



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

**September 23, 2020**

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Minutes of the Regular Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held via video conference at approximately 12:10 a.m.

**Members of the Board present were:**

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

Anthony J. Picente, Jr. – Excused

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Gil Quiniones	President and Chief Executive Officer
Justin Driscoll	Executive Vice President and General Counsel
Adam Barsky	Executive Vice President and Chief Financial Officer
Joseph Kessler	Executive Vice President and Chief Operating Officer
Kristine Pizzo	Executive Vice President and Chief Human Resource & Administrative Officer
Sarah Salati	Executive Vice President and Chief Commercial Officer
Lee Garza	Senior Vice President – Financial Operations
Soubhagya Parija	Senior Vice President & Chief Risk Officer
Robert Piascik	Senior Vice President & Chief Information Officer
Angela Gonzalez	Senior Vice President – Internal Audit
Kimberly Harriman	Senior Vice President – Public & Regulatory Affairs
Keith Hayes	Senior Vice President – Clean Energy Solutions
Yves Noel	Senior Vice President – Strategy & Corporate Development
Scott Tetenman	Senior Vice President – Finance
Karen Delince	Vice President and Corporate Secretary
Girish Behal	Vice President – Project & Business Development
John Canale	Vice President – Strategic Supply Management
Kenneth Carnes	Vice President – Critical Secure Services & CISO
Joseph Leary	Vice President – Community & Government Relations
Patricia Lombardi	Vice President – Project Management
Daniella Piper	Vice President – Digital Transformation Office and Chief of Staff
Anne Reasoner	Vice President – Budgets and Business Controls
Ethan Riegelhaupt	Vice President – Corporate Communications
Saul Rojas	Vice President – Enterprise Resilience
Evan Yager	Vice President – Enterprise Portfolio Management Office
Thakur Sundeep	Controller
Christina Reynolds	Treasurer
Victor Constanza	Senior Director – Configuration Control and Deputy CISO
Evan Kolkos	Senior Manager – Customer Business Development
Adrienne Lotto	Senior Director – Energy Security & Resilience Programs
Lawrence Mallory	Senior Director – Physical Security & Crisis Management
Peter Prunty	Senior Director – Security Compliance
Thomas Spencer	Senior Director – Enterprise Risk & Corporate Insurance
Susan Craig	Director – Media Relations
Maribel Cruz	Director – Projects
Mary Cahill	Manager – Executive Office
Christopher Vitale	Senior Finance Project Manager
Paul DeMichele	Media Relations Project Manager
Lorna Johnson	Senior Associate Corporate Secretary
Sheila Quatrocci	Associate Corporate Secretary
Michele Stockwell	Project Coordinator – Executive Office

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

**Introduction**

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

1. **Adoption of the September 23, 2020 Proposed Meeting Agenda**

On motion made by Trustee Trainor and seconded by Trustee McKibben, the members adopted the meeting Agenda.

**Conflicts of Interest**

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

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

*This item was pulled from the Agenda.*



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

*This item was pulled from the Agenda.*

**4. DISCUSSION AGENDA:**

**a. Strategic Initiatives**

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

President Quiniones provided an update on NYPA's response to the COVID-19 pandemic (Exhibit 4a i-1-A). He said that the state of the Authority is good, the health and safety of its employees during the COVID-19 pandemic being its number one priority.

**1. Covid-19 Response Update**

**NYPA/CANALS RETURN TO THE WORKPLACE GUIDE**

NYPA has developed a detailed "Playbook" on how to operate in this pandemic environment based on the experience gathered to date. This includes:

- Employee training and refreshers on the NYPA/Canals Return to the Workplace Guide.
- Reinforcing with supervisors, the need to monitor adherence to the guidelines including spot checks by Senior Leadership.
- Advocating the use of technology (i.e. conference calls, video conferencing) to limit physical interactions and optimize work.
- Making use of scheduling processes to manage floor density at WPO, limit foot traffic, and restrict access to common areas to limit interactions among personnel.
- Limiting travel between floors, to sites and field locations to essential only in order avoid contamination.
- Limiting in-person meetings and invitations to visitors and vendors.

**NYPA/Canals response to cluster of cases (Aug/Sept 2020)**

In the months of August and September, NYPA/Canals experienced a COVID flare-up and were able to implement its Playbook game plan, contact tracing and isolating those who were determined to be positive, quarantining those who were exposed, and very rapidly drove down the numbers across the organization -- a manifestation of how the organization was able to implement its Playbook.

**NYPA/CANALS Return to the Workplace**

The Authority is methodically returning its approximately 2400 employees back to work as it un-pauses its capital and maintenance program, both at NYPA and Canals. On October 5th, the Authority plans to allow additional employees, both full-time and part-time, who have been working remotely, to re-enter the workplace based on the Playbook. The management team has been managing this process successfully.

**Capital Summary**

President Quiniones said that the management team at both NYPA and Canals have done a great job in un-pausing the capital work. By the end of the year, NYPA and Canals will be able to execute projects for approximately 80 percent of the original budget which the Board approved last December. All the projects identified to be un-paused have been cleared to do so and work has restarted on almost 70 percent of those projects; the other projects are projected to be restarted shortly. President Quiniones continued that this is an improvement from the report to the Board in July, and a credit to the employees of the Power Authority and Canal Corporation.

**Fourth Quarter Report**

President Quiniones reported that one of the key activities scheduled for the 4<sup>th</sup> quarter is a Strategy Workshop with the Board to finalize the NYPA 2030 Strategic Plan in October with a follow-up in November. The Finance Committee is scheduled to meet in November, and, in December the Board will be requested to approve the Authority's Budget and Strategic Plan. In addition, the Audit Committee is also scheduled to meet in December.

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

Mr. Joseph Kessler, Executive Vice President and Chief Operations Officer, provided highlights of Utility Operations' performance to the Board. (Exhibit "4b-A"). He said that Utility Operations exceeded all of its performance metrics for the reporting period. Although the Dart Rate is not at "0" it exceeded the performance target and Utility Operations will make every effort to continue that trend through the end of the year.

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

Generation Market Readiness

- Generation Market Readiness factor was at 99.96%. This is above the target of 99.40%.

Transmission System Reliability

- Transmission System Reliability factor was 96.37%. This is above the target of 92.85%.

Environmental Incidents

- Year-to-date, there were 18 incidents. The Target is not to exceed 28 incidents.

Safety

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

- The year-to-date DART Rate is 0.08. The target is 0.78.

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

Ms. Sarah Salati, Executive Vice President and Chief Commercial Operations Officer, provided highlights of the report to the Board (Exhibit "4c-A"). She said that despite the impacts with the COVID-19 pandemic, Commercial Operations was able to manage its operations.

**Electricity Supply**

**Merchant Gross Margin**

The expected value target that was set in last year's budget for the Merchant Gross Margin was \$335 million; currently, Commercial Operations is projecting this to be approximately \$300 million.

This year, we experienced the third warmest winter on record since 1895, which had an impact on energy prices, as well as load, because of supply and demand. In addition, the COVID-19 pandemic had a significant impact on load, with the reduction of almost 15% at the height of the pandemic in April and May. Although some of the prices have stabilized, the Authority will not be able to make up for the impact to its merchant margin in the first half of the year.

Commercial Operations will continue to monitor and hedge it and look to next year to ensure that the Authority has greater stability in its Merchant Gross Margin.

**Economic Development**

The Authority has supported its customers through the allocation of more than 70 percent of the hydro programs that it has to offer, continues to support capital commitments and job retention in the state and looks forward to furthering the economic recovery of New York State.

The COVID-19 pandemic has had an impact on Commercial Operations Construction Portfolio.

**Clean Energy Solutions**

Although staff work remotely to continue to execute contracts, which represents the pipeline that will be implemented physically, Commercial Operations is behind in its revenue stream because of a four-month pause and un-pause, and it took some time to recommence work with the contractors. However, staff is working vigorously to accelerate those projects and timelines, where possible.

**EVolve**

Commercial Operations paused its EVolve projects but is now back on track to support getting to approximately 40 public DC Fast Charging Ports over the State by the end of the year. On September 22, the Authority, along with the Lieutenant Governor, had the grand opening of its first public electric charging stations in Lagrangeville, NY.

**New York Energy Manager**

The Authority is on track with reinforcement of the ability to deliver value from its digital platform, the New York Energy Manager.

**Key Milestones in Customer Support**

**Account Center**

Through its Account Center, Commercial Operations continues to identify ways to better serve its customers, making sure that they are improving the services as well as communicating with the customers.

**Customer Satisfaction – COVID Survey**

NYPA's responses to the question "*How would you rate your utility's COVID Response*" was above the national average and above the JD Power Eastern Utilities responses, which is encouraging and a testament to the work that the Authority has been doing in this regard.

**NYS Economic Development**

Since March, the Authority has received capital commitments of more than \$1.5 billion; job commitments of more than 52,000 and supported awards of hydropower to 70 businesses and organizations across the state.

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

Mr. Adam Barsky, Executive Vice President and Chief Financial Officer, provided highlights of the report to the Board. (Exhibit "4d-A"). He said the report will summarize the detailed discussions of the current year's results and year-end forecasts at the Finance Committee meeting earlier.

**Year-end Projection (January – December 2020)**

The year-to-date Net Loss is \$18 million. The Authority is forecasting an end-of-year \$26 million Net Loss as its higher probability expected case at this time. On a conservative basis, that Net Loss is within a range that could go to \$30 million in either direction, given some of the uncertainties and volatilities the Authority continues to face. That range band is expected to narrow by the end of the year, and this will be discussed further at the next meeting.

**Full-Year Variance Analysis**

**Net Income**

Budgeted year-end Net Income \$41,473

**Operating Variances**

**Merchant Portfolio**

Margins – Generation (\$55,613) – Driven by lower market prices and the resulting decrease of projected market-based power sales

Margins – Transmission (\$12,830) – Due to higher than budgeted Hudson Transmission Partners (HTP) and RTEP payments, offset by increased Transmission Revenue Requirement.

Margins – Non-Utility (\$6,081) – Due to lower than budgeted Energy Efficiency revenue.

Operating Expenses (\$2,392) – Due primarily to an increase in operating and maintenance expenses as the YTD reductions driven by the COVID-19 pandemic are expected to reverse within the balance of the forecast period. Other expenses have also increased driven primarily by the COVID-19 response efforts.

Non-Operating Expenses \$8,615 – Primarily due to a realized gain on sale of securities and lower than budgeted depreciation, partially offset by mark-to-market losses on the Authority's investment portfolio.

The two main underlying drivers of the major variances (\$76 million) are: (1) the Earnings before Interest Depreciation & Amortization (EBIDA) or operating income – \$59 million or 77% of that variance was detailed as being attributable to the impact of the COVID-19 pandemic; and (2) The ruling regarding the RTEP charge associated with the Authority's HTP line.

Mr. Barsky ended by saying that, although projecting a Net Loss, the Authority's Balance Sheet remains very strong; its liquidity is strong; its high-quality AA credit ratings are intact; and its underlying business fundamentals from which its financials is being tracked remains on target as the Authority moves forward and merge from the COVID-19 Pandemic.

**e. Finance Committee Report**

Chairperson Tracy McKibben reported that the Finance Committee met earlier today, adopted the Minutes of the last meeting, and received four staff reports that concluded into 9 items that are now submitted to the Boards for approval. The items for approval are regarding the Authority's operations and one for the Canal Corporation:

**Canal Corporation**

1. \$22.6 million in funding to support operations of the Canal Corporation.

**Legal Operations - Licensing**

1. \$13.3 million in additional funds for compliance, implementation and settlement activities associated with the New License for the St. Lawrence/FDR Power Project.

**Utility Operations**

1. \$25.0 million for on-call general maintenance services for the SENY Region facilities.
2. \$30 million which represents the Authority's share of the costs to replace Phase Shifters PSR33 and PSR34 associated with L33P and L34P transmission lines.
3. \$24.8 million for Phase 2 of the Rotor Modification for Stress Redistribution Project which includes upgrades to the remaining thirteen generating units at the St. Lawrence-FDR Power Project.
4. \$27.7 million for implementation of the TLEM Tower Coating Upgrades Project for Central New York Region.
5. \$29.3 million for implementation of the TLEM Tower Coating Upgrades Project for Western New York Region.

**Commercial Operations**

1. \$150 million for construction services contracts for the LED Street Lighting Direct Install Program for energy efficiency customers.
2. \$10 million for construction services for the Authority's energy efficiency efforts.

In addition, the Committee recommended that the Trustees adopt one additional Utility Operation item that was previously considered by the Finance Committee in July, a 15-year contract in the amount of \$12.7 million, that includes \$2.4 million in escalation over the life of the contract, to *GE Renewables US LLC* of Greenwood Village, for design, manufacture, and delivery for Niagara Power Project Mechanical and Electrical Upgrades Project – Wicket Gate.

The vote on this item was further deferred for consideration at the December 9th Board meeting.



**i. Financial Operations**

**1. Release of Funds in Support of the New York State Canal Corporation**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to authorize the release of an additional up to \$22.6 million in funding to the New York State Canal Corporation ('Canal Corporation') to support the operations of the Canal Corporation in calendar year 2020. The amount requested is 25% of the Canal Corporation's 2020 O&M Budget. The Trustees have previously authorized the release of \$68.4 million to support the operations of the Canal Corporation for calendar year 2020.

The Finance Committee, at its September 23, 2020 meeting, recommended that the Trustees authorize the release of this additional funding.

**BACKGROUND**

The Authority has been authorized to provide financial support for the Canal Corporation. See, e.g., Public Authorities Law § 1005-b(2). However, certain expenditures associated therewith do not constitute Capital Costs or Operating Expenses ('Operating Expenses') as defined in the Authority's General Resolution Authorizing Revenue Obligations dated February 24, 1998, as amended and supplemented ('Bond Resolution'). Expenditures for the Canal Corporation's operating purposes that do not constitute Capital Costs or Operating Expenses must satisfy the requirements of the Authority's Bond Resolution relating to the release of funds from the trust estate created by the Bond Resolution for lawful corporate purposes. In addition, as set forth in the Trustees' Policy Statement dated May 24, 2011, a debt service coverage ratio of 2.0 is to be used as a reference point in considering any such release of funds.

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

Under the Bond Resolution, Capital Costs (which includes capital costs related to the Canal Corporation) may be paid without satisfying the provision described above.

**DISCUSSION**

With this authorization, the Trustees will have authorized the release of a cumulative \$91.0 million, an amount equal to 100% of the Canal Corporation's 2020 O&M Budget.

