue to coordinate with BUDC and ESD on the development of the Center and will participate in an Advisory Group to be established for the Center on an ongoing basis once it is opened.

FISCAL INFORMATION

The development of the WNY Workforce Training Center will be funded from the Authority's Operating Fund. Funding for the Center has been accounted for in the 2016 Project and Business Development department budget which the Trustees approved at their December 17, 2015 meeting.

RECOMMENDATION

The Vice President – Project and Business Development recommends that the Trustees approve the requested funding of up to \$15 million to be used during 2016-2017 for the development of the Workforce Training Center described above.

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

Ms. Katherine Rougeux provided highlights of staff's recommendation to the Trustees.

In response to a question from Chairman Koelmel, Ms. Rougeux said that the Authority is applying to be part of the Historic Preservation Tax Credit program as well as Brownfield tax credit. These are major sources of funding which would come after the completion of the project. National Grid's Brownfield is another Federal Grant program and the Authority is expecting that more than \$10 million will come from that source which is determined based on the cost of the Center.

In response to further questioning from Chairman Koelmel, Ms. Rougeux said the Empire State Development has set aside additional funds for operating costs and other expenses, \$15 million of which is the Authority's contribution.

In response to still further questioning from Chairman Koelmel, Ms. Rougeux said the Authority is in the process of hiring an operator who will be responsible for the coordination of the Center. She said that Buffalo Urban Development Corporation, as well as Empire State Development that own the property, are jointly overseeing the project. Empire State Development has issued the RFP for an operator and Buffalo Urban Development Corporation issued the RFP for a Construction Manager. The

Authority will have a grant agreement with Buffalo Urban Development Corporation, which will outline its roles and ability to use the space. The Authority is part of the stakeholder group and plans to be part of the advisory group as the Center becomes operational.

President Quiniones added that the Utility Training Center and Clean Energy Training Center are regional training centers; therefore, in addition to NYPA, other utilities such as National Grid, New York State Electric and Gas, Rochester Gas and Electric, Central Hudson will be using this training center.

In response to a question from Vice Chairman Nicandri, Ms. Rougeux said one of the grants that the Authority is pursuing is Brownfield's tax credit. This tax credit has not yet been awarded.

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

RESOLVED, That the Trustees hereby authorize the funding of up to \$15 million in 2016-17 for the development of the Western New York Workforce Training Center, as described in the foregoing report of the President and Chief Executive Officer; and be it further

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

8. Governance and Board Matters

a. Finance Committee Report

Trustee McKibben said that there was further reporting to the staff report provided at the Finance Committee Meeting earlier today.

b. Board Resolutions

i. James F. Pasquale

President Quiniones said Mr. James Pasquale (“Jim”) has been with NYPA for 30 years. He started in the Accounting Department and now leads NYPA’s customer businesses in both energy efficiency and economic development. President Quiniones said Jim is the voice of NYPA’s customer because he has always advocated for its customers’ needs and preferences and made sure that NYPA had a customer-focused culture.

President Quiniones said that when he joined the Power Authority in October 2007, Jim was also very helpful to him. Moreover, because he was a veteran, even at that time, Jim helped him along the way both personally and professionally. He said he did not want to say “good-bye,” but “good luck” to Jim. He said Mr. Pasquale set up the Customer Solutions group for success, and now that the Authority is two years into its strategy, the team that Jim put together is now poised to bring that business into its full potential.

President Quiniones said that on behalf of the Board and staff of the Authority he wanted to congratulate Mr. Pasquale and wish him all the best, good health and good luck in his retirement.

President Quiniones said he wanted to add that Ms. Leanore Welz, Jim’s Executive Assistant, and the wife of NYPA’s former Chief Operating Officer, Ed Welz, will be retiring as well after more than twenty-four years with the Authority. He thanked her for her service and for her positive energy and assistance when needed, and said her service at the Power Authority was appreciated.

In response, Mr. Pasquale said he had a great thirty years at the Power Authority and he is appreciative of the opportunity given to him during his time here. He said he is very proud of his team and the successes they had. He reiterated that he is an advocate of succession planning and thinks the team is well positioned for continued success.

Chairman Koelmel said he echoed President Quiniones remarks regarding Mr. Pasquale’s 30-year career at NYPA. He thanked Mr. Pasquale for his service and wished him all the best in his retirement.

Upon motion made by Vice Chairman Nicandri and seconded by Trustee Kress, the following resolution was unanimously adopted.

WHEREAS, James Pasquale’s inspired leadership during his 30 years of service to the New York Power Authority is reflected in a succession of stellar accomplishments that have driven NYPA’s unrelenting pursuit of economic growth in New York State and its equally aggressive efforts to provide cutting-edge energy services to its customers and others; and

WHEREAS, Mr. Pasquale’s NYPA career, from his earliest days as a senior accountant through his current position of Senior Vice President, Economic Development & Energy Efficiency, reveals a decades-long devotion to government service and finding the best ways to utilize public power on behalf of businesses and communities across New York; and

WHEREAS, Mr. Pasquale intuitively understands how big ideas transform people’s lives and recognizes the importance of converting the power of nature into low-cost, clean hydroelectric power, with its many economic and environmental benefits; and

WHEREAS, he has taken the lead in rethinking how energy services could be delivered by NYPA in a more innovative fashion and how its facilities could deliver even greater dividends in the years to come; and

WHEREAS, Mr. Pasquale, as a trusted adviser to businesses, state and local government agencies, legislators and stakeholders throughout the state, is recognized and esteemed for his vital role in fundamentally changing the economic development landscape in New York; and

WHEREAS, his tireless and unparalleled efforts in developing and implementing the historic Power for Jobs and ReCharge NY economic development power programs have underscored the profound impact of NYPA's resources in improving the lives of New York families by protecting and growing hundreds of thousands of good-paying jobs and supporting billions of dollars in capital investments; and

WHEREAS, Mr. Pasquale, with his insistence on personal and organizational excellence, has helped to transform the departmental and corporate culture of NYPA to meet the challenges of the radical restructuring of the state's electric utility industry; and

WHEREAS, as a member of NYPA's Executive Management Committee, he has played a major role in implementing Strategic Vision 2020 and has helped NYPA build on its considerable legacy of achievement, to reinvent how electricity is accessed in the decades ahead; and

WHEREAS, Mr. Pasquale promotes innovation, integrity and vision that will continue to inform and inspire NYPA employees as they consider new marketing opportunities throughout New York State; and

WHEREAS, Mr. Pasquale has been a respected mentor who has provided critical insight to NYPA employees; and

WHEREAS, Mr. Pasquale is retiring from the Power Authority, having contributed immensely to past successes and done much to pave the way for those to come;

NOW THEREFORE BE IT RESOLVED, That the Trustees of the Power Authority of the State of New York convey their deepest thanks and appreciation to James Pasquale for his service to NYPA and the people of the state, and that they wish him a happy, healthy and rewarding future.

September 27, 2016

ii. Rocco Iannarelli

President Quiniones said Mr. Rocco Iannarelli ("Rocco") has been with NYPA for seven years and worked in public service for many years. He said Rocco is the Authority's utility player. He joined the Authority, first as head of the Human Resources group and then moved on to manage the Enterprise Shared Services group. Rocco agreed to postpone his retirement last December when the Authority was in the process of reorganizing the leadership team; he agreed to stay on as SVP of Public and Corporate Affairs until a candidate was selected. President Quiniones said that Rocco has always been the person who gave him both formal and informal coaching about internal and external politics and has been a valued confidant to him.

President Quiniones said that on behalf of the Board and staff of the Authority he wanted to thank Rocco for all the contributions he made to help advance the Power Authority to where it is today. He congratulated him and wished him good luck on his retirement.

In response, Mr. Iannarelli said having worked many years in the private and public sectors, in addition to holding public office, which he loved, he enjoyed working at the Power Authority, a unique and interesting organization. The Board and staff is a superb team and that is what makes NYPA a great organization.

Upon motion made by Vice Chairman Nicandri and seconded by Trustee Kress, the following resolution was unanimously adopted.

WHEREAS, Rocco Iannarelli has worked with unselfish professionalism and purpose to advance the interests of the New York Power Authority and its employees at a time of profound change in the electric power industry and unprecedented challenges for NYPA; and

WHEREAS, throughout an extraordinary career at NYPA that began in 2009 as Vice President of Human Resources, Mr. Iannarelli has demonstrated a warm, inclusive management style that encourages teamwork and collaboration; and

WHEREAS, holding senior positions at NYPA, Mr. Iannarelli has with great effectiveness and lasting impact overseen activities in Human Resources, Enterprise Shared Services and Corporate Affairs; and

WHEREAS, the dedication and humor he has displayed throughout this period have earned him the abiding admiration, respect and loyalty of those who have worked with and for him; and

WHEREAS, Mr. Iannarelli's previous experience as an elected official in Nassau County and as the clerk of its Legislature helped NYPA strengthen relationships with local governments on Long Island and throughout New York State; and

WHEREAS, Mr. Iannarelli helped secure approvals within NYPA for the implementation of Mosaic, the Power Authority's talent management software system; and

WHEREAS, he championed a policy that allows NYPA employees to take paid time off for volunteer activities; and

WHEREAS, Mr. Iannarelli was instrumental in ushering NYPA employees through the Governor's Office of Employee Relations training processes; and

WHEREAS, he has made meaningful contributions to NYPA's developmental intern program by supporting its growth and prominence within the organization, and supported and nurtured NYPA's Troops to Energy Jobs program; and

WHEREAS, as head of Human Resources, Mr. Iannarelli regularly visited NYPA sites statewide and attended their employee recognition events; and

WHEREAS, he served as acting Senior Vice President of Enterprise Shared Services during 2015; and

WHEREAS, also in 2015, Mr. Iannarelli postponed his retirement at the request of the President and Chief Executive Officer to become Senior Vice President of Corporate Affairs; and

WHEREAS, his accomplishments in that role included the successful refurbishment of the Niagara Power Vista visitors center and his administration of the Executive Office; and

WHEREAS, Mr. Iannarelli is retiring as Senior Vice President and Counselor to NYPA's President and Chief Executive Officer, having contributed immensely to past successes and done much to lay the groundwork for the fulfillment of the Power Authority's Strategic Vision 2020;

NOW THEREFORE BE IT RESOLVED, That the Trustees of the Power Authority of the State of New York convey their deepest thanks and appreciation to Rocco Iannarelli for his service to NYPA and the people of the state, and that they wish him; his wife, Jill; and their son, Andrew, many years of happiness.

September 27, 2016

9. **Next Meeting**

The Regular meeting of the Trustees will be held on **December 15, 2016 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 by Vice Chairman Nicandri and seconded by Trustee Kress, the meeting was adjourned at approximately 1:25: p.m.

Karen Delince
Karen Delince
Corporate Secretary

EXHIBITS

For

September 27, 2016

Regular Meeting

Minutes

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)
to

<Customer Legal Name>

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, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with <Customer Legal Name> (“Customer”) with offices and principal place of business at <Customer Address>. 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 <Trustee Approval Date>, the Authority’s Board of Trustees (“Trustees”) approved a <Allocation Amount> 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 <Trustee Approval Date>, 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. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **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.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **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.
- Z. **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.
- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

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 <3 Years after Trustee Approval Date> (*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 10th 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

<Customer Legal Name>

<Customer Address>

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:

<Customer Legal Name>

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 (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: <Customer Legal Name>	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
<Power Type (EP/RP)>	<Allocation Amount>	<Facility Address>, NY <Facility Zipcode>	<Trustee Approval Date>	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 (CES)**

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 <Total Employment Commitment> 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 minimum capital investment of <Capital Investment Commitment(\$)> to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following specific expenditures:

<Line Item of Specific Project Capital Expenditures>

Total Capital Investment: _____ **<Capital Investment Commitment(\$)>**

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than <3 Years after Trustee Approval Date> (*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 (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR
REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to adjustment after a 3-year look-back, and the PSC indicates it will adopt

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year ("REC Program Year").

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP's clean energy goals. The Authority's participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the "EP and RP Programs ZEC Cost"). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP and RP Programs based on the proportion of the actual annual kilowatt-hours

load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the REC Charge. Depending on the availability of the Customer's kilowatt-hour

load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

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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 (10th) 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 15th 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		1.03

- 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	6.24
<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	6.23
Ratio of MY/MY-1			1.00

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

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
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		1.02

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			1.016

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

**AGREEMENT FOR THE SALE OF
PRESERVATION POWER AND ENERGY
(CES)**

to

<Customer Legal Name>

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 1 of Article 5 of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Preservation Power and Energy (“Agreement”) to <Customer Legal Name>, having facilities at <Customer Address> (“Customer”). The Authority and the Customer are from time to time referred to in this Agreement individually as a “Party” or collectively as the “Parties” and agree as follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the St. Lawrence-FDR Power Project known as Preservation Power (or “PP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, PP consists of 490 megawatts (“MW”) of firm hydroelectric power and associated energy produced by the St. Lawrence-FDR Power Project;

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

WHEREAS, the Authority has the authority under PAL § 1005(13)(a) to award allocations of PP 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 has applied for an allocation of PP for use at facilities located at <Customer Address> (defined in Article I of this Agreement as the “Facility”) to be received upon completion of an expansion of the Facility as provided for in the Capital Expansion Program described in this Agreement;

WHEREAS, on <Trustee Approval Date>, the Authority’s Board of Trustees (“Trustees”) approved a <Allocation Amount> kilowatt allocation of PP (defined in Article I of this Agreement as the “Allocation”) to the Customer for a seven year term, as further described in this Agreement;

WHEREAS, the provision of Electric Service (defined in Article I of this Agreement) associated with the Allocation is an unbundled service separate from the transmission and delivery service necessary for the Customer to receive the Allocation which will be performed by the Customer’s local utility company;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which

specifies the approval process for contracts negotiated by the Authority; and

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

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

Article I. Definitions

- A. **Agreement** means this Agreement as further described in the preamble, including all documents and other matters attached to and incorporated into the Agreement.
- B. **Allocation** refers to the total amount of PP and associated energy set forth in Schedule A to this Agreement awarded to the Customer.
- C. **Contract Demand** has the meaning set forth in the Service Tariff.
- D. **Electric Service** is Firm Power and Firm Energy associated with the Allocation and sold to the Customer in accordance with the provisions of this Agreement, the Service Tariff, and the Rules.
- E. **Energy Efficiency Audit** means a physical inspection of a building in a manner approved by the Authority that should include the following elements: (1) an assessment of a building's energy use, cost and efficiency which produces an energy utilization index for the building (such as an Energy Use Intensity or Energy Performance Indicator); (2) a comparison of the building's index to indices for similar buildings; (3) an analysis of low-cost/no-cost measures for improving energy efficiency; (4) a listing of potential capital improvements for improving energy consumption; and (5) an initial assessment of potential costs and savings from such measures and improvements.
- F. **Facility** means the Customer's facility identified in Schedule A.
- G. **Firm Energy** has the meaning set forth in the Service Tariff.
- H. **Firm Power** has the meaning set forth in the Service Tariff.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the license issued by FERC to the Authority for the continued operation and maintenance of the St. Lawrence Project, pursuant to Section 15 of the Federal Power Act, which became effective October 22, 2003 after expiration of the Project's original license issued in 1953.
- K. **Hydro Projects** is a collective reference to the Authority's Niagara Project and St. Lawrence-FDR Project.

- L. **International Joint Commission** (or **IJC**) refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.
- M. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- N. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- O. **NYISO Charges** has the meaning set forth in the Service Tariff.
- P. **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.
- Q. **PAL** means the New York Public Authorities Law.
- R. **Preservation Power** (or **PP**) has the meaning set forth in the Service Tariff.
- S. **Niagara Project** means the Authority's Niagara Power Project, FERC Project No. 2216.
- T. **Rules** refers to the Authority's Rules and Regulations for Power Service (Part 454 of 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 Authority.
- U. **Service Tariff** means the Authority's Service Tariff No. 10, 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.
- V. **St. Lawrence Project** means the Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.
- W. **Schedule A** refers to the Schedule A to this Agreement entitled "Preservation Power Allocations" which is attached to and made part of this Agreement.
- X. **Schedule B** refers to the Schedule B to this Agreement entitled "Preservation Power Commitments" which is attached to and made part of this Agreement.

- Y. **Schedule C** refers to Schedule C to this Agreement entitled “Takedown Schedule” which is attached to and made part of this Agreement.
- Z. **Schedule D** refers to the Schedule D entitled “Clean Energy Standard Cost Recovery Charges” which is attached to and made part of this Agreement.
- AA. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectric power that would otherwise have been supplied to the Customer under this Agreement.
- BB. **Taxes** have the meaning set forth in the Service Tariff.
- CC. **Unforced Capacity** (or **UCAP**) is the electric capacity required to be provided by Load Serving Entities to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

Article II. Electric Service

- A. The Authority shall provide Electric Service to the Customer to enable the Customer to receive the Allocation in accordance with this Agreement, the Service Tariff and the Rules. The Customer shall not be entitled to receive Electric Service for any PP Allocation that is not specified in 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 the Service Tariff.
- 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 and the Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as PP from the St. Lawrence 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 PP customers, as applicable, based on the terms of such ruling, order, or decision. The Authority will use reasonable efforts to provide at least thirty (30) days prior written notice to the Customer of any such modification unless such notice is inconsistent with such ruling, order or decision.

- F. The Contract Demand may not exceed the Allocation.
- G. 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 such parties determine is necessary to provide for the allocation, sale and delivery of PP to the Customer, the proper and efficient implementation of the PP power program, billing related to PP Power, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents the Authority determines are necessary to effectuate such exchanges of information.
- H. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer's local electric utility providing for the delivery of PP on terms and conditions that are acceptable to the Authority.
- I. 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") the Authority determines is necessary for the provision of Electric Service, the delivery of PP, billing related to the PP program, the effective and proper administration of the PP 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.

Article III. Rates, Terms and Conditions

- A. The Authority will provide Electric Service to the Customer based on the rates, terms and conditions established in accordance with this Agreement, the Service Tariff and the Rules.
- B. The Service Tariff and the Rules may be amended from time to time by the Authority. The Authority shall provide at least thirty (30) days prior written notice to the Customer of any proposed change in the Service Tariff or the Rules. No subsequent amendment to the Service Tariff or the Rules shall affect the determination of rates for PP to the Customer during the term of the Agreement except insofar as otherwise authorized by this Agreement. This provision shall not limit the Authority's discretion to determine rates applicable to allocations of power and energy awarded to the Customer beyond or in addition to the Allocation.
- C. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates shall be subject to increase by the Authority at any time upon 30 days prior written notice to Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the St. Lawrence Project and the Authority's competitive position with respect to other suppliers, the 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 the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority

shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to the Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers that are subject to the Service Tariff after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, the Authority shall forward to the Customer with the notice of the increase, an explanation of all reasons for the increase, and shall also identify the sources from which the Authority will obtain the total of increased revenues and the bases upon which the Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as the Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- D. In addition to all other fees, assessments and charges provided for in the Agreement, the Service Tariff and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

Article IV. 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 local electric utility’s applicable tariffs 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 shall render bills for power and energy by the tenth (10th) business day of the month for charges due for the previous month. Such bills shall include the NYISO Charges and Taxes (as such terms are defined in the Service Tariff) associated with the Allocation. NYISO Charges and Taxes billed to the Customer are subject to adjustments consistent with any subsequent NYISO re-billings to Authority.
- 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 the Service Tariff.
- 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.

Article V. Transmission and Delivery of Power and Energy

- A. The Customer shall responsible for securing arrangements with its local utility for transmission and delivery service associated with the Allocation unless otherwise agreed to by the Parties.
- B. The Customer will pay its local utility for transmission and delivery service associated with the Allocation in accordance applicable contracts and all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the Firm Power and Firm Energy supplied by the Authority under this Agreement. To the extent the Authority incurs transmission and delivery service charges or other costs associated with the Allocation during the term of this Agreement, the Customer agrees to compensate the Authority for all such charges and costs incurred.
- 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 as may be required under the applicable local utility company tariffs. In no event shall the Authority act as the LSE for the power and energy consumed by Customer other than

Electric Service (inclusive of Substitute Energy, if any) sold by the Authority under this Agreement. The Customer understands and acknowledges that it will be responsible to the Authority for all charges and other costs incurred by the Authority associated with the provision of Electric Service to enable the Customer to receive the Allocation, including charges and costs contained in the NYISO Tariffs or other applicable tariffs (including local utility company tariffs), regardless of whether such charges and costs are transmission-related. Such charges and costs are in addition to the charges for power and energy.

Article VI. Preservation Power Commitments

- A. Schedule B sets forth the Customer's specific "Preservation Power Commitments." Such commitments 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 to the Customer under this Agreement is expressly conditioned upon the Customer's timely completion of the Capital Expansion Program regarding the Facility as described in Schedule B.
- C. In the event of partial completion of the Capital Expansion Program which results in the Facility expansion being partially completed, 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 expansion, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support operations thereat.
- 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 expansion. The Authority will inspect the Facility expansion for the purpose of verifying the completion status of the Facility expansion and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service in accordance with this provision 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 expansion by <3 Years after Trustee Approval Date> (*i.e.*, within three (3) years of the Authority's award of the Allocation), (i) the Authority may, at its option and discretion, cancel the Allocation, or reduce it by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility expansion, or (ii) upon request of the Customer, such date may be extended by the Authority in its sole discretion.

Article VII. Rules and Service Tariff; Conflicts

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

provisions of this Agreement and the Service Tariff, the provisions of this Agreement shall govern.

Article 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 the Service Tariff as applicable.
- B. The Authority shall provide reasonable notice to the Customer of any curtailments referenced in Article VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement.
- C. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the hydroelectricity that would otherwise have been supplied under this Agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.
- D. 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.
- E. 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.

Article IX. Additional Allocations

- A. Upon application by the Customer, the Authority may award additional allocations of PP to the Customer at such rates and on such terms and conditions as set forth in the Service Tariff. Once the Customer agrees to purchase Electric Service associated with such additional allocations, the Authority will produce modified or supplemental Schedules A and B which will reflect any such additional allocations and other pertinent terms as appropriate. The Authority will furnish the Customer with any such modified or supplemental Schedules within thirty (30) days of the commencement of Electric Service for any such additional allocation.

- B. The Customer shall furnish such documentation and other information as the Authority requests to enable the Authority to evaluate (i) whether any additional allocations should be made to the Customer, and (ii) the terms relating to any additional allocation.

Article X. 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
Telephone:
Facsimile: (914) 390-8156
Electronic mail:
Attention: Manager – Business Power Allocations and Compliance

To: Customer

<Customer Legal Name>
<Customer Address>
Telephone:
Facsimile:
Electronic mail:
Attention:

- 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. Any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to 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 rulings by the IJC and without regard to conflicts of law provisions.

Article XI. 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.

Article XII. Successors and Assigns; Transfers; Resale of PP

- A. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained.
- B. The transfer of any portion of the Allocation, or any benefits relating the Allocation, by the Customer to any person, to a different owner or operator of the Facility, or to a different facility, is prohibited unless (i) specifically approved by the Authority, and, (ii) all other legal requirements applicable to such a transfer are complied with. Any transfer that occurs without such approval and compliance shall be invalid and transfer may in the Authority's sole discretion subject the transferor to revocation or modification of the Allocation and/or this Agreement.
- C. The Customer may not resell any portion of the Allocation to any person. If such a sale occurs, the Authority may, in its sole discretion, terminate the Allocation and/or this Agreement.

Article XIII. Previous Agreements and Communications

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of PP, and supersedes all previous communications between the Parties hereto, either oral or written, with respect to the sale of PP. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

Article XIV. 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.

Article XV. Severability and Voidability

- A. If any term or provision of this Agreement is 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 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.

Article XVI. Term, Modification, Termination and Effect

- A. Electric Service under this Agreement shall continue with respect to an Allocation until the earliest of: (1) termination by the Customer with respect to all of the Allocation upon at least ninety (90) days prior written notice to the Authority; (2) termination by Authority pursuant to the Rules upon required notice; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- B. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days prior written notice to the Authority. The termination shall be effective commencing with the first "Billing Period" as defined in the Service Tariff following the required notice.
- C. The Authority may modify or terminate Electric Service hereunder or modify the quantities of power and energy associated with an Allocation: (1) if such termination 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 or in the Rules.
- D. This Agreement shall become legally binding and effective only upon satisfaction of the following conditions precedent: (1) receipt of approval of this Agreement by the Authority Board of Trustees; (2) receipt of approval of this Agreement by the Governor of the State of New York pursuant to PAL § 1009; and (3) execution of this Agreement by the Authority and the Customer.

Article XVII. 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:

<Customer Legal Name>

BY: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A

PRESERVATION POWER ALLOCATIONS

Customer: <Customer Legal Name>

Type of Allocation	Allocation (kW)	Trustee Approval Date	Expiration Date	Facility
PP	<Allocation Amount>	<Trustee Approval Date>	Seven (7) years from commencement of Electric Service of any portion of this Allocation	<Facility Address>, NY <Facility Zipcode>

SCHEDULE B

PRESERVATION POWER COMMITMENTS

ARTICLE I. EMPLOYMENT COMMITMENTS

A. Base Employment Level

The Customer shall establish and maintain the employment level as provided for in the Appendix to this Schedule B (the “Base Employment Level”). Unless otherwise provided for in Schedule B, such Base Employment Level shall be the total number of full-time positions held by: (1) individuals employed by the Customer at the Facility identified in the Appendix to this Schedule B; and (2) individuals who are contractors or are employed by contractors of the Customer and who are assigned to such Facility (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 at least 20 hours but not more than 35 hours per week shall be counted as one Base Level Employee.

The Customer shall not establish or maintain the Base Employment Level by transfers of employees from previously held positions with the Customer or its affiliates located within New York State, 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. The Authority shall have the sole discretion to make any such change.

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 Customer employees and contractor employees at the Facility, 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 Customer employees and contractor employees 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.

ARTICLE 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.C 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 facilities receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is defined in the Service Tariff) for PP 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.C 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. Notice of Intent to Reduce Contract Demand

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

ARTICLE III. CAPITAL INVESTMENT

The Customer agrees to undertake the Capital Expansion Program set forth in the Appendix to this Schedule B.

ARTICLE IV. ENERGY EFFICIENCY AUDITS AND INFORMATION REQUESTS

The Customer shall undergo an Energy Efficiency Audit of its facilities 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 facilities.

The Customer agrees to cooperate to make its facilities 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

I. Base Employment Level

In accordance with Article I of Schedule B, the Customer agrees to a Base Employment Level at the Customer's Facility as indicated below.

Base Employment Level	Facility	Miscellaneous/Notes
Within three (3) years of the commencement of Electric Service of any portion of the Allocation to the Facility, the Customer shall employ not less than <Total Employment Commitment> persons in full-time positions at the Facility (the "Base Employment Level") and shall maintain such Base Employment Level for the term of the Allocation.	<Facility Address>, NY <Facility Zipcode>	

II. Capital Expansion Program

The Customer shall make a total capital investment of at least <Capital Investment Commitment(\$)> in connection with an expansion of the Facility (the "Capital Investment"). The Capital Investment is expected to consist of the following specific expenditures:

<Line Item of Specific Project Capital Expenditures>

Total Capital Investment: <Capital Investment Commitment(\$)>

The Capital Investment shall be made, and the expansion of the Facility shall be completed and fully operational, not later than <3 Years after Trustee Approval Date> (*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
TAKEDOWN SCHEDULE

N/A

SCHEDULE D

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of the Service Tariff or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff and Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff, or Rules.

REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under the PP Program, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the PP Program (the “PP Program ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the PP Program to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the PP Program based on the proportion of the actual annual kilowatt-hours load served under such

Program to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the PP Program ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the PP purchased by the Customer to total kilowatt-hours load served by the Authority under the PP Program (PP Program level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the PP Program by the Authority (PP Program level load).
- b. The ZEC Charge shall apply to the sale of PP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of PP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to procure RECs for the Customer's load, and pay the Authority the REC Charge; (b) secure the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will

either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of PP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of PP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article IV of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of the Service Tariff or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

Schedule of Rates for Sale of Firm Power to
Preservation Power Customers

Service Tariff No. 10

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Preservation Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

A. The following abbreviations are used:

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

B. The term "Agreement" means an executed Agreement for the Sale of Preservation Power and Energy between the Authority and the Customer (each as defined below).

C. The term "Annual Adjustment Factor" or "AAF" shall have the meaning set forth in Section V herein.

D. The term "Authority" means 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."

E. The term "Customer" means a business customer who has received an allocation for Preservation Power from the Authority and who purchases Preservation Power directly from the Authority.

F. The term "Electric Service" means the power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

- G. The term "Preservation Power" means 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).
- H. The term "Firm Power" means 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.
- I. The term "Firm Energy" means energy (kWh) associated with Firm Power.
- J. The term "Load Serving Entity" or "LSE" shall have the meaning set forth in the Agreement.
- K. The term "Project" means the Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.
- L. The term "Rate Year" or "RY" means the period from July 1 through June 30 of the following year.
- M. The term "Rules" means 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.
- N. The term "Service Tariff" means this Service Tariff No. 10.

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. Preservation Power Base Rates

The monthly base rates for demand and energy charges paid by Customer to Authority shall be:

<u>Rate Year</u>	<u>Demand Charge</u> \$/kW-mo.	<u>Energy Charge</u> \$/MWh
2010	6.15	10.52
2011	6.71	11.48
2012	7.32	12.52
2013	7.99	13.66

Beginning with the 2014 Rate Year (July 1, 2014), and for each Rate Year thereafter, such rates shall be subject to an Annual Adjustment Factor set forth in Section V herein.

B. Preservation Power 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 Preservation Power 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. 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.

F. 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.

G. 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.

H. Contract Demand

The contract demand of each Customer will be the amount of Preservation Power, not to exceed the Customer's Allocation, provided to such Customer by the Authority in accordance with the Agreement. The minimum Contract Demand for any Preservation Power Allocation is 100 kW.

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 Firm Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Firm Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Firm Energy sales will be the same for all Firm Power and Firm 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 – Unless separately metered, the billing demand charged by the Authority to each Customer will be the highest 15-minute integrated demand during each billing period recorded on the Customer's meter multiplied by a percentage based on load factor sharing, as applicable.
3. Billing Energy – Unless separately metered, 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 load factor sharing, as applicable.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Firm Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the 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 Preservation 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.

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. Adjustment of Charges

1. Distribution Losses

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

2. Transformer Losses

If delivery is made at transmission voltage but metered on the low-voltage side of the Customer's substation, the meter readings will be increased two percent to compensate for transformer losses.

3. Power Factor

Power factor is the ratio of real power (kW) to apparent power (kVa) for any given load and time. The Authority may require the Customer to maintain a power factor of not less than 90%, lagging or leading, at the point of delivery, or as may otherwise be imposed upon the Authority by the local electric utility providing delivery and/or NYISO.

H. Conflicts

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

I. Customer Resales Prohibited

The Customer may not resell any quantity of Preservation 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."

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: 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 15th 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		1.03

- 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	6.24

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	6.23

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

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

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
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		1.02

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			1.016

STEP 3

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.99	13.66
New Rate Year Base Rate	8.12	13.88

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

**AGREEMENT FOR THE SALE OF
RECHARGE NEW YORK POWER AND ENERGY
(CES)**

(«narr_new_mailingaddressname»)

POWER AUTHORITY OF THE STATE OF NEW YORK

**30 South Pearl Street, 10th Floor
Albany, New York 12207-3425**

**AGREEMENT FOR THE SALE OF
RECHARGE NEW YORK POWER AND ENERGY**

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 1 of Article 5 of the New York Public Authorities Law (“PAL”), with offices and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425 (“Authority”), hereby enters into this Agreement for the Sale of Recharge New York Power and Energy (“Agreement”) with «narr_new_mailingaddressname», with offices located at «ncc_new_mail_add_street1», «ncc_new_mail_add_city», «ncc_new_stateid1_new_name» «ncc_new_mail_add_postalcode» (“Customer”). The Authority and the Customer are from time to time referred to in this Agreement individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the Authority is authorized to make available to, contract with and sell to “eligible applicants” located in New York State “Recharge New York Power” (“RNY Power”) as provided for in PAL § 1005(13-a) and Economic Development Law (“EDL”) § 188-a;

WHEREAS, RNY Power is intended to play an important role in providing competitively priced power for sale to attract, retain and expand businesses and promote economic development in New York State;

WHEREAS, RNY Power consists of up to 910 megawatts (“MW”) of power and energy consisting of equal amounts of (i) hydropower generated by the Authority’s St. Lawrence Project and Niagara Project, and (ii) other power made available by the Authority from other sources;

WHEREAS, the Authority is authorized to make individual awards of RNY Power to eligible applicants based on, among other things, the criteria listed in the EDL § 188-a;

WHEREAS, the Authority’s Board of Trustees (“Trustees”) has made an award of RNY Power to the Customer (defined in Article 1 of this Agreement as the “Awarded Allocation”) consisting of equal amounts of “RNY Hydropower” and “RNY Market Power” as specified in Schedule A of this Agreement;

WHEREAS, pursuant to PAL § 1005(13-a)(c), the Customer has elected to purchase the RNY Hydropower and the RNY Market Power (if any) as specified in Schedule A of this Agreement (defined in Article 1 of this Agreement as the “Accepted Allocation”);

WHEREAS, the Trustees have authorized the Authority to, among other things, provide electric service to the Customer at the rates and on the terms and conditions provided for in this Agreement to enable the Customer to receive the Accepted Allocation; and

WHEREAS, the Authority supports the efficient use of energy, including the RNY Power sold pursuant to this Agreement.

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

ARTICLE 1 **DEFINITIONS**

“Agreement” means this Agreement as further described in the preamble, including all documents, schedules and other materials attached to and/or incorporated into the Agreement.

“Accepted Allocation” means that portion of the Awarded Allocation the Customer has elected to accept and purchase from the Authority as specified in Schedule A of this Agreement.¹

“Awarded Allocation” means the amount of RNY Power awarded to the Customer as specified in Schedule A of this Agreement which consists of equal amounts of RNY Hydropower and RNY Market Power.

“Billing Period” has the meaning set forth in Service Tariff No. RNY-1.

“Contract Demand” has the meaning set forth in Service Tariff No. RNY-1.

“Electric Service” is Firm Power and Firm Energy associated with the Accepted Allocation and sold to the Customer in accordance with the provisions of this Agreement, Service Tariff No. RNY-1 and the Rules.

“Energy Efficiency Audit” means a physical inspection of a building in a manner approved by the Authority that should include the following elements: (1) an assessment of a building’s energy use, cost and efficiency which produces an energy utilization index for the building (such as an Energy Use Intensity or Energy Performance Indicator); (2) a comparison of the building’s index to indices for similar buildings; (3) an analysis of low-cost/no-cost measures for improving energy efficiency; (4) a listing of potential capital improvements for improving energy consumption; and (5) an initial assessment of potential costs and savings from such measures and improvements.

¹ For purposes of illustration, if the Customer has elected to purchase the RNY Market Power component of its Awarded Allocation from the Authority, the Accepted Allocation will equal the Awarded Allocation and consist of equal parts of RNY Hydropower and RNY Market Power. If the Customer has elected not to purchase the RNY Market Power component from the Authority, the Accepted Allocation will be equal to half of the amount of the Awarded Allocation and consist solely of RNY Hydropower.

“Facility” means the Customer’s place of business specified in Schedule A to this Agreement that will receive or is receiving the Accepted Allocation.

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

“FERC License” means the license issued by FERC to the Authority for the continued operation and maintenance of the Niagara Power Project, pursuant to Section 15 of the Federal Power Act, which license became effective September 1, 2007 after expiration of the Project’s original license issued in 1957, and/or the license issued by FERC to the Authority for the continued operation and maintenance of the St. Lawrence-FDR Power Project, pursuant to Section 15 of the Federal Power Act, which became effective November 1, 2003 after expiration of the Project’s original license issued in 1953.

“Firm Energy” has the meaning set forth in Service Tariff No. RNY-1.

“Firm Power” has the meaning set forth in Service Tariff No. RNY-1.

“Hydro Projects” is a collective reference to the Authority’s Niagara Power Project, FERC Project No. 2216, and St. Lawrence-FDR Power Project, FERC Project No. 2000.

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

“Load Serving Entity” or “LSE” has the meaning established by the NYISO in NYISO Tariffs as may be modified from time to time.

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

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

“NYISO Charges” has the meaning set forth in the Service Tariff No. RNY-1.

“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.

“Other NYPA Power” means power and energy, other than RNY Power, that NYPA allocates and sells to the Customer pursuant to statute and/or contract.

“Person” means any natural person, corporation, company, sole proprietorship, governmental entity, or other entity.

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

“Recharge New York Power” (or “RNY Power”) refers to Firm Power and Firm Energy the Authority is authorized to allocate and sell as provided for in PAL § 1005(13-a) and EDL § 188-a.

“RNY Hydropower” means “recharge New York hydropower” as defined in PAL § 1005(13-a)(b).

“RNY Market Power” means “recharge New York market power” as defined in PAL § 1005(13-a)(b).

“Rules” refers to the Authority's Rules and Regulations set forth in Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, as may be modified from time to time by the Authority.

“Service Tariff No. RNY-1” means the Authority’s Service Tariff No. RNY-1 issued March 27, 2012, as modified from time to time by the Authority, and which contains, among other things, the schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement. Service Tariff No. RNY-1 shall be applicable to Electric Service provided to the Customer under this Agreement beginning July 1, 2012 and thereafter until such time as another Authority tariff applies.

“Schedule A” refers to the Schedule A entitled “Recharge New York Power Allocations” which is attached to and made part of the Agreement.

“Schedule B” refers to the Schedule B entitled “Recharge New York Power Commitments” which, along with its attachments, is attached to and made part of the Agreement.

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

“Schedule D” refers to the Schedule D entitled “Clean Energy Standard Cost Recovery Charges” which is attached to and made part of this Agreement.

“St. Lawrence Project” means the St. Lawrence-FDR Power Project, FERC Project No. 2000.

“Substitute Energy” means energy the Authority procures and sells to the Customer to replace RNY Hydropower that would otherwise have been sold to the Customer but for a curtailment made in accordance with Service Tariff No. RNY-1.

“Supplemental Power” means default or supplemental power and associated energy that is required by the Customer because its Accepted Allocation and Other NYPA Power do not satisfy its full electric load.

“Takedown” has the meaning set forth in the Service Tariff No. RNY-1.

“Takedown Schedule” means a schedule pursuant to which the Accepted Allocation will be made available to the Customer.

“Taxes” have the meaning set forth in Service Tariff No. RNY-1.

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

“Utility Tariff” means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC covering the delivery of RNY Power and the sale and delivery of Supplemental Power and RNY Market Power.

ARTICLE 2 **ELECTRIC SERVICE**

1. The Authority will provide Electric Service to enable the Customer to receive the Accepted Allocation in accordance with this Agreement, Service Tariff No. RNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service for any RNY Power unless such RNY Power is identified as an Accepted Allocation on Schedule A.

2. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Accepted Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for an Accepted Allocation, the Authority will provide, and the Customer shall pay for, Electric Service with respect to the Accepted Allocation in accordance with such Takedown Schedule.

3. The Contract Demand may not exceed the Accepted Allocation.

4. As part of its Electric Service to the Customer, the Authority will provide UCAP in amounts necessary to meet the Customer’s NYISO Unforced Capacity requirements associated with the Accepted Allocation in accordance with NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. RNY-1.

5. The Customer’s Facility must be metered by the Customer’s local electric utility in a manner satisfactory to the Authority, or another metering arrangement satisfactory to the Authority must be provided (collectively, “Metering Arrangement”). A Metering Arrangement that is not satisfactory to the Authority shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer. After commencement of Electric Service,

the Customer shall notify the Authority in writing within thirty (30) days of any alteration to the Facility's Metering Arrangement, and provide any information requested by the Authority (including Facility access) to enable the Authority to determine whether the Metering Arrangement remains satisfactory. If an altered Metering Arrangement is not conformed to the Authority's requirements within thirty (30) days of a determination it is unsatisfactory, the Authority may suspend Electric Service on at least ten (10) days' prior written notice to the Customer. The Authority may, in its sole discretion, waive any of the requirements provided for in this Section 2.5 in whole or in part where, in the Authority's judgment, another mechanism satisfactory to the Authority can be implemented to enable the Authority to receive pertinent, timely and accurate information relating to the Customer's energy consumption and demand and render bills to the Customer for all charges that become due in accordance with this Agreement, Service Tariff No. RNY-1, and the Rules.

6. If the Customer has elected to purchase RNY Market Power from the Authority, the Customer may request cancellation of such election. A request for cancellation must be made in writing in a form deemed satisfactory by the Authority and may only be made for the full amount of RNY Market Power purchased from the Authority. If the Authority in its sole discretion accepts the request, the Authority will effectuate such cancellation as soon as practicable, taking into consideration any commitments the Authority has made under contracts entered into with third parties for the purpose of supporting RNY Market Power supply and delivery to the Customer and other RNY Power program customers. The Authority shall have the right to reject a request for cancellation to the extent the Authority determines that such cancellation would unreasonably increase the costs chargeable to other RNY Power program customers or cause the Authority to incur unrecoverable costs. If the Customer's election is cancelled pursuant to this provision, the Authority shall have no further obligation to sell RNY Market Power to the Customer for the remaining term of the corresponding Accepted Allocation.

7. The Customer acknowledges and agrees that Customer's local electric utility shall be responsible for delivering the Accepted Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering any Accepted Allocation to the Customer.

8. 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 such parties determine is necessary to provide for the allocation, sale and delivery of RNY Power to the Customer, the proper and efficient implementation of the RNY Power program, billing related to RNY Power, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents the Authority determines are necessary to effectuate such exchanges of information.

9. The Authority may modify or terminate Electric Service under this Agreement or modify the quantities of power and energy associated with any Accepted Allocation (i) if such modification or termination 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 (ii) as otherwise provided in this Agreement, Service Tariff No. RNY-1, or in the Rules. Unless such notice is not practicable, the

Authority will provide thirty (30) days prior written notice to the Customer before any such modification.

10. The Accepted Allocation may be modified by the Authority if the amount of power and energy available for sale as RNY Power from the Hydro Projects is modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction ("Regulatory Order"). Any such modification will be made on a *pro rata* basis to all of the Authority's RNY Power customers, as applicable, based on the terms of such ruling, order or decision. Unless such notice is not practicable, the Authority will provide thirty (30) days prior written notice to the Customer before any such modification.

11. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer's local electric utility providing for the delivery of RNY Power on terms and conditions that are acceptable to the Authority.

12. 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") the Authority determines is necessary for the provision of Electric Service, the delivery of RNY Power, billing related to the RNY Power Program, the effective and proper administration of the RNY Power 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.

ARTICLE 3

RATES FOR ELECTRIC SERVICE

1. Unless otherwise specified in this Agreement or Service Tariff No. RNY-1, Electric Service shall be subject to the Billing Demand and Billing Energy rates and other charges as provided for in Service Tariff No. RNY-1.

2. No provision of this Agreement or Service Tariff No. RNY-1 shall be construed as a promise, representation or warranty of any nature whatsoever, express or implied, by the Authority that the provision of Electric Service will result in the Customer at any time (i) paying less for electricity than the amount it would have paid had the Customer not entered into this Agreement or procured electric service from another source, or (ii) receiving any other economic, reliability or other benefit except and to the extent expressly set forth in this Agreement or such tariff.

3. Notwithstanding any other provision of this Agreement, Service Tariff No. RNY-1, or the Rules, the demand and energy rates for Electric Service commencing on or after July 1, 2012 shall be subject to increase by the Authority at any time upon thirty (30) days prior written notice to the Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the Hydro Projects and the Authority's competitive position with respect to other suppliers, the 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 the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy charges pursuant to this Section 3.3. Any rate increase to the Customer under this Section 3.3 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 Section 3.3. With respect to any such increase, the Authority shall forward to the Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which the Authority will obtain the total of increased revenues and the bases upon which the Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as the Authority determines such increase is necessary to provide revenues for the purposes stated in this Section 3.3.

4. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. RNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

ARTICLE 4

BILLING; BILLING METHODOLOGY

1. The amount of energy and demand that will be used by the Authority for Customer billing purposes shall be determined based on the methodology provided for in any agreements between the Authority and the Customer's local electric utility regarding the delivery of RNY Power. An alternative basis for billing may be used provided the Parties agree in writing and the Customer's local electric utility provides its consent if such consent is deemed necessary.

2. The Authority will render bills to the Customer for Electric Service relating to the Customer's Accepted Allocation on or before the fifteenth (15th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing in accordance with this Agreement, Service Tariff No. RNY-1 and the Rules, and are subject to adjustment as provided for in this Agreement, Service Tariff No. RNY-1 and the Rules. As provided in Service Tariff No. RNY-1, bills will include, in addition to any other charges applicable pursuant to this Agreement, Service Tariff No. RNY-1 and the Rules, NYISO Charges and Taxes associated with the Accepted Allocation. NYISO Charges shall be subject to adjustment consistent with any subsequent NYISO re-billings to Authority.

3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.

4. Bills are due and payable by the Customer within twenty (20) days of the date on which the Authority renders the bill. Unless otherwise agreed to by the Authority in writing, bills 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. The rights and remedies provided to the Authority in this Article 4 are in addition to any and all other rights and remedies available to Authority at law or in equity.

ARTICLE 5

TRANSMISSION AND DELIVERY

1. 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 RNY

Power. Delivery of Accepted Allocations shall be subject to the Utility Tariff.

2. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Accepted 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.

3. The Customer shall be solely responsible for procuring and paying for the procurement, transmission and delivery of (i) all Supplemental Power required by the Customer, and (ii) all RNY Market Power the Customer has elected to purchase from a person other than the Authority. Should the Authority incur charges associated with the procurement, transmission, or delivery of such Supplemental Power or such RNY Market Power, the Customer shall reimburse the Authority for all such charges.

4. The Customer understands and acknowledges that delivery of the Accepted Allocation will be made over transmission facilities under the control of the NYISO. The Customer understands and agrees that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Accepted Allocation for services established in the NYISO Tariffs or any other applicable tariff as provided for in Service Tariff No. RNY-1.

5. The Authority will act as the Load Serving Entity for the Customer's Accepted Allocation (*i.e.*, RNY Hydropower, and RNY Market Power as long as it is purchased from the Authority), or the Authority may arrange for another entity to do so on its behalf. Except as provided for in Article 7 of this Agreement with regard to Substitute Energy, the Authority shall not act as the LSE or perform any LSE functions with respect to any (i) Supplemental Power required or consumed by Customer, or (ii) RNY Market Power purchased from a person other than the Authority.

ARTICLE 6

SUPPLEMENTAL CUSTOMER COMMITMENTS

1. The Customer acknowledges and agrees that its Accepted Allocation is partly in consideration of the Customer's agreement to meet the commitments provided for in Schedule B of this Agreement.

2. The Authority shall have the right to reduce the Accepted Allocation based on reductions to the Contract Demand made in accordance with Schedule B if the Customer fails to meet commitments associated with the Accepted Allocation.

3. Within a reasonable time after any reduction to the Accepted Allocation, the Authority will furnish the Customer with a revised Schedule A which reflects the reduced Accepted Allocation and, to the extent the Authority deems it appropriate, a revised Schedule B.

ARTICLE 7

HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

1. 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 from the Hydro Projects, the Authority shall curtail the amount of firm power and energy to which the Customer is entitled as RNY Hydropower under this Agreement in accordance with Service Tariff No. RNY-1. The provision of RNY Market Power, if any, sold to the Customer by the Authority is not subject to curtailment pursuant to this Article 7. The Authority shall provide Substitute Energy to the Customer and the Customer shall pay for such Substitute Energy in accordance with Service Tariff No. RNY-1.

2. The Authority may require the Customer to enter into a separate agreement relating to the provision and sale of Substitute Energy. The provisions of this Agreement will remain in effect notwithstanding the existence of any such separate agreement.

ARTICLE 8

CONFLICTS

Service Tariff No. RNY-1 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. RNY-1 and the Rules, the provisions of Service Tariff No. RNY-1 will govern. In the event of any inconsistencies, conflicts or differences between the Service Tariff No. RNY-1 and any other provisions of this Agreement, the provisions of this Agreement will govern. The Authority will provide at least thirty (30) days prior written notice to the Customer of any proposed change in the Rules and Service Tariff No. RNY-1, but in no event will the Authority provide less notice than that required to be provided to similarly affected Authority customers within New York State.

ARTICLE 9

ADDITIONAL ALLOCATIONS

1. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of RNY Power 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 A 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 A, within a reasonable time after commencement of Electric Service for any such additional allocation.

2. 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.

ARTICLE 10

NOTICES

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

To Authority:

Manager, Business Power Allocations & Compliance
New York Power Authority
123 Main Street
White Plains, New York 10601
Telephone: (914) 681-6200
Facsimile: (914) 390-8156
Electronic mail: recharge.newyork@nypa.gov

To Customer:

Name: _____
Title: _____
Company: _____
Address: _____
Telephone: _____
Facsimile: _____
Electronic mail: _____

2. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (a) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (b) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (c) if delivered by hand, with written confirmation of receipt; (d) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; (e) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt; or (f) if sent by electronic file or data transfer 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.

ARTICLE 11

SUCCESSORS AND ASSIGNS; TRANSFERS; RESALE

1. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto, provided that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained.

2. The transfer of any portion of the Awarded Allocation or Accepted Allocation, or any benefits relating the Awarded Allocation or Accepted Allocation, by the Customer to any Person, to a different owner or operator of the Facility, or to a different facility, is prohibited unless (i) specifically approved by the Authority, and, (ii) all other legal requirements applicable to such a transfer are complied with. Any transfer that occurs without such approval and compliance shall be invalid and transfer may in the Authority's sole discretion subject the transferor to revocation or modification of the Awarded Allocation, Accepted Allocation and/or this Agreement.

3. The Customer may not resell any portion of the Awarded Allocation or Accepted Allocation to any Person. If such a sale occurs, the Authority may, in its sole discretion, terminate the Awarded Allocation, Accepted Allocation and/or this Agreement.

ARTICLE 12

EFFECTIVENESS; TERMINATION; EFFECT

1. This Agreement shall become effective and legally binding on the Parties: (i) upon receipt of approval of this Agreement by the Authority's Board of Trustees; and (ii) upon execution of this Agreement by the Authority and the Customer.

2. Electric Service under this Agreement shall continue until the earliest of: (1) termination by the Customer with respect to all of the Accepted Allocation upon at least ninety (90) days prior written notice to the Authority; (2) termination by Authority in accordance with this Agreement, Service Tariff No. RNY-1 and/or the Rules; or (3) termination of the Accepted Allocation by its own terms as specified in Schedule A of this Agreement ("Allocation Expiration Date").

3. The Customer may exercise a partial termination of the Accepted Allocation upon at least ninety (90) days prior written notice to the Authority. Unless otherwise agreed to by the Parties in writing, the termination shall be effective commencing with the first Billing Period following the required notice. In the event of a partial termination, the Authority will furnish the Customer with a revised Schedule A which reflects the revised Accepted Allocation and a revised Schedule B to the extent the Authority deems it appropriate.

4. Unless otherwise provided in this Agreement or agreed to by the Authority in writing, a termination, reduction, or other modification in whole or in part of the Accepted Allocation shall apply equally to the RNY Hydropower component and RNY Market Power component (if any) of the Customer's Accepted Allocation.

5. Unless otherwise provided in this Agreement or agreed to by the Authority in writing, a termination, reduction, or other modification in whole or in part of an Accepted Allocation shall result in a corresponding termination, reduction, or modification of the Customer's Awarded Allocation, and shall apply equally to the RNY Hydropower and RNY Market Power components of the Customer's Awarded Allocation.

ARTICLE 13

MISCELLANEOUS

1. Choice of Law

Any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to 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 rulings by the IJC and without regard to conflicts of law provisions.

2. Venue

Each Party consents to the exclusive jurisdiction and venue of any state court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

3. Previous Agreements, Communications and Representations

This Agreement, including its schedules, appendices and attachments shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of the Accepted Allocation and its other subject matter, and supersedes all previous communications between the Parties hereto, either oral or written, including price estimates, with reference to the sale of the Accepted Allocation. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

4. Waiver

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

5. Severability and Voidability

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

ARTICLE 14
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 or other acceptable file format that appropriately captures the signature, 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:

CUSTOMER

By: _____

Name (Print): _____

Title (Print): _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Name: Keith T. Hayes

Title: Vice President, Marketing

Date: _____

SCHEDULE A

RECHARGE NEW YORK POWER ALLOCATIONS

APPLICANT: «narr_new_mailingaddressname»

CONSOLIDATED FUNDING APP. No: «ncntr_new_applicationid»

CUSTOMER: Check the appropriate box below to make your election, and confirm your election by signing next to the election made. You may only check one box. The Authority will acknowledge your election and the applicable Accepted Allocation when executing the Agreement.

Option 1

Customer elects to purchase ALL of the RNY Market Power listed under Accepted Allocation from the Authority:

☐ Customer Signature: _____

Option 1 Allocation Information (will apply if ALL of the RNY Market Power that is part of the Awarded Allocation is purchased from the Authority)

Awarded Allocation	Accepted Allocation	Contract Demand	Term of Accepted Allocation	Trustee Award Date	Facility
RNY Hydropower (kW): «nall_new_nypavalue3» RNY Market Power (kW):«nall_new_nyapvalue4» Total (kW): «nall_new_nypavalue1»	RNY Hydropower (kW): «nall_new_nypavalue3» RNY Market Power (kW):«nall_new_nyapvalue4» Total (kW):«nall_new_nypavalue1»	«nall_new_nypavalue1» (kW)*	7 years (from the date of commencement of Electric Service)	December 16, 2014	«narr_new_phys_add_city», NY

*The value listed for the Contract Demand is subject to the Takedown Schedule, if any, attached to the Agreement as Schedule C.

OR

SCHEDULE A

APPLICANT: «narr_new_mailingaddressname»

CONSOLIDATED FUNDING APP. No: «ncntr_new_application
id»

Option 2

Customer elects to purchase NONE of the RNY Market Power listed under Accepted Allocation from the Authority:

☐ Customer Signature: _____

Option 2 Allocation Information (will apply if NONE of the RNY Market Power that is part of the Awarded Allocation is purchased from the Authority)

Awarded Allocation	Accepted Allocation	Contract Demand	Term of Accepted Allocation	Trustee Award Date	Facility
RNY Hydropower (kW): «nall_new_nypavalue3» RNY Market Power (kW):«nall_new_nypavalue4» Total (kW): «nall_new_nypavalue1»	RNY Hydropower (kW): «nall_new_nypavalue3» RNY Market Power (kW): 0 Total (kW):«nall_new_nypavalue3»	«nall_new_nypavalue3» (kW)*	7 years (from the date of commencement of Electric Service)	December 16, 2014	«narr_new_phys_add_city », NY

*The value listed for the Contract Demand is subject to the Takedown Schedule, if any, attached to the Agreement as Schedule C.