Staff has reviewed the effect of releasing up to an additional \$22.6 million in funding at this time on the Authority's expected financial position and reserve requirements. In accordance with the Board's Policy Statement adopted May 24, 2011, staff calculated the impact of this release, together with the last 12 months releases including (i) the release of \$30 million in Recharge New York Discounts for 2020, (ii) the release of up to \$91.0 million in Canal-related operating expenses for 2020 (\$22.6 million authorized in December 2019, \$22.6 million authorized in March 2020, and \$22.6 million of which the Trustees are

being asked to authorize at this May 2020 meeting), (iii) the release of up to \$2 million in Western NY Power Proceeds net earnings, and (iv) the release of up to \$1 million in Northern NY Power proceeds net earnings, on the Authority's debt service coverage and determined it would not fall below the 2.0 reference level. Based on the Authority's Four-Year Budget and Financial Plan, the 2.0 reference point level is forecasted to be met at each year-end of the forecast period 2020-2023. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to release such amounts from the trust estate created by the Bond Resolution consistent with the terms thereof.

#### FISCAL INFORMATION

Staff has determined that sufficient funds are available in the Operating Fund to release an additional up to \$22.6 million in funding to support the operation of the Canal Corporation in calendar year 2020. Staff has further determined that the amounts presently held in reserves in the Operating Fund are adequate for the purposes specified in Section 503.2 of the Authority's Bond Resolution and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution.

The expenses associated with the operations of the Canal Corporation for calendar year 2020 were included in the Canal Corporation's 2020 O&M Budget and the Authority's 2020 Budget.

#### RECOMMENDATION

The Chief Financial Officer and the Finance Committee recommend that the Trustees authorize the release of an additional up to \$22.6 million in funding to the Canal Corporation to support the operations of the Canal Corporation in calendar year 2020. The Chief Financial Officer further recommends that the Trustees affirm that such release is feasible and advisable, that the amounts presently set aside as reserves in the Operating Fund are adequate for the purposes specified in Section 503.2 of the Authority's Bond Resolution, and that the amount of up to \$22.6 million is not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution.

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

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

**RESOLVED, That the Trustees hereby authorize the release of an additional up to \$22.6 million in funding to the Canal Corporation to support operations of the Canal Corporation in calendar year 2020, as discussed in the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the amounts presently set aside as reserves in the Operating Fund are adequate for the purposes specified in Section 503.2 of the Authority's Bond Resolution, that the amount of up to \$22.6 million in funding as described in the foregoing report is not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented, and that the release of such amount is feasible and advisable; and be it further**

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

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

ii. Legal Operations – Licensing

1. **St. Lawrence/FDR Power Project Relicensing – Increase in Authorized Spending Limit for Compliance with New License and Implementation of Settlement Agreements – Capital Expenditure Authorization Request**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to authorize an additional \$13.3 million in funding related to compliance with requirements of the License for the St. Lawrence/FDR Power Project ('Project') that the Federal Energy Regulatory Commission ('FERC') issued in October 2003, and funds related to the implementation of settlement agreements between the Authority and various parties as a result of the relicensing, bringing the total authorization to \$182.3 million.

On October 23, 2003, FERC issued the Order for a new License. Overall, the Order was consistent with the license application and the Offer of Settlement and, at their meeting of November 25, 2003, the Trustees approved the acceptance of the new License. Acceptance of the new License obligates the Power Authority to the conditions of the new License and the commitments in the settlement agreements.

On December 16, 2003, the Trustees authorized funding of \$169 million for costs related to compliance with requirements of the second fifty-year License for the Project. To date, \$168.7 million has been expended relating to the settlement agreements with local governments, state and federal resource agencies and non-governmental organizations, the construction of habitat improvement projects ('HIPS'), shoreline stabilization projects, and construction and refurbishment of recreational facilities. Additional funding is needed due to ongoing HIPS commitments, the construction of a field office to allow DEC staff to continue maintenance of the Wilson Hill Wildlife Management Area ('WHWMA') and several other HIPS, and additional obligations arising from ongoing regulatory compliance.

The Finance Committee, at its September 23, 2020 meeting, adopted a resolution that the Trustees authorize the aforementioned request.

DISCUSSION

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

Certain HIPS have not achieved the levels required by the settlement agreements with the resource agencies, requiring additional time and funding to reach the stated goals. One such HIP is an effort to establish nesting habitat for the Common Tern, which is a New York State listed threatened species. To date, the goal of 1400 nesting pairs has not been reached, and, as required by the settlement agreements, the Power Authority consulted with the agencies on new measures to meet the goal. Accordingly, the Power Authority will incorporate a barge to provide an additional habitat for the birds and to help protect the nests from predation. The cost of acquiring a barge, positioning it, and establishing nesting habitat upon it will approach \$1 million.

Moreover, new obligations were identified requiring additional funding to meet regulatory standards and remain in compliance. Among the new mandates is the refurbishment of a historic bathhouse at the Long Sault Campground and the resubmission of the Project's Recreation Plan to better update the information of the facilities and amenities available to the public; both of these projects are a

result of an environmental inspection by FERC conducted in July 2017. The cost for these two projects approaches \$800,000.

The Power Authority is pursuing the construction of a field office for DEC located on Project lands. The License requires the Power Authority to ensure ongoing management of the HIPS operation and maintenance efforts that will maintain compliance of the projects for the term of the License. Through a funding agreement with the Power Authority, DEC has taken on the role to operate the constructed HIPS, including those at WHWMA, and to ensure each is performing as expected and remaining in compliance. This effort requires two full-time and two part-time employees along with an investment in vehicles, boats, and other equipment. The duties span over 40 miles from end-to-end and include over 25 different sites of the various HIPS. A centralized office will accommodate the personnel and equipment and will better serve the duties of DEC relative to the WHWMA and HIPS. The construction of this facility will approach \$2 million.

Other obligations that require additional funding include the Shoreline Stabilization Program \$2,500,000, Lake Sturgeon Spawning Beds \$750,000, Osprey Nesting Platforms \$100,000, and the final phase of the Little Sucker Brook HIP \$1,100,000.

#### FISCAL INFORMATION

The current cost of implementing the requirements of the new License and the commitments included in the settlement agreements are estimated at \$169 million. This cost includes escalation beyond 2003, an allocation for indirect costs and a contingency on environmental projects, recreation projects and implementation costs.

The Trustees are requested to authorize an additional \$13.3 million in funding for compliance and implementation work related to environmental projects, recreational projects and settlement payments costs, escalation, contingency and allocation for indirect costs bringing the total authorization to \$182.3 million.

As these expenditures are related to the implementation of commitments in the new License and the settlement agreements, payments will be made from St. Lawrence accounts for relicensing and construction.

#### RECOMMENDATION

The Executive Vice President and General Counsel, the Executive Vice President and Chief Operating Officer, the Director of Licensing and the Finance Committee recommend that the Trustees authorize the additional funds of \$13.3 million bringing the total authorized capital expenditures to \$182.3 million for compliance, implementation and settlement activities associated with the new license for the St. Lawrence/FDR Power Project.

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

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

**RESOLVED, That in accordance with the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$13.3 million are hereby approved to facilitate and accomplish implementation of, and compliance with, the new License issued by the Federal Energy Regulatory Commission for**

the St. Lawrence-FDR Power Project, as well as the settlement agreements associated therewith;

<u>Capital</u>	<u>Expenditure Authorization</u>
St. Lawrence/FDR Power Project Relicensing – Compliance with New License and Implementation of Settlement Agreements	<u>\$13.3 million</u>

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

### iii. Utility Operations

#### 1. **Procurement (Services) Contract – On-Call General Maintenance Services for Southeast New York Region**

The President and Chief Executive Officer submitted the following report:

##### “SUMMARY

The Trustees are requested to approve a five-year contract award in the amount of \$25 million to Fresh Meadow Power LLC of Queens, New York, for on-call general maintenance services for the Southeast New York ('SENY') Region facilities.

The Finance Committee, at its September 23, 2020 meeting, adopted a resolution recommending that the Trustees approve the award of the above five-year contract.

##### 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. Additionally, in accordance with the Authority's Expenditure Authorization procedures, the award of non-personal services contracts exceeding \$6 million requires the Trustees' approval.

##### DISCUSSION

The Authority has used On-Call General Maintenance Services in the SENY Region for the last fifteen (15) years. These services include onsite welding services, electrical maintenance, balance of plant equipment maintenance, large pump and motor replacement, installation and alignments, Heat Recovery Steam Generator('HRSG') catalyst work and replacements, Instrumentation and Controls, and certified HRSG and power piping repairs.

The Authority posted a Request for Proposal ('RFP'), No. Q20-6881HM, for On-Call General Maintenance Services for the SENY Region in the New York State *Contract Reporter* and on the Authority's ARIBA portal on January 28, 2020. Thirty-eight (38) firms are listed as having reviewed the notice/bid document.

On Friday, March 13, 2020, two proposals were received from the following firms which were posted to the NYPA Ariba sourcing site:

1. Fresh Meadow Power, LLC
2. ACME Industrial Inc.

The table below provides a comparison of the hourly rates quoted/bid by both Bidders for their different Skill Level Labor/Craft.

<b>Craft/Trade(s)</b>	<b>Fresh Meadow Power LLC</b>	<b>ACME Industrial Inc.</b>
Site Supervisor	\$175.00	\$160.00
Millwright	\$160.33	\$270.00
Steam/Pipe Fitter	\$173.04	\$285.00
Electrician	\$165.32	\$280.00
I&C Tech	\$195.31	\$160.00
Laborer	\$122.29	\$215.00

ACME Industrial Inc. failed to submit its own Quality Assurance ('QA') Manual(s), ASME Certification or any proof to validate that they are a National Board Certified Boiler Repair contractor with an 'R' and a 'VR' stamp, which is an essential and vital part of the On-Call General Maintenance Services Agreement, especially for two of the SENY facilities, The Eugene W. Zeltmann and The Richard M. Flynn Plants. ACME quoted hourly rates higher than its competitor for the trade workers by approximately 45%, on average. The Minority/Women-Owned Business Enterprise ('M/WBE') firms which ACME intended to engage for this work are not New York State certified entities. Their intended Service-Disabled Veterans-Owned Business ('SDVOB') firm, DMC Industrial, did not meet the criteria to qualify as an SDVOB firm.

Fresh Meadow Power ('FMP') is the incumbent contractor for the On-Call General Maintenance Services Agreement and its contract is valid to May 31, 2021. FMP has successfully provided these required On-Call Maintenance services to the Authority's SENY Region and has met the Authority's Quality Assurance/Control, performance, and safety requirements. FMP filed Waiver Request to waive the M/WBE and the SDVOB participation goals which were reviewed and were considered reasonable by the NYPA Supplier Diversity ('SDP') group. FMP took no other exceptions to the Authority's bid documents, commercial Terms and Conditions. All the technical and commercial exceptions that required clarifications related to FMP's bid have been addressed, negotiated, and mutually agreed to.

#### FISCAL INFORMATION

This contract is a Transactional Agreement; all funds will be released into individual Purchase Order Requests that will abide by and follow all the Authority's Expenditure Authorization Procedures. Maintenance on the SENY Facilities is budgeted out for five years and is represented in the Regional Asset Management Plan ('RAMP'). All currently identified risks associated with the Fleet are documented in the Risk Registry. All projects upgrades will be clearly defined in the Utility Operations Project Portfolio ('UOPP') and proceed through the UOPP Approval processes, as required.

#### RECOMMENDATION

The Senior Vice President – Power Supply, the Regional Manager – Southeast New York ('SENY') recommends that the Trustees approve the award of a five-year contract agreement in the amount of \$25,000,000 to Fresh Meadow Power LLC., required for the General Maintenance Service Agreement for the SENY Region.

The Finance Committee, at its September 23, 2020 meeting adopted a resolution that the Trustees approve the award of this contract agreement.

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

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

**RESOLVED, that pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted to approve a five-year contract award in the amount of \$25 million to Fresh Meadow Power LLC., of Queens, NY for the Southeast New York ("SENY") Region's General Maintenance Service Agreement for repairs and upgrades.**

<u>Contractor</u>	<u>Contract Amount</u>
Fresh Meadow Power, LLC	
Queens, NY	<u>\$25,000,000</u>
(Q20-6881HM)	



**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.**

**2. Transmission Line L33P and L34P Interconnections:  
Replacement of Phase Shifters – Capital Expenditure  
Authorization Request**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to approve capital expenditures in the amount of \$30 million, representing the Authority's share of the replacement costs of Phase Shifter Regulating Transformer PSR33 and Phase Shifter Regulating Transformer PSR34, referred to hereafter as 'Cost-Shared Equipment Requiring Replacement' Project.

Capital Expenditures in the amount of \$600,000 for preliminary engineering and payment to Hydro-One of 483 Bay Street, 15<sup>th</sup> floor, North Tower, Toronto, Ontario, Canada, were previously approved by the President and Chief Executive Officer in July 2020, bringing the total estimated Project cost to \$30.6 million.

The Finance Committee, at its September 23, 2020 meeting, adopted a resolution that the Trustees approve the above capital expenditures.

**BACKGROUND**

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

The Project will replace the existing Phase Shifter Regulating transformers PSR33 and PSR34, which are part of the 230kV transmission lines L33P and L34P.

L33P and L34P, jointly owned by the Authority and Hydro-One, connect Hydro-One's transmission network to the Authority's transmission network. They originate from Hydro-One's St. Lawrence Transformer Station in Ontario and terminate in the Authority's Robert Moses switchyard in northern New York.

Under normal operating conditions, the phase shifters are used to regulate and maintain power flow exchange between New York State and Ontario, to provide balance between the interconnected transmission networks. Under emergency conditions, the phase shifters are used to transfer power to assist the entity experiencing reduction in power output due to the loss of generation, or to help channel power flow to nearby transmission lines to relieve transmission overload.

**DISCUSSION**

The Authority and Hydro-One entered into and formed Parties to an Interconnection Facilities Agreement ('IFA') effective March 31, 2007, that governs the operation of the L33P and L34P Interconnection facilities.

Pursuant to the terms of the IFA, the Authority and Hydro-one entered into a Memorandum of Understanding ('MOU'), on May 1, 2020, identifying phase-shifting transformer PSR34, in operation since 1978, and phase shifting transformer PSR33, in operation since 1962, to be equally owned by the Authority and Hydro-One, and subject to cost sharing for their replacements.

PSR33 and PSR34 have experienced multiple failures throughout their operation. Most recently, PSR33 has experienced a failure deemed to be more sensible to replace than repair. Similarly, PSR34 is considered nearing the end of its useful life, requiring replacement.

The capital expenditures will cover the Authority's share of the replacement cost for transformers PSR33 and PSR34. It will also cover the additional work that may be required at the St. Lawrence Robert Moses Switchyard for the protection of lines L33P and L34P due to this equipment replacement.

Pursuant to the terms of the MOU, project execution will occur in 3 phases over a 3-year period. Phase 1 involves equipment procurement by Hydro-One in 2020 for the Cost-Shared Equipment Requiring Replacement. Phase 2 involves the installation, testing and commissioning of the new transformer PSR33 to be completed in 2022. Phase 3 involves the installation, testing and commissioning of the new transformer PSR34 and project closeout, to be completed in 2023.

Capital Expenditures in the amount of \$600,000 were previously approved in July 2020, for preliminary engineering, and payment to Hydro-One.

The total capital expenditure authorization request is comprised of the following:

Engineering/Design	\$ 2,362,500
Procurement of Equipment	\$ 13,750,000
Construction/Installation	\$ 10,268,800
Project Closeout	\$ 104,000
Authority Direct and Indirect Expenses	<u>\$ 3,514,200</u>
TOTAL	\$ 30,000,000

The proposed spending for this Project is included in the approved Four-Year Capital Plan.

#### FISCAL INFORMATION

Payment associated with this Project will be made from the Authority's Capital Fund and will be recovered under the Authority's FERC approved formula rate.

#### RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Regional Manager – Transmission, the Vice President – Project Management, and the Senior Program Director recommend that the Trustees approve capital expenditures in the amount of \$30 million for the Authority's share of the Cost-Shared Equipment Requiring Replacement Project.

The Finance Committee, at its September 23, 2020 meeting, adopted a resolution that the Trustees approve the capital expenditures.

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

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

**RESOLVED, That pursuant to the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$30 million are hereby authorized for the Authority's share of the replacement costs of Phase Shifter Regulating transformer PSR33 and Phase Shifter Regulating transformer**

PSR34, collectively referred to hereafter, as “Cost-Shared Equipment Requiring Replacement” Project, in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the Authority’s share of the Cost-Shared Equipment Requiring Replacement Project.

<u>Capital</u>	<u>Expenditure Authorization</u>
Transmission Line L33P and L34P Interconnections - Replacement of Phase Shifters	<u>\$30,000,000</u>

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

**3. St. Lawrence-FDR Power Project – Rotor Modification for Stress Redistribution – Phase 2 – Revised Capital Expenditure Authorization Request**

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The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to approve capital expenditures in the amount of \$24,848,200 for Phase 2 of the Rotor Modification for Stress Redistribution project which includes upgrades to the remaining thirteen generating units at the St. Lawrence-FDR Power Project ('Project'). The work being performed on the remaining thirteen generator units is planned to be completed by the end of 2035.

Capital Expenditures in the amount of \$1,878,216 for preliminary engineering were previously approved by the President and Chief Executive Officer. Subsequently, capital expenditures in the amount of \$5,345,400 for upgrades to the first three generating units were approved by the Trustees in September 2017. At that time, the total project was estimated at approximately \$32 million. The total project costs at this time is nearly unchanged at \$32,017,816.

The Finance Committee, at its September 23, 2020, meeting, adopted a resolution recommending that the Trustees approve the additional capital expenditures.

**BACKGROUND**

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

During the final stages of the St. Lawrence Life Extension and Modernization Program, significant cracks were discovered in the arms of the generator rotors in the last two units. Further propagation of the cracks could have rendered the units inoperable or could lead to a potentially catastrophic failure. The cracks were immediately repaired, and the units returned to service without additional costs and downtime. Further investigation of the remaining units revealed propagation of smaller cracks of varying severity in the same general areas which needed to be addressed.

The Authority's staff recognized the criticality and the need for a two-phased approach for the repairs. First, implement an immediate inspection program with temporary repairs of the cracks. Second, set in place a program for a long-term solution, including possible modifications and structural upgrades to the rotor spiders.

**DISCUSSION**

Authority staff has performed extensive investigations and analyses relative to this condition with results and recommendations presented in the engineering reports titled, 'Engineering Assessment Generator Rotor Spider Arm Cracks,' December 15, 2014, and 'Supplement to Engineering Assessment Generator Rotor Spider Arm Cracks,' November 8, 2016. The main report attributes the cracking primarily to the number of start/stop cycles for the age of the units, which result in high stresses in critical areas of the rotor frame, particularly in areas of discontinuities. The supplemental report addresses specifically the potential cracking of the ledges at the outer end of the rotor spider which supports the rotor ring.

Overall, the rotor frame repair program will address specific recommendations for crack repairs, structural reinforcements, rounding of discontinuities and weld modifications to reduce stress concentrations. Compared to the cost of replacing the rotors, the proposed long-term program of repairs and modifications to the generator rotors is the most cost-effective approach for long-term reliable operation of the units.

The sequence of work will consist of: disassembly and staging of the rotor, followed by total paint removal and abatement, crack repair and welding of gusset plates, post-weld heat treatment, final surface preparation, prime and finish coat application, and unit reassembly and testing prior to return to service. All work will be performed within the Erection Bay of the St. Lawrence-FDR Power Project. A six-month outage is anticipated per unit specifically for this work. To date, work has been completed on three rotors.

The majority of the work is performed by Authority craft personnel with support from external contractors, primarily for paint abatement and weld treatment. These external services contracts were previously approved by the Trustees at the July 2020 meeting.

The work being performed on the remaining thirteen generator units is planned to be completed by the end of 2035.

#### FISCAL INFORMATION

Payment associated with this Project will be made from the Authority's Capital Fund. Funding in the amount of \$7,223,616 has been authorized, to date, for the Project, which is estimated at a total of \$32,017,816 to complete preliminary engineering, detailed engineering and design, procurement, implement construction, and Authority direct/indirect costs. This authorization in the amount of \$24,848,200 is projected to be the last authorization for the Project.

The total cost for Phase 2 of the Project is summarized as follows:

Preliminary Engineering and Design	\$1,878,216
Engineering/Design	\$2,095,700
Procurement	\$3,346,200
Construction/Installation	\$20,320,700
Authority Close-Out, Direct and Indirect Expenses	\$4,431,000
<b>TOTAL</b>	<b>\$32,071,816</b>

#### RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Senior Vice President – Power Supply, the Vice President – Project Management, the Vice President – Strategic Supply Management, the Regional Manager and the Program Director recommend that the Trustees approve additional capital expenditures in the amount of \$24,848,200 for Phase 2 of the Rotor Modification for Stress Redistribution Project which includes upgrades to the remaining thirteen generating units at the St. Lawrence-FDR Power Project.

The Finance Committee, at its September 23, 2020 meeting, adopted a resolution that the Trustees approve the capital expenditures.

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

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

**RESOLVED, That in accordance with the Authority's Capital Planning and Budgeting Procedures, the Authority will use Capital**

Funds, which may include proceeds of debt issuances, to finance the costs of the of the St. Lawrence-FDR Power Project Rotor Modification for Stress Redistribution Project.

<u>Capital</u>	<u>Expenditure Authorization</u>
Rotor Modification for Stress Redistribution	<u>\$24,848,200</u>

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

4. **Niagara Power Project – Next Generation Niagara  
Program Mechanical and Electrical Upgrades –  
Wicket Gate Procurement – Contract Award**

**This item was deferred.**



**5. Transmission Life Extension & Modernization Program – Tower Coating Upgrades Project for the Central NY Region – Capital Expenditure Authorization Request**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to approve capital expenditures in the amount of \$27.7 million for the Transmission Life Extension & Modernization ('TLEM') Tower Coating Upgrades Project for the Central NY Region ('Project').

The Finance Committee, at its September 23, 2020 meeting, adopted a resolution that the Trustees approve the capital expenditures.

**BACKGROUND**

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

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

The Authority's transmission assets require continued field assessment and recoating to extend the longevity of critical components, achieve compliance with regulatory requirements and maintain system reliability. Existing coating conditions on steel towers supporting the Central Region transmission lines warrant a new program of recoating to protect painted and galvanized steel surfaces.

**DISCUSSION**

The scope-of-work includes surface preparation and recoating towers on approximately 1,049 transmission structures. The transmission lines effected are: Edic to Fraser Substations ('EF'); Utica to Coopers Corner ('UCC'); Coopers Corner to Rock Tavern ('CCRT'); Roseton to Fishkill ('RFK'); Crescent, Vischer Ferry Substations, Atomic to Woodlawn river crossings, and Lock #7 tower crossings. This project was recently reclassified from O&M to Capital expenditure.

Project execution is planned to occur over a four-year period. The Trustees approved a contract award at their January 29, 2020 meeting. The tower coating upgrades is planned for completion in 2024, subject to approved outages. In support of the Project schedule, the Trustees approved a four-year construction contract award at their January 29, 2020 meeting.

The total capital expenditure authorization request is comprised of the following:

Preliminary Engineering/Design	\$ 160,100
Procurement of Equipment	\$ 0
Construction/Installation	\$23,390,000
Project Closeout	\$ 181,500
Authority Direct and Indirect Expenses	<u>\$ 3,932,100</u>
TOTAL	\$27,663,700

The proposed spending for this Project is included in the approved Four-Year Capital Plan.

FISCAL INFORMATION

Payment associated with this Project will be made from the Authority's Capital Fund and will be recovered under the Authority's FERC approved formula rate.

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Regional Manager – Transmission, the Vice President – Project Management, the Vice President – Strategic Supply Management, and the Senior Program Director recommend that the Trustees approve capital expenditures in the amount of \$27.7 million to implement the Transmission Life Extension & Modernization("TLEM") Tower Coating Upgrades for Central NY Region.

The Finance Committee, at its September 23, 2020 meeting, adopted a resolution that the Trustees approve the capital expenditures.

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

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

**RESOLVED, That pursuant to the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$27.7 million are hereby authorized for the Transmission Life Extension & Modernization ("TLEM") Tower Coating Upgrades for Central NY Region in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of the TLEM Tower Coating Upgrades Project for the Central NY Region.**

<u>Capital</u>	<u>Expenditure Authorization</u>
TLEM - Tower Coating Upgrades CNY	<u>\$27,663,700</u>

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

**6. Transmission Life Extension & Modernization Program –  
Tower Coating Upgrades Project for the Western NY  
Region – Capital Expenditure Authorization Request**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to approve capital expenditures in the amount of \$29.3 million for the Transmission Life Extension & Modernization ('TLEM') Tower Coating Upgrades Project for the Western NY Region ('Project').

The Finance Committee, at its September 23, 2020 meeting, adopted a resolution recommending that the Trustees approve the capital expenditures.

**BACKGROUND**

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

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

The Authority's transmission assets require continued field assessment and recoating to extend the longevity of critical components, achieve compliance with regulatory requirements and maintain system reliability. Existing coating conditions on steel towers supporting the Western Region transmission lines warrant a new program of recoating to protect painted and galvanized steel surfaces.

**DISCUSSION**

In 2016, the recoating project commenced; 1,079 tower structures have been recoated to date, and 306 towers are planned to be recoated in 2021. The transmission lines affected are: Niagara to Syracuse (NS), Niagara to Rochester (NR), Syracuse to Rochester (SR), Rochester to Pannel (RP), Niagara to Beck Substations (PA), Clay to Edic (CE), and Pannel to Clay (PC). This project was recently reclassified as a Capital expenditure, based on a review of the scope-of-work.

A Request for Proposal ('RFP') is planned for 2021 to complete the remaining 1,441 Structures on the CE, and PC Transmission Lines. Project execution is planned to continue through 2025, subject to approved outages.

The total capital expenditure authorization request is comprised of the following:

Engineering/Design	\$ 787,500
Procurement of Equipment	\$ 0
Construction/Installation	\$22,554,000
Project Closeout	\$ 1,375,000
Authority Direct and Indirect Expenses	<u>\$ 4,622,200</u>
TOTAL	\$29,338,700

The proposed spending for this Project is included in the approved Four-Year Capital Plan.

FISCAL INFORMATION

Payment associated with this Project will be made from the Authority's Capital Fund and will be recovered under the Authority's FERC approved formula rate.

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Regional Manager – Transmission, the Vice President – Project Management, the Vice President – Strategic Supply Management, and the Senior Program Director recommend that the Trustees approve capital expenditures in the amount of \$29.3 million to implement the Transmission Life Extension & Modernization ('TLEM') Tower Coating Upgrades Project for Western NY Region.

The Finance Committee, at its September 23, 2020 meeting, adopted a resolution recommending that the Trustees approve the capital expenditures.

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

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

**RESOLVED, That pursuant to the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$29.3 million are hereby authorized for the Transmission Life Extension & Modernization ("TLEM") Tower Coating Upgrades Project for the Western NY Region in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of the TLEM Tower Coating Upgrades Project for the Western NY Region.**

<u>Capital</u>	<u>Expenditure Authorization</u>
TLEM - Tower Coating Upgrades WNY	<u>\$29,338,700</u>

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

#### iv. Commercial Operations

##### 1. **Energy Efficiency Program – Contract Award for Construction Services – LED Street Lighting Direct Install Program**

The President and Chief Executive Officer submitted the following report:

#### SUMMARY

The Trustees are requested to award construction services contracts to three firms, Candela Systems Corp., Hawthorne, NY, D&M Contracting, Inc., Elmsford, NY and E-J Electric T&D, LLC, Wallingford, CT in the aggregate amount of \$150 million for a term of up to 5 years for the LED Street Lighting Direct Install Program ('Program') for energy efficiency customers. The costs will be recovered directly from Program participants. The Program will be funded from amounts previously authorized by the Trustees for the Authority's Energy Efficiency Program ('EEP').

The Finance Committee, at its September 23, 2020 meeting adopted a recommendation that the Trustees authorize the award of a five-year, competitively bid contract to the above-mentioned firms for the LED Street Lighting Direct Install Program in the aggregated amount of \$150 million as part of the Authority's EEP.

#### BACKGROUND

Public Authorities Law 1005 (17) authorizes the Authority to finance and design, develop, construct, implement, provide, and administer energy-related projects, programs, and services.

Section 2879 of the Public Authorities Law and the Authority's Guidelines for Procurement Contracts require Trustee approval for procurement contracts involving services to be rendered for a period in excess of one year. Additionally, in accordance with the Authority's Expenditure Authorization Procedures, the award of construction services contracts exceeding \$6 million requires the Trustees' approval.