FOR AUTHORITY USE ONLY:

Authority Acknowledgement of Customer election: _____

Accepted Allocation: _____kW

RNY Hydropower purchased from the Authority: _____kW

RNY Market Power purchased from the Authority: _____kW

SCHEDULE B

RECHARGE NEW YORK POWER COMMITMENTS

The provision of RNY Power to the Customer is in consideration of, among other things, the commitments made by the Customer as provided for in this Schedule B.

ARTICLE 1 **CUSTOMER COMMITMENTS**

A. Employment

1. Employment Levels

The Customer shall establish and/or maintain the employment level set forth in Appendix 1 to this Schedule B (the “Base Employment Level”). Unless otherwise provided for in Schedule B, such Base Employment Level shall be the total number of full-time positions held by: (1) individuals employed by the Customer at the Facility identified in Appendix 1 to this Schedule B; and (2) individuals who are contractors or are employed by contractors of the Customer and who are assigned to such Facility (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 at least 20 hours but not more than 35 hours per week shall be counted as one Base Level Employee.

The Customer shall not establish or maintain the Base Employment Level by transfers of employees from previously held positions with the Customer or its affiliates located within New York State, 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. The Authority shall have the sole discretion to make any such change.

2. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on an annual basis for the period July 1 through June 30 (the “Reporting Period”) to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer’s Facility identified in Appendix 1 to this Schedule B, 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 specify the number of individuals who are employed by the Customer, who are contractors, and 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 August immediately following the preceding Reporting Period.

SCHEDULE B

B. Capital Investment

1. Capital Investment Levels

The Customer shall make the scheduled capital investments described in Appendix 2 to this Schedule B.

2. Capital Investment Records

Unless otherwise specified in Appendix 2 to this Schedule B, the Customer shall maintain records of its capital investments for each Facility receiving an Accepted Allocation. The Customer shall provide copies and an explanation of such records to the Authority on an annual basis for the Reporting Period on or before the last day of August immediately following the preceding Reporting Period.

C. Power Utilization Records

The Customer shall keep monthly records of the maximum demand utilized each month for each Facility receiving an Accepted Allocation and provide copies and an explanation of such records to the Authority on an annual basis for the Reporting Period on or before the last day of August immediately following the preceding Reporting Period.

D. Energy Efficiency Audits; Information Requests

The Customer shall undergo an Energy Efficiency Audit of the Facility receiving an Accepted Allocation 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 shall provide the Authority with a copy of the results of the Energy Efficiency Audit or, at the Authority's option, a report describing the results of the Energy Efficiency Audit, as well as documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer shall cooperate to make its facilities 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.

E. Compliance Verification

In addition to any reports or other information required by this Agreement, the Authority or its designee shall have the right to examine and audit on reasonable advance written notice to the Customer all non-confidential written and electronic records and data in order to determine the Customer's compliance with the Customer Commitments provided for under this Article 1.

SCHEDULE B

ARTICLE 2 **REDUCTIONS IN CONTRACT DEMAND**

The Contract Demand shall be subject to reduction as provided for in this Schedule B for the Customer's failure to meet commitments.

A. Employment Levels

If the annual monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B for the subject Reporting Period, the Authority may reduce the Contract Demand in accordance with Section 2.D of this Schedule B. 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 Reporting Period divided by the Base Employment Level. The Authority will round any such reduction to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Capital Investment Levels

The Authority may reduce the Contract Demand as provided in Appendix 2 to this Schedule B.

C. Power Utilization Levels

If the average of the Customer's six (6) highest Billing Demands (as such term is defined in Service Tariff No. RNY-1) is less than 90% of the Customer's Contract Demand in a Reporting Period, the Authority may reduce the Contract Demand in accordance with Section 2.D of this Schedule B. 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 Reporting Period divided by the Contract Demand. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

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 B, the Authority will 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 employment levels or electrical demand, as well as the business cycle.

SCHEDULE B

SCHEDULE B – APPENDIX 1

BASE EMPLOYMENT LEVEL

In accordance with Article 1 of Schedule B, the Customer agrees to a Base Employment Level at the Customer's Facility indicated below on or before the date(s) specified:

Base Employment Level	Facility	Date(s)	Miscellaneous/Notes
«nall_new_customervalue2»	«narr_new_phys_add_city», NY	The date of commencement of electric service	
«nall_new_customervalue1»	«narr_new_phys_add_city», NY	3 years from the date of commencement of electric service	

CONSOLIDATED FUNDING APP. No: «ncntr_new_applicationid»

SCHEDULE B

SCHEDULE B – APPENDIX 2

CAPITAL INVESTMENT COMMITMENTS

In accordance with Article 1 of this Schedule B, the Customer agrees to make the following capital investments in the Facility (“Capital Investment Commitment”) between (1) the date of the Customer’s application for RNY Power, unless an earlier date was proposed in the Customer’s application for an ongoing capital investment in which case such earlier date shall apply, and (2) the end of the Capital Investment Period indicated:

Capital Investment Commitment: A minimum of
«nall_new_customerdollarvalue1_base» «nall_new_customerdollarvalue2_base»

Capital Investment Period: «nall_new_customerdollarunit1id_new_name»
«nall_new_customerdollarunit2id_new_name»

If the amount of the Customer’s actual capital investment in the Facility as of the end of the Customer’s Capital Investment Period is less than 90% of its Capital Investment Commitment, the Contract Demand may be reduced by the Authority subject to Section 2.D of this Schedule B. 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 actual capital investment made in the Facility divided by the Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

CONSOLIDATED FUNDING APP. No: «ncntr_new_applicationid»

SCHEDULE C
TAKEDOWN SCHEDULE

CONSOLIDATED FUNDING APP. No: «ncntr_new_applicationid»

SCHEDULE D

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. RNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. RNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):

(1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).

(2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. RNY-1, or the Rules.

SCHEDULE D

implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under the Recharge New York Program, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the Recharge New York Program (the “RNY Program ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the Recharge New York Power Program to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the Recharge New York Program based on the proportion of the actual annual kilowatt-hours load served under such Program to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

SCHEDULE D

- iii. The Authority will allocate a portion of the RNY Program ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the Recharge New York Power purchased by the Customer to total kilowatt-hours load served by the Authority under the Recharge New York Program (Recharge New York Power Program level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the Recharge New York Power Program by the Authority (Recharge New York Power Program level load).
- b. The ZEC Charge shall apply to the sale of Recharge New York Power sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of Recharge New York Power commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will

SCHEDULE D

either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of Recharge New York Power sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of Recharge New York Power commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article 4 of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. RNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

Schedule of Rates for Sale of Recharge New York Power
(Direct Sale)

Service Tariff No. RNY-1

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Schedule of Rates for Sale of Recharge New York Power

I. Applicability

To direct sales of Recharge New York Power to a Customer for firm Electric Service.

II. Frequently Used Abbreviations and Terms

- ECA Energy Cost Adjustment
- EDL New York Economic Development Law
- kW kilowatt(s)
- kWh kilowatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- OATT NYISO Open Access Transmission Tariff
- PRAP Periodic Rate Adjustment Process
- PAL New York Public Authorities Law
- RNY Recharge New York
- ROS Rest of State
- RY Rate Year
- UCAP Unforced Capacity

Accepted Allocation: That portion of the Awarded Allocation the Customer has elected to accept and purchase from the Authority.

Agreement: An executed agreement between the Authority and a Customer setting forth the terms and conditions applicable to the allocation and sale of RNY Power to the Customer, including an agreement entitled “Agreement for the Sale of Recharge New York Power and Energy.”

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” and “NYPA.”

Awarded Allocation: The amount of RNY Power awarded to the Customer by the Authority, which consists of equal amounts of RNY Hydropower and RNY Market Power.

Billing Demand: This term has the meaning provided for in Section IV.D of this Service Tariff.

Billing Energy: This term has the meaning provided for in Section IV.D of this Service Tariff.

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 Facility receiving the Accepted Allocation is located.

Contract Demand: The amount of RNY Power, not to exceed the Customer’s Accepted Allocation, allocated to the Customer which the Customer agrees to take and pay for in accordance with the Agreement. The Contract Demand shall equal the Accepted Allocation.

Customer: A RNY Blended Customer or RNY Hydropower Customer.

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

Eligible Applicant: This term has the meaning provided for in EDL § 188-a.

Facility: The Customer's place of business specified in the Agreement that will receive or is receiving the Accepted Allocation.

Firm Energy: Firm Hydro Energy and Firm Market Energy (kWh) associated with Firm Power.

Firm Hydro Energy: Firm energy (kWh) associated with Firm Hydro Power.

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

Firm Market Energy: Firm energy (kWh) associated with Firm Market Power supplied by Authority to the Customer.

Firm Market Power: Capacity (kW) that is intended to be always available from market sources and/or the Authority's non-Hydro Project-based resources as determined to be available for such use by the Authority.

Firm Power: Firm RNY Hydropower and Firm RNY Market Power.

Hydro Project: The Authority's St. Lawrence-FDR Power Project, FERC Project No. 2216 and/or the Authority's Niagara Power Project, FERC Project No. 2000.

Load Serving Entity or LSE: This term has the meaning provided for in the Agreement.

Minimum Demand Charge: This term has the meaning provided for in Section III.C.1 of this Service Tariff.

NYISO Tariffs: The tariffs of the NYISO, including the NYISO OATT, as such tariffs are amended and in effect from time to time.

PP Service Tariff No. 10: The Authority's service tariff denominated as "Schedule of Rates for Sale of Firm Power to Preservation Power Customers, Service Tariff No. 10," as amended from time to time by the Authority.

Rate Year or RY: The July Billing Period through the June Billing Period of the following year, beginning July 2012.

Recharge New York Power or RNY Power: Firm Power and Firm Energy the Authority is authorized to allocate and sell to Eligible Applicants in accordance with PAL § 1005(13-a) and EDL § 188-a.

RNY Blended Customer: An Eligible Applicant who has been awarded an allocation of RNY Power from the Authority and who has elected to accept and purchase RNY Hydropower and RNY Market Power from the Authority. In such case, the Customer's Accepted Allocation shall be comprised of 50 percent RNY Hydropower and 50 percent RNY Market Power.

RNY Hydro Customer: An Eligible Applicant who has been awarded an allocation of RNY Power from the Authority and who has elected to accept and purchase only RNY Hydropower from the Authority.

RNY Hydropower: This term has the same meaning as "recharge New York hydropower" as defined in PAL § 1005(13-a)(b), and further refers to the hydropower and energy components of a RNY Power allocation made to a RNY Hydro Customer or a RNY Blended Power Customer.

RNY Market Power: This term has the same meaning as "recharge New York market power" as defined in PAL § 1005(13-a)(b), and further refers to the market power and energy components of a RNY Power allocation made to a RNY Blended Power Customer.

Rules: The Authority's rules and regulations set forth in Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York as may be modified from time to time by the Authority.

Service Tariff: This service tariff, denominated as "Schedule of Rates for Sale of Recharge New York Power (Direct Sale), Service Tariff No. RNY-1," as amended from time to time by the Authority.

Substitute Energy: Energy the Authority procures and sells to the Customer to replace RNY Hydropower that would otherwise have been sold to the Customer but for a curtailment made in accordance with the Agreement and this Service Tariff.

Take Down: The portion of the Accepted Allocation the Customer requests to be scheduled for a specific period as provided for in the Agreement.

Taxes: This term has the meaning provided for in Section III.C.2 of this Service Tariff

Zones: Geographical regions within New York State (sometimes referred to as "load zones" or "energy regions") designated by the NYISO and identified by letter (A-K) that are used to facilitate energy transactions and administration of the State's power grid.

Additional terms are defined in the text of this Service Tariff.

Unless otherwise indicated, all other capitalized terms and abbreviations used but not defined in this Service Tariff shall have the meaning as set forth in the Agreement.

III. Monthly Zonal Base Rates and Related Matters

A. Monthly Zonal Base Rates

Subject to the other provisions of this Service Tariff, the monthly zonal base rates to be charged to the Customer by the Authority based on the location (i.e., Zone) of its Facility shall be as follows:

RNY Hydro Customer		
Zones	Billing Demand (\$/kW)	Billing Energy (\$/kWh)
A-E	7.97	0.01945
F	7.97	0.03233
G-I	7.97	0.03992
J	7.97	0.05201
K	7.97	0.05892

RNY Blended Customer		
Zones	Billing Demand (\$/kW)	Billing Energy (\$/kWh)
A-E	3.99	0.04057
F	3.99	0.05506
G-I	3.99	0.06224
J	3.99	0.07815
K	3.99	0.08152

B. Monthly Zonal Base Rate Components

The monthly zonal base rates for RNY Hydro Customers referenced in Section III.A above consist of the following components, which are detailed below: (1) Preservation Power Price Component; (2) NYISO Transmission and Related Charges Component; (3) Capacity Component (for Zones G, H, I, J and K only); and (4) Distribution Losses Component.

The monthly zonal base rates for RNY Blended Customers include the RNY Hydro Customer rate components listed in the preceding sentence and the following additional components which are detailed below: (1) Market Energy Component; (2) Capacity Component (for all Zones); and (3) Bad Debt Risk Component.

The following is a description of the monthly zonal base rate components:

1. Preservation Power Price Component

This component consists of the rate the Authority charges for Preservation Power as set in accordance with Section III.A of the Authority's PP Service Tariff No. 10.

2. NYISO Transmission and Related Charges ("NYISO Charges") Component

This component consists of the Authority's estimated costs for NYISO Charges for services provided by the NYISO pursuant to NYISO Tariffs, NYISO-related agreements and NYISO procedures associated with the Authority's provision of Electric Service to the Customer. The NYISO Charges that will be accounted for in the monthly zonal base rates include:

- Charges for Ancillary Services 1 through 6 and any new ancillary services as may be provided in accordance with NYISO Tariffs;
- Transmission Usage Charges ("TUC") which are Marginal Losses and Congestion costs;
- The New York Power Authority "Transmission Adjustment Charge" or "NTAC";

- d. NYISO wide uplift as provided for in the NYISO Tariffs;
- e. Any and all other charges, assessments, or other amounts associated with delivery of RNY Power sold to Customers by the Authority, or otherwise associated with the Authority's responsibilities as a Load Serving Entity for Customers, that the NYISO assesses on the Authority under the provisions of the OATT or under other applicable NYISO 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.

3. Capacity Component

This component consists of the Authority's estimated costs to meet the NYISO's capacity requirements. This is currently expressed by the NYISO as the Unforced Capacity or "UCAP" obligation. The UCAP obligation is inclusive of any adjustments for reserves needed to meet the installed reserve margin as required by the NYISO.

For RNY Hydro Customer loads, except for those in Zones G, H, I, J and K, capacity will be secured through the Hydro Project. For RNY Hydro Customer loads in Zones G, H, I, J and K only, locational capacity requirements as required by the NYISO will be secured through market purchases or any other means as determined to be most appropriate by the Authority in its sole discretion. The remaining capacity (ROS capacity) will be secured through the Hydro Project.

For RNY Blended Customer loads, capacity will be secured through a combination of sources consisting of the Hydro Project, bilateral contracts, NYISO auctions, or any other means as determined to be most appropriate by the Authority in its sole discretion.

4. Distribution Losses Component

This component consists of the Authority's estimated costs associated with distribution losses of the local electric utility.

5. Market Energy Component

This component, applicable to monthly zonal base rates for RNY Blended Customers, reflects the Authority's forecast of prices for market purchases to be made by Authority on behalf of the Customer based on current and anticipated market conditions. The Authority intends to procure RNY Market Power using short and long-term purchases, including purchases from the NYISO Day-Ahead Market and/or Real-Time Market (each term as provided for in the NYISO Tariffs), and through requests for proposals to the extent the Authority deems them appropriate. Financial hedging instruments may be used for the purposes of mitigating the risk in price movements. The Authority will include the costs of any financial products used to hedge these purchases. Purchases of RNY Market Power will be made in whichever portfolio combination the Authority deems to be appropriate in its sole discretion.

6. Bad Debt Risk Component

This component accounts for risk of loss to the Authority from bad debt associated with the sale of RNY Power across the RNY Power Program.

C. Other Charges

The monthly zonal base rates do not reflect any of the charges discussed in this Section III.C (collectively, “Other Charges”). The Customer shall be responsible for payment of such Other Charges as a separate charge from the monthly zonal base rates to the extent they apply to such Customer.

1. Minimum Demand Charge

The Customer shall be subject to a monthly minimum billing demand charge calculated as follows. If in any given month Customer’s monthly demand usage is less than 75 percent of its Contract Demand, a minimum demand charge equal to 75 percent of the Customer’s Contract Demand (or if the Take Down is less than the Contract Demand, 75 percent of the Take Down), times the applicable demand rate shall apply for that month. Such minimum monthly charge shall be in addition to all other charges provided for in this Service Tariff, including but not limited to Energy Billing and Other Charges as provided for in this Service Tariff.

2. Taxes

The Authority will charge and collect from the Customer all local, state and federal taxes, assessments or other charges mandated by local, state or federal agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer (“Taxes”) if and to the extent such Taxes are not recovered by the Authority pursuant to another provision of this Service Tariff.

3. Curtailments and Substitute Energy

Firm Hydro Power and Firm Hydro Energy are subject to curtailment as provided for in the Agreement and Section IV.B of this Service Tariff. The Authority shall provide Substitute Energy to the Customer, and the Customer shall pay the Authority for Substitute Energy, in accordance with the Agreement and Section IV.B of this Service Tariff.

D. New Charges

The Customer shall be responsible for payment of any and all new costs or charges incurred by the Authority in connection with its provision of Electric Service to the Customer, including but not limited to, charges and costs incurred for supplying RNY Hydropower and RNY Market Power, and any new NYISO Charges as may be defined and applied in any NYISO Tariffs, NYISO-related agreements and NYISO procedures from time to time (collectively, “New Charges”). The Authority, in its sole discretion, may include any such New Charges in the monthly zonal base rates or the Energy Charge Adjustment, or bill the Customer separately for such New Charges.

E. Delivery Charges

The Customer shall be solely responsible for paying its local electric utility for all delivery service charges associated with RNY Power. Should the Authority incur any charges from the local electric utility associated with such delivery service, the Customer shall reimburse the Authority for all such charges.

F. 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 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 the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on an 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.

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 in accordance with Section III.H of this Service Tariff and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The provisions of Section IV.E of this Service Tariff 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 or otherwise regarding Metering Arrangements.

G. Energy Charge Adjustment

As described above in Section III.B of this Service Tariff, one or more of the monthly zonal base rate components are based on estimates made by the Authority. Charges to the Customer shall be subject to an Energy Charge Adjustment process ("ECA") administered by the Authority. Pursuant to the ECA, charges for Electric Service shall be subject to adjustment (i.e., increase or decrease) when the Authority determines that actual costs vary from the estimates used by the Authority to formulate the monthly zonal base rate components.

H. 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.

I. Periodic Rate Adjustment Process

Monthly zonal base rates for RNY Hydro Customers and RNY Blended Customers, including the monthly zonal base rate components listed in Section III.B of this Service Tariff, shall be subject to adjustment in accordance with a Periodic Rate Adjustment Process (“PRAP”) that will establish new monthly zonal base rates for such Customers. It is anticipated that PRAP will occur annually and establish new rates that will be effective beginning on the first day of the next succeeding Rate Year, provided however, the Authority may conduct the PRAP more or less frequently to establish new rates with a different effective date as determined to be advisable by the Authority considering market conditions and other appropriate factors.

As noted above in Section III.B of this Service Tariff, the Preservation Power Price Component of the RNY Hydro Customer and RNY Blended Customer rates is based on the Preservation Power Rate as established in accordance with Section III.A of the PP Service Tariff No.10. The Preservation Power Rate has been established for the period through June 2014. Commencing with the rate year beginning July 2014, and for each rate year thereafter, the Preservation Power Rate is subject to an Annual Adjustment Factor as provided for in Sections V.A.1, V.A.2, V.A.4 and V.B of the PP Service Tariff No.10.

Unless the Authority determines such notice to be impracticable, the Authority will provide the Customer with not less than thirty (30) days written notice of any adjustment of the rates made in accordance with the PRAP.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2 of this Service Tariff, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power.
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 the Authority's firm power customers served from the Hydro Projects, curtailments in the amount of Firm Power and Firm Energy to which the Customer is entitled as RNY Hydropower under the Agreement will be applied on a pro rata basis to all firm power and firm energy customers served by the Hydro Projects. Reductions as a percentage of the otherwise required firm power and firm energy sales will be the same for all firm power and firm energy customers served by the Hydro Projects. The provision of RNY Market Power, if any, sold to the Customer by the Authority is not subject to curtailment.
3. The Authority will provide Substitute Energy to the Customer to replace the RNY Hydropower that would otherwise have been supplied under this Agreement but for the curtailment. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer shall pay the Authority directly for: (a) the market cost of the Substitute Energy; and (b) all costs, including but not limited to any NYISO Charges and Taxes, the Authority incurs in connection with the provision of Substitute Energy.
4. The Authority will give the Customer advance notice of forecasted shortfalls in Firm Power and Firm Energy curtailments which will advise the Customer of the forecasted shortfall of Firm Power and Firm Energy, the period to which the forecast applies (usually a Billing Period), and the Customer's anticipated share of the forecasted shortfall. After the Billing Period to which the notice applies, the Authority will determine after the fact the actual shortfall and make any appropriate adjustments to charges and billings to the Customer in accordance with the rates provided for in this Service Tariff.
5. The Authority is under no obligation to supply and will not supply to the Customer in later Billing Periods any curtailed RNY Hydropower.

C. Delivery of RNY Power

The Customer's local electric utility shall be responsible for delivering RNY Power to the Customer. The Authority shall have no responsibility for delivering any RNY Power to the Customer.

For the purpose of this Service Tariff, Firm Power and Firm Energy will 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 will not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Billing and Billing Methodology

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

1. The amount of energy that will be used by the Authority for Customer billing purposes will be determined based on the methodology provided for in any agreements between the Authority and the Customer's local electric utility regarding the delivery of RNY Power.
2. **Billing Demand.** The Billing Demand charged by the Authority to each Customer will be the highest 30-minute integrated demand during each Billing Period recorded on the Customer's meter 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 RNY 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 RNY Power.

E. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the fifteenth (15th) 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 this Agreement, Service Tariff No. RNY-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. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of a bill rendered by Authority, the Customer shall pay such bill in the time provided for by this Agreement, and adjustments, if necessary, will be made thereafter.
5. 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.

F. Conflicts

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

New York Power Authority
Authorization for Public Hearing on the Contracts for Pending WNY Hydropower Allocations

Exhibit "4c ii-D"
September 27, 2016

Exhibit Number	Company Name	Program	City	County	Trustee Approval	Base Jobs	New Jobs	Capital Investment Commitment	Awarded Allocation (kW)	Contract Term
F-1	3M Company	EP	Tonawanda	Erie	7/29/2014	345	6	\$1,985,000	150	7 Years
F-2	Confer Plastics, Inc.	EP	North Tonawanda	Niagara	9/29/2015	180	24	\$2,600,000	400	7 Years
F-3	Fresenius Kabi USA, LLC	RP	Grand Island	Erie	4/4/2011	575	90	\$30,000,000	2,000	5 Years
F-4	Niagara Coatings Services, Inc.	RP	Niagara Falls	Niagara	7/26/2016	25	3	\$475,000	100	7 Years
F-5	North American Hoganas, Inc.	EP	Niagara Falls	Niagara	5/19/2015	58	10	\$3,000,000	400	7 Years
F-6	Saint-Gobain Ceramics & Plastics, Inc.	RP	Niagara Falls	Niagara	2/26/2015	69	7	\$4,530,000	300	7 Years
F-7	Unifrax I LLC	RP	Tonawanda	Erie	10/15/2014	268	50	\$33,000,000	1,900	7 Years
TOTALS							190	\$75,590,000	5,250	

Exhibit Number	Company Name	Program	City	County	Trustee Approval	Base Jobs	New Jobs	Capital Investment Commitment	Awarded Allocation (kW)	Contract Term
G-1	Roth Industries, Inc.	PP	Watertown	Jefferson	7/26/2016	14	8	\$ 6,700,000	600	7 Years

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

3M COMPANY

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, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with 3M Company (“Customer”), having facilities at 305 Sawyer Avenue, Tonawanda, NY 14150. 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 July 29, 2014, the Authority’s Board of Trustees (“Trustees”) approved a 150 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 July 29, 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. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **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.

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

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

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 July 29, 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 10th 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

3M Company
305 Sawyer Ave
Tonawanda, NY 14150
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:

3M COMPANY

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 (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: 3M Company				
Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Expansion Power	150	305 Sawyer Ave Tonawanda, NY 14150	July 29, 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 (CES)**

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 351 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 minimum capital investment of \$1,985,000 to construct and/or furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following specific expenditures:

Infrared Heating System –	\$ 485,000
Pulp Shredder/ Conveying -	\$1,000,000
Automated Web Handling System -	<u>\$ 500,000</u>

Total Capital Investment:	\$1,985,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than July 29, 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 (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

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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 (10th) 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 15th 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		1.03

- 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	6.24
<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	6.23
Ratio of MY/MY-1			1.00

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

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
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		1.02

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			1.016

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

CONFER PLASTICS, 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, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Confer Plastics, Inc. (“Customer”) with offices and principal place of business at 97 Witmer Road, North Tonawanda, NY 14120. 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 September 29, 2015, the Authority’s Board of Trustees (“Trustees”) approved a 400 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 September 29, 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. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **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.

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

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

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 September 29, 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 10th 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

Confer Plastics, Inc.
97 Witmer Road
North Tonawanda, NY 14120
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:

CONFER PLASTICS, 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 (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Confer Plastics, Inc.	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Expansion Power	400	97 Witmer Road North Tonawanda, NY 14120	September 29, 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 (CES)**

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 204 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 minimum capital investment of \$2,600,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following specific expenditures:

New 100-pound Blow Molding Machine -	\$2,100,000
Installation & Miscellaneous Equipment -	<u>\$ 500,000</u>
Total Capital Investment:	\$2,600,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than September 29, 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 (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

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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 (10th) 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 15th 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		1.03

- 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	6.24
<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	6.23
Ratio of MY/MY-1			1.00

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

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
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		1.02

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			1.016

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

FRESENIUS KABI USA, 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, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Fresenius Kabi USA, LLC (“Customer”), having facilities at 3159 Staley Road, Grand Island, NY 14072. 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 April 4, 2011, the Authority’s Board of Trustees (“Trustees”) approved a 2,000 kilowatt (“kW”) allocation of RP to the Customer for a five (5) 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 April 4, 2011, 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. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **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.

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

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

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 31, 2016, 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 10th 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

Fresenius Kabi USA, LLC
3159 Staley Road
Grand Island, NY 14072
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:

FRESENIUS KABI USA, 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 (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Fresenius Kabi USA, LLC	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Replacement Power	2,000	3159 Staley Road Grand Island, NY 14072	April 4, 2011	Five (5) 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 (CES)**

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 665 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 minimum capital investment of \$30,000,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following specific expenditures:

6 (Used) Lyophilizers -	\$ 7,000,000
17 (New) Air Handlers -	\$ 4,000,000
2 (New) Chillers w/ cooling towers -	\$ 7,000,000
Facility Modifications -	<u>\$12,000,000</u>

Total Capital Investment:	\$30,000,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than December 31, 2016. 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 (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

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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 (10th) 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 15th 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		1.03

- 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	6.24
<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	6.23
Ratio of MY/MY-1			1.00

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

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
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		1.02

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			1.016

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

NIAGARA COATINGS SERVICES, 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, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Niagara Coatings Services, Inc. (“Customer”) with offices and principal place of business at 8025 Quarry Road, Niagara Falls, NY 14304. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree 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 July 26, 2016, the Authority’s Board of Trustees (“Trustees”) approved a 100 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on July 26, 2016, 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. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **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.