On February 19, 2018, the Governor announced the Smart Street Lighting NY Service which has a goal of converting 500,000 streetlights to LED technology by 2025. NYPA has been tasked with implementing 250,000 streetlight conversions in order to help achieve the State's goal. The conversions would yield estimated savings of 482 gigawatt hours annually and reduce the overall greenhouse gas emissions, which aligns with the State's goal of 40 percent reduction in emissions by 2030. The LED Street Lighting Direct Install Program will facilitate the conversion to LED street lighting and achieve associated energy savings.

The Program will provide customers with an expedited implementation model that will focus on a '1-for-1' replacement of existing street lighting systems. This service will help NYPA achieve the State's goals. Customers will be provided with a detailed street lighting evaluation and will receive contractor direct installation services to implement the LED conversions. This program will be available to all customers with qualifying projects as part of the Authority's efforts to convert standard streetlights to LED technology.

#### DISCUSSION

The Authority issued Request for Proposal ('RFP') No. Q20-6928DKT, which was advertised in the *NYS Contract Reporter* on March 16, 2020 and via the Authority's Ariba system. Thirty-three (33) bidders were invited to bid. On April 23, 2020 seven (7) proposals were received. The RFP was broken into ten (10) different service territories throughout New York State with bidders having the option to bid on any or all regions. As part of their proposals, bidders were asked to provide unitized pricing based on various fixture quantities as well as region(s) selected.

The evaluation team consisted of members from Clean Energy, Engineering & Construction Management, and Strategic Supply Management. Commercial evaluations of all bids were conducted by Strategic Supply Management to ensure the firms' financial viability and determine if any exceptions requested were acceptable. MBE and WBE commitments for all suppliers are 15% and SDVOB commitments for all suppliers are 6%.

The evaluation team performed a thorough technical evaluation of the firms and analyzed their pricing, experience, and capacity to meet the program's deliverables. D&M Electrical Contracting, Inc. has substantial experience working on NYPA street lighting projects and was the apparent low bidder. Candela Systems Corp. has been awarded previous NYPA lighting projects, are an MWBE and was the 2<sup>nd</sup> apparent low bidder. Candela Systems Corp. bid on all regions and can cover the entirety of NYS. E-J Electric T&D LLC was selected as the Contractor for NYPA's Street Lighting O&M program and can provide project continuity by performing both the LED conversion and the post installation O&M services to Customers. E-J Electric T&D LLC was the apparent 3<sup>rd</sup> low bidder.

Based upon a thorough analysis of the proposals, as well as reference checks, the Authority staff recommends the award of contracts to Candela Systems Corp., D&M Electrical Contracting, Inc., and E-J Electric T&D LLC.

#### FISCAL INFORMATION

The LED Street Lighting Direct Install Program will be made available to customers participating in the Authority's EEP and will be funded from amounts previously authorized for the Authority's EEP. Funding for the Authority's EEP is 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 Authority overheads and the costs of advancing funds, but excluding grants as applicable, for the LED Street Lighting Direct Install program will be recovered from the program participants.

#### RECOMMENDATION

The Executive Vice President and Chief Commercial Officer, the Senior Vice President - Clean Energy Solutions, the Vice President - Engineering & Construction Management, the Vice President - Strategic Supply Management, and the Finance Committee recommends that the Trustees approve the award of a competitively bid construction services contract to Candela Systems Corp., D&M Electrical Contracting, Inc., and E-J Electric T&D LLC in the aggregate amount of \$150 million for a term of up to 5 years.

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

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

**RESOLVED, That the Trustees, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, hereby grant approval to award contracts in the aggregate amount of \$150 million for up a term of up to five years to Candela Systems Corp., D&M Electrical Contracting, Inc., and E-J Electric T&D LLC for the LED Street Lighting Direct Install Program as part of the Authority's Energy Efficiency Program.**

<u>Contractor</u>	<u>Aggregate Contract Amount</u>
Candela Systems Corp. (MBE) Hawthorne, NY	
D&M Electrical Contracting, Inc. Elmsford, NY	<u>\$150,000,000</u>
E-J Electric T&D LLC Wallingford, CT	

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.

**2. Energy Efficiency Program – Direct Installation  
Services – Contract Award for Construction Services**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to approve the award of a construction services contract for direct installation electrical and lighting services to Graybar Electric Company, Inc. ('Graybar') of Clayton, Missouri for a total authorized amount of \$10 million for a term through January 31, 2023. The direct Installation model is designed to implement simple energy efficiency projects quickly and cost effectively. The costs will be recovered directly from program participants. The Program will be funded from amounts previously authorized by the Trustees for the Authority's Energy Efficiency Program ('EEP').

The Finance Committee, at its September 23, 2020 meeting, adopted a resolution that the Trustees authorize the award to Graybar Electric Company, Inc. in the amount of \$10 million for a term ending on January 31, 2023.

**BACKGROUND**

The Trustees' approval is being sought under Public Authorities Law §1005(17), which enables the Authority to finance and design, develop, implement, and administer energy related projects, and provide energy services for its customers. The Authority is adopting expedited project delivery methods to better meet customer needs with faster project delivery times. The Authority has been delivering small lighting projects to its customers with traditional project delivery models, including public solicitations of projects. The direct install delivery method of lighting projects will offer faster project cycle times and competitive pricing by bypassing a sometimes costly and timely design and bidding process and standardizing recommendations.

Section 2879 of the Public Authorities Law and the Authority's Guidelines for Procurement Contracts require the Trustees' approval of 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 construction services contracts in excess of \$6 million require the Trustees' approval.

**DISCUSSION**

Pursuant to Section 3.F of the NYPA Guidelines for Procurement Contracts (3/31/2020) 'Certain goods and/or services may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the State (e.g., the New York State Office of General Services ('OGS')) or Federal government (e.g., General Services Administration ('GSA')) or any city or municipality where the White Plains Strategic Supply Management ('SSM') Department, or facility SSM Departments, and the initiating department determine that a reasonable potential exists for cost savings or other benefits to the Authority and have approved the specifications and proposed terms and conditions of such contract.'

Accordingly, OMNIA Partners is a cooperative purchasing organization that allows government entities to access other competitively solicited contracts. The Authority has been a member of OMNIA since 2006 and is a signatory to a Master Intergovernmental Cooperative Purchasing Agreement by and between the Authority and OMNIA Partners. The Authority has utilized this OMNIA service for the purchase of equipment for NYPA facilities. The Authority will be utilizing Contract EV2370 – Electrical, Lighting, Data Communications and Security Products and Related Products, Services and Solutions that was publicly solicited and advertised by the city of Kansas City ('City') on behalf of itself and all states, local governments, school districts, and higher education institutions in the United States of America, and other government agencies and nonprofit organizations (herein 'Participating Public Agencies') under its RFP #EV2370 issued on September 6, 2017.



On October 6, 2017 the City received from the following offerors:

- Graybar Electric Company, Inc.
- HB (Delivering Systems LLC/DBA High Biometrics)
- SupplyFORCE

Upon evaluation, the City's committee elected to award a contract to the most responsive proposal, Graybar Electric Company, Inc., for electrical, lighting, data communications and security products and related products, services, and solutions. Using the Contract EV2370 will provide significant cost savings and other benefits including, but not limited to, an expedited implementation and delivery timeframe to the Authority. Additionally, the Authority's Business Development team reviewed the pricing provided by Graybar and validated the competitiveness and reasonableness of such pricing and terms in comparison to prior and current Authority Energy Services Programs solutions.

The delivery method being utilized is direct install with unitized pricing to expedite the project for completion in a shorter time frame. Unitized pricing was pre-negotiated to prevent the need for bidding on an individual project basis. Graybar will perform a scoping survey at assigned locations. That survey will generate a scope-of-work and cost and savings estimates. After the approval of the survey, a task order to implement the installation of lighting and other direct installation measures will be issued.

#### FISCAL INFORMATION

Funding for the Authority's EEP is 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 Authority overheads and the costs of advancing funds, but excluding grants as applicable, will be recovered from the customers.

#### RECOMMENDATION

The Executive Vice President and Chief Commercial Officer, the Senior Vice President - Clean Energy Solutions and the Finance Committee recommend the award of a competitively bid construction services contract to Graybar Electric Company, Inc. ('Graybar') of Clayton, Missouri, for a term ending on January 31, 2023 in the amount of \$10 million.

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

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

**RESOLVED, That the Trustees, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, hereby grant approval to award a contract to Graybar Electric Company, Inc., ("Graybar") of Clayton, Missouri, for an amount of \$10,000,000 for up to a term through January 31, 2023 for direct install electrical and lighting services throughout New York State.**

<u>Contractor</u>	<u>Contract Amount</u>
Graybar Electric Company, Inc. Clayton, Missouri	<u>\$10,000,000</u>

**AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and**

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

**f. Governance Committee Report**

**i. Ten-Point Racial Justice and Equity Plan – Authorization -- (Deferred)**

Chairman Koelmel said that the members engaged in informative discussion during the Governance Committee meeting earlier, one with enthusiastic support for the work outlined by staff. However, the Board ultimately agreed to defer action on staff's recommendation for specific funding authorization related to the Ten-Point Racial Justice and Equity Plan and asked Trustee Dennis Trainor, Chair of the Governance Committee, to provide an overview of the discussions.

Chair Dennis Trainor reported that the Governance Committee met earlier today and adopted a Consent Agenda consisting of minutes and reports regarding Procurement, Real Estate, and Ethics and Compliance and Enterprise Resilience.

He continued that the committee also received and discussed a report on the NYPA and Canal Corporation Racial Justice and Equity Plan which aims to move the Authority toward a more diverse, equitable and inclusive workforce, increase the commitment to environmental justice in underserved communities and increase the participation of Minority and Women-Owned businesses in the supply chain. The Plan will ensure that NYPA's culture, behaviors and actions demonstrates that diversity, equity, and inclusion are a priority, foster diversity in the supply chain and engage staff in expanding opportunities for students in underserved communities. He ended by saying that the Board believes that the Authority needs to take a bigger and bolder approach for this initiative and will make a decision on this request at the December Board meeting.

Chairman Koelmel added that a lot of great work has been done under Nancy Harvey's leadership and congratulated her on being the "quarterback" on this initiative. He continued that Victoria Daniels and Kaela Mainsah gave informative reports, and, as reported by the Chair of the Governance Committee, Dennis Trainor, the Board is incredibly supportive of their high energy and passionate work, to date, and look forward to an additional update in December at which time the Board expects to formally endorse and support the Plan that they have begun to develop and lean in to ensure that the Authority have the "best of class" outcomes consistent with NYPA's mission. He ended by saying "kudos," to Nancy Harvey on her appointment, and her team for the work that they have done, to date, and thanks to Dennis Trainor, Chair of the Governance Committee, for helping the Board "steer the ship" from the Board members' standpoint.

5. **Informational Item: NYPA's Dam Safety Program and External Audit Findings**

This report was deferred to the December 9th Board meeting.

**6. CONSENT AGENDA:**

On motion made by Vice Chair Nicandri and seconded by Trustee Trainor, the members approved the Consent Agenda.

**a. Commercial Operations**

**i. Recharge New York Power – New, Extended, and Modified Allocations**

The President and Chief Executive Officer submitted the following report:

**“SUMMARY**

The Trustees are requested to:

- (a) authorize the extension of the 5 allocations of Recharge New York (‘RNY’) Power awarded to the businesses listed in Exhibit ‘6a i-A’ as described below for a term of 7 years, to commence on the expiration of each such allocation, or in the Authority’s discretion, on a date to be agreed upon by the Authority and the customer for a term not to exceed 7 years (collectively, the ‘Extended Term’), subject to the following conditions: A customer whose allocation would be extended would have to agree to provide supplemental commitments for, among other things, jobs and capital investments, as it has in its current RNY Power agreement(s) with the Authority (collectively, ‘Current RNY Power Agreement’) for the length of any Extended Term, through the incorporation of such supplemental commitments in the proposed final contract that is executed by the parties. With respect to capital investments, the vast majority of RNY Power customers (i.e., those who do not have project/expansion capital investment commitments) would be expected to meet a minimum capital investment commitment;
- (b) approve a modification to the employment commitments and use of the RNY Power allocation for the customer listed in Exhibit ‘6a i-B’;
- (c) award new allocations of RNY Power available for ‘retention’ purposes to the businesses listed in Exhibit ‘6a i-C’ in the amounts indicated therein;
- (d) award new allocations of RNY Power available for ‘expansion’ purposes to the businesses listed in Exhibit ‘6a i-D’ in the amounts indicated therein;
- (e) award new allocations of RNY Power available for eligible small businesses and/or not-for-profit corporations to the entities listed in Exhibit ‘6a i-E’ in the amounts indicated therein; and
- (f) approve modifications related to the employment commitments of two existing RNY Power allocations for the customer listed in Exhibit ‘6a i-F.’

The sale of any extended or new allocation as proposed herein would be governed by the form of the RNY Power contract that was approved by the Trustees on March 26, 2019, and existing Authority Service Tariff RNY-1.

All the above actions have been recommended by the Economic Development Power Allocation Board (‘EDPAB’) at its September 22, 2020 meeting.

**BACKGROUND**

On April 14, 2011, Governor Andrew M. Cuomo signed into law the RNY Power Program as part of Chapter 60 (Part CC) of the Laws of 2011. The RNY Power Program is codified primarily in Economic Development Law (‘EDL’) §188-a and Public Authorities Law §1005(13-a) (the ‘RNY Statutes’). The program makes available 910 megawatts (‘MW’) of ‘RNY Power,’ 50% of which will be provided by certain Authority hydropower resources and 50% of which will be procured by the Authority from other sources. RNY Power contracts can be for a term of up to 7 years in exchange for job and capital investment commitments. RNY Power is available to businesses and not-for-profit corporations for job retention and business expansion and attraction.

As part of Governor Cuomo's initiative to foster business activity and streamline economic development, applications for all statewide economic development programs, including the RNY Power Program, have been incorporated into a single on-line Consolidated Funding Application ('CFA') marking a fundamental shift in how State economic development resources are marketed and allocated. Beginning in September 2011, the CFA was available to applicants. The CFA continues to serve as an efficient and effective tool to streamline and expedite the State's efforts to generate sustainable economic growth and employment opportunities. All applications that are considered for an RNY Power allocation are submitted through the CFA process.

RNY Power is available to businesses and not-for-profit corporations for job retention and business expansion and attraction purposes. Specifically, Chapter 60 provides that at least 350 MW of RNY Power shall be dedicated to facilities in the service territories served by the New York State Electric and Gas, National Grid, and Rochester Gas and Electric utility companies; at least 200 MW of RNY Power shall be dedicated to the purpose of attracting new businesses and encouraging expansion of existing businesses statewide; and up to 100 MW shall be dedicated for eligible not-for-profit corporations and eligible small businesses statewide.

'Eligible applicant' is defined by statute to mean an eligible business, eligible small business, or eligible not-for-profit corporation, however, an eligible applicant shall not include retail businesses as defined by EDPAB, including, without limitation, sports venues, gaming or entertainment-related establishments or places of overnight accommodations.

RNY Power allocation awards are comprised of 50% hydropower and 50% Authority-procured market power. Prior to entering into a contract with an eligible applicant for the sale of RNY power, and prior to the provision of electric service relating to the RNY power allocation, the Authority shall offer each eligible applicant the option to decline to purchase the RNY market power component of such allocation. If an eligible applicant declines to purchase the RNY market power component, the Authority has no responsibility for supplying such market power to the eligible applicant.

Under applicable law, applications for RNY Power are first considered by EDPAB. EDPAB is authorized to recommend applicants to the Authority's Trustees that it believes should receive an award of RNY Power based on applicable statutory criteria and other pertinent considerations. The criteria provided for in the RNY Statutes are summarized in Exhibit '6a i-H' to this report. An allocation recommended by EDPAB qualifies the subject applicant to enter a contract with the Authority for the purchase of the RNY Power if the Authority makes an allocation award.

In arriving at recommendations for EDPAB's consideration, Staff, among other things, attempted to maximize the economic benefits of low-cost NYPA hydropower, the critical state asset at the core of the RNY Power Program, while attempting to ensure that each recipient receives a meaningful RNY Power allocation.

Unless otherwise noted in Exhibits '6a i-C', '6a i-D', and '6a i-E', new business applicants with relatively high scores were recommended for allocations of retention RNY Power of 50% of the requested amount or average historic demand, whichever was lower. These allocations were capped at 10 MW for any recommended allocation. Unless otherwise noted in Exhibit '6a i-E', not-for-profit corporation applicants that scored relatively high were recommended for allocations of 33% of the requested amount or average historic demand, whichever was lower. These allocations were capped at 5 MW. Although not applicable in the recommendations presented herein, applicants currently receiving hydropower allocations under other Authority power programs are typically recommended for allocations of RNY Power of 25% of the requested amount, subject to the caps as stated above.

RNY Power allocation extensions have been awarded by the Trustees on eight prior occasions spanning from October 2018 through July 2020. These recommendations pertain to existing RNY Power customers receiving an Extended Term of 7 years.

RNY Power allocations pertaining to new applicants have been awarded by the Trustees on twenty-eight prior occasions spanning from April 2012 through July 2020. Of the 200 MW block of RNY Power made available pursuant to Chapter 60 for business 'expansion' purposes, 88.1 MW remain unallocated. Of the 100 MW block of RNY Power that is set aside for not-for-profit corporations and small businesses pursuant to Chapter 60, 3.1 MW remain unallocated. Of the remaining RNY Power made available pursuant to Chapter 60, 130.5 MW remain unallocated. These figures reflect Trustee actions on RNY Power applications taken prior to any actions the Trustees take today.

EDPAB, at its meeting held on September 22, 2020, recommended that:

- (a) the Trustees approve extensions for the 5 RNY Power allocations that are listed in Exhibit '6a i-A' for a term of 7 years;
- (b) the Trustees approve the modifications related to the RNY Power allocation described in Exhibit '6a i-B' for the reasons discussed below and in Exhibit '6a i-B';
- (c) each of the applicants identified in Exhibits '6a i-C', '6a i-D', and '6a i-E' be awarded an RNY Power allocation in the amounts indicated in these respective Exhibits for a term of 7 years; and
- (d) the Trustees approve the modifications related to the RNY Power allocations described in Exhibit '6a i-F' for the reasons discussed in Exhibit '6a i-F'.<sup>1</sup>

Consistent with the RNY Statutes, EDPAB recommended that the contracts for the sale of extended and new allocations contain:

- (1) provisions for effective periodic audits of the recipient of an allocation for the purpose of determining contract and program compliance, and for the partial or complete withdrawal of an allocation if the recipient fails to maintain commitments, relating to such things as employment levels, power utilization, capital investments, and/or energy efficiency measures;
- (2) requirements for an agreement by the recipient of an allocation undertake at its own expense an energy audit of its facilities at which the allocation is consumed modified by the Authority on a showing of good cause by the recipient, and that the recipient provide the Authority with a copy of any such audit or a report describing the results of such audit;
- (3) a requirement for an agreement by the recipient of an allocation to make its facilities available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform; and
- (4) a recommendation shall require that if the actual metered load at the facility where the allocation is utilized is less than the allocation, such allocation will be reduced accordingly.

The sale of RNY Power allocations that are awarded by the Trustees today would be governed by the form of RNY Power contract that was approved by the Trustees on March 26, 2019, and Authority Service Tariff RNY-1. The terms and conditions in the RNY Power contract form are consistent with the terms and conditions recommended by EDPAB as described above.

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<sup>1</sup> EDPAB also recommended termination of the application review process for the applicant listed in Exhibit '6a i-G' for the reasons discussed in Exhibit '6a i-G.' No action is required by the Trustees.



## DISCUSSION

### 1. Extension of Existing RNY Power Allocations

For the current round of recommendations, Authority Staff has reviewed applications from 5 RNY Power customers listed on Exhibit '6a i-A' who are seeking extensions, and a copy of each application has been made available to the Board. Staff's review has consisted of a review on a customer-specific basis of such issues as the amount of each allocation that would be extended, the supplemental commitments that these customers have made under their Current RNY Power Agreement and are prepared to make as consideration for an extension, and the customer's compliance status under its Current RNY Power Agreement, including its compliance with supplemental commitments for jobs and capital investments.

In summary, the businesses listed on Exhibit '6a i-A' which are located throughout the State bring valuable benefits to the State. In total, the allocations listed in Exhibit '6a i-A' are supporting the retention of 9,975 jobs and more than \$253 million in capital investments throughout New York State, and the Authority will require customers to commit to the same or substantially similar supplemental commitments for jobs and capital investments that are summarized in Exhibit '6a i-A' for the Extended Term.

Based on the foregoing discussion and EDPAB's recommendations, staff recommends that the Trustees extend the allocations listed on Exhibit '6a i-A' as described above and in Exhibit '6a i-A' subject to the following conditions:

- (a) The sale of any allocation extended as proposed herein will be governed by the RNY Power contract form that was approved by the Trustees on March 26, 2019, and Authority Service Tariff RNY-1.
- (b) In order to receive an extension of its allocation, the customer must agree, for the Extended Term, to provide the supplemental commitments for jobs and capital investments that are the same or substantially similar to those that are summarized generally in Exhibit '6a i-A' (subject to adjustments described above), through the incorporation of such supplemental commitments in the final contract that is executed by the parties. With respect to capital investments, RNY Power customers who do not have current project/expansion capital investment commitments would be expected to meet a minimum capital investment commitment which may be satisfied through capital expenditures made over a five-year period.
- (c) Unless otherwise noted in Exhibit '6a i-A', the customer is in compliance with its contractual obligations to the Authority under its Current RNY Power Agreement.

Staff believes that an extension of each allocation listed on Exhibit '6a i-A' is appropriate and is consistent with the applicable statutory criteria listed in Exhibit '6a i-H.' In addition, the terms and conditions in the RNY Power contract form approved by the Trustees on March 26, 2019 are consistent with the terms and conditions recommended by EDPAB.

### 2. Modifications to Existing Extension Allocation and/or Supplemental Commitments

CBS Broadcasting Inc. ('CBS') was previously approved for an RNY Power allocation extension totaling 7,350 kilowatts ('kW'). Since that time, the company has requested to utilize the allocation at additional facilities not listed in its NYPA contract. Staff reviewed this request and recommends that CBS's contract be modified to accommodate the use of the allocation at additional requested sites. As a result, the company will be able to commit to additional jobs associated with these facilities. Based on the foregoing and EDPAB's recommendations, staff recommends the amount of the company's extended employment commitment be increased from 3,400 jobs to 3,551 jobs.

### 3. Retention-Based RNY Power Allocations

The Trustees are asked to address applications submitted via the CFA process for RNY Power retention-based allocations. Unless otherwise indicated in Exhibit '6a i-C,' these applications seek an RNY Power allocation for job retention purposes only.

Consistent with the evaluation process as described above, EDPAB recommended, at its September 22, 2020 meeting, that RNY Power retention allocations be awarded to the businesses listed in Exhibit '6a i-C.' Each business has committed to retain jobs in New York State and to make capital investments at their facilities in exchange for the recommended RNY Power allocations.

Staff recommends that the Trustees accept EDPAB's recommendations and award RNY Power allocations to each of the businesses listed on Exhibit '6a i-C' in the amounts and terms indicated therein.

### 4. Expansion-Based RNY Power Allocations

The Trustees are also asked to address applications requesting RNY Power allocations for expansion purposes. Allocations for this purpose would be sourced from the 200 MW block of RNY Power dedicated by statute for 'for-profit' businesses that propose to expand existing businesses or create new business in the State. Unless otherwise indicated in Exhibit '6a i-D,' these applications seek an RNY Power allocation to support expansion of an existing business or a new business/facility. EDPAB recommended, at its September 22, 2020 meeting, that RNY Power expansion-based allocations be made to the businesses listed in Exhibit '6a i-D.' Each such allocation would be for a term of 7 years unless otherwise indicated.

As with the evaluation process used for the retention recommendations described above, applications for the expansion-based RNY Power were scored based on the statutory criteria, albeit with a focus on information regarding each applicants' specific project to expand or create their new facility or business (e.g., the expansion project's cost, associated job creation, and new electric load due to the expansion).

The proposed amounts of the expansion-based allocations listed in Exhibit '6a i-D' are largely intended to provide approximately 70% of the individual expansion projects' estimated new electric load. Because these projects have estimated new electric load amounts, and to ensure that an applicant's overestimation of the amount needed would not cause that applicant to receive a higher proportion of RNY Power to new load, the allocations in Exhibit '6a i-D' are recommended based on an 'up to' amount basis. Each of these applicants would be required to, among other commitments, add the new electric load as stated in its application, and would be allowed to use up to the amount of their RNY Power allocation in the same proportion of the RNY Power allocation to requested load as stated in Exhibit '6a i-D.'

Staff recommends that the Trustees accept EDPAB's recommendations and award RNY Power allocations to each of the businesses listed on Exhibit '6a i-D' in the amounts indicated therein.

### 5. Small Business and/or Not-for-Profit-Based RNY Power Allocations

The Trustees are also asked to address applications for RNY Power for eligible small businesses and/or not-for-profit corporations. Chapter 60 specifies that no more than 100 MW of RNY Power may be made available for eligible small businesses and eligible not-for-profit corporations.

Consistent with the evaluation process described above, EDPAB recommended, at its September 22, 2020 meeting, that RNY Power allocations be awarded to the small businesses and/or not-for-profit applicants listed in Exhibit '6a i-E.' These applicants have committed to retain or create jobs in New York State and make capital investments to the extent indicated in Exhibit '6a i-E' in exchange for the recommended RNY Power allocations as described in Exhibit '6a i-E.' The RNY Power allocations identified in Exhibit '6a i-E' are recommended for a term of 7 years unless otherwise indicated.

Staff recommends that the Trustees accept EDPAB's recommendations and award RNY Power allocations to each of the not-for-profit entities and/or small businesses listed on Exhibit '6a i-E' in the amounts indicated therein.

If the recommended allocations are made, the 100 MW block of power will be close to fully allocated. Accordingly, staff is prepared to establish a waiting list for small businesses and not-for-profit corporations who wish to apply for RNY Power.

6. Modifications to Existing Allocations and/or and Related Supplemental Commitments

At its meeting held on September 22, 2020, EDPAB recommended that the Trustees approve modifications relating to the RNY Power allocations listed on Exhibit '6a i-F' for Active Retirement Community, Inc. ('Active Retirement').

Active Retirement was previously approved for a retention-based RNY Power allocation totaling 290 kilowatts ('kW') with an associated employment commitment of 350 retained jobs. After the approval, the customer realized it failed to properly account for full-time equivalent positions in its job counts and inadvertently overstated its job commitment.

As a result, the company has requested to modify the retained job commitment to 185 jobs. Staff reviewed this request and is recommending that the company's contract be modified to accommodate the adjustment to 185 retained jobs committed.

Active Retirement was also previously approved for an expansion-based RNY Power allocation totaling 150 kilowatts ('kW') with an associated employment commitment of 391 total jobs (350 retained jobs and 41 new jobs). The customer made a similar miscalculation on its job counts for this allocation and overstated its intended job creation commitment.

As a result, the company has requested to modify its new job commitment from 41 to 22 new jobs. Staff reviewed this request and is recommending that the company's contract be modified to accommodate the revised new job commitment.

Using the revised baseline of 185 retained jobs as described above, the company's revised employment commitment associated with its expansion-based allocation will be 207 total jobs (185 retained jobs and 22 new jobs).

Staff has no objection to the requested modifications, and therefore recommends that the Trustees approve the modifications listed in Exhibit '6a i-F.'

7. Termination of Application/Review Process

At its meeting on September 22, 2020, EDPAB terminated the application review process for the applicant listed on Exhibit '6a i-G' for the reasons listed on Exhibit '6a i-G.' No action by the Trustees is required on this matter. In the past, some applicants in these circumstances refiled if able to advance a more complete RNY Power application.

RECOMMENDATION

The Senior Vice President – Clean Energy Solutions recommends that the Trustees accept the recommendations of the Economic Development Power Allocation Board ('EDPAB') and:

- (1) authorize the extension of each of the existing 5 allocations of Recharge New York ('RNY') Power in the manner described above for the customers listed on Exhibit '6a i-A' for a term of 7 years to commence on the expiration of the allocation, or commencing on a date to be agreed upon by the parties for a term not to exceed 7 years, subject to the conditions described above;

- (2) approve a modification to the employment commitments and use of the RNY Power allocation extension for the customer listed in Exhibit '6a i-B' for the reasons discussed above and in Exhibit '6a i-B';
- (3) award the new allocations of RNY Power for retention purposes to the businesses listed in Exhibit '6a i-C' as indicated therein;
- (4) award the new allocations of RNY Power for expansion purposes to the businesses listed in Exhibit '6a i-D' as indicated therein;
- (5) award the new allocations of RNY Power to the small business and/or not-for-profit applicants identified in Exhibit '6a i-E' for retention and/or expansion purposes as indicated therein; and
- (6) approve the modifications related to the allocations and/or supplemental commitments described in Exhibit '6a i-F' for the reasons discussed above and in Exhibit '6a i-F.'