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

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

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 July 26, 2019 (*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 10th 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

Niagara Coatings Services, Inc.
8025 Quarry Road
Niagara Falls, NY 14304
Email:
Facsimile:
Attention:

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

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

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

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

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

XVII. Waiver

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

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

NIAGARA COATINGS SERVICES, 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 (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Niagara Coatings Services, Inc.	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Replacement Power	100	1) 8025 Quarry Road Niagara Falls, NY 14304 2) 8030 Quarry Road Niagara Falls, NY 14304	July 26, 2016	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 (CES)**

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 28 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 minimum capital investment of \$475,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following specific expenditures:

Installation of 200 HP Air Compressor	\$100,000
Installation of Blast Booth	\$275,000
Installation of (2) Air Filter Beds	<u>\$100,000</u>
Total Capital Investment:	\$475,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than July 26, 2019 (*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 (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

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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 (10th) 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 15th 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		1.03

- 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	6.24
<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	6.23
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		1.02

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			1.016

STEP 3

Apply Collar of ±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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

NORTH AMERICAN HOGANAS, 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, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with North American Hoganas, Inc. (“Customer”), having facilities at 5950 Packard Road, Niagara Falls, NY 14304. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree 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 400 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. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **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.

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

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

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 10th 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

North American Hoganas, Inc.
5950 Packard Road
Niagara Falls, NY 14304-0310
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:

NORTH AMERICAN HOGANAS, 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 (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: North American Hoganas, Inc.	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Expansion Power	400	5950 Packard Road Niagara Falls, NY 14304	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 (CES)**

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 68 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 minimum capital investment of \$3,000,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following specific expenditures:

Electrolytic Copper Building and Equipment - (Heaters, oil heated dryers, pump stations, coolers and rectifiers)	\$1,500,000
R12 Wash Building and Equipment - (Oil heated dryers, pump stations, coolers, dust collection, and packaging equipment)	<u>\$1,500,000</u>
Total Capital Investment:	\$3,000,000

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 (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

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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 (10th) 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 15th 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		1.03

- 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	6.24
<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	6.23
Ratio of MY/MY-1			1.00

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

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
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		1.02

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			1.016

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

SAINT-GOBAIN CERAMICS & PLASTICS, 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, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Saint-Gobain Ceramics & Plastics, Inc. (“Customer”) with offices and principal place of business at 6600 Walmore Road, Niagara Falls, NY 14304. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree 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 February 26, 2015, the Authority’s Board of Trustees (“Trustees”) approved a 300 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 February 26, 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. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **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.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **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.
- Z. **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.
- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

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 February 26, 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 10th 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

Saint-Gobain Ceramics & Plastics, Inc.
6600 Walmore Road
Niagara Falls, NY 14304
Email:
Facsimile:
Attention:

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

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication

of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

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

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

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

XVII. Waiver

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

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

SAINT-GOBAIN CERAMICS & PLASTICS, 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 (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Saint-Gobain Ceramics & Plastics, Inc.	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Replacement Power	300	6600 Walmore Road Niagara Falls, NY 14304	February 26, 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 (CES)**

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 76 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 minimum capital investment of \$4,530,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following specific expenditures:

A. Capacity Expansion (Building & Equipment):	\$1,930,000
B. New Product Line (Equipment):	\$ 200,000
C. Building Expansion (Building & Equipment):	<u>\$2,400,000</u>

Total Capital Investment:	\$4,530,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than February 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 (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

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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 (10th) 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 15th 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		1.03

- 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	6.24
<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	6.23
Ratio of MY/MY-1			1.00

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

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
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		1.02

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			1.016

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

UNIFRAX I 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, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Unifrax I LLC (“Customer”), having facilities at 360 Firetower Drive, Tonawanda, NY 14150. 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 October 15, 2014, the Authority’s Board of Trustees (“Trustees”) approved a 1,900 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 October 15, 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. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **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.

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

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

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 October 15, 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 10th 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

Unifrax I LLC
360 Firetower Drive
Tonawanda, NY 14150-5812
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:

UNIFRAX I 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 (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Unifrax I LLC				
Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Replacement Power	1,900	360 Firetower Drive Tonawanda, NY 14150	October 15, 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 (CES)**

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 318 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 minimum capital investment of \$33,000,000 to construct and/or furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following specific expenditures:

<u>Line #3 Project</u>	<u>\$Million</u>
Stock Preparation and Forming	\$8.1
Drying	\$4.9
Inline Converting & Conveying	\$2.9
Bldg. /Grounds and Equipment Relocation	\$6.0
Infrastructure & Utilities (Lighting/ Heating)	\$1.9
Bldg. & Property Acquisition	<u>\$9.2</u>
Total Capital Investment:	\$33.0 Million

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than October 15, 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 (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

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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 (10th) 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 15th 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		1.03

- 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	6.24
<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	6.23
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		1.02

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			1.016

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE OF
PRESERVATION POWER AND ENERGY
(CES)

to

ROTH INDUSTRIES, 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 1 of Article 5 of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Preservation Power and Energy (“Agreement”) to Roth Industries, Inc., having facilities at 268 Bellew Avenue South, Watertown, New York, 13601 (“Customer”). The Authority and the Customer are from time to time referred to in this Agreement individually as a “Party” or collectively as the “Parties” and agree as follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the St. Lawrence-FDR Power Project known as Preservation Power (or “PP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, PP consists of 490 megawatts (“MW”) of firm hydroelectric power and associated energy produced by the St. Lawrence-FDR Power Project;

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

WHEREAS, the Authority has the authority under PAL § 1005(13)(a) to award allocations of PP 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 has applied for an allocation of PP for use at facilities located at 268 Bellew Avenue South, Watertown, New York, 13601 (defined in Article I of this Agreement as the “Facility”) to be received upon completion of an expansion of the Facility as provided for in the Capital Expansion Program described in this Agreement;

WHEREAS, on July 26, 2016, the Authority’s Board of Trustees (“Trustees”) approved a 600 kilowatt (“kW”) allocation of PP (defined in Article I of this Agreement as the “Allocation”) to the Customer for a seven year term, as further described in this Agreement;

WHEREAS, the provision of Electric Service (defined in Article I of this Agreement) associated with the Allocation is an unbundled service separate from the transmission and delivery service necessary for the Customer to receive the Allocation which will be performed by the Customer’s local utility company;

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

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

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

Article I. Definitions

- A. **Agreement** means this Agreement as further described in the preamble, including all documents and other matters attached to and incorporated into the Agreement.
- B. **Allocation** refers to the total amount of PP and associated energy set forth in Schedule A to this Agreement awarded to the Customer.
- C. **Contract Demand** has the meaning set forth in the Service Tariff.
- D. **Electric Service** is Firm Power and Firm Energy associated with the Allocation and sold to the Customer in accordance with the provisions of this Agreement, the Service Tariff, and the Rules.
- E. **Energy Efficiency Audit** means a physical inspection of a building in a manner approved by the Authority that should include the following elements: (1) an assessment of a building's energy use, cost and efficiency which produces an energy utilization index for the building (such as an Energy Use Intensity or Energy Performance Indicator); (2) a comparison of the building's index to indices for similar buildings; (3) an analysis of low-cost/no-cost measures for improving energy efficiency; (4) a listing of potential capital improvements for improving energy consumption; and (5) an initial assessment of potential costs and savings from such measures and improvements.
- F. **Facility** means the Customer's facility identified in Schedule A.
- G. **Firm Energy** has the meaning set forth in the Service Tariff.
- H. **Firm Power** has the meaning set forth in the Service Tariff.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the license issued by FERC to the Authority for the continued operation and maintenance of the St. Lawrence Project, pursuant to Section 15 of the Federal Power Act, which became effective October 22, 2003 after expiration of the Project's original license issued in 1953.
- K. **Hydro Projects** is a collective reference to the Authority's Niagara Project and St. Lawrence-FDR Project.

- L. **International Joint Commission** (or **IJC**) refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.
- M. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- N. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- O. **NYISO Charges** has the meaning set forth in the Service Tariff.
- P. **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.
- Q. **PAL** means the New York Public Authorities Law.
- R. **Preservation Power** (or **PP**) has the meaning set forth in the Service Tariff.
- S. **Niagara Project** means the Authority's Niagara Power Project, FERC Project No. 2216.
- T. **Rules** refers to the Authority's Rules and Regulations for Power Service (Part 454 of 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 Authority.
- U. **Service Tariff** means the Authority's Service Tariff No. 10, 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.
- V. **St. Lawrence Project** means the Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.
- W. **Schedule A** refers to the Schedule A to this Agreement entitled "Preservation Power Allocations" which is attached to and made part of this Agreement.
- X. **Schedule B** refers to the Schedule B to this Agreement entitled "Preservation Power Commitments" which is attached to and made part of this Agreement.
- Y. **Schedule C** refers to Schedule C to this Agreement entitled "Takedown Schedule" which is attached to and made part of this Agreement.

- Z. **Schedule D** refers to the Schedule D entitled “Clean Energy Standard Cost Recovery Charges” which is attached to and made part of this Agreement.
- AA. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectric power that would otherwise have been supplied to the Customer under this Agreement.
- BB. **Taxes** have the meaning set forth in the Service Tariff.
- CC. **Unforced Capacity** (or **UCAP**) is the electric capacity required to be provided by Load Serving Entities to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

Article II. Electric Service

- A. The Authority shall provide Electric Service to the Customer to enable the Customer to receive the Allocation in accordance with this Agreement, the Service Tariff and the Rules. The Customer shall not be entitled to receive Electric Service for any PP Allocation that is not specified in 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 the Service Tariff.
- 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 and the Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as PP from the St. Lawrence 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 PP customers, as applicable, based on the terms of such ruling, order, or decision. The Authority will use reasonable efforts to provide at least thirty (30) days prior written notice to the Customer of any such modification unless such notice is inconsistent with such ruling, order or decision.
- F. The Contract Demand may not exceed the Allocation.

- G. 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 such parties determine is necessary to provide for the allocation, sale and delivery of PP to the Customer, the proper and efficient implementation of the PP power program, billing related to PP Power, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents the Authority determines are necessary to effectuate such exchanges of information.
- H. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer's local electric utility providing for the delivery of PP on terms and conditions that are acceptable to the Authority.
- I. 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") the Authority determines is necessary for the provision of Electric Service, the delivery of PP, billing related to the PP program, the effective and proper administration of the PP 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.

Article III. Rates, Terms and Conditions

- A. The Authority will provide Electric Service to the Customer based on the rates, terms and conditions established in accordance with this Agreement, the Service Tariff and the Rules.
- B. The Service Tariff and the Rules may be amended from time to time by the Authority. The Authority shall provide at least thirty (30) days prior written notice to the Customer of any proposed change in the Service Tariff or the Rules. No subsequent amendment to the Service Tariff or the Rules shall affect the determination of rates for PP to the Customer during the term of the Agreement except insofar as otherwise authorized by this Agreement. This provision shall not limit the Authority's discretion to determine rates applicable to allocations of power and energy awarded to the Customer beyond or in addition to the Allocation.
- C. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates shall be subject to increase by the Authority at any time upon 30 days prior written notice to Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the St. Lawrence Project and the Authority's competitive position with respect to other suppliers, the 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 the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to the

Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers that are subject to the Service Tariff after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, the Authority shall forward to the Customer with the notice of the increase, an explanation of all reasons for the increase, and shall also identify the sources from which the Authority will obtain the total of increased revenues and the bases upon which the Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as the Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- D. In addition to all other fees, assessments and charges provided for in the Agreement, the Service Tariff and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

Article IV. 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 local electric utility’s applicable tariffs 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 shall render bills for power and energy by the tenth (10th) business day of the month for charges due for the previous month. Such bills shall include the NYISO Charges and Taxes (as such terms are defined in the Service Tariff) associated with the Allocation. NYISO Charges and Taxes billed to the Customer are subject to adjustments consistent with any subsequent NYISO re-billings to Authority.
- 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 the Service Tariff.
- 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.

Article V. Transmission and Delivery of Power and Energy

- A. The Customer shall responsible for securing arrangements with its local utility for transmission and delivery service associated with the Allocation unless otherwise agreed to by the Parties.
- B. The Customer will pay its local utility for transmission and delivery service associated with the Allocation in accordance applicable contracts and all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the Firm Power and Firm Energy supplied by the Authority under this Agreement. To the extent the Authority incurs transmission and delivery service charges or other costs associated with the Allocation during the term of this Agreement, the Customer agrees to compensate the Authority for all such charges and costs incurred.
- 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 as may be required under the applicable local utility company tariffs. In no event shall the Authority act as the LSE for the power and energy consumed by Customer other than Electric Service (inclusive of Substitute Energy, if any) sold by the Authority under this Agreement. The Customer understands and acknowledges that it will be responsible to the Authority for all charges and other costs incurred by the Authority associated with the

provision of Electric Service to enable the Customer to receive the Allocation, including charges and costs contained in the NYISO Tariffs or other applicable tariffs (including local utility company tariffs), regardless of whether such charges and costs are transmission-related. Such charges and costs are in addition to the charges for power and energy.

Article VI. Preservation Power Commitments

- A. Schedule B sets forth the Customer's specific "Preservation Power Commitments." Such commitments 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 to the Customer under this Agreement is expressly conditioned upon the Customer's timely completion of the Capital Expansion Program regarding the Facility as described in Schedule B.
- C. In the event of partial completion of the Capital Expansion Program which results in the Facility expansion being partially completed, 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 expansion, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support operations thereat.
- 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 expansion. The Authority will inspect the Facility expansion for the purpose of verifying the completion status of the Facility expansion and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service in accordance with this provision 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 expansion by July 26, 2019 (*i.e.*, within three (3) years of the Authority's award of the Allocation), (i) the Authority may, at its option and discretion, cancel the Allocation, or reduce it by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility expansion, or (ii) upon request of the Customer, such date may be extended by the Authority in its sole discretion.

Article VII. Rules and Service Tariff; Conflicts

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

Article 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 the Service Tariff as applicable.
- B. The Authority shall provide reasonable notice to the Customer of any curtailments referenced in Article VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement.
- C. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the hydroelectricity that would otherwise have been supplied under this Agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.
- D. 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.
- E. 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.

Article IX. Additional Allocations

- A. Upon application by the Customer, the Authority may award additional allocations of PP to the Customer at such rates and on such terms and conditions as set forth in the Service Tariff. Once the Customer agrees to purchase Electric Service associated with such additional allocations, the Authority will produce modified or supplemental Schedules A and B which will reflect any such additional allocations and other pertinent terms as appropriate. The Authority will furnish the Customer with any such modified or supplemental Schedules within thirty (30) days of the commencement of Electric Service for any such additional allocation.
- B. The Customer shall furnish such documentation and other information as the Authority requests to enable the Authority to evaluate (i) whether any additional allocations should be made to the Customer, and (ii) the terms relating to any additional allocation.

Article X. 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
Telephone:
Facsimile: (914) 390-8156
Electronic mail:
Attention: Manager – Business Power Allocations and Compliance

To: Customer

Roth Industries, Inc.
268 Bellew Avenue South
Watertown, New York 13601
Telephone:
Facsimile:
Electronic mail:
Attention:

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. Any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to 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 rulings by the IJC and without regard to conflicts of law provisions.

Article XI. 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.

Article XII. Successors and Assigns; Transfers; Resale of PP

- A. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained.
- B. The transfer of any portion of the Allocation, or any benefits relating the Allocation, by the Customer to any person, to a different owner or operator of the Facility, or to a different facility, is prohibited unless (i) specifically approved by the Authority, and, (ii) all other legal requirements applicable to such a transfer are complied with. Any transfer that occurs without such approval and compliance shall be invalid and transfer may in the Authority's sole discretion subject the transferor to revocation or modification of the Allocation and/or this Agreement.
- C. The Customer may not resell any portion of the Allocation to any person. If such a sale occurs, the Authority may, in its sole discretion, terminate the Allocation and/or this Agreement.

Article XIII. Previous Agreements and Communications

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of PP, and supersedes all previous communications between the Parties hereto, either oral or written, with respect to the sale of PP. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

Article XIV. 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.

Article XV. Severability and Voidability

- A. If any term or provision of this Agreement is 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 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.

Article XVI. Term, Modification, Termination and Effect

- A. Electric Service under this Agreement shall continue with respect to an Allocation until the earliest of: (1) termination by the Customer with respect to all of the Allocation upon at least ninety (90) days prior written notice to the Authority; (2) termination by Authority pursuant to the Rules upon required notice; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- B. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days prior written notice to the Authority. The termination shall be effective commencing with the first "Billing Period" as defined in the Service Tariff following the required notice.
- C. The Authority may modify or terminate Electric Service hereunder or modify the quantities of power and energy associated with an Allocation: (1) if such termination 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 or in the Rules.
- D. This Agreement shall become legally binding and effective only upon satisfaction of the following conditions precedent: (1) receipt of approval of this Agreement by the Authority Board of Trustees; (2) receipt of approval of this Agreement by the Governor of the State of New York pursuant to PAL § 1009; and (3) execution of this Agreement by the Authority and the Customer.

Article XVII. 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:

ROTH INDUSTRIES, INC.

BY: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A

PRESERVATION POWER ALLOCATIONS

Customer: Roth Industries, Inc.

Type of Allocation	Allocation (kW)	Trustee Approval Date	Expiration Date	Facility
PP	600	July 26, 2016	Seven (7) years from commencement of Electric Service of any portion of this Allocation	268 Bellew Avenue South, Watertown, NY 13601

SCHEDULE B

PRESERVATION POWER COMMITMENTS

ARTICLE I. EMPLOYMENT COMMITMENTS

A. Base Employment Level

The Customer shall establish and maintain the employment level as provided for in the Appendix to this Schedule B (the “Base Employment Level”). Unless otherwise provided for in Schedule B, such Base Employment Level shall be the total number of full-time positions held by: (1) individuals employed by the Customer at the Facility identified in the Appendix to this Schedule B; and (2) individuals who are contractors or are employed by contractors of the Customer and who are assigned to such Facility (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 at least 20 hours but not more than 35 hours per week shall be counted as one Base Level Employee.

The Customer shall not establish or maintain the Base Employment Level by transfers of employees from previously held positions with the Customer or its affiliates located within New York State, 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. The Authority shall have the sole discretion to make any such change.

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 Customer employees and contractor employees at the Facility, 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 Customer employees and contractor employees 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.

ARTICLE 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.C 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 facilities receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is defined in the Service Tariff) for PP 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.C 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. Notice of Intent to Reduce Contract Demand

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

ARTICLE III. CAPITAL INVESTMENT

The Customer agrees to undertake the Capital Expansion Program set forth in the Appendix to this Schedule B.

ARTICLE IV. ENERGY EFFICIENCY AUDITS AND INFORMATION REQUESTS

The Customer shall undergo an Energy Efficiency Audit of its facilities 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 facilities.

The Customer agrees to cooperate to make its facilities 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

I. Base Employment Level

In accordance with Article I of Schedule B, the Customer agrees to a Base Employment Level at the Customer's Facility as indicated below.

Base Employment Level	Facility	Miscellaneous/Notes
Within three (3) years of the commencement of Electric Service of any portion of the Allocation to the Facility, the Customer shall employ not less than twenty two (22) persons in full-time positions at the Facility (the "Base Employment Level") and shall maintain such Base Employment Level for the term of the Allocation.	268 Bellew Avenue South, Watertown, NY 13601	

II. Capital Expansion Program

The Customer shall make a total capital investment of at least \$6,700,000 in connection with an expansion of the Facility (the "Capital Investment"). The Capital Investment is expected to consist of the following specific expenditures:

New Building Construction:	\$3,000,000
Blow Molding Equipment:	\$3,300,000
Miscellaneous Equipment:	<u>\$ 400,000</u>
Total Capital Investment:	\$6,700,000

The Capital Investment shall be made, and the expansion of the Facility shall be completed and fully operational, not later than July 26, 2019 (*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
TAKEDOWN SCHEDULE

N/A

SCHEDULE D

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of the Service Tariff or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff and Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff, or Rules.

REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under the PP Program, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the PP Program (the “PP Program ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the PP Program to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the PP Program based on the proportion of the actual annual kilowatt-hours load served under such

Program to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the PP Program ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the PP purchased by the Customer to total kilowatt-hours load served by the Authority under the PP Program (PP Program level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the PP Program by the Authority (PP Program level load).
- b. The ZEC Charge shall apply to the sale of PP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of PP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to procure RECs for the Customer's load, and pay the Authority the REC Charge; (b) secure the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will

either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of PP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of PP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article IV of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of the Service Tariff or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

Schedule of Rates for Sale of Firm Power to
Preservation Power Customers

Service Tariff No. 10

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Preservation Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

A. The following abbreviations are used:

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

B. The term "Agreement" means an executed Agreement for the Sale of Preservation Power and Energy between the Authority and the Customer (each as defined below).

C. The term "Annual Adjustment Factor" or "AAF" shall have the meaning set forth in Section V herein.

D. The term "Authority" means 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."

E. The term "Customer" means a business customer who has received an allocation for Preservation Power from the Authority and who purchases Preservation Power directly from the Authority.

F. The term "Electric Service" means the power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

- G. The term "Preservation Power" means 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).
- H. The term "Firm Power" means 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.
- I. The term "Firm Energy" means energy (kWh) associated with Firm Power.
- J. The term "Load Serving Entity" or "LSE" shall have the meaning set forth in the Agreement.
- K. The term "Project" means the Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.
- L. The term "Rate Year" or "RY" means the period from July 1 through June 30 of the following year.
- M. The term "Rules" means 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.
- N. The term "Service Tariff" means this Service Tariff No. 10.

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. Preservation Power Base Rates

The monthly base rates for demand and energy charges paid by Customer to Authority shall be:

<u>Rate Year</u>	<u>Demand Charge</u> \$/kW-mo.	<u>Energy Charge</u> \$/MWh
2010	6.15	10.52
2011	6.71	11.48
2012	7.32	12.52
2013	7.99	13.66

Beginning with the 2014 Rate Year (July 1, 2014), and for each Rate Year thereafter, such rates shall be subject to an Annual Adjustment Factor set forth in Section V herein.

B. Preservation Power 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 Preservation Power 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. 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.

F. 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.

G. 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.

H. Contract Demand

The contract demand of each Customer will be the amount of Preservation Power, not to exceed the Customer's Allocation, provided to such Customer by the Authority in accordance with the Agreement. The minimum Contract Demand for any Preservation Power Allocation is 100 kW.

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 Firm Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Firm Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Firm Energy sales will be the same for all Firm Power and Firm 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 – Unless separately metered, the billing demand charged by the Authority to each Customer will be the highest 15-minute integrated demand during each billing period recorded on the Customer's meter multiplied by a percentage based on load factor sharing, as applicable.
3. Billing Energy – Unless separately metered, 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 load factor sharing, as applicable.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Firm Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the 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 Preservation 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.

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. Adjustment of Charges

1. Distribution Losses

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

2. Transformer Losses

If delivery is made at transmission voltage but metered on the low-voltage side of the Customer's substation, the meter readings will be increased two percent to compensate for transformer losses.

3. Power Factor

Power factor is the ratio of real power (kW) to apparent power (kVa) for any given load and time. The Authority may require the Customer to maintain a power factor of not less than 90%, lagging or leading, at the point of delivery, or as may otherwise be imposed upon the Authority by the local electric utility providing delivery and/or NYISO.

H. Conflicts

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

I. Customer Resales Prohibited

The Customer may not resell any quantity of Preservation 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."

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: 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 15th 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		1.03

- 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	6.24

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	6.23

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

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

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
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		1.02

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			1.016

STEP 3

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.99	13.66
New Rate Year Base Rate	8.12	13.88

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

BUFFALO SHREDDING AND RECOVERY, 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, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Buffalo Shredding and Recovery, LLC (“Customer”) with offices and principal place of business at 3175 Lakeshore Road, Buffalo, NY 14219. 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 September 27, 2016, the Authority’s Board of Trustees (“Trustees”) approved an extension of the 1,200 kilowatt (“kW”) allocation of EP to the Customer through June 30, 2020 (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and/or operation of the Facility as further described in this Agreement;

WHEREAS, on September 27, 2016, 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. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **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.

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

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

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.

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 10th 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

Buffalo Shredding and Recovery, LLC
3175 Lakeshore Road, Buffalo, NY 14219
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:

BUFFALO SHREDDING AND RECOVERY, 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 (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Buffalo Shredding and Recovery, LLC	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Expansion Power	400	3175 Lakeshore Road Buffalo, NY 14219	September 27, 2016	June 30, 2020

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

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

The Customer shall employ at least 22 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

N/A

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

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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 (10th) 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 15th 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		1.03

- 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	6.24
<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	6.23
Ratio of MY/MY-1			1.00

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

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
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		1.02

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			1.016

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

GRAPHIC CONTROLS ACQUISITION CORP.

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, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Graphic Controls Acquisition Corp. (“Customer”) with offices and principal place of business at 400 Exchange Street, Buffalo, NY 14204. 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 September 27, 2016, the Authority’s Board of Trustees (“Trustees”) approved an extension of the 120 kilowatt (“kW”) allocation of RP to the Customer through June 30, 2020 (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and/or operation of the Facility as further described in this Agreement;

WHEREAS, on September 27, 2016, 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. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **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.

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

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

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.

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 10th 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

Graphic Controls Acquisition Corp.
400 Exchange Street
Buffalo, NY 14204
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:

GRAPHIC CONTROLS ACQUISITION CORP.

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 (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Graphic Controls Acquisition Corp.	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Replacement Power	120	400 Exchange Street Buffalo, NY 14204	September 27, 2016	June 30, 2020

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

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

The Customer shall employ at least 290 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

N/A

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

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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 (10th) 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 15th 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		1.03

- 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	6.24
<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	6.23
Ratio of MY/MY-1			1.00

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

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
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		1.02

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			1.016

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

Proc Awards

Procurement (Services) Contracts – Awards
(For Description of Contracts See "Discussion")

EXHIBIT "4e i-A"
September 27, 2016

<u>Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
BUSINESS SERVICES - CORPORATE FINANCE	Q16-6072JMT; 2 awards: 1. NAVIGANT CONSULTING, INC. New York, NY 4500275657 2. NEXANT, INC. White Plains, NY 4500275688	10/01/16 (on or about)	Provide for consulting services in connection with the Authority's transmission cost-of-service, rate development, cost recovery, rate/market analysis, FERC filings, and related matters, as needed	09/30/21	B/P			\$3,600,000*
*Note: represents aggregate total for up to 5-year term								
COMMERCIAL OPERATIONS - FUEL PLANNING & OPERATIONS	SAYBOLT LP Houston, TX (HQ) Linden, NJ (Branch Office) (QFS-2016-01; PO# TBA)	01/01/17 (on or about)	Provide for independent petroleum inspection and other related services	12/31/19	B/P			\$132,000*
*Note: represents total for up to 3-year term								
ECONOMIC DEVELOPMENT & ENERGY EFFICIENCY - ENERGY EFFICIENCY	Q16-6052AT; 2 awards: 1. MILLENNIUM MAIN- ♦ TENANCE & ELECTRICAL CONTRACTORS, INC. Brooklyn, NY 2. THREEE TECH ♦ ELECTRIC, INC. Staten Island, NY (PO#s TBA)	10/01/16 (on or about)	Provide for electrical installation services of sample and warranty energy efficient lighting at various Customer facilities within the 5 boroughs of NYC and Westchester County, on an "as needed" basis, as part of the Energy Services Program	09/30/20	B/C			\$1,125,000*
*Note: represents aggregate total for up to 4-year term All costs will be recovered by the Authority.								
ECONOMIC DEVELOPMENT & ENERGY EFFICIENCY - ENERGY EFFICIENCY	OHM'S ELECTRICAL ♦ CORP. Glendale, NY (Q15-5971MC; 4500274867)	08/24/16	Provide for electrical installation services to support implementation of an energy efficient lighting upgrade project at JFK airport	08/23/18	BC	\$1,386,206		\$1,386,206*
*Note: represents total for up to 2-year term All costs will be recovered by the Authority.								