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

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

**RESOLVED, That the Trustees hereby accept the recommendations of the Economic Development Power Allocation Board ("EDPAB") and approve the extension of each of the existing 5 Recharge New York ("RNY") Power allocations previously awarded to the customers listed in Exhibit "6a i-A" in the manner described in the accompanying report of the President and Chief Executive Officer ("Report") for a term of 7 years, to commence on (1) the expiration of the term of the allocation, or (2) in the Authority's discretion, commencing on a date to be agreed upon by the Authority and the customer for a term not to exceed 7 years (collectively, the "Extended Term"), subject to the following conditions:**

- (a) the sale of the allocations as extended hereunder shall be made pursuant to the contract form approved by the Board on March 26, 2019, and Authority Service Tariff RNY-1;**
- (b) in order to receive an extension of its allocation, the customer agrees to provide the supplemental commitments for jobs, capital investment and power utilization that are the same or determined by the Authority to be substantially similar to those contained in Exhibit "6a i-A" (subject to adjustments described above) for the Extended Term, through the incorporation of such supplemental commitments in the final contract that is executed by the parties, and RNY Power customers who do not have an ongoing project/expansion capital investment commitment shall meet a minimum capital investment commitment which may be satisfied through capital expenditures made over a five-year period.**

**RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the modification to the employment commitments and use of the RNY Power allocation extension for the customer listed in Exhibit "6a i-B" for the reasons indicated in the Report and Exhibit "6a i-B"; and**

**RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the new RNY Power allocations for retention purposes to the applicants listed in “6a i-C” in the amounts indicated therein for the reasons indicated in the Report and Exhibit “6a i-C”; and**

**RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the new RNY Power allocations for expansion purposes to the applicants listed in Exhibit “6a i-D” in the amounts indicated therein for the reasons indicated in the Report and Exhibit “6a i-D”;**

**RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the new RNY Power allocations for retention and/or expansion purposes to the small businesses and/or not-for-profit applicants listed in Exhibit “6a i-E” in the amounts indicated therein for the reasons indicated in the Report and Exhibit “6a i-E”;**

**RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the modifications/ adjustments to the supplemental commitments described in Exhibit “6a i-F” for the reasons indicated in the Report and Exhibit “6a i-F”; and**

**RESOLVED, That the Chief Commercial Officer – Commercial Operations, or such official’s designee, hereby is authorized on behalf of the Authority to provide for final terms and conditions that will be applicable to the foregoing allocations and/or projects, including without limitation progress milestones and provisions for the expiration of any allocation in the event that such milestones are not met; 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. **Expansion Power Allocation**

The President and Chief Executive Officer submitted the following report:

**"SUMMARY"**

The Trustees are requested to:

1. Approve an allocation of 100 kilowatts ('kW') of Expansion Power ('EP') to Premium PPE, LLC ('Premium') to support the company's proposed expansion at a new facility located at 120 Earhart Drive in Amherst (Erie County). The project is discussed in detail below and in Exhibit '6a ii-A.'
2. Authorize a public hearing, in accordance with Public Authorities Law ('PAL') §1009, on a proposed form of contract with Premium ('Proposed Contract') that would, along with Authority Service Tariff No. WNY-2 ('ST WNY-2'), apply to the sale of EP to Premium. Copies of the Proposed Contract and ST WNY-2 are attached as Exhibit '6a ii-B.'

**BACKGROUND**

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

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

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

At this time, 63,695 kW of unallocated EP and 89,836 kW of unallocated RP is available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).

**DISCUSSION**

Founded in 2020, Premium is a medical supply manufacturer specializing in personal protective equipment ('PPE'). The company seeks to provide medical PPE to healthcare systems, hospitals, and first responders amidst the COVID-19 pandemic.

The company's ownership currently operates a PPE import distribution business which employs 2 people at a facility in Cheektowaga. Premium is proposing to transition its operations into the manufacturing and storage of medical PPE at a new, larger facility.

The company is proposing to purchase a 43,700 square foot facility in Amherst to serve as a PPE manufacturing and storage site. The company would also be making significant machinery and equipment purchases as part of its expansion project.

Premium's expansion project would involve a capital investment of at least \$4.5 million which includes the acquisition of the new Amherst facility in addition to machinery and equipment purchases.

The new facility would represent a capital investment expenditure of at least \$2.5 million. Machinery and equipment purchases would represent a capital investment expenditure of at least \$2 million. PPE manufacturing equipment, including machines used to produce surgical and face masks, would be purchased in connection with the expansion project.

Premium is planning to begin the expansion project as soon as possible. Due to the nature of the business, the project is especially critical amidst the COVID-19 pandemic.

The company would commit to the creation of 25 new, permanent, full-time jobs that would be located at the Amherst facility. The average compensation/benefits are estimated to be \$47,020 per job.

The company applied for 150 kW of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 100 kW for a term of ten years.

The job creation ratio for the proposed allocation of 100 kW is 250 new jobs per MW. This ratio is above the historic average of 65 new jobs per MW based on allocations previously awarded. The total investment of at least \$4.5 million would result in a capital investment ratio of \$45 million per MW. This ratio is above the historic average of \$17.2 million per MW.

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

### CONTRACT INFORMATION

The following is a summary of some of the matters that would be addressed in ST WNY-2 and the Proposed Contract with Premium:

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

- Periodic communications to customer about energy-related projects, programs and services offered by the Authority.
- Compliance provisions that allow the Authority to reduce a customer's allocation for a failure to meet supplemental commitments, with an opportunity for the customer to present a proposed plan with actionable milestones to cure deficiencies.
- The collection of a Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge to allow the Authority to recover costs it incurs relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the customer's load.

Staff intends to discuss the form of the Proposed Contract with Premium and anticipates reaching agreement on a contract substantially similar to the form attached as Exhibit '6a ii-B.' Accordingly, the Trustees are requested to authorize a public hearing, pursuant to PAL §1009, on the form of the Proposed Contract attached as Exhibit '6a ii-B.' The form of the Proposed Contract is consistent with recently approved contracts for the sale of EP and RP.

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

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

#### RECOMMENDATION

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

1. Approve an allocation of 100 kW of EP to Premium as described herein and in Exhibit '6a ii-A' for a term of ten years; and
2. Authorize a public hearing, in accordance with PAL §1009, on the Proposed Contract with Premium attached as Exhibit '6a ii-B.'

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

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

**RESOLVED, That an allocation of 100 kilowatts of Expansion Power be awarded to Premium PPE, LLC for a term of 10 years as detailed in the foregoing report of the President and Chief Executive Officer ("Report") and Exhibit "6a ii-A," be and hereby is approved, subject to rates previously approved by the Trustees; and be it further**



**RESOLVED, That the Trustees hereby authorize a public hearing pursuant to Public Authorities Law (“PAL”) §1009 on the terms of the proposed form of the direct sale contract with Premium for the sale of the EP allocation (the “Contract”), the current form of which is attached as Exhibit “6a ii-B”; and be it further**

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

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

iii. **Extension of Hydropower Contracts with Upstate Investor-Owned Utilities for the Benefit of Rural and Domestic Consumers and Notice of Public Hearing**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to approve: (1) extensions of allocations totaling 360 megawatts ('MW') of firm 'peaking' hydropower for a term of up to three years through December 31, 2023, to Niagara Mohawk Power Corporation d/b/a National Grid ('National Grid'), New York State Electric and Gas Corporation ('NYSEG') and Rochester Gas and Electric Corporation ('RGE') (hereinafter referred to collectively as the 'Utilities'); and (2) associated contracts that would amend existing contracts between the Authority and each of the Utilities to provide for the continued sale of the extended peaking allocations (collectively, the '2020 Amendments'). The 2020 Amendments, each entitled '2020 Amendment to 1990 Service Agreement,' are attached as Exhibit '6a iii-A' (National Grid), Exhibit '6a iii-B' (NYSEG) and Exhibit '6a iii-C' (RGE), respectively. The current peaking power allocations and the current contracts providing for their sale to the Utilities are scheduled to expire on December 31, 2020.

The proposed 2020 Amendments are subject to the public hearing and gubernatorial review process in Public Authorities Law ('PAL') § 1009. Accordingly, the Trustees are further requested to authorize: (1) a public hearing on the proposed 2020 Amendments; (2) transmittal of the 2020 Amendments to the Governor and legislative leaders as provided for in PAL § 1009; and (3) if necessary, the execution of the 2020 Amendments to provide for the sale of the allocations on a short-term, month-to-month basis pending completion of the public hearing and gubernatorial approval process.

**BACKGROUND**

In accordance with hydropower contracts signed with the Utilities in 1990 ('1990 Hydro Contracts') and certain extensions of such contracts, the Utilities have purchased both firm power and firm peaking power from the St. Lawrence/FDR and Niagara Power Projects.

The Utilities have purchased such power at the Authority's cost-based hydropower rate, the benefits of which have been passed on to the Utilities' residential and small farm customers (also referred to as their rural and domestic or 'R&D' consumers) without markup, through the electric service provided by the Utilities under their retail tariffs.

Chapter 60 (Part CC) of the Laws of 2011 created the Recharge New York Power Program ('RNY Program'). This law authorized the Authority to redeploy firm hydropower previously allocated to the Utilities for use in the RNY Program. See PAL § 1005(13-a).

Effective August 1, 2011, the Authority withdrew the firm power allocations from the Utilities in accordance with the 1990 Hydro Contracts and Part CC, and terminated the firm power allocations of 189 MW for National Grid, 167 MW for NYSEG and 99 MW for RGE. The Authority continued to sell the firm peaking power to the Utilities.

Beginning in 2014, the Authority extended the peaking power allocations and term of each of the 1990 Hydro Contracts for 3-year terms. The 1990 Hydro Contracts, as extended, provides for the sale of the peaking power through December 31, 2020.

**DISCUSSION**

The proposed 2020 Amendments would continue the sale of 360 MW of firm peaking hydropower to the Utilities, which consists of 175 MW for National Grid, 150 MW for NYSEG and 35 MW for RGE. These peaking power allocations would continue to allow the Authority to pass on the benefits of the firm peaking power to the Utilities' R&D consumers.

The Authority has negotiated extension terms with the Utilities. The parties have agreed to extend the term of the 1990 Hydro Contracts covering the sale of the firm peaking power for up to three additional years through December 31, 2023, with NYPA having the right to terminate each contract upon thirty days' written notice to the Utilities and the Utilities having the right to terminate their contracts after one year, upon thirty days' written notice to the Authority.

As noted, the proposed 2020 Amendments are subject to the public hearing and gubernatorial review process provided for in PAL § 1009. Accordingly, staff further recommends that the Trustees authorize a public hearing on the final proposed 2020 Amendments. In addition, because the 2017 extensions are scheduled to expire on December 31, 2020, staff recommends that the Authority be authorized to execute the 2020 Amendments providing for the sale of the peaking power allocations on a month-to-month basis pending completion of the public hearing and gubernatorial approval process. In the unlikely event that gubernatorial approval is not received, the extensions would expire on the last day of the month following disapproval or the date by which the Governor is required to act on the contracts.

#### FISCAL INFORMATION

The proposed 2020 Amendments would provide that the Utilities continue to pay for firm peaking hydropower at the cost-based rates that are charged to the Authority's preference customers in accordance with the Authority's rate-setting methodologies and principles. Accordingly, there will be no fiscal impact to the Authority associated with these contract extensions.

#### RECOMMENDATION

The Senior Vice President – Clean Energy Solutions recommends that the Trustees: (i) approve extension of the peaking power allocations for a term of up to three years through December 31, 2023; (ii) approve the proposed 2020 Amendments, the current versions of which are attached hereto as Exhibits '6a iii-A', '6a iii-B' and '6a iii-C'; (iii) authorize the Corporate Secretary to convene a public hearing on the final negotiated 2020 Amendments and transmit copies of such extensions to the Governor and legislative leaders pursuant to PAL §1009; and (iv) authorize staff to execute final negotiated 2020 Amendments which would provide for the sale of firm peaking power on a month-to-month basis, if necessary, pending completion of the public hearing and gubernatorial approval process.

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

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

**RESOLVED, That an extension of allocations of firm peaking power (175 megawatts ("MW") for Niagara Mohawk Power Corporation d/b/a National Grid, 150 MW for New York State Electric and Gas Corporation, and 35 MW for Rochester Gas and Electric Corporation) through December 31, 2023 is hereby approved; and be it further**

**RESOLVED, That each '2020 Amendment to 1990 Service Agreement' attached to the foregoing report of the President and Chief Executive Officer hereto as Exhibits "6a iii-A", "6a iii-B" and "6a iii-C" (collectively, the "2020 Amendments"), is hereby approved; and be it further**

**RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit copies of the proposed 2020 Amendments 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 Public Authorities Law ("PAL") §1009; and be it further

**RESOLVED**, That the Corporate Secretary be and hereby is authorized to convene a public hearing on the proposed 2020 Amendments in accordance with the procedures set forth in PAL §1009; and be it further

**RESOLVED**, That the Senior Vice President – Clean Energy Solutions or his designee be, and hereby is, authorized, subject to approval of the form thereof by the Executive Vice President and General Counsel, to negotiate and execute any and all documents necessary or desirable to implement the final 2020 Amendments on a month-to-month basis, if necessary, pending gubernatorial approval of the 2020 Amendments as set forth in the foregoing report of the President and Chief Executive Officer; and be it further

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

**b. Financial Operations**

**i. Approval of Budget Report for Submission  
Pursuant to Section 2801 of the Public  
Authorities Law and Agency Procedures**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to (a) approve the budget report attached as Exhibit '6b i-A' (the 'Budget Report'), and (b) authorize Authority staff to submit the Budget Report to the State officials identified in Public Authorities Law ('PAL') §2801, and file the Budget Report electronically with the State in accordance with New York State Authorities Budget Office ('ABO') and State Comptroller requirements.

**BACKGROUND**

PAL §2801 requires each state public authority to submit a budget report annually, not less than 90 days before the commencement of its fiscal year, in the form submitted to its members or trustees, with budget information on operations and capital construction setting forth the estimated receipts and expenditures for the next fiscal year and the current fiscal year, and the actual receipts and expenditures for the last completed fiscal year, to the Governor, the Chair and Ranking Minority Member of the Senate Finance Committee, the Chair and Ranking Minority Member of the Assembly Ways and Means Committee and the ABO (collectively, 'State Officials').