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1 Award Basis: B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search
2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

Procurement (Services) Contracts – Awards
(For Description of Contracts See "Discussion")

EXHIBIT "4e i-A"
September 27, 2016

<u>Bus Unit/ Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Authorized Expenditures For Life Of Contract</u>
HUMAN RESOURCES & ENTERPRISE SHARED SERVICES - HR / BENEFITS	Q16-6019MR; 4 awards:	09/01/16 (eff. date; vend- or notification) 01/01/17 (start of actual TPA services)	Provide Third Party Administrative ("TPA") services for the Authority's Healthcare Benefit programs	12/31/21	B/S			
Total projected TPA cost per vendor for up to 5-1/4 year term: (does <u>not</u> include actual claims funding)								
1. UNITEDHEALTHCARE SERVICES, LLC ("UHC") (Islandia, NY and New York, NY) (4500276445)								\$9,400,000
2. EXPRESS SCRIPTS, INC. ("ESI") (St. Louis, MO and Franklin Lakes, NJ) (4500276426)								\$1,350,000
3. DELTA DENTAL OF NEW YORK, INC. (Mechanicsburg, PA and New York, NY) (4500276429)								\$450,000
4. DAVIS VISION, INC. (San Antonio, TX and Plainview, NY) (4500276433)								\$25,000
			<u>Salaried</u> (active & retired)	<u>IBEW</u> (active & retired)	<u>UWUA</u> (active & retired)	<u>Teamsters</u> (retired)		
MAJOR MEDICAL and HOSPITALIZATION			UHC UHC	UHC UHC	UHC UHC	UHC UHC		
PRESCRIPTION DRUGS			ESI	ESI	ESI	ESI		
DENTAL			DELTA DENTAL (active only)	DELTA DENTAL (active only)	DELTA DENTAL (active only)	N/A		
VISION CARE			DAVIS VISION (active only)	N/A	N/A	N/A		
FLEXIBLE SPENDING ACCOUNTS			UHC (active only)	UHC (active only)	UHC (active only)	N/A		

Note: Healthcare benefit programs for The Canal Corp. are handled separately and therefore were not included in this RFP.

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Procurement (Services) Contracts – Awards
(For Description of Contracts See "Discussion")

EXHIBIT "4e i-A"
September 27, 2016

<u>Bus Unit/ Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Authorized Expenditures For Life Of Contract</u>
HUMAN RESOURCES & ENTERPRISE SHARED SERVICES - HR / CONTINGENT STAFFING	Q16-6056MR; 15 awards: 1. ASR INTERNATIONAL CORP. Hauppauge, NY 2. DATROSE ♦ Webster, NY 3. ECLARO INTER- ♦ NATIONAL, INC. New York, NY 4. INFINITY CONSULT- ING SOLUTIONS, INC. New York, NY 5. KFORCE, INC. Tampa, FL 6. LANCESOFT, INC. Herndon, VA (HQ) New York, NY (Branch Office) 7. MINDLANCE, INC. Hoboken, NJ 8. MONROE STAFFING SERVICES, INC. Trumbull, CT 9. NEXUS STAFFING, INC. ♦ Floral Park, NY 10. RANGAM CONSULT- ♦ ANTS, INC. Somerset, NJ	10/01/16 (on or about)	Provide for temporary staffing services to sup- port non-technical areas	09/30/21 * (3-yr award with 2-yr option to extend) * coterminous for all 15 con- tracts, regard- less of start date	B/S			\$15,000,000*

*Note: represents aggregate total for initial 3-year term; approval requested for approx. 5-year term

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Procurement (Services) Contracts – Awards
(For Description of Contracts See "Discussion")

EXHIBIT "4e i-A"
September 27, 2016

<u>Bus Unit/ Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Authorized Expenditures For Life Of Contract</u>
	11. REINHARD-MADISON APPROACH STAFFING dba MADISON APPROACH ♦ STAFFING, INC. Elmsford, NY							
	12. SOLOMON PAGE GROUP, LLC New York, NY							
	13. TTI OF USA, INC. New York, NY							
	14. VTECH SOLUTION, INC. Washington, D.C.							
	15. WISEENGINEERING, LLC ♦ Dover, NJ (PO#s TBA)							
HUMAN RESOURCES & ENTERPRISE SHARED SERVICES - ESS / FACIL MGMT	Q16-6070HM; 2 awards to: OTIS ELEVATOR COMPANY Yonkers, NY		Provide for Rappleyea Building and Garage Elevator Modernization + 5-year Maintenance contract					\$2,495,400*
	1. Modernization 4500276397	09/01/16		08/31/18	B/C	\$100,000 (Initial Award Amount)		
	2. Maintenance (PO# TBA)	est. 09/01/18 (to commence upon testing & acceptance of entire Elevator Mod- ernization Project, cur- rently estimated to be approx. Sept. 2018)		08/31/23 (or 5 years from actual Effective Date)	B/S	* Note: represents aggregate total for up to 7-yr combined term; includes \$2,285,352 total for 2-year elevator modernization contract (comprising \$2,203,445 for Modernization - base bid + \$55,500 for Maintenance during Modernization + \$22,000 for Options and \$4,407 for Perf. & Payment Bonds) and \$210,048 for 5-year Post-Modernization Maintenance contract		

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Procurement (Services) Contracts – Awards
(For Description of Contracts See "Discussion")

EXHIBIT "4e i-A"
September 27, 2016

<u>Bus Unit/ Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Authorized Expenditures For Life Of Contract</u>
HUMAN RESOURCES & ENTERPRISE SHARED SERVICES - ESS / FACIL MGMT	PREDATOR PEST CONTROL, INC. Howard Beach, NY (Q16-6071RM; PO# TBA)	10/01/16 (on or about)	Provide for pest control services for the Rappleyea Building, garage & grounds	09/30/21	B/S			\$175,000*
						*Note: represents total for up to 5-year term		
HUMAN RESOURCES & ENTERPRISE SHARED SERVICES - HR / COMPENSATION	SALARY.COM, LLC Wellesley, MA (Q16-6059RM; 4500275701)	08/01/16	Provide for a cloud-based compensation data ana- lytics and survey manage- ment system and related services	07/31/21	B/S	\$16,500 (Initial not-to-exceed Award Amount)		\$82,500*
						*Note: represents total for up to 5-year term		
INFORMATION TECHNOLOGY	TIME WARNER CABLE (now SPECTRUM MAN- AGEMENT HOLDING COMPANY LLC) Latham, NY 4500274843	08/01/16	Provide for Wide Area Network infrastructure, connectivity, communi- cations and support ser- vices for business func- tions at multiple locations of The Canal Corp.	07/31/23	B/S	\$120,000 (Initial not-to-exceed Award Amount)		\$1,091,000*
						*Note: represents total for up to 7-year term		
UTILITY OPERATIONS - PROJECT MANAGEMENT + CEC	WSP USA CORP. New York, NY (Q16-6062MR; 4600003196)	08/18/16	Provide for A/E and Design services (as well as assistance with bid pro- cess & construction mgmt through project closeout) for a new Emergency Energy Control Center	08/17/19	B/P	\$100,000 (Initial Award Amount)		\$630,000*
						*Note: represents total for up to 3-year term		

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Procurement (Services) Contracts – Extensions and/or Additional Funding
(For Description of Contracts See "Discussion")

EXHIBIT "4e i-B"
September 27, 2016

<u>Plant Site/ Bus. Unit</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Authorized Expenditures For Life Of Contract</u>
ECONOMIC DEVELOPMENT & ENERGY EFFICIENCY + INFORMATION TECHNOLOGY	LOADSPRING SOLUTIONS, INC. Wilmington, MA 4500262861	10/01/15	Provide for offsite Oracle Primavera cloud hosting services	09/30/20	B/S	\$339,730	\$212,350	\$922,730*
						*Note: represents original award amount of \$272,530 + an additional \$67,200 authorized per the EAPs + CURRENT REQUEST for \$583,000		
LAW	GIBSON, DUNN & CRUTCHER, LLP Los Angeles, CA (HQ) New York, NY (Branch Office) 4500238151	10/01/13	Provide for legal counsel and representation services in connection with certain confidential ongoing matters	09/30/18	C/L	\$2,000,000	\$942,164	\$2,000,000*
						*Note: represents previously approved total of \$2 million; NO additional funding requested		
UTILITY OPERATIONS - POWER GEN - STL	BARRETT PAVING MATERIALS, INC. Watertown, NY 4500271086	04/15/16	Provide for upgrade and repaving of Barn- hart Island Road - Phase I and initial portion of Phase II -- STL	04/14/17	B/C	\$1,933,765	\$0	\$3,019,265*
						*Note: represents original award amount of \$933,765 + an additional \$1 million authorized per the EAPs + CURRENT REQUEST for \$1,085,500 Approx. 50% of the costs will be reimbursed to the Authority by Ontario Power Generation, per the Joint Works Agreement.		

♦ M / WBE: New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
1 Award Basis: B= Competitive Bid; C= Competitive Search; S= Sole Source; Si = Single Source
2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; L= Legal Service

**New York Power Authority
Proposed Alternate ECC Location
(Outlined in Blue)
The Hartford Site
Town of New Hartford
Oneida County**

Exhibit A

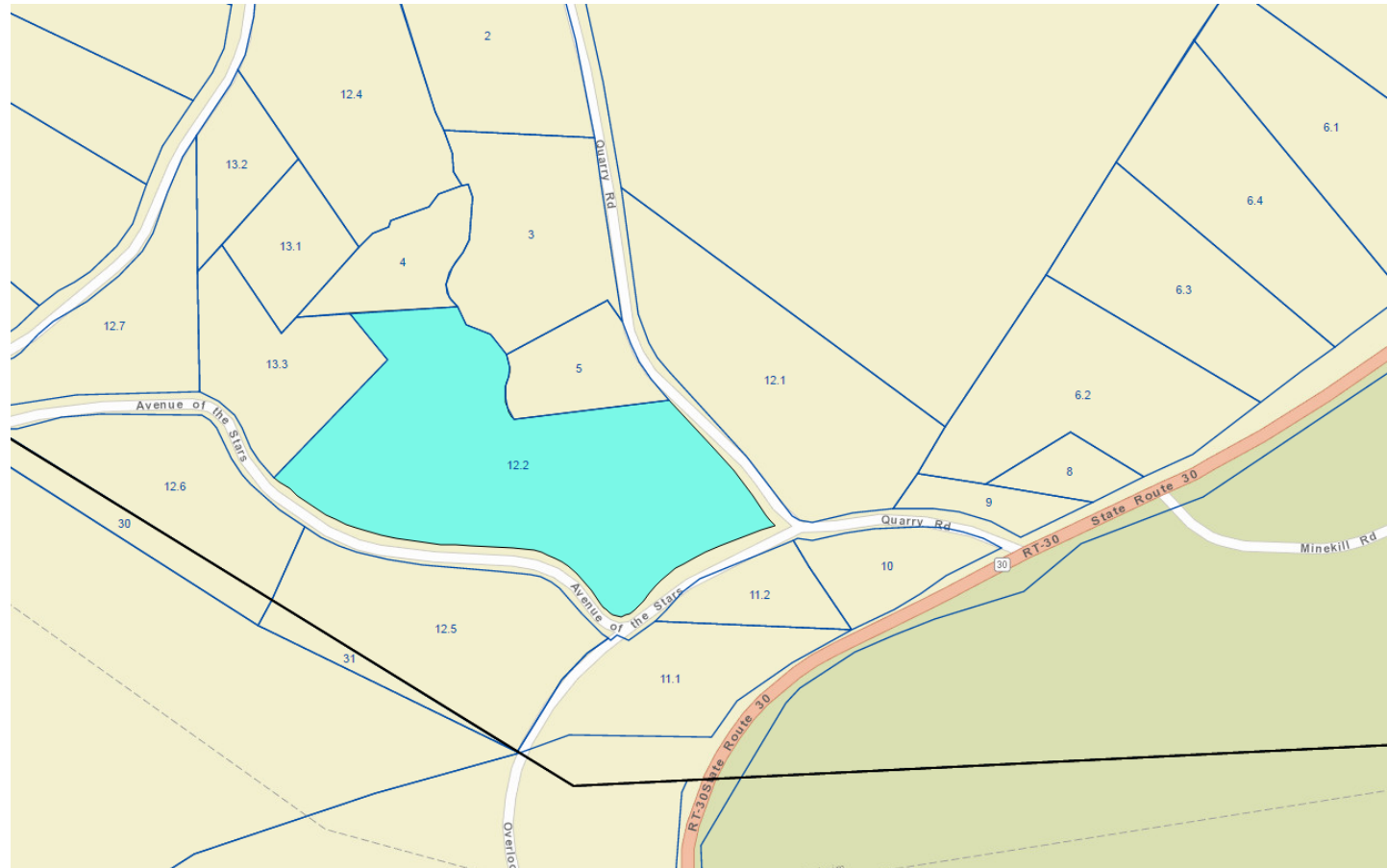
**NOTE: Location, and configuration of parcel
may vary pending field survey.**



1 inch = 200 feet
0 50 100 200 300 400 Feet



Exhibit A



**New York Power Authority
Blenheim-Gilboa PSPP
Nickerson Park
Proposed Esmt Acquisition
Map 203 - Parcels 203A, 203B**

Legend

- FERC Project Boundary 2011
- Map 203, Parcel 203A
- Map 203, Parcel 203B
- Easements to NYPA
- NYPA Owned Lands
- Nickerson_Park_Tax_Parcel

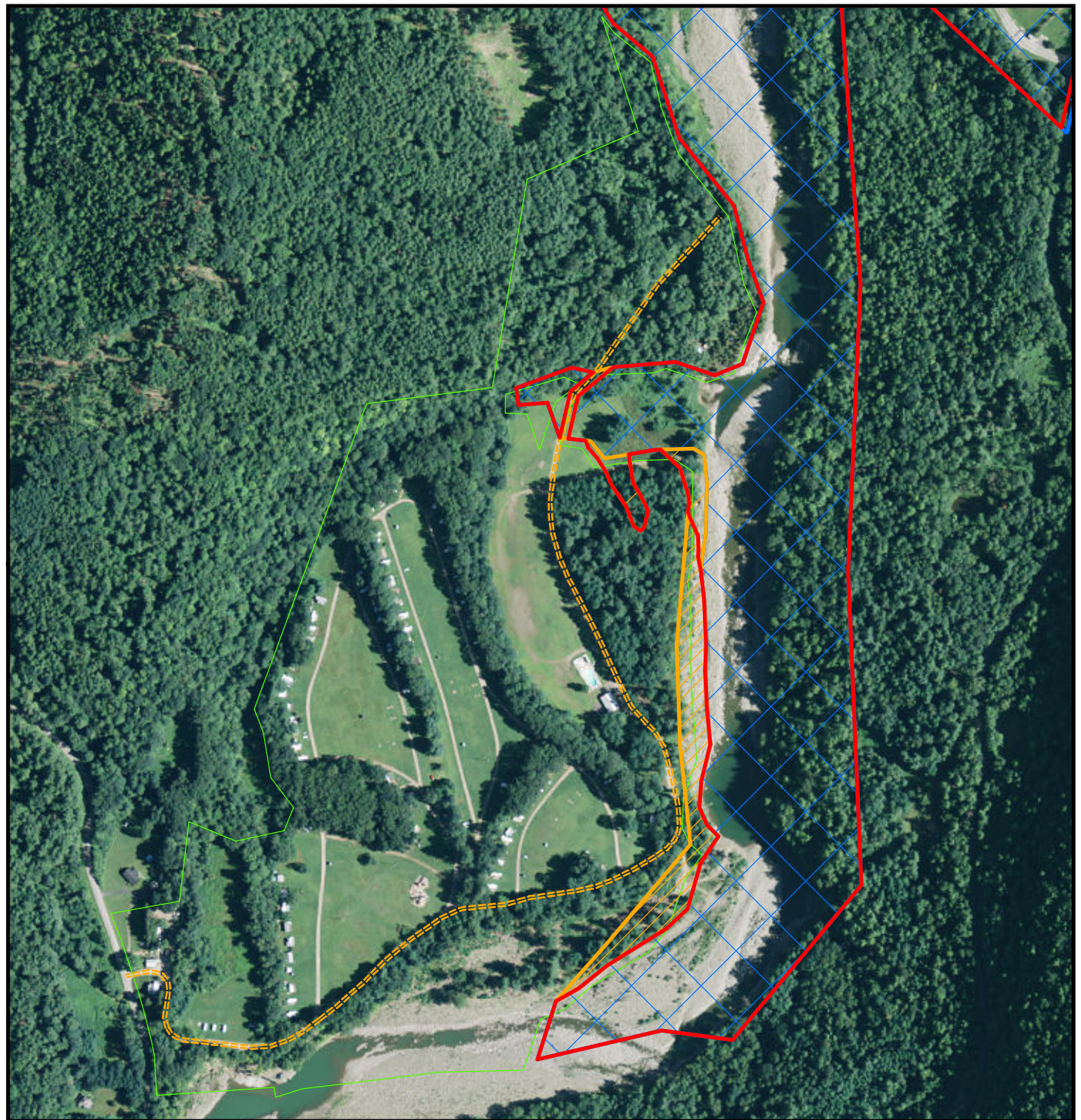
Notes:

Parcel 203A = Flooding Esmt (3.45 Ac)
Parcel 203B = Non-Exclusive Access Esmt



1 inch = 500 feet

0 125 250 500 750 1,000 Feet



**NEW YORK POWER AUTHORITY AND
LOCAL 1-2, UTILITY WORKERS UNION OF AMERICA,
A.F.L. - C.I.O.
TERM: 1/18/2009 to 12/31/2019**

1) Wage Increases and Lump Sum Payment

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:

1/1/10	3.50%
1/1/14	3.50%
1/1/15	2.00%
1/1/16	2.00%
1/1/17	2.50%
1/1/18	2.50%
1/1/19	2.00%

A non-pensionable lump sum payment in the gross amount of three thousand five hundred (\$3,500) 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 5-year interim period (1/1/11 through 12/31/15). For example, an employee who was on the payroll for the entire 5-year period (60-months) will receive the full \$3500 gross non-pensionable payment (60/60 x \$3500); employees hired after 1/1/11 will receive a pro rata share of the lump sum.

- 2) UWUA-represented employees may elect to participate in the NYPA Health Insurance Plan (the NYPA Choice Plan") which covers other NYPA employees. Employees electing the Choice Plan will continue to contribute \$780.00 annually. The amount of the contribution will be frozen for the remainder of the agreement. Changes to the Plan may be implemented in the absence of negotiation with the UWUA insofar as such changes apply to all NYPA Choice plan participants.

- 3) Annual employee health insurance contribution amounts for the PPO Plan shall be changed as follows:

<u>Year</u>	<u>Individual / Family</u>
After ratification	\$1,000 / \$1,600
1/1/17	\$1,000 / \$2,500
1/1/18	\$1,300 / \$3,300
1/1/19	\$1,400 / \$3,500

- 4) Annual (out of network) health insurance deductible amounts for the PPO Plan shall be changed as follows:

<u>Year</u>	<u>Individual / Family</u>
After ratification	\$400 / \$1,200
1/1/17	\$500 / \$1,500
1/1/18	\$600 / \$1,800
1/1/19	\$700 / \$2,100

- 5) Annual (out of network) per person/family out of pocket maximum amounts for the PPO Plan shall be changed as follows:

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

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

<u>Year</u>	
After ratification	\$25
1/1/19	\$30

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

<u>Year</u>	
After ratification	\$8 - \$25 - \$40, 2.5x mail order
1/1/17	\$8 - \$25 - \$45, 2.5x mail order

- 8) Establish health insurance waiver Opt-Out payment of \$1,500 effective upon ratification.
- 9) Increase hearing aids maximum amount from \$1,000 every three years to \$1,500 every three years.
- 10) Increase maximum dental benefit amount from \$1,500 to \$2,000. Demonstration of student status no longer required.
- 11) NYPA will provide all benefits required to be provided under PPACA.
- 12) 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.
- 13) Increase the meal allowance to \$17 upon ratification.
- 14) Changes to retiree health insurance are reflected in the attached document.
See Attachment 1.
- 15) The parties agree to update and revise the CBA to make "housekeeping" changes.
- 16) NYPA and UWUA agree to convene a joint labor-management committee with equal number of representatives to review new benefits plans that offer cost reduction.
- 17) NYPA accepts **UP#6** of insurance enhancement (cost to be paid by employee)
- a. AFLAC Cancer Protection
 - b. AFLAC Accident Expense Plan
- 18) NYPA accepts **UP#8** to increase orthodontist lifetime maximum benefit from \$2,000 to \$3,000.
- 19) NYPA will not lay-off or involuntarily furlough any employee represented by the UWUA on the date of full and final ratification for lack of work through December 30, 2019, if any contractors on the property are performing work which could be performed by such excess employee.

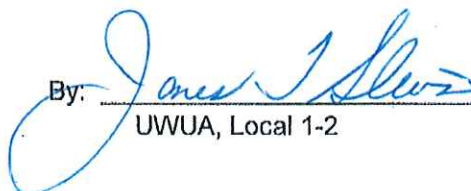
The Parties agree to continue negotiations on two proposals.

- (i) In the event NYPA chooses to utilize certain title modifications, what is the appropriate pay differential for UWUA represented employees assigned to the new titles (or modified titles).
- (ii) What, if any, increase in the license differential is appropriate for the attainment of stationary engineer/refrigeration certification.

These continued negotiations will commence no later than 60 days following full and final ratification of this agreement. In the event no agreement is reached within an additional 90 days after beginning negotiations, either party may request the appointment of a fact finding panel under the procedures of 209 of the NYS Taylor Law.

The foregoing reflects the parties' final and complete agreement.

By: 
New York Power Authority

By: 
UWUA, Local 1-2

July 7, 2016

Retiree Health Insurance

Current Employees

Current employees who retire after 12/31/19 shall pay nothing for the NYPA Plan, but if enrolled in another plan, shall pay 50% of the increase in cost between the NYPA plan and his/her other plan, if any.

Current employees who retire after 12/31/19 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 1/1/19 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.

JS



**NY Power
Authority**

President & Chief Executive Officer Report

Gil Quiniones

September 27, 2016

NYPA Overall Performance

August 2016

Goal	Measure	Status	Year-To-Date 2016	
			Target	Actual
Maintain Infrastructure	Generation Market Readiness (%)		99.40	99.74
	Transmission System Reliability (%)		95.79	94.49
Financial Management	Debt Coverage (Ratio)		2.50	2.67
	O&M Budget Performance (\$ Millions)		309.1	274.9
Energy Services	MMBTU's Saved		215.5	238.5
	Energy Efficiency Investment in State Facilities (\$ Millions)		26.4	37.3
Workforce Management	Retention (# of Touchpoints)		450	1199*
Safety Leadership	DART Rate (Index)		0.78	0.80
Environmental Responsibility	Environmental Incidents (Units)		22	12

*Quarterly measure

Corporate Performance

Status	
	Meeting or Exceeding Target
	Below Target
	Significantly Below Target

Key Accomplishments Since Last Trustee Meeting



Marcy Series South Compensation Project – 440MW of downstate congestion alleviated



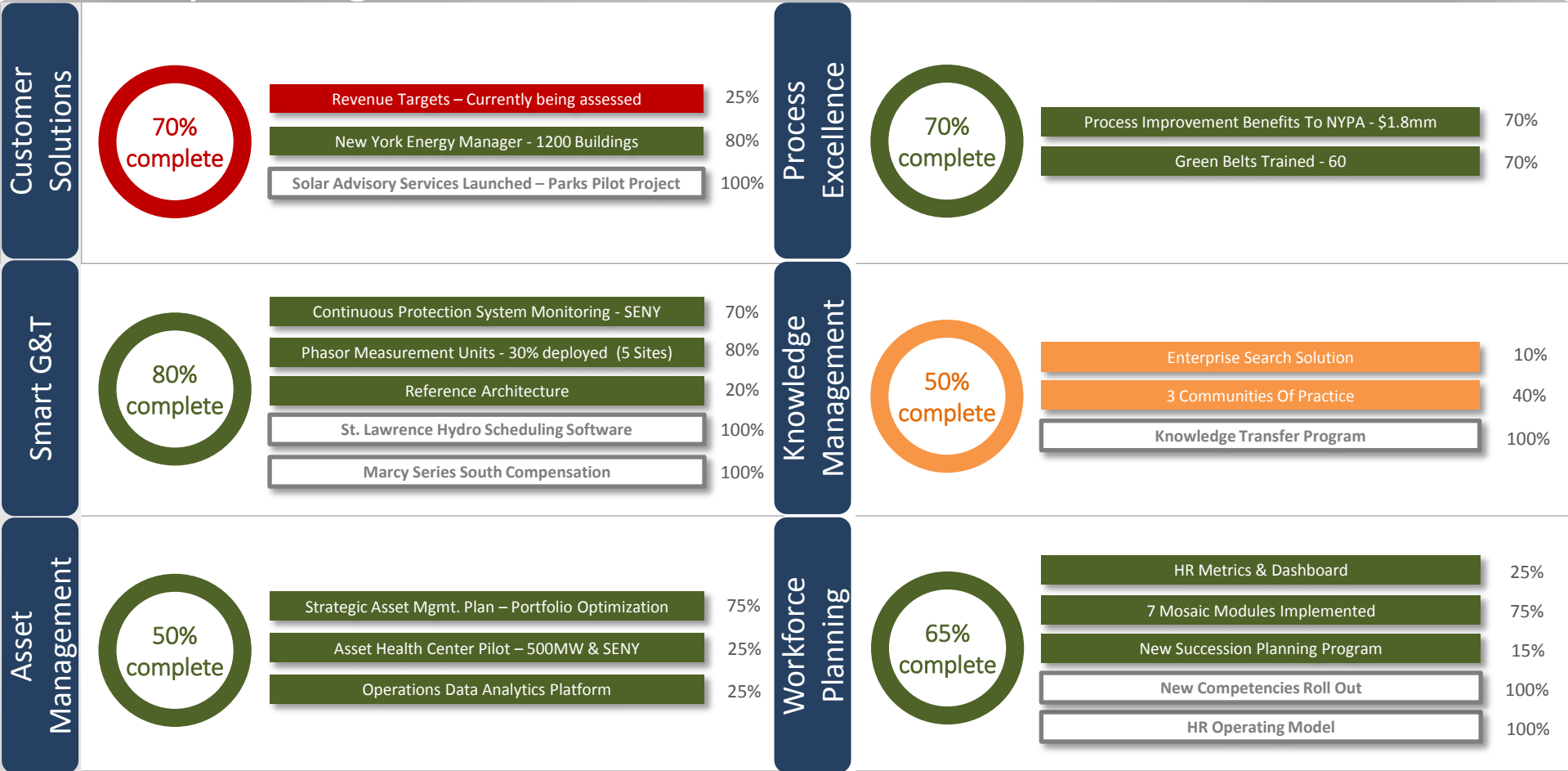
New York Energy Manager – real time energy use for over 1000 buildings



HR Mosaic Goals Module – over 2/3 of employees have created personal goals that are aligned to the EMC and broader NYPA 2020 strategy

2016 Key Strategic Initiative Milestones

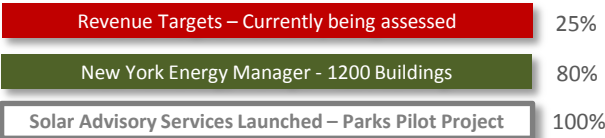
Key ● On time ● Some risk of missed deadline ● Completed
● Strong risk of missed deadline / will definitely miss deadline



2016 Key Strategic Initiative Milestones

Key ● On time ● Some risk of missed deadline ● Completed
● Strong risk of missed deadline / will definitely miss deadline

Customer Solutions

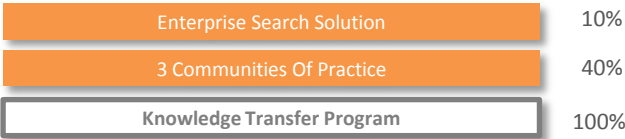


Revenue Targets:

Original business plan has been put on hold. Immediate focus is on revenue generation activities, with targets being set (by November) that will enable a break even business by 2019.

Longer term initiative strategy will be revisited in Q4 2016.

Knowledge Management



Enterprise Search Solution:

A cybersecurity risk that allows users to search for sensitive information may potentially impact ability to deliver in milestone in 2016. Currently working with IT to understand likelihood of risk & mitigate accordingly.

Communities of Practice:

Five pages have been launched. However benefits are tied to degree of use of the pages. Team is working to create and deliver the staff education required to encourage more traffic and site use.

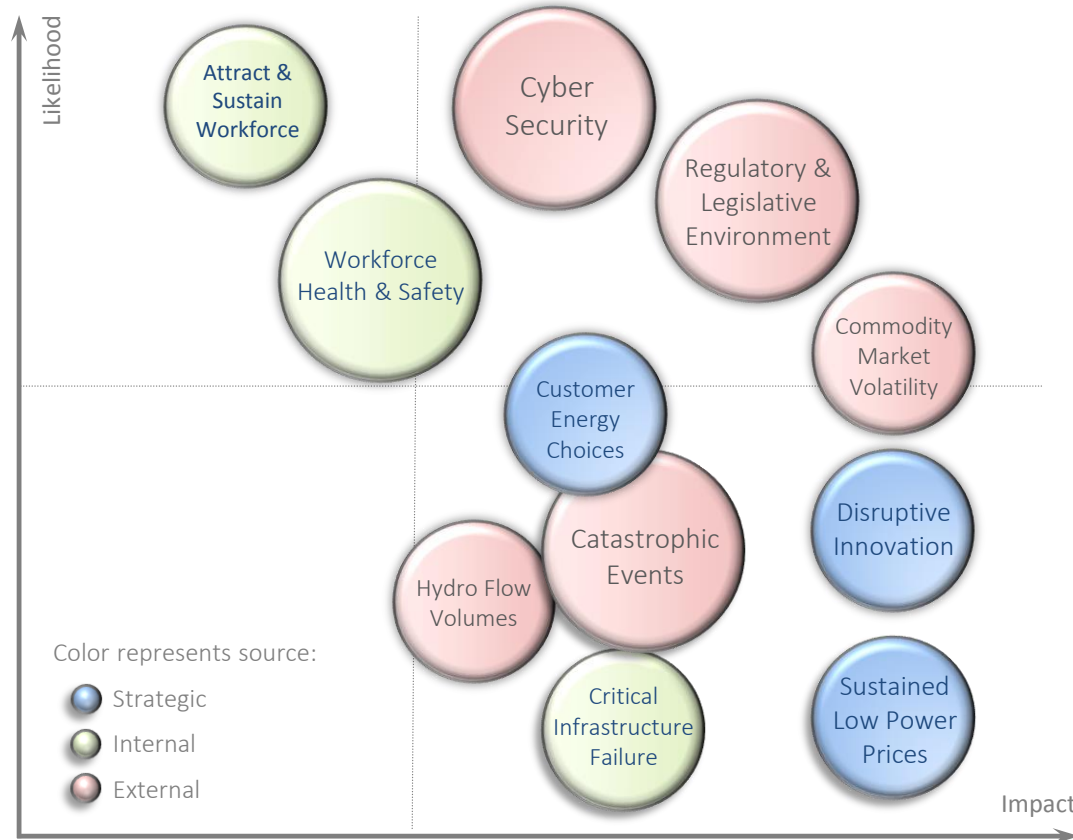


Risk Management Update

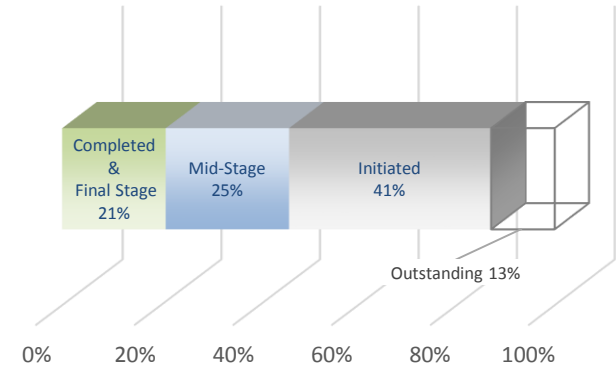
September 2016

Soubhagya Parija | Senior Vice President & Chief Risk Officer
September 27, 2016

Top Enterprise Risks



- **No significant shift in enterprise risk profile**
- **Cross functional risk management approach:**
 - Mitigation Strategies
 - Action Plans
 - Key Risk Indicators
 - Risk Driver & Controls
- **Action Plans Progress**



Key Risk Management Activities

- Phase II of Reputational Resiliency Project is underway with scheduled completion in January 2017
- Identified enterprise risks associated with the Canal integration
- Commodity Risk Project Team formulating strategy to execute on PwC recommendations to enhance merchant portfolio program
- Conducted Cyber Benchmark survey to drive the cyber policy renewal strategy in October 2016
- Active Shooter Response Plan in progress with tabletop drills scheduled for Q3 at Niagara and the White Plains Office during Q4
- Large Public Power Council (LPPC)
 - Chair Risk Appetite Working Group
 - Collaboratively shared the process of developing & implementing Key Risk Indicators with member organization



Appendix

Key Risk Indicators

Key Risk Indicators: Strategic

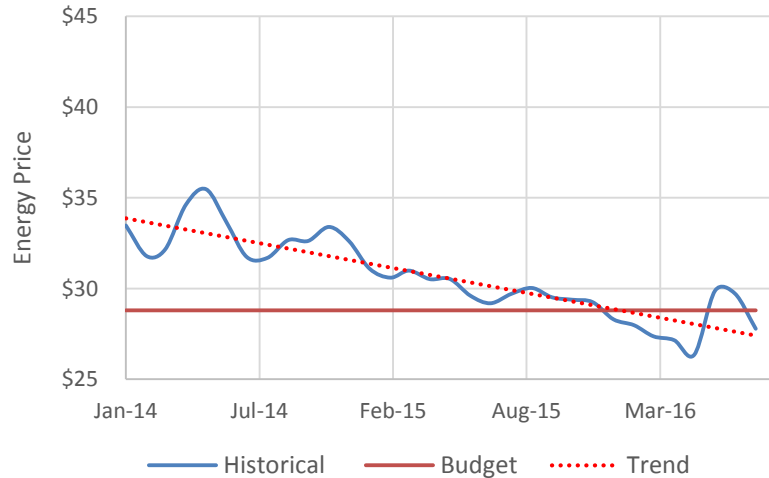
Sustained Low Power Prices

Balance of 2016

Zone A Historical Forward Prices versus Budget



Status



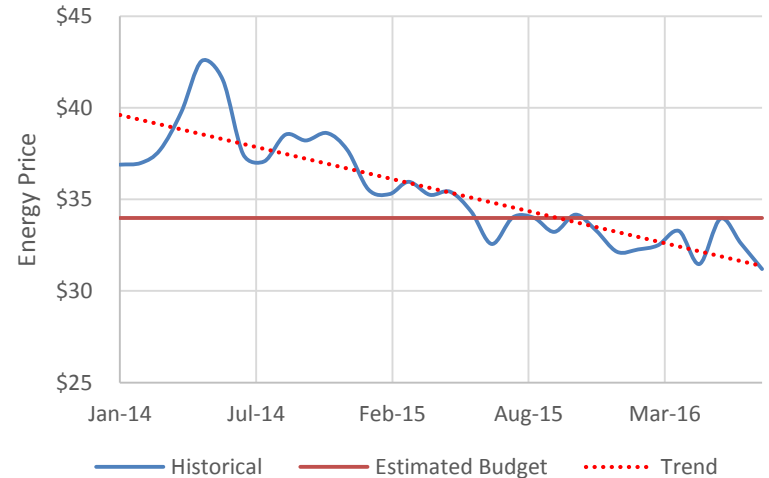
Sustained Low Power Prices

Calendar 2017

Zone A Historical Forward Prices versus Estimated Budget



Status



Energy Prices continue in a downward trend. The hedging strategy attempts to reduce potential downside impact on gross margin while leaving room for upside on the unhedged portion of the merchant portfolio.

Key Risk Indicators: Strategic

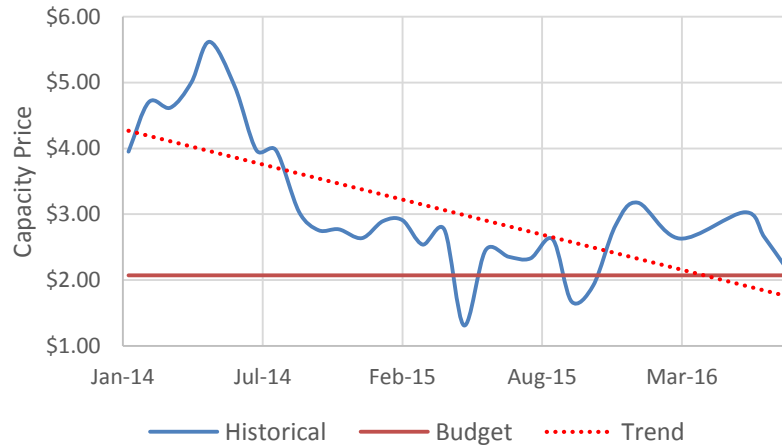
Sustained Low Power Prices

Balance of 2016

ROS Capacity Historical Forward Prices versus Budget



Status



Although 2016 ROS Capacity Prices are trending lower, portfolio is hedged at ~100% of target.

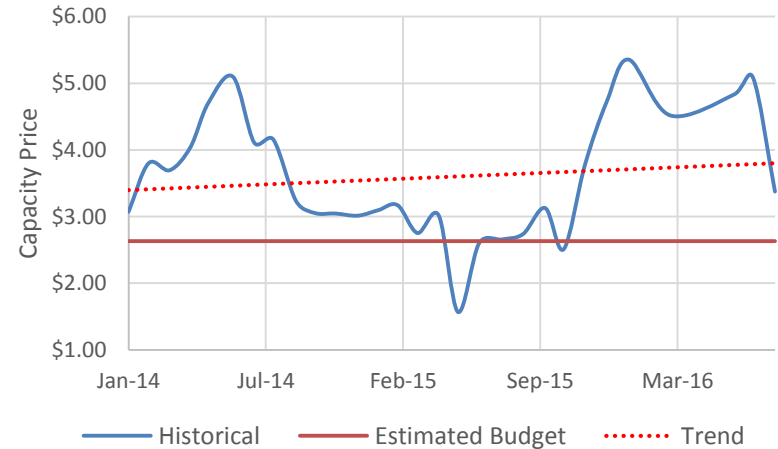
Sustained Low Power Prices

Calendar 2017

ROS Capacity Historical Forward Prices versus Estimated Budget



Status



For 2017, portfolio is hedged at ~60% of target with the ability to capture upside pricing on unhedged position.

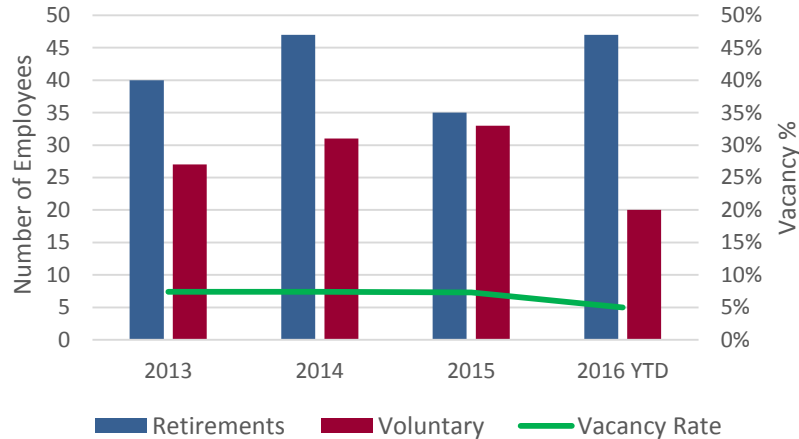
Key Risk Indicators: Internal

Attract & Retain Qualified Workforce

Historic Attrition & Ability to Fill Open Positions:
Salaried Voluntary Turnovers versus Vacancy Rate



Status

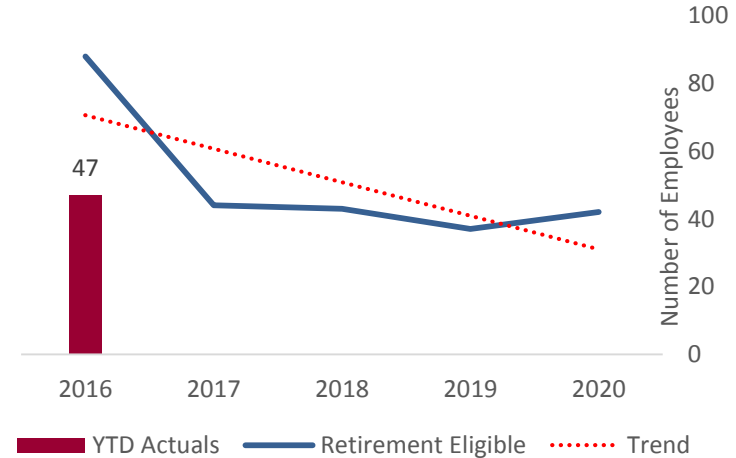


Attract & Retain Qualified Workforce

Projection of Employees Retiring:
Retirement Eligible 2016-2020



Status

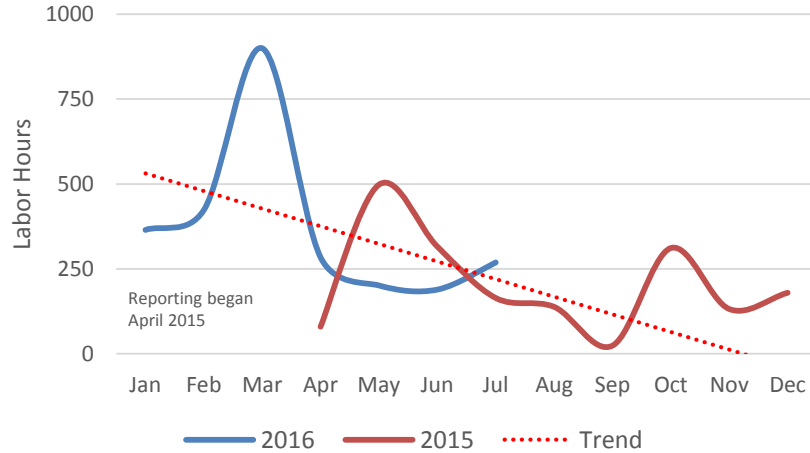


Retirements compared to vacancy rates remain stable, indicating a balance between available qualified resources and vacancies. Implementation of the Human Resources Maturity Model is having a positive impact on the Attract & Retain Qualified Workforce Risk.

Key Risk Indicators: Internal

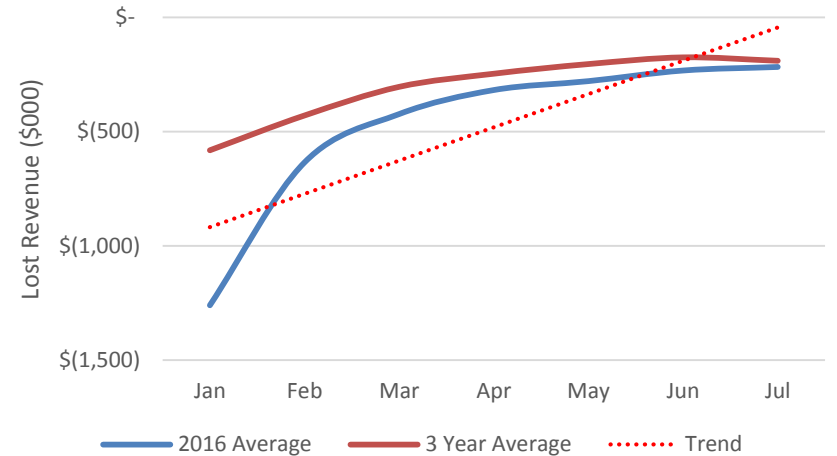
Critical Infrastructure Failure

Tracking Critical Corrective Maintenance Hours:
Critical Maintenance Hours versus Average (2013-2015)



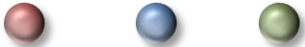
Critical Infrastructure Failure

Lost Revenue Resulting from Forced Outages:
Financial Market Impact of Forced Outage Events



The reduction in corrective critical maintenance hours & forced outage financial impacts have led to improving trends in the Critical Infrastructure Failure metrics. An enhanced focus on equipment redundancy, business resiliency and costs have all contributed towards the improvement.

Unfavorable Stable Favorable



Key Risk Indicators: Internal

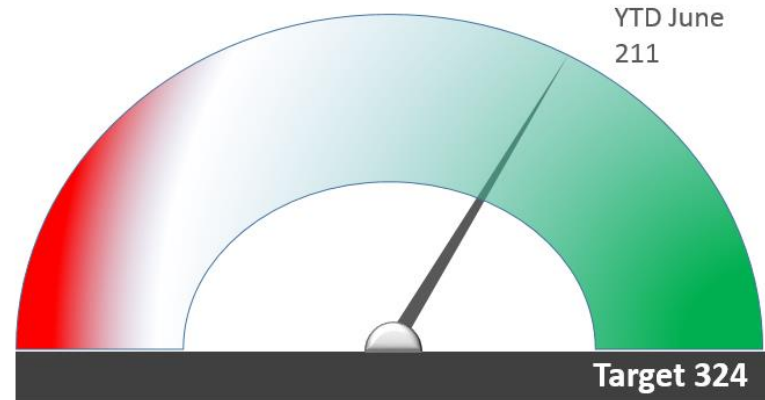
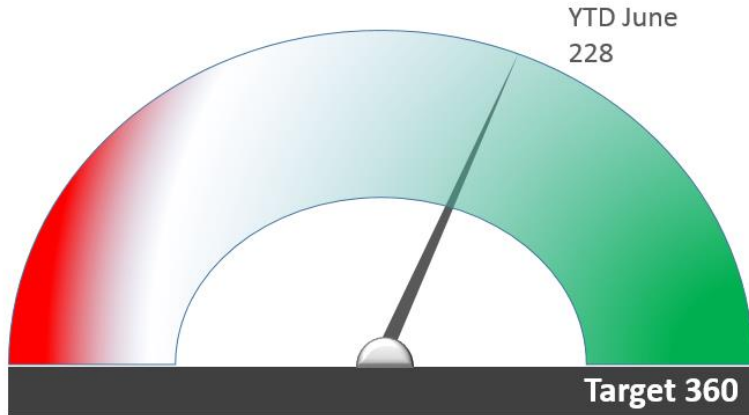
Workforce Health & Safety

Near Miss Reporting:
Mitigating Noted Hazards to Prevent Escalation to More Serious Incidents



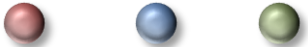
Workforce Health & Safety

Safety Walk Downs:
Capture Efforts at Incident Prevention



Proactive safety measures such as Near Miss Reporting and Safety Walk downs are on target due to high cultural safety awareness reinforced by proactive policies, procedures and training practices.

Unfavorable Stable Favorable



Key Risk Indicators: External

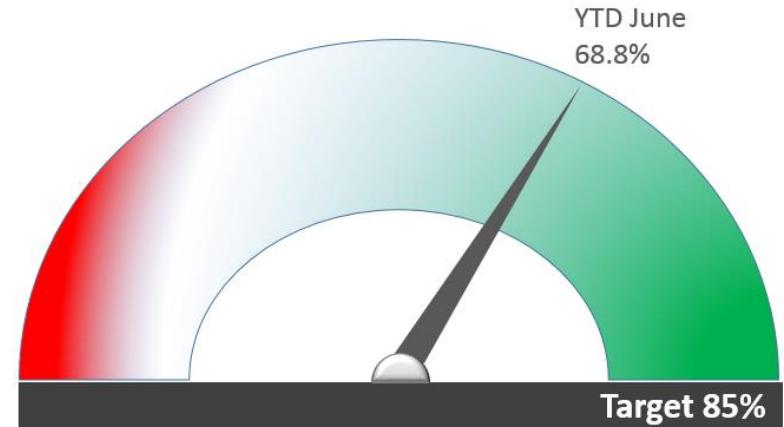
Catastrophic Events

Drills & Exercises (Semi-Annual)



Catastrophic Events

Closure of After-Action Reports (Semi-Annual)

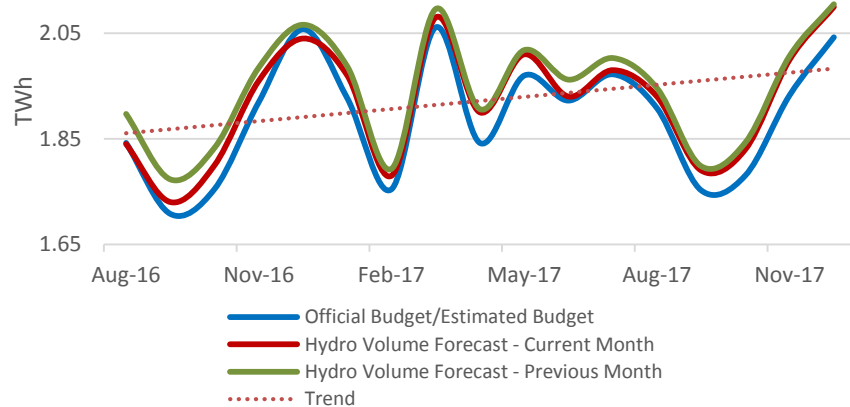


Drills & Exercises and Closure of After-Action Reports are new Key Risk Indicators. The former is a stretch goal intended to change culture and results in an initial behind target report.

Key Risk Indicators: External

Hydro Flow Volumes

Current Monthly Forecast versus Previous Month and Budget

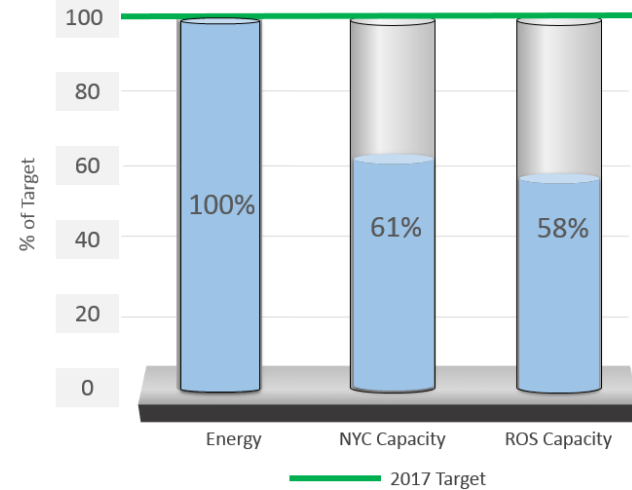


Hydro Flow Volume trend is increasing with the current and previous months forecasts at or above budget except for December 2016.

Commodity Market Volatility

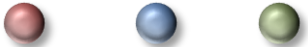
Hedged Positions: Percentage Hedged versus Target

Unfavorable Stable Favorable



Execution of the 2017 hedging strategy for Energy & Capacity has reduced the impact of lower pricing.

Unfavorable Stable Favorable



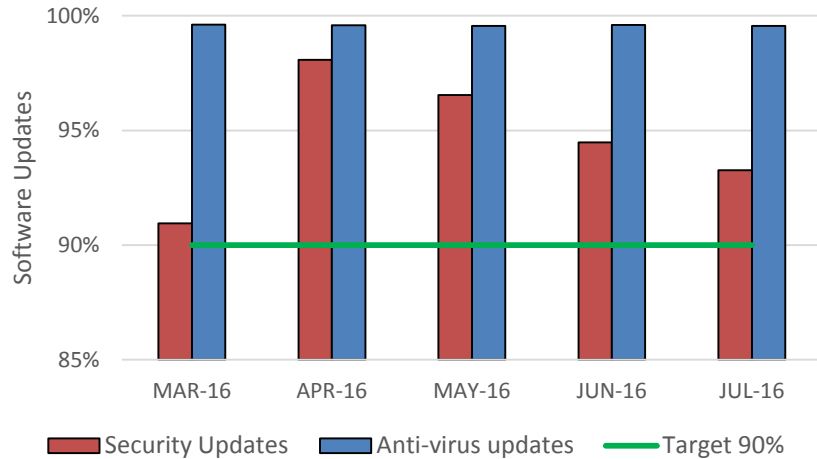
Key Risk Indicators: External

Cyber Security

Software Updates to Keep Assets Protected Against Threats



Status



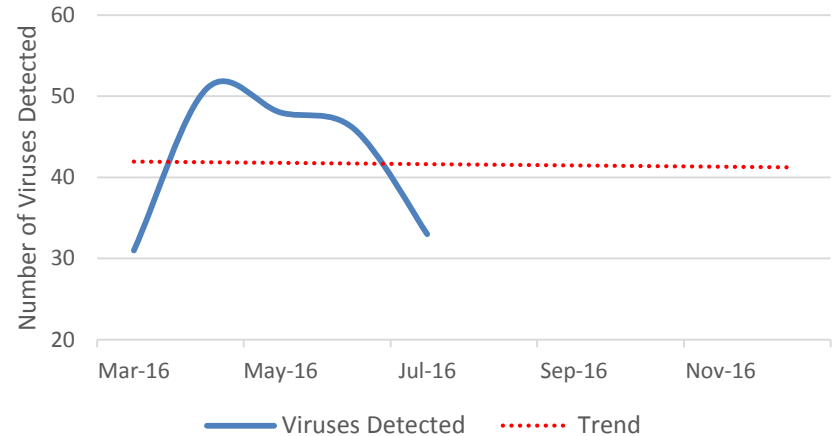
On-track at greater than 90% - prioritizing patch installation to those patches with the greatest reduction in severity of threat.

Cyber Security

Viruses Identified and Addressed on NYPA Networked PCs



Status



Detection levels increased in April due to Ransomware threat.