The ABO and State Comptroller also require state public authorities to file budget reports electronically with the State through the Public Authorities Reporting Information System ('PARIS') online reporting system. PARIS requires three additional years of forward-looking budget information for a total of six years of budget information.

**DISCUSSION**

The Trustees are requested to approve the Budget Report prepared by staff. The Budget Report reflects information required by PAL §2801 and additional information required by the PARIS system. The Budget Report is inclusive of budget information relating to the Canal Corporation. The Trustees are further requested to authorize staff to submit the Budget Report to the State Officials identified in PAL §2801, and to file the Budget Report with the State electronically through PARIS.

The Budget Report is prepared solely for the purpose of meeting the requirements of PAL § 2801 and Comptroller and ABO requirements. The Budget Report relies on data and projections that were developed during the months of July through September 2020. These data and projections include inputs such as forecasts of electric prices, fuel expenses, customer power and energy use, generation levels and revenues from Authority power projects, operations & maintenance and capital expense. The Authority is not required to update the Budget Report at any point during the remainder of 2020 or in 2021 prior to submittal of the Budget Report for fiscal year 2021 for the normal annual process outlined in PAL §2801, however it is providing quarterly updates to the State based on a separate request for current year only figures.

Staff is in the process of preparing the Authority's annual budget as well as the Four-Year Budget and Financial Plan. The annual budget and the Four-Year Budget and Financial Plan will be presented to the Trustees for approval at a subsequent meeting. The Four-Year Budget and Financial Plan may include assumptions and figures that are different from those in the Budget Report.

FISCAL INFORMATION

The Budget Report's estimates for each of the years 2020-2024 are indicative forecasts. The Trustees are not being asked to approve any revenue or expenditure amounts for those years at this time.

RECOMMENDATION

The Chief Financial Officer recommends that the Trustees: (1) approve the Budget Report; and (2) authorize staff to submit the Budget Report to State Officials, and file the Budget Report with the State electronically through PARIS, as discussed herein.

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

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

**RESOLVED, That pursuant to Public Authorities Law §2801, the Budget Report attached as Exhibit "6b i-A" is approved for the purposes stated in the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, the Authority's staff be, and hereby is, authorized to submit the Budget Report to the State officials identified in Public Authorities Law §2801, and file the Budget Report with the State electronically in accordance with New York State Authorities Budget Office and State Comptroller requirements; 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. **Release of Funds in Support of the Western New York Power Proceeds Allocation Act**

The President and Chief Executive Officer submitted the following report:

**"SUMMARY"**

The Trustees are requested to authorize and ratify the release of up to \$2 million in funds into the Western New York Economic Development Fund ('WNYEDF') representing 'net earnings' from unallocated Expansion Power and Replacement Power sold into the wholesale energy market for the period January 1, 2020 through December 31, 2020 as set forth in Chapter 58 of the Laws of 2012.

**BACKGROUND**

On March 30, 2012, Governor Cuomo signed into law the Western New York Power Proceeds Allocation Act (the 'Act') which authorizes the Authority, as deemed feasible and advisable by the Trustees, to deposit into the WNYEDF net earnings from the sale of unallocated Expansion Power and Replacement Power from the Authority's Niagara power project. The Act repealed Chapter 436 of the Laws of 2010, which had amended the Public Authorities Law and the Economic Development Law, to create a somewhat similar program authorizing unallocated Expansion Power and Replacement Power to be utilized for WNYEDF benefits.

The effective date for calculating the net earnings is August 30, 2010, the original effective date of Chapter 436 of the Laws of 2010. Net earnings are defined as 'the aggregate excess of revenues received by the power authority of the state of New York from the sale of expansion and replacement power and energy produced at the Niagara project that was sold in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis to an eligible expansion power or replacement power customer under the applicable tariff or contract.'

The net earnings deposited into the WNYEDF will be utilized to fund economic development projects ('eligible projects') by private businesses, including not-for-profits, which are physically located within New York State and within a thirty-mile radius of the Niagara power project. Eligible projects are to support the growth of business in the state and thereby lead to increased tax revenues and job creation or retention. Eligible projects may include capital investment in buildings, equipment and associated infrastructure; research and development that benefits New York State; support for tourism and marketing and advertising for Western New York State tourism and business; and energy related projects as authorized under §1005(17) of Public Authorities Law.

The Act also established the Western New York Power Proceeds Allocation Board ('Allocation Board') which consists of five members appointed by the Governor. The Allocation Board's responsibilities include establishing written procedures for reviewing applications and making recommendations to the Authority for the allocation of fund benefits to eligible projects. In reviewing applications for benefits, the Allocation Board shall employ the same criteria used for determining eligibility for Expansion, Replacement and Preservation Power allocations as provided in §1005 of Public Authorities Law including, but not limited to, the number of jobs and type of jobs created as measured by wage and benefit levels; business' long-term commitment to the region; amount of capital investment; and impact on competitiveness in the region. Upon recommendation of the Allocation Board, the Authority shall award fund benefits to an applicant, provided however, that upon a showing of good cause, the Authority shall have the discretion as to whether to adopt the Allocation Board's recommendation, or to award benefits in a different amount or on different terms and conditions.

**DISCUSSION**

The Authority is requested, from time to time, to provide financial support to the State or for various other State programs. Any such transfer of funds must (1) be authorized by the Legislature; (2)

be approved by the Trustees 'as feasible and advisable,' and (3) satisfy the requirements of the Authority's General Resolution Authorizing Revenue Obligations dated February 24, 1998, as amended and supplemented ('Bond Resolution'). Further, as set forth in the Trustees' Policy Statement dated May 24, 2011, a debt service coverage ratio of 2.0 shall be used as a reference point in considering any such payments or transfers.

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

The Trustees have already authorized the release of up to \$64 million in net earnings from the Operating Fund to the WNYEDF representing the then-estimated net earnings from inception through December 31, 2019. Actual net earnings deposited into the WNYEDF through this period totaled \$41.7 million.

Staff is seeking ratification of deposits into the WNYEDF of net earnings for the period January 1, 2020 through December 31, 2020 of up to a total of \$2 million. While it is estimated that approximately \$1.78 million in net earnings will be generated based upon current levels of unallocated Expansion Power and Replacement Power from the Authority's Niagara power project and presently projected wholesale energy prices, the recommendation for up to \$2 million reflects the potential volatility in market prices. Such net earnings have been deposited into the WNYEDF on, at least, a quarterly basis. Such deposits may be made up to a fiscal quarter after the period in which the net earnings are generated.

Staff has reviewed the effect of releasing the requested up to \$2.0 million in funding at this time on the Authority's expected financial position and reserve requirements. In accordance with the Board's Policy Statement adopted May 24, 2011, staff also calculated the impact of this release, together with (i) the release of \$30 million in Recharge New York Discounts for 2020; (ii) the release of up to \$91.1 million in Canal-related operating expenses for 2020 (\$22.8 million authorized December 2019, \$22.8 million in March 2020, \$22.8 million in May 2020, and \$22.7 million in September 2020); (iii) and the release of up to \$1 million in Northern NY Power Proceeds net earnings on the Authority's debt service coverage ratio and determined it would not fall below the 2.0 reference level. Based on the Authority's Four-Year Budget and Financial Plan, the 2.0 reference point level is forecasted to be met at each year-end of the forecast period 2019-2022. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to release such amounts from the trust estate created by the Bond Resolution consistent with the terms thereof.

#### FISCAL INFORMATION

Staff has determined that sufficient funds are available to provide up to \$2 million for deposit into the WNYEDF for net earnings calculated for the period January 1, 2020 through December 31, 2020, and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution. Provisions for the Authority's fiscal year 2020 deposits for this program were also included in the 2020 Operating Forecast approved by the Trustees in December 2019. Authorization for the deposit of net earnings calculated for periods beyond December 31, 2020 into the WNYEDF will be requested of the Trustees at a later date.



RECOMMENDATION

The Executive Vice President & Chief Financial Officer recommends that the Trustees (a) affirm the deposit of up to \$2 million into the WNYEDF, to the extent such amount of net earnings is generated during the period January 1, 2020 through December 31, 2020, is feasible and advisable and (b) ratify the release of such amount from the Operating Fund to the WNYEDF.

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

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

**RESOLVED, That the Trustees hereby authorize and ratify the release of up to \$2 million from the Operating Fund to the Western New York Economic Development Fund (“WNYEDF”), to the extent such amount of net earnings is generated for the period from January 1, 2020 through December 31, 2020, as authorized by Chapter 58 of the Laws of 2012 and as discussed in the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the amount of up to \$2 million released to the WNYEDF for the purposes authorized by Chapter 58 described in the foregoing resolution is (a) affirmed by the Trustees to be feasible and advisable and (b) not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further**

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

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

iii. **Release of Funds in Support of the Northern New York Power Proceeds Allocation Act**

The President and Chief Executive Officer submitted the following report:

**"SUMMARY"**

The Trustees are requested to authorize and ratify the release of up to \$1 million in funds into the Northern New York Economic Development Fund ('NNYEDF') representing 'net earnings' from the sale of unallocated St. Lawrence County Economic Development Power into the wholesale energy market for the period January 1, 2020 through December 31, 2020, as authorized by Chapter 545 of the Laws of 2014.

**BACKGROUND**

**1. Program Structure**

On December 29, 2014, Governor Cuomo signed into law the Northern New York Power Proceeds Allocation Act (the 'Act') which created a program intended to support economic development by providing financial support for eligible economic development projects located, or proposed to be located, in St. Lawrence County by eligible applicants.

In summary, the program is to be administered by the Authority, with assistance from the five-member Northern New York Power Proceeds Allocation Board ('NNYPPAB') which the Act creates. The NNYPPAB, whose members are appointed by the Governor, is authorized to solicit applications from 'eligible applicants' for financial assistance known as 'fund benefits' to support 'eligible projects;' evaluate applications based on eligibility requirements and applicable criteria; and make recommendations to the Trustees for awards of fund benefits. The Trustees are authorized to consider whether to make awards of fund benefits to support eligible projects that are recommended by the NNYPPAB.

The Act defines 'eligible applicant' as a private business, including a not-for-profit corporation. 'Eligible projects' are defined as economic development projects that are or would be physically located within St. Lawrence County that will support the growth of business in St. Lawrence County and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments. Eligible projects may include capital investments in buildings, equipment, and associated infrastructure (collectively, 'infrastructure') owned by an eligible applicant for fund benefits; transportation projects under state or federally approved plans; the acquisition of land needed for infrastructure; research and development where the results of such research and development will directly benefit New York State; support for tourism and marketing and advertising efforts for St. Lawrence County tourism and business; and energy-related projects. Eligible projects do not include, and fund benefits may not be used for, public interest advertising or advocacy; lobbying; the support or opposition of any candidate for public office; the support or opposition to any public issue; legal fees related to litigation of any kind; expenses related to administrative proceedings before state or local agencies; or retail businesses as defined by NNYPPAB, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

Applications will be evaluated using the following criteria specified in the Act:

1. whether the eligible project would occur in the absence of an award of fund benefits;
2. the extent to which an award of fund benefits will result in new capital investment in the State by the eligible applicant and the extent of such investment;
3. other assistance the eligible applicant may receive to support the eligible project;

4. the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed if the eligible applicant were to receive an award of fund benefits;
5. the eligible applicant's payroll, salaries, benefits and number of jobs at the eligible project for which an award of fund benefits is requested;
6. the number of jobs that will be created or retained within St. Lawrence County and any other parts of the State in relation to the requested award of fund benefits, and the extent to which the eligible applicant will agree to commit to creating or retaining such jobs as a condition to receiving an award of fund benefits;
7. whether the eligible applicant is at risk of closing or curtailing facilities or operations in St. Lawrence County and other parts of the State, relocating facilities or operations out of St. Lawrence County and other parts of the State, or losing a significant number of jobs in St. Lawrence County and other parts of the State, in the absence of an award of fund benefits;
8. the significance of the eligible project that would receive an award of fund benefits to the economy of the area in which such eligible project is located; and
9. for new, expanded and/or rehabilitated facilities, the extent to which the eligible applicant will commit to implement or otherwise make tangible investments in energy efficiency measures as a condition to receiving an award of fund benefits.

The Act provides that the NNYPPAB shall also consider the extent to which an award of fund benefits would be consistent with the strategies and priorities of any Regional Economic Development Council having responsibility for the region in which the eligible project would be located, and authorizes the NNYPPAB to solicit the views of organizations that have an interest in economic development in St. Lawrence County regarding such matters as proposed funding strategies and priorities, and applications for fund benefits.

## 2. Program Funding

The program is funded by 'net earnings' from the sale of unallocated St. Lawrence County Economic Development Power ('SLCEDP'). SLCEDP consists of up to 20 MW of hydropower from the Authority's St. Lawrence/FDR Power Project which the Authority has made available for sale to the Town of Massena Electric Department ('MED') for MED to sub-allocate for economic development purposes in accordance with a contract between the parties entered into in 2012 entitled 'Agreement Governing the Sale of St. Lawrence-FDR Project Power and Energy to the Town of Massena Electric Department for Economic Development Purposes' (the 'Authority-TMED Contract'). The Act defines 'net earnings' as the aggregate excess of revenues received by the Authority from the sale of energy associated with SLCEDP by the Authority in the wholesale energy market over what revenues would have been received had such energy been sold to MED on a firm basis under the terms of the Authority-MED contract. For the first five years after enactment, the amount of SLCEDP that may be used by the Authority to generate net earnings may not exceed the lesser of 20 MW or the amount of SLCEDP that has not been allocated by the Authority under the Authority-MED contract for sub-allocations. Thereafter, the amount of SLCEDP that may be used by the Authority to generate net earnings may not exceed the lesser of 10 MW or the amount of SLCEDP that has not been allocated under the Authority-MED contract for sub-allocations.

The Act also authorized the Authority to create and maintain a fund known as the Northern New York Economic Development Fund (the 'NNYEDF'), and deposit net earnings into the NNYEDF as determined to be feasible and advisable by the Trustees. The NNYEDF is a separate fund residing within the Authority's Operating Fund.

## DISCUSSION

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

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

The Trustees have already authorized the release of up to \$14 million in net earnings from the Operating Fund to the NNYEDF representing the then-estimated net earnings from inception through December 31, 2019. Actual net earnings deposited into the NNYEDF through this period totaled \$4.9 million.