Unfavorable



Stable



Favorable



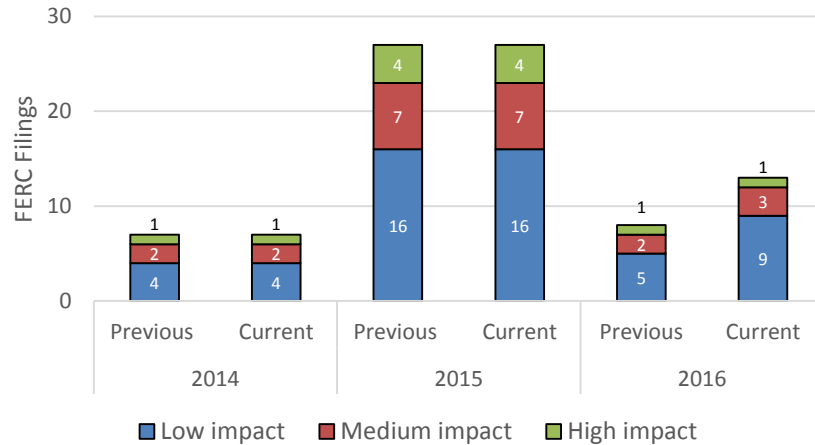
Key Risk Indicators: External

Regulatory & Legislative Environment

Federal Regulation and/or Legislation with Potential Impact



Status



While the number of potential filings increased, potential high impact FERC decisions remained the same. However, final orders from FERC may require changes to the current categories.



**NY Power
Authority**



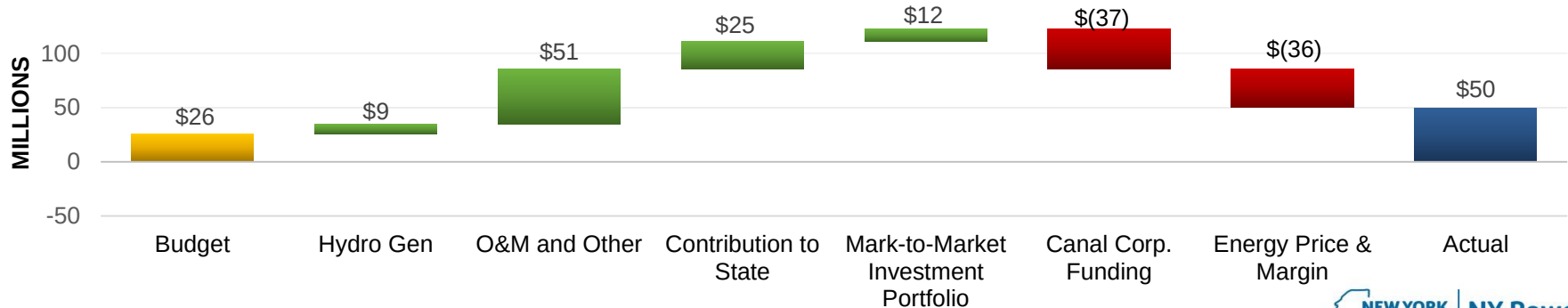
**NY Power
Authority**

Chief Financial Officer Report

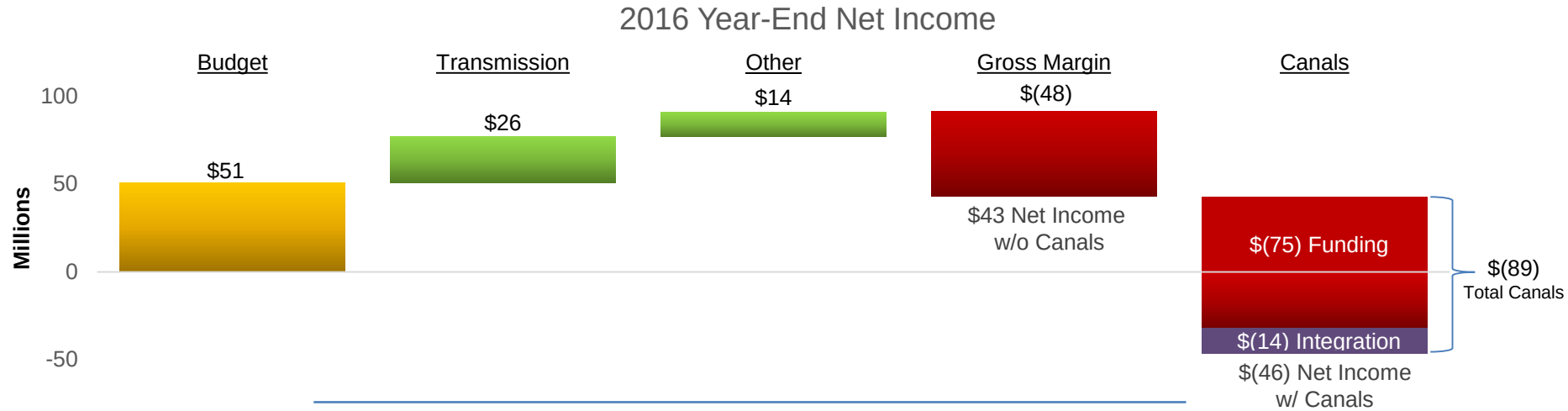
September 27, 2016

Net Income YTD August 2016

- Net income for the eight months ended August 2016 was \$50.4 million, which was \$24.2 million higher than the budgeted \$26.2 million. A major factor impacting results was the timing of the contribution to the State. The budget assumed a \$25 million contribution in June business. This contribution will be considered by the Board early next year.
- Excluding this contribution, net income for the year-to-date was \$0.9 million lower than budgeted primarily due to a lower net margin on sales (\$27.4 million) and unbudgeted expenses related to the Canal Corp. funding agreement (\$31.3 million), substantially offset by lower operating expenses (\$52.4 million) and higher income on the Authority's investment portfolio (\$5.7 million, primarily mark-to-market gain due to lower than anticipated market interest rates). Margins on market-based sales were lower than budgeted due to lower prices resulting in lower market revenue at Niagara and St. Lawrence. Operating expenses reflected underspending in several programs including Western NY Economic Development and Workforce Development in addition to less than expected O&M spending due to timing.
- Net income for the month of August was \$16.4 million which was \$6.8 million higher than the budgeted 9.6 million. The month included a higher net margin on sales (\$16.6 million) partially offset by unbudgeted expenses related to the Canal Corp. (\$7 million) and a mark-to-market loss on the Authority's investment portfolio (\$2.1 million, higher market interest rates in August). Net margins were higher due to higher prices on market sales and higher transmission revenues.



Financial Outlook – 2016



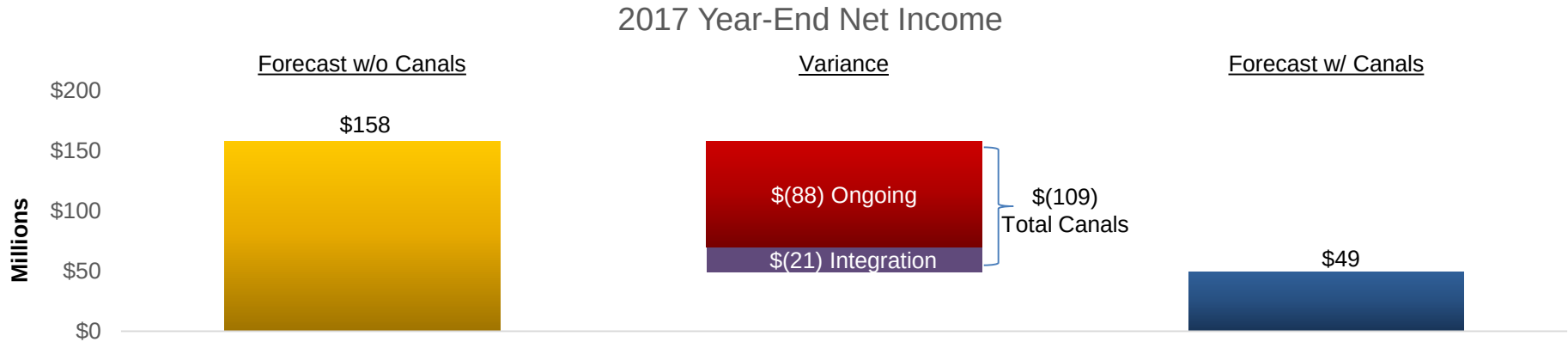
2016 Canals Expenses (In Millions)

	<u>Integration</u>	<u>Funding</u>	<u>Total</u>
O&M	\$ (14.4)	\$ (75.0)	\$ (89.4)
Capital	\$ (17.0)	\$ -	\$ (17.0)
Total	\$ (31.4)	\$ (75.0)	\$ (106.4)



**NY Power
Authority**

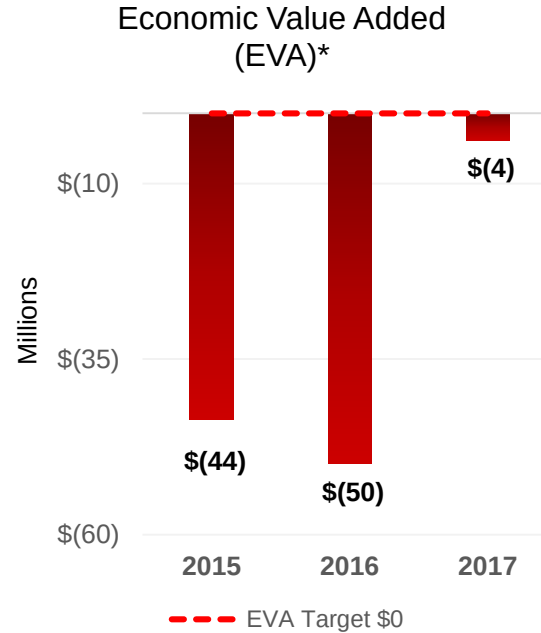
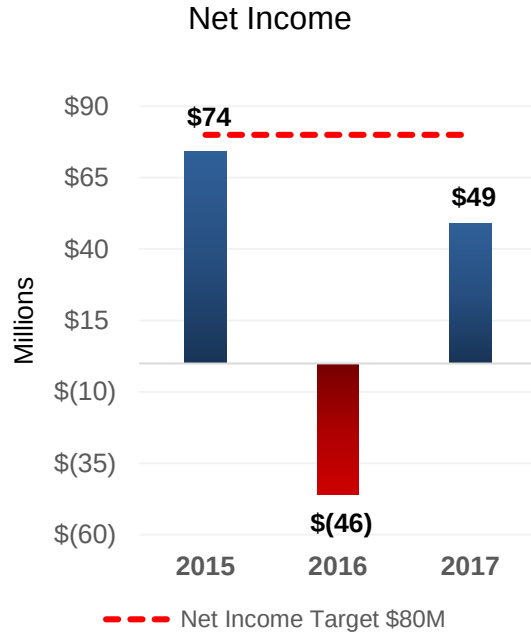
Financial Outlook – 2017



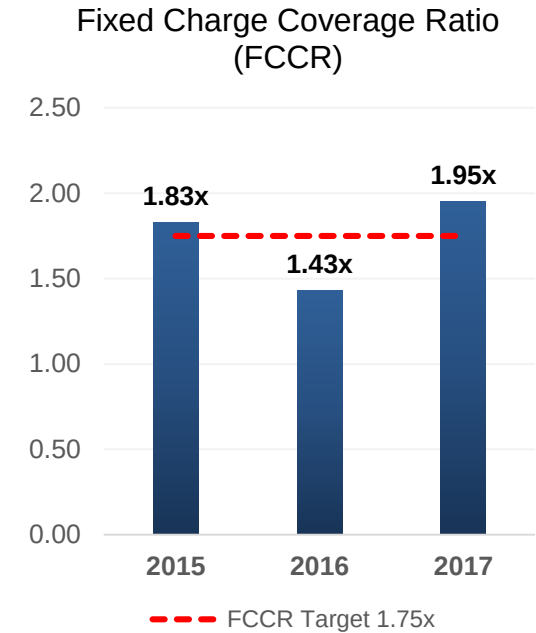
2017 Canals Expenses (In Millions)

	<u>Integration</u>	<u>Ongoing</u>	<u>Total</u>
O&M	\$ (17.6)	\$ (68.5)	\$ (86.1)
Capital	\$ (10.0)	\$ (54.7)	\$ (64.8)
Total	\$ (27.6)	\$ (123.2)	\$ (150.9)

Financial Metrics 2015-2017 and proposed targets



*Excludes Canal Corporation





**NY Power
Authority**

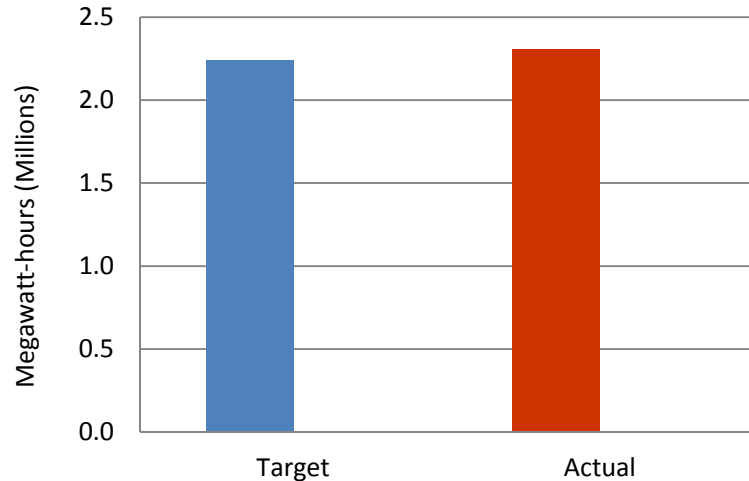
Chief Operating Officer Report

August 12, 2016

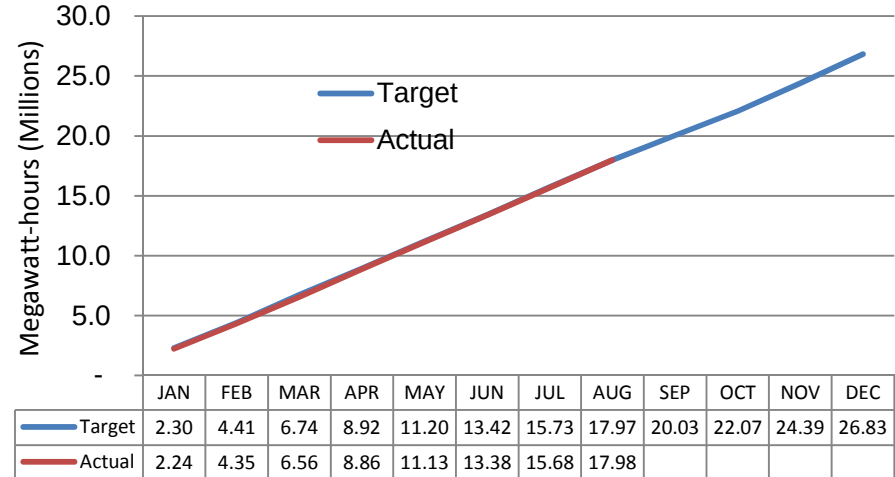
Operations - System Net Generation

- Systemwide Net Generation in August was 2,301,975 MWh (megawatt-hours) which is above the projected net generation of 2,236,748 MWh. The year-to-date net generation was 17,984,549 MWh which is above the projected target of 17,971,729 MWh.

August 2016

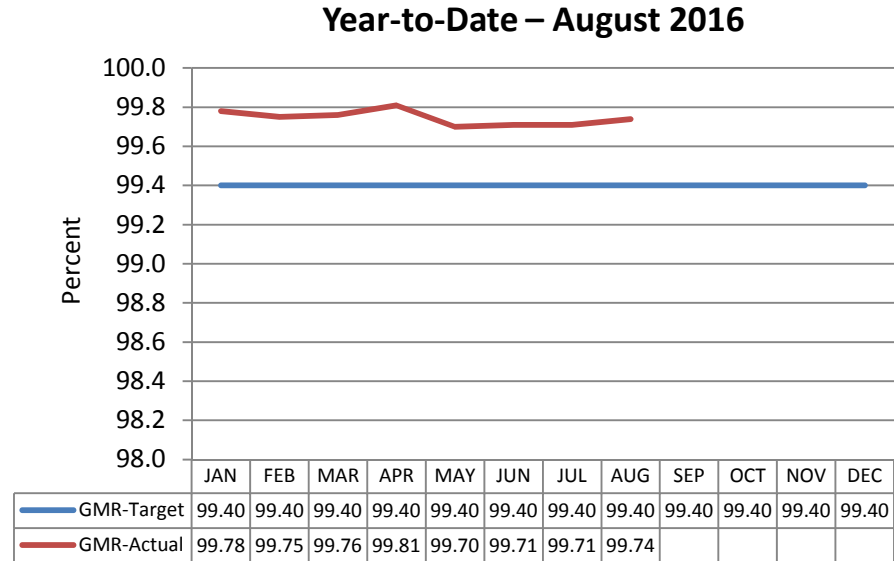
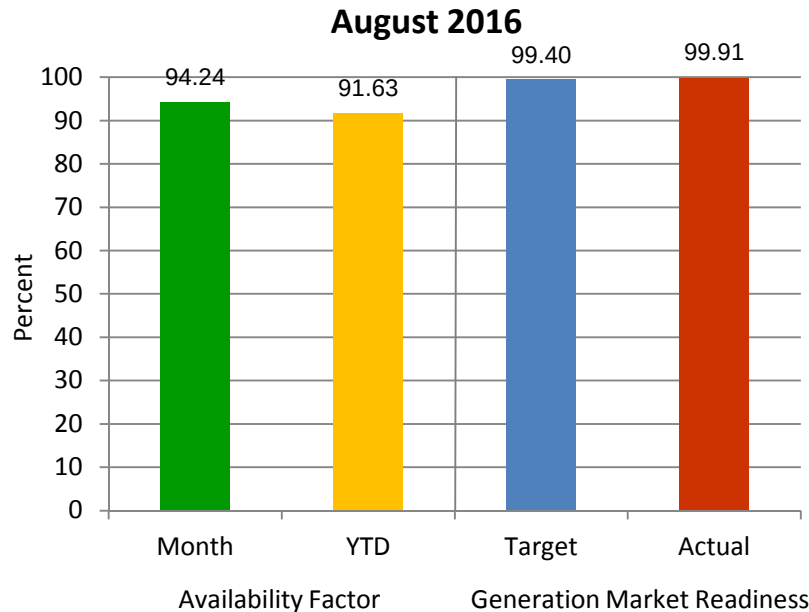


Year-to-Date – August 2016



Operations – Plant Performance

- The fleet availability factor in August was 94.24 percent, and the YTD value was 91.63 percent. Generation Market Readiness factor in August was 99.91 percent, which is higher than the target of 99.40 percent. Year-to-date Generation Market Readiness factor was at 99.74 percent, which is above the annual target of 99.40 percent.



Operations – Plant Outages

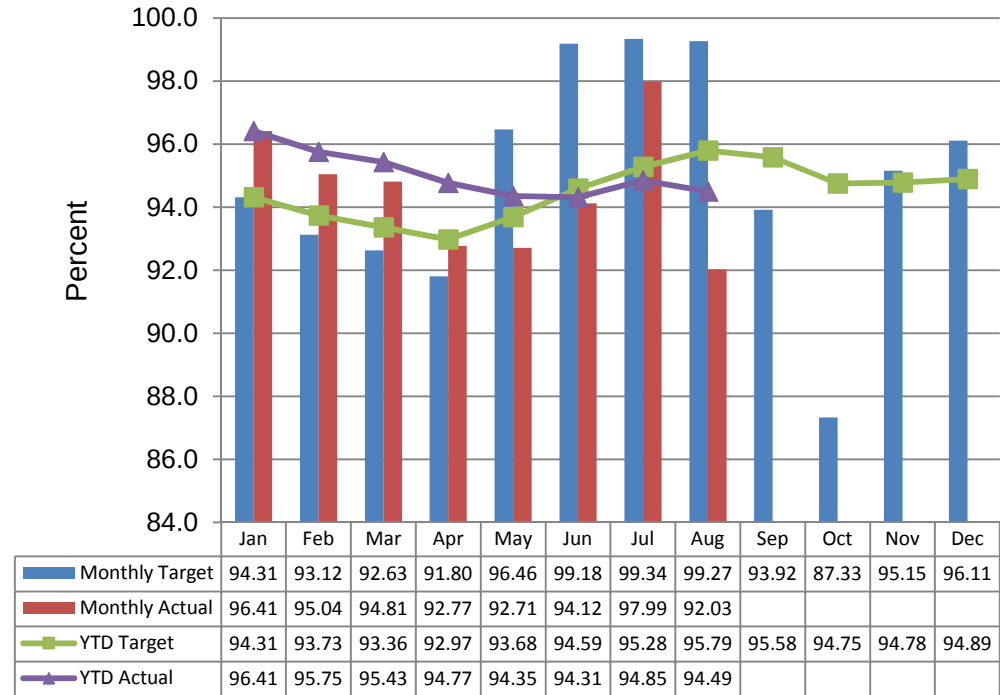
- There was one significant forced outage event in August:
 - At Niagara, RMNPP Unit 2 remains in a forced outage since July 7 due to a fire in the stator. The unit is expected to return to service in by December 1. So far, the unit was out of service for 1,330 hours.

Niagara/St. Lawrence River Flows

- Niagara River flows in August were above the historical average and will be above normal levels throughout the year. St. Lawrence River flows for August were at historical levels and are expected to be above the historical average flow over the year.

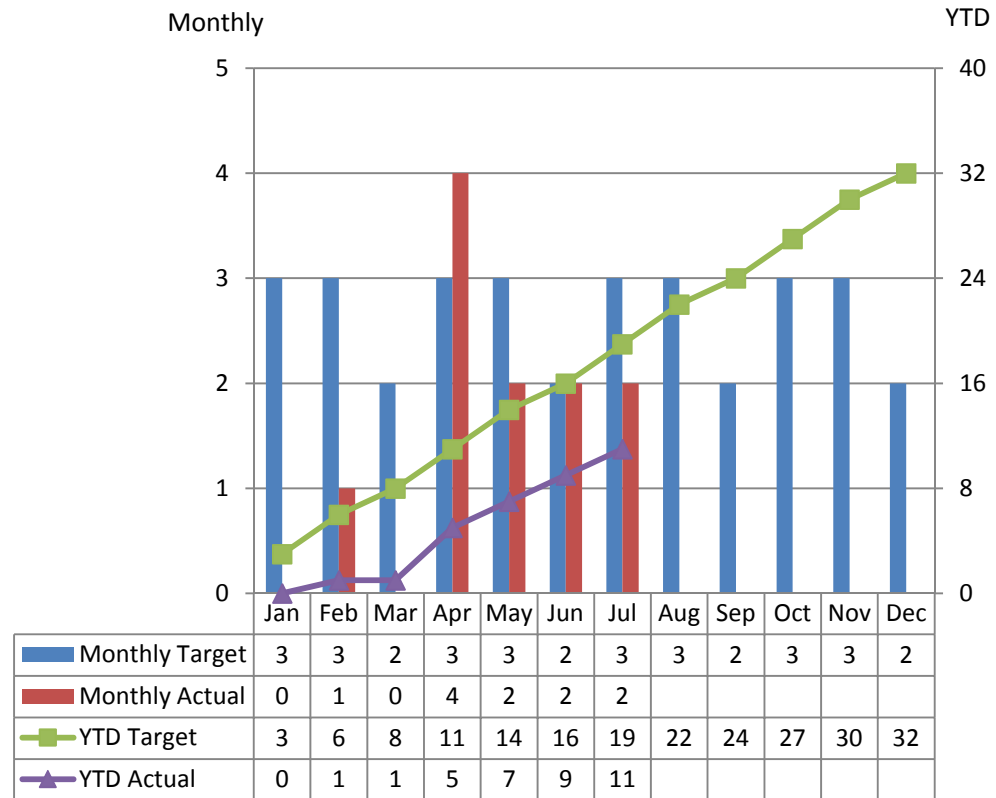
Transmission System Reliability

- Transmission reliability in August was 92.03 percent, which was below the monthly target of 99.27 percent. Year-to-date transmission reliability is 94.49 percent, below the target of 95.79 percent.
- There was one significant unplanned transmission outage in August.
 - 744 hours @ Feeder Y-49



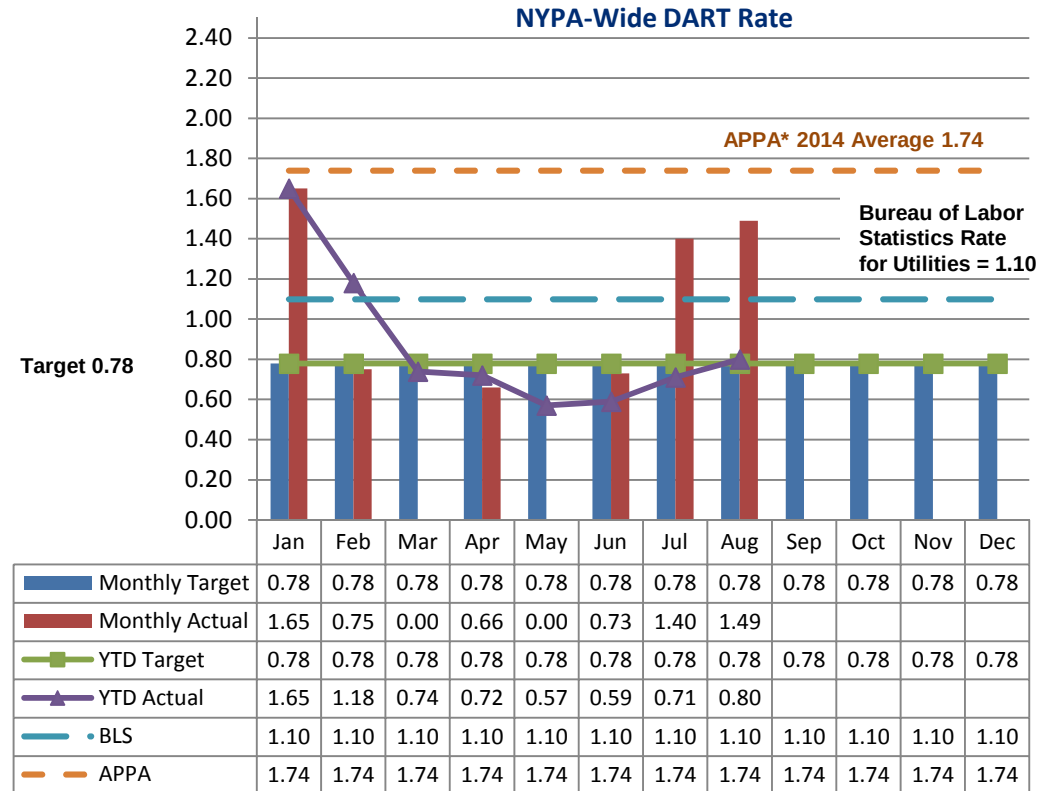
Environmental Incidents

- There was one reportable incident in August:
 - At Niagara, a fault and failure of a Potential Transformer (PT-89273) resulted in an explosion and fire. A loss of 50-60 gallons of transformer oil was spread across the stone in the switchyard. All contaminated stone and clean-up material were removed.
- For the year, there have been 12 incidents to report. The annual target is 32 incidents.



Safety DART Rate

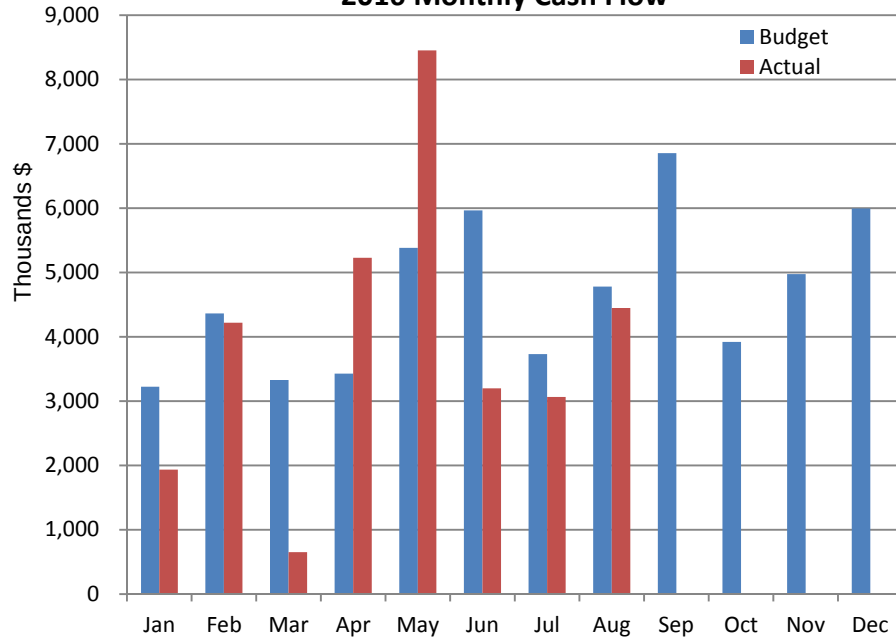
- The NYPA DART (Days Away, Restricted or Transferred) Rate for August was 1.49 which is not meeting the target of 0.78. For the year, the DART Rate was 0.80 is also not meeting the target of 0.78.
- There were two lost time incidents in August that met the DART criteria.
 - At 500MW, an Op Technician reported an injury to his left eye which led to 3 days of missed work.
 - At Clark, a BG lineman injured his left ankle resulting in placing him on restricted duty.
- For the year, there have been 9 injuries that resulted in lost time and met the DART criteria.



Life Extension and Modernization Programs – Transmission LEM

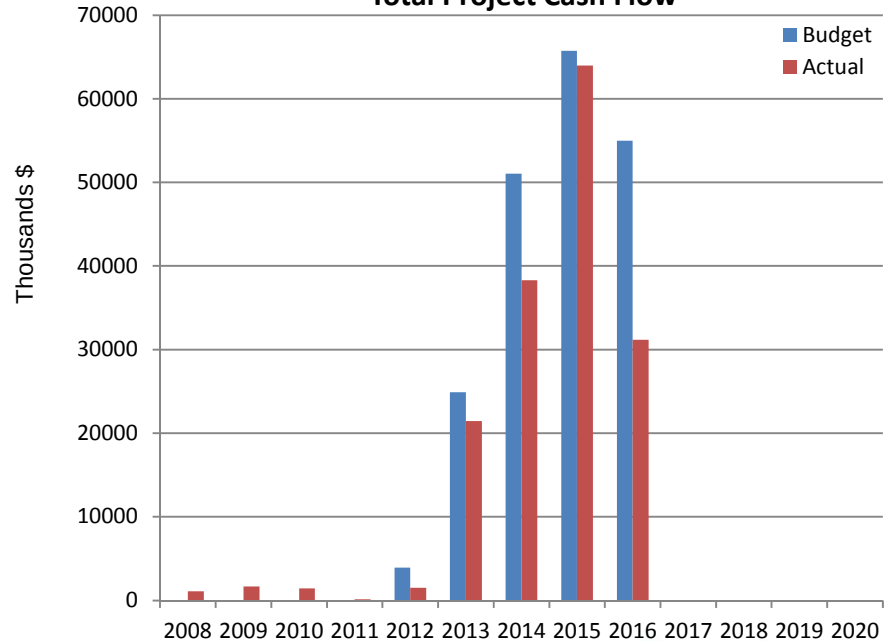
Due to outage restrictions, scope of the Fall 2016 outage has been reduced to one breaker and associated disconnects and relays. Massena Substation - Reactor 1C Refurbishment complete; 2X in progress with completion expected in September 2016; 1A to be refurbished starting in October 2016. St. Lawrence RM Switchyard – Installation of new station service in progress – scheduled for completion in September 2016. Procurement of equipment and detailed engineering underway for the Marcy and BG Switchyard LEM with construction scheduled to begin in Fall 2016. Marcy- Auto 1X refurbishment complete; Auto 1A to be refurbished beginning October 2016. Evaluation of bids for Niagara Tower Painting in progress. Permits received and revised drilling proposal accepted by NYPA & Velco therefore commencement of drilling for PV-20 Submarine Cable Replacement on the NY side on track for August 2016.

2016 Monthly Cash Flow



Total 2016 Budget = \$55,935,588 Total 2016 Actuals = \$31,191,200

Total Project Cash Flow



2016 Approved Budget To date = \$201,525,588

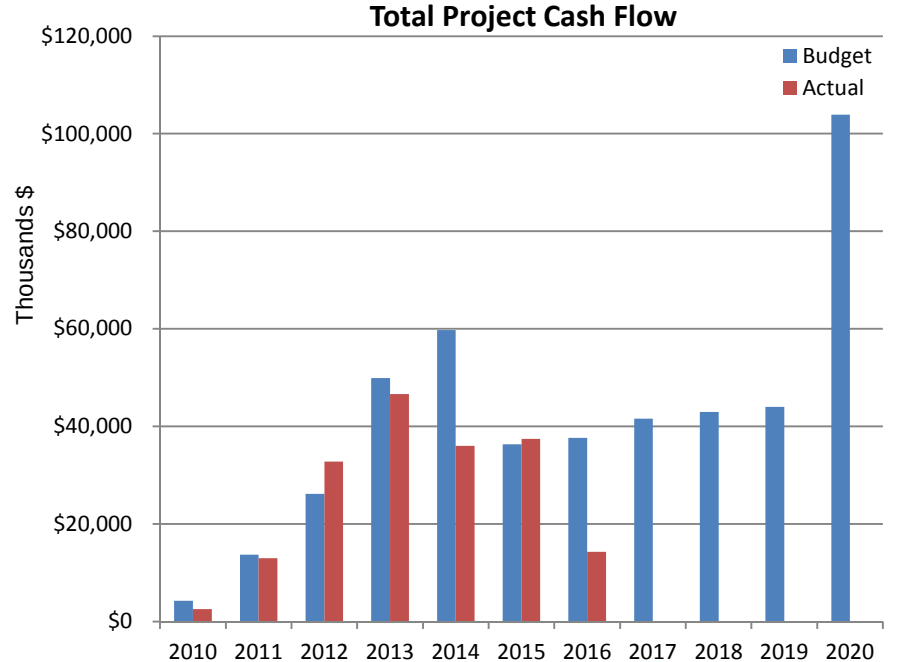
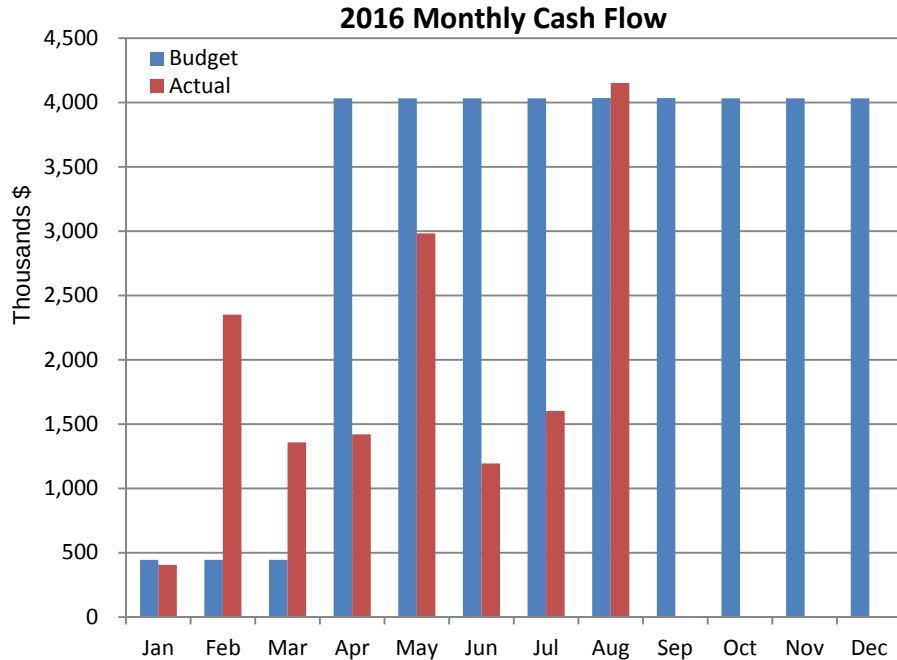
Total Actuals to date = \$160,561,700



NY Power Authority

Life Extension and Modernization Programs – LPGP LEM

- The sixth unit outage (Unit 12) started on July 11, 2016 and is scheduled to return to service on February 17, 2017. There is a \$7.5 million credit as a result of reinstating the Andritz contract that is not reflected in the chart below and will be reconciled within the next couple of months. The project's cash flow indicated in 2020 will also be re-allocated this year to take the Andritz contract back into account.



Technical Compliance – NERC Reliability Standards

New Bulk Electric System (BES) Definition

- NYPA provided comments regarding Alcoa Power Generation Inc.'s draft request to be omitted from the NERC Compliance Registry. NYPA requested that certain references to the NYPA MED Grasse River 115kV transmission lines and to NYPA cyber assets be removed and recommended revised language related to NYPA's energy scheduling of the MAL lines.
- NYPA provided supporting documentation and responses to questions from NERC as part of their review of the NYPA Plattsburgh Capacitor Banks #5 & #6 BES Exception Request.

NPCC Guided Self-Certification

- On August 5, NPCC notified NYPA of its obligation to self-certify compliance with Reliability Standard PRC-006-NPCC-1 Automatic Underfrequency Load Shedding Implementation Plan, pursuant to requirements R4 and R7.

Critical Infrastructure Protection (CIP) Standards

- The Reliability Standards and Compliance staff discussed the next steps with Operations Technology regarding the incorporation of upstate Low Impact facilities into the CIP Compliance Program prior to the April 1, 2017 enforcement date.
- Revised Compliance Responsibility Matrices related to NYPA's agreements with Con Edison and LIPA/PSEG to address CIP V5/6 requirements for NYPA-owned (Low Impact) facilities and assets that they operate and maintain for NYPA.

NERC Risk-Based Compliance Monitoring and Enforcement Program

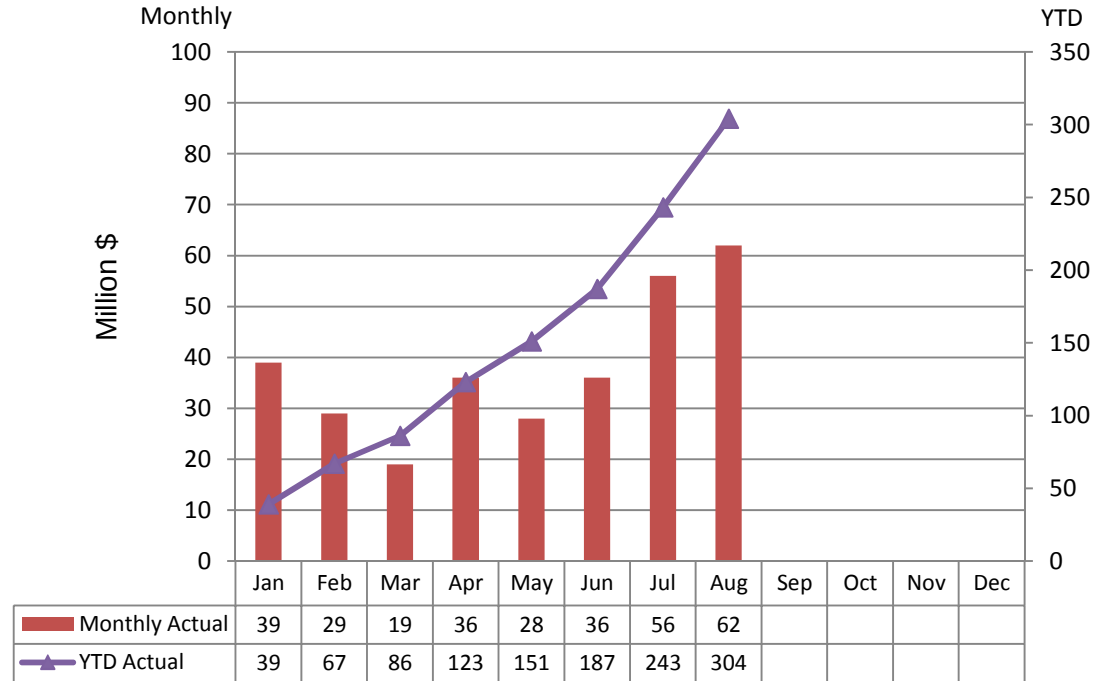
- NPCC completed its review of NYPA's Internal Controls Evaluation (ICE) documentation and is recommending a significant reduction for NYPA's NERC Compliance Operations and Planning audit scope going forward.
- It is anticipated that NPCC will close out the NYPA ICE with an on-site visit, which is scheduled to occur in 3Q 2016.



Energy Resource Management

NYISO Markets

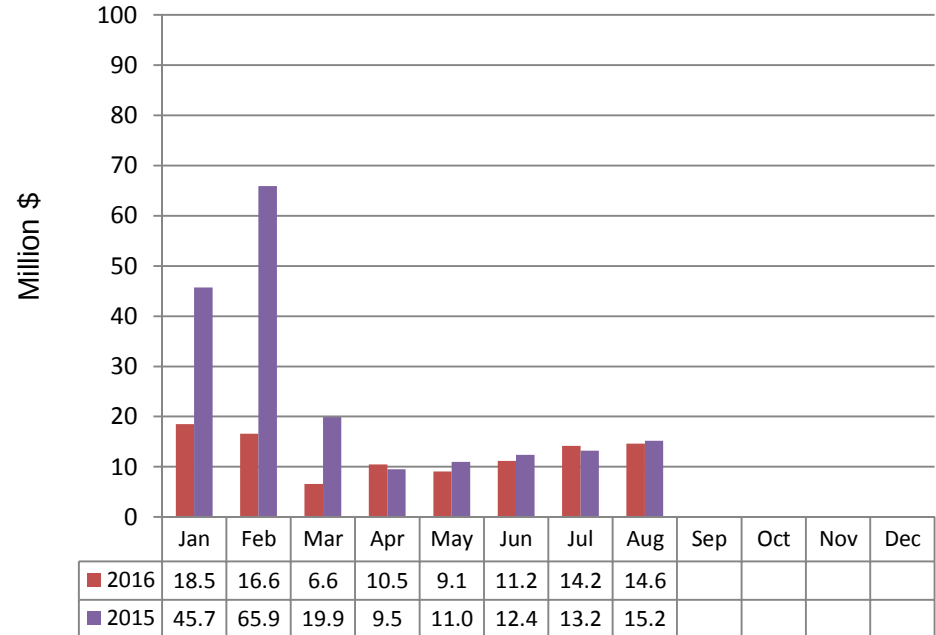
- In August, Energy Resource Management (ERM) bid 2.67 million MWh of NYPA generation into the NYISO markets, netting \$62.3 million in power supplier payments to the Authority.
- Year-to-date net power supplier payments are \$304.2 million.



Energy Resource Management

Fuel Planning & Operations:

- In August 2016, NYPA's Fuels Group transacted \$14.6 million in natural gas and oil purchases, compared with \$15.2 million in August 2015. Year-to-date natural gas and oil purchases are \$101.7 million, compared with \$192.8 million at this point in 2015.
- The total -\$91.2 million decrease is due to the lower cost of fuel and / or fuel consumption at the Astoria Energy II Plant (-\$43.4 million), 500-Mw Combined Cycle Plant (-\$38.4 million), and Richard M. Flynn Power Plant (-\$7.6 million), and Small Clean Power Plants (-\$1.8 million).





Chief Commercial Officer Report

Jenny Liu

January 9, 2017

Commercial Ops: Wholesale

Contract & Market Revenue

\$1,618 M v. \$1,871 M

(actual v. budget August YTD)



14%

Market Context

\$34.43/MWh 2016 v. \$50.20/MWh 2015

(average monthly energy price YTD)



31%

Fuel Costs

\$54.5 M savings

(actual v. budget August YTD)



Hedging Program

\$20.8 M positive

(August settlements YTD)



Commercial Ops: Economic Development



Transmission Business Development

Western NY: new 345kV line with NYSEG proposed

Central NY: upgrades with private developer proposed



Economic Development *(as of end of August 2016)*

Recharge NY: 748 MW out of 910 MW allocated

All programs: 400,000 jobs, \$33 Billion capital committed

Commercial Ops: Customer

Energy Efficiency Implementation

(\$6.5 M) v. (\$6.3 M) budget

Net projection year-end



NY Energy Manager
Network Operations Center

Grants & Initiatives

(\$6.2 M) deployed to date in grants and initiative investments

NY Energy Manager: Network Operations Center opened in August

K-Solar: 41 contracts signed, 8 projects totaling 4.9 MW in construction by year-end

Overall net year-end: (\$21.6 M) projection, \$9.1 M improvement on budget



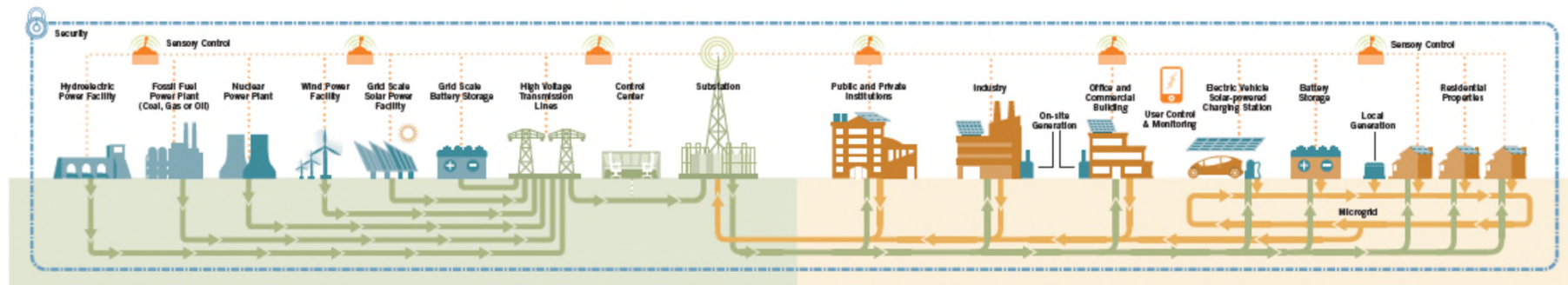
Information Technology

100 + 100 Days

January 9, 2017

Information Technology: Context

The Power Industry of the Future



IT – supports NYPA goals and the utility of the future

- New capabilities in IT strategy, analytics and cyber security
- Known for innovation and secure reliable IT operations

Information Technology : Opportunities

- Expanding Internet of Things Analytics team
 - Big Data for analytics
- Working with strategy & strategic initiative teams
 - Enterprise search for Knowledge Management
 - Predictive analytics for Asset Management
 - Blockchain technology
- Aligning network and cyber security to support the vision
 - Increasing capabilities through industry and new services
 - Developing mutual aid capabilities for cyber security



Information Technology: Challenges/Priorities

- **Raising IT maturity**
 - Prioritize based on needs and add resources as necessary
- **Canal Integration**
 - Consultants to help resource constraints
 - Continues to be a priority through 2017, possibly 2018
- **Cyber Security**
 - Aligning team and implementing plan to meet utility of the future needs
 - Interim CISO ensuring systems and data protected

Information Technology : Expected Output

First 100 Days	Next 100 Days
One NYPA - IT/OT alignment	Canal “Day 1” success
IT assessment	Draft of Strategic Technology Plan
Strategic technology planning - started	Analytics for Smart G&T, Asset Management
IT operating & organization model, structure	Enterprise search for Knowledge Management
Interim CISO hired, maturity roadmap	IT governance 2.0 – align IT demand
Canal integration - IT support via consultants	Cyber security aligned, CISO hired
Relationship building across business	Talent - develop high potentials & succession



First 100 Days – Corporate & Public Affairs

Kimberly Harriman

September 27, 2016

Corporate & Public Affairs – First 100 Days



Community & Government Affairs



Communications



September 27, 2016

Corporate & Public Affairs - First 100 Days

First 100 Days: Top Priorities

1. Identify thought leading/problem solving opportunities with agency partners.
2. Refocus communications strategy to reach intended audience.
3. Partner with stakeholders to accomplish initiatives and goals.
4. Reinvigorate the Environmental Justice and Sustainability Program.

Corporate & Public Affairs - First 100 Days



Regulatory + Proactive Steps = Achievement of Energy Policies

1. Strengthen lines of communication with key regulatory partners.
2. Identify and leverage opportunities to be at the creation/development table.
3. Provide solutions with identification of concerns.

Corporate & Public Affairs - First 100 Days



Who is our audience?

1. Identify the audiences we need to reach – Customers, government/regulatory, industry, financial community, etc.
2. Craft messages in a manner that speak to the audience(s).
3. Utilize the communications medium that best works with the intended audience.

Corporate & Public Affairs - First 100 Days

Community & Government Affairs



Proactively enlist partners to achieve goals.

1. Identify strategic initiatives and challenges and the geographic area of impact.
2. Determine impacted stakeholders.
3. Interact with stakeholders in order to support accomplishment of initiatives and challenges.

Corporate & Public Affairs - First 100 Days

Environmental Justice



1. Apply broader definition of EJ to stakeholder identification – communicate internally
2. Identify all business units that possibly touch EJ issues.
3. Key in on decision making steps within those units
4. Introduce EJ at an early point in those discussions
5. Improve issue identification for NYPA via better relationships and dialogue with key EJ stakeholders

Corporate & Public Affairs - First 100 Days



Sustainability

1. Develop a Departmental Plan to support Sustainability Plan
2. Establish Sustainability Program budget
3. Create an Interdepartmental Sustainability Committee
4. Reassess Employee Engagement Initiatives

Exhibit Number	Company Name	Program	City	County	Base Jobs	New Jobs	Estimated Capital Investment	New Jobs Avg. Wage & Benefits	Power Requested (kW)	Power Recommended (kW)	Contract Term
A-1	GEICO	RP	Town of Amherst	Erie	2,600	300	\$6,000,000	\$47,244	400	400	7 Years
A-2	CI Filing Systems LLC	RP	Town of Tonawanda	Erie	0	80	\$7,916,000	\$37,938	1,210	1000*	7 Years
TOTALS						380	\$13,916,000			1,400	

*Allocation not to exceed new load

APPLICATION SUMMARY
Replacement Power

Company:	GEICO
Project Location:	Town of Amherst
County:	Erie County
IOU:	National Grid
Business Activity:	Insurance call center
Project Description:	Already established with an operations center in the CrossPoint Business Park in Amherst, GEICO is looking to lease a nearby, 86,000-square-foot facility to establish a second call center.
Existing Allocation(s):	1,300 kW of Expansion Power ("EP")
Power Request:	400 kW
Power Recommended:	400 kW Replacement Power
Job Commitment:	
Base:	2,600 jobs
New:	At least 300 jobs
New Jobs/Power Ratio:	750 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$47,244
Capital Investment:	At least \$6 million
Capital Investment/MW:	\$15 million/MW
Other ED Incentives:	Empire State Development Economic Development Purposes Grant of \$4 million.
Summary:	GEICO has had a major impact on the economy in Western New York ("WNY") since it opened its Northeast Operations Center in 2005. The addition of this second, large facility (with long term potential for even greater hiring capability) has the potential to enhance that impact. GEICO has looked at other locations within the USA for this facility. A hydropower allocation, coupled with other state support, offers the company a strong incentive to expand in WNY. GEICO is currently in compliance with its commitments for its current EP allocation.

APPLICATION SUMMARY
Replacement Power

Company:	CI Filing Systems LLC ("CI Filing")
Project Location:	Town of Tonawanda
County:	Erie County
IOU:	National Grid
Business Activity:	Maker of index tabs, file folders, file backs and legal dividers.
Project Description:	CI Filing is proposing to move its operations from New Jersey to Tonawanda into two renovated buildings to manufacture, warehouse and distribute its products.
Existing Allocation(s):	None
Power Request:	1,210 kW
Power Recommended:	1,000 kW Replacement Power
Job Commitment:	
Base:	0 jobs
New:	At least 80 jobs
New Jobs/Power Ratio:	80 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$37,938
Capital Investment:	At least \$7.9 million
Capital Investment/MW:	\$7.9 million/MW
Other ED Incentives:	Up to \$800,000 in Excelsior Jobs Program support from Empire State Development ("ESD").
Summary:	With a plan to increase production and sales, CI Filing is proposing to relocate its manufacturing and distribution operations from New Jersey to Western New York. An allocation of hydropower, coupled with additional state support from ESD, will help offset relocation and renovation costs and allow the company to stay competitive.

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

GEICO

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, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with GEICO (“Customer”), having facilities at 150 Crosspoint Parkway, Getzville, NY 14068. 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 September 27, 2016, the Authority’s Board of Trustees (“Trustees”) approved a 400 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 September 27, 2016, 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. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **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.

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

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

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 September 27, 2019 (*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 10th 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

GEICO

150 Crosspoint Parkway
Getzville, NY 14068

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:

GEICO

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 (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: GEICO				
Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Replacement Power	400	1) 150 Crosspoint Parkway Getzville, NY 14068 2) 300 Crosspoint Parkway Getzville, NY 14068	September 27, 2016	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 (CES)**

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 2,900 full-time employees (“Base Employment Level”) at the Customer’s Facility, provided that such Base Employment Level must be comprised of at least 300 full-time employees at 150 Crosspoint Parkway, Getzville, NY and at least 2,600 full-time employees at 300 Crosspoint Parkway, Getzville, NY. 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 minimum capital investment of \$6,000,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following specific expenditures:

General Construction -	\$4,148,500
Carpet -	\$ 191,000
Engineering & Architecture -	\$ 100,000
Furniture -	\$1,053,600
Light Fixtures & Signage -	\$ 268,700
Refrigerators & Ice Makers -	\$ 13,200
Security (Access control & Cameras) -	<u>\$ 225,000</u>

Total Capital Investment: \$6,000,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than September 27, 2019 (*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 (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

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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 (10th) 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 15th 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		1.03

- 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	6.24
<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	6.23
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		1.02

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			1.016

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

CI FILING SYSTEMS LLC

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with CI Filing Systems LLC (“Customer”), having facilities at 1136 Military Road, Tonawanda, NY 14217. 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 September 27, 2016, the Authority’s Board of Trustees (“Trustees”) approved a 1,000 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 September 27, 2016, 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. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **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.

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

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

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 September 27, 2019 (*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 10th 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

CI Filing Systems LLC
1136 Military Road
Tonawanda, NY 14217

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:

CI FILING SYSTEMS LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: CI Filing Systems LLC				
Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Replacement Power	1,000	1) Manufacturing Operations: 1136 Military Road Tonawanda, NY 14217 2) Warehousing/ Distribution: 860 Ontario St. Tonawanda, NY 14217	September 27, 2016	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 (CES)**

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 80 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 minimum capital investment of \$7,916,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following specific expenditures:

Purchase/Construction/Renovation - (Warehousing/distribution at 860 Ontario St.)	\$3,150,000
Construction/Renovation/Design & Planning/Move - (Manufacturing operations at 1136 Military Rd.)	<u>\$4,766,000</u>
Total Capital Investment:	\$7,916,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than September 27, 2019 (*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 (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- c. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



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

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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 (10th) 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 15th 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		1.03

- 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	6.24
<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	6.23
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		1.02

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			1.016

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

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Issued by James F. Pasquale, Senior Vice President
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