Staff is seeking ratification of deposits into the NNYEDF of net earnings for the period January 1, 2020 through December 31, 2020 of up to a total of \$1 million. While it is estimated that approximately \$.5 million in net earnings will be generated based upon current levels of unused St. Lawrence County Economic Development Power and presently projected wholesale energy prices, the recommendation for up to \$2 million reflects the potential volatility in market prices. Such net earnings have been deposited into the NNYEDF on, at least, a quarterly basis. Such deposits may be made up to a fiscal quarter after the period in which the net earnings are generated.

Staff has reviewed the effect of releasing the requested up to \$21.0 million in funding at this time on the Authority's expected financial position and reserve requirements. In accordance with the Board's Policy Statement adopted May 24, 2011, staff also calculated the impact of this release, together with (i) the release of \$30 million in Recharge New York Discounts for 2020; (ii) the release of up to \$91.1 million in Canal-related operating expenses for 2020 (\$22.8 million authorized December 2019, \$22.8 million in March 2020, \$22.8 million in May 2020, and \$22.7 million in September 2020); (iii) and the release of up to \$2 million in Western NY Power Proceeds net earnings on the Authority's debt service coverage ratio and determined it would not fall below the 2.0 reference level. Based on the Authority's Four-Year Budget and Financial Plan, the 2.0 reference point level is forecasted to be met at each year-end of the forecast period [2019-2022]. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to release such amounts from the trust estate created by the Bond Resolution consistent with the terms thereof.

## FISCAL INFORMATION

Staff has determined that sufficient funds are available to provide up to \$1 million for deposit into the NNYEDF for net earnings generated for the period January 1, 2020 through December 31, 2020, and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution. Provisions for the Authority's fiscal year 2020 deposits for this program were also included in the 2020 Operating Forecast approved by the Trustees in December 2020. Authorization for the deposit of net earnings calculated for periods beyond December 31, 2020 into the NNYEDF will be requested of the Trustees at a later date.

RECOMMENDATION

The Executive Vice President and Chief Financial Officer recommends that the Trustees (a) affirm the deposit of up to \$21 million into the NNYEDF, to the extent such amount of net earnings is generated during the period January 1, 2020 through December 31, 2020, is feasible and advisable and (b) ratify the release of such amount from the Operating Fund to the NNYEDF.

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

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

**RESOLVED, That the Trustees hereby authorize and ratify the release of up to \$1 million from the Operating Fund to the Northern New York Economic Development Fund (“NNYEDF”), to the extent such amount of net earnings is generated for the period from January 1, 2020 through December 31, 2020, as authorized by Chapter 545 of the Laws of 2014 (“Chapter 545”) and as discussed in the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the amount of up to \$1 million released to the NNYEDF for the purposes authorized by Chapter 545 described in the foregoing resolution is (a) affirmed by the Trustees to be feasible and advisable and (b) not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further**

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

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

**c. Procurement (Services) Contracts**

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

The President and Chief Executive Officer submitted the following report:

**“SUMMARY**

The Trustees are requested to approve the award and funding of the multiyear procurement (services) contracts listed in Exhibit ‘6c i-A,’ in support of projects and programs for the Authority’s Business Units/Departments and Facilities. Detailed explanations of the recommended awards and extensions, including the nature of such services, the basis for the new awards if other than to the lowest-priced, lowest total cost of ownership or ‘best valued’ bidders and the intended duration of such contracts, or the reasons for the extension and the projected expiration dates, are set forth in the discussion below.

**BACKGROUND**

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

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

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

**DISCUSSION**

**Awards**

The Trustees are requested to approve the award and funding of the multiyear procurement (services) contracts listed in Exhibit ‘6c i-A,’ where the EAPs require approval based upon contract value or the terms of the contracts will be more than one year. Except as noted, all of these contracts contain provisions allowing the Authority to terminate the services for the Authority’s convenience, without liability other than paying for acceptable services rendered to the effective date of termination. Approval is also requested for funding all contracts. Except as noted, these contract awards do not obligate the Authority to a specific level of personnel resources or expenditures.

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

The following is a summary of each recommended contract award.

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

***Commercial Operations - Fuel Planning & Operations***

The contract with **AmSpec, L.L.C. ('AmSpec') (FD-2020-08)** 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, Zeltmann (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. Although there is an existing contract with Saybolt LP ('Saybolt') (FD-2019-13) that will expire on December 31, 2022, Saybolt no longer does independent oil inspection services in the New York Harbor and requested NYPA's consent to assign the existing contract to another firm. The firm of SGS North America Inc. was assigned the Saybolt contract on August 20, 2020. Consequently, staff found it prudent to issue a new Request for Proposal (**RFP/QFS-2020-01**) for a second firm to provide these services. An advertisement was posted in the New York State *Contract Reporter*, but the responses received were from entities that are not in the business of providing petroleum inspection services. However, bids were solicited from five firms that were previously known to staff to be in the business of providing petroleum inspection services. Two 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 AmSpec, the lowest-priced evaluated 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 October 1, 2020 for an intended term of up to 27 months, 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, \$81,000.

***Utility Operations – Facility Management***

The proposed non-personal services contract with **A&A Maintenance Enterprise, Inc. ('A&A') (Q20-6994JM)** would provide Contract Administration for Janitorial Services for the Centroplex Building at the White Plains Office. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Two firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Two proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to A&A which is technically and commercially qualified and meets the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of five years, beginning on or about January 1, 2021, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$7,750,000.

***Utility Operations – Physical Security & Crisis Management***

Due to the need to meet and maintain the Authority's project schedule, the proposed personal services contract with **TruView BSI LLC ('TruView') (4600003978)** for Background Investigation Services became effective August 24, 2020, with an initial interim award amount of \$100,000, is being requested to allow Physical Security to continue ongoing background screening investigations, subject to the Trustees' ratification, in accordance with the Authority's Guidelines for Procurement Contracts and EAP's. The employment screening and the contractor background investigations include comprehensive background investigations for all new Authority employees, as well as all contractors/consultants requiring

access to the Authority's facilities on an unescorted basis. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Six firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Three proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to TruView which is technically and commercially qualified and meets the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$2.5 million. TruView is a Service-Disabled Veteran-Owned Business.

### ***Utility Operations – Power System Equipment***

The proposed personal services contract with **GoPower, Inc. ('GoPower') (N20-10299397AD)** would provide evaluation and engineering analysis of the Robert Moses Niagara Power Project ('RMNPP') High Power Fluid Filled ('HPFF') cables. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Twenty-one firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Four proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to GoPower which is technically and commercially qualified and meets the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of three years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$750,000.

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

Due to the need to meet and maintain the Authority's project schedule, the proposed construction services contract with **Crown Castle International Corporation dba Crown Castle Fiber LLC ('CCF') (4500323110)** for Smart Generation & Transmission ('SG&T') Communication Backbone Program Dark Fiber from Albany to Niagara ('ALB-NIA') became effective August 18, 2020, with an initial interim award amount of \$50,000, subject to the Trustees' ratification, in accordance with the Authority's Guidelines for Procurement Contracts and EAP's. The Dark Fiber, ALB-NIA connection project will support the Authority's Communication Backbone Program, part of the SG&T Initiative, which was established to deploy a robust, secure, and scalable communications network. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Fourteen firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. One proposal was received electronically via Ariba and was evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to CCF which is technically and commercially qualified and meets the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of twenty years for both Lease and Maintenance Agreements, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$1,243,945 (which includes \$175,000 contingency to manage scope and schedule change risks potentially incurred pending acquisition off all required permits and agency approvals).

### ***Utility Operations – Project Management – Central NY***

The proposed construction services contract with **Winn Construction Services, Inc. ('WCS') (Q20-6932AP)** would provide construction services for Crescent Dam A and B Concrete Repairs, subject to the Trustees' ratification, in accordance with the Authority's Guidelines for Procurement Contracts and EAP's. Bid documents were developed by staff and were accessible through the NYPA.gov site. The



Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Fourteen firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Three proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to WCS which is technically and commercially qualified and meets the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of two-years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$3,327,000. WCS is a New York State Small Business Enterprise.

#### ***Utility Operations – Site Administration SENY***

Due to the need to meet and maintain the Authority's project schedule, the proposed personal services contract with **Basson Trading LLC dba Aladon ('Aladon') (4600003977)** for Reliability Centered Maintenance ('RCM') Facilitator Mentoring Services became effective August 24, 2020, with an initial interim award amount of \$75,000, subject to the Trustees' ratification, in accordance with the Authority's Guidelines for Procurement Contracts and EAP's. The Authority embarked on a journey to implement RCM as part of the ISO 55000 certification continuous improvement and Asset Performance Management ('APM'). The Authority trained several employees as RCM facilitators to make NYPA self-sufficient in the application of the RCM process. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Five firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Two proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to Aladon which is technically and commercially qualified and meets the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$2.75 million.

#### ***Utility Operations – Site Administration SENY***

The proposed non-personal services contract with **Daikin Applied Americas, Inc. dba Daikin Applied ('Daikin') (A20-002021DW)** would provide Chiller Maintenance and Repairs to the Authority's Small Clean Power Plants ('SCPP') Power Plant Chiller Systems. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Five firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Four proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to Daikin which is technically and commercially qualified and meets the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$5 million.

#### **FISCAL INFORMATION**

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

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

RECOMMENDATION

The Senior Vice President – Operations Support Services and Chief Engineer; the Senior Vice President – Power Supply; the Vice President – Strategic Supply Management; the Vice President – Project Management; the Vice President – Environmental, Health & Safety; the Vice President – Enterprise Resilience; and the Regional Manager of SENY; recommend that the Trustees approve the award of multiyear procurement (services) and other contracts to the companies listed in Exhibit '6c i-A,' for the purposes and in the amounts discussed within the item and/or listed in the respective exhibits.

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

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

**RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award and funding of the multiyear procurement services contracts set forth in Exhibit "6c 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 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) Contract – Owner's Architect Services for the Brockport Pedestrian Bridge Project**

The President and Chief Executive Officer submitted the following report:

**"SUMMARY"**

The Trustees are requested to approve a five-year value contract award in the amount of \$427,167.00 to SHoP Architects P.C. ('SHoP') of New York, NY, the most qualified and best value designer for the design of the Pedestrian Bridge at Brockport Guard Gate.

**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. Additionally, in accordance with the Authority's Expenditure Authorization procedures, the award of a personal services contract to be rendered for a period in excess of one year and/or in excess of \$2,000,000 requires the Trustees' approval.

As part of a Pre-Feasibility and Prequalification Study conducted in 2019, Buro Happold (consultant to NYPA for the Reimagine the Canals program) procured conceptual designs from three firms for the construction of a bridge adjacent to the guard gate in the Village of Brockport:

1. Clare Lyster Urbanism and Architecture ('CLUAA'), a Women-owned Business Enterprise ('WBE') based in Chicago, IL, was selected because they had submitted a short-listed entry-- Winter Waterways--to the Reimagine the Canals ideas competition held in 2017.
2. SHoP Architects PC ('SHoP'), a NYS Small Business Enterprise ('SBE') firm based in New York, NY, was selected because they had participated in numerous bridge design competitions and expressed interest in contributing to the Reimagine program.
3. WXY Architect + Urban Design ('WXY'), a NYS SBE and WBE based in New York, NY, was selected because they had submitted an entry to the ideas competition in 2017, and had participated in numerous bridge design competitions and expressed interest in further contributing to the Reimagine program.

Through discussions with local stakeholders and NYPA personnel, it was agreed that the designs submitted by WXY and SHoP should be given further review and consideration. The CLUAA design was generally regarded as interesting, but too modern for the historic surroundings and not well 'connected' to the historic guard gate--one of the design criteria the firms were given. In May of 2020, NYPA directed Buro Happold to prepare a feasibility report for the bridge design. A key component of the feasibility report was a mini competition between WXY and SHoP to further develop their designs from the pre-feasibility study. During the competition Buro Happold's Bridge Engineering team assisted the designers with developing a structurally feasible design. Buro Happold also procured an independent third-party estimator to evaluate the cost of each design.

The Authority issued a request to each of the two firms to submit a proposal in the furtherance of the development of the conceptual design phase for the Pedestrian Bridge at Brockport Guard Gate Project with a submission deadline of July 22, 2020. Both proposals were included in the feasibility report issued by Buro Happold on July 22, 2020.

Proposals were evaluated on the basis of relevant criteria that included: (1) Approach; (sensitive to historic guard gate appearance, utilizes canal infrastructure, structurally and materially sustainable and innovative, contextually appropriate, accommodates spectators for rowing events); (2) Feasibility; (constructability, within budget, addresses accessibility and safety, easy to maintain, permitability (i.e. ability to be permitted by regulatory authorities)).

WXY's proposal was thoughtful about public use and access, but their proposed design was estimated at \$10,322,135.00, which is more than \$3M over the project budget. Additionally, the scale of the proposed design was inappropriate for the site, and the structural design and cladding of the bridge did not allow for ease of maintenance.

SHoP's proposal was estimated to cost \$6,807,181.00. The SHoP proposal was determined to be the best value as the proposed costs were fair and reasonable and within the project budget (\$7M), and the design demonstrated a sensitivity to the scale and nature of the project site. The materials of the bridge and proposed structural solution referred to the historic guard gate in a contemporary way and allowed for ease of maintenance.

SHoP's fee was negotiated down by \$75,000.00, by reducing the number of hours for construction administration as that task will be primarily performed by an Engineer of Record procured separately. SHoP took a few exceptions to NYPA's Terms and Conditions that were addressed, negotiated, and mutually agreed to.

#### FISCAL INFORMATION

Payments associated with this contract will be made from NYPA's Empire Line capital fund.

#### RECOMMENDATION

The Senior Vice President – Strategy, the Vice President – Planning Empire Line, and the Vice President – Strategic Supply Management recommend that the Trustees approve the award of a five-year value contract in the amount of \$427,167.00 to SHoP Architects P.C. ('SHoP') of New York, NY, for the design of the Pedestrian Bridge at Brockport Guard Gate.

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

The following resolution, as recommended 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 approve a five-year value contract award in the amount of \$427,167.00 to SHoP Architects P.C. ("SHoP") of New York, NY, for the design of the Pedestrian Bridge at Brockport Guard Gate.**

<u>Contractor</u>	<u>Contract Amount</u>
SHoP Architects P.C. New York, NY	<u>\$427,167.00</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**

**September 23, 2020**

**effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

**d. Rate Making**

**i. 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 7.49% as compared to 2020 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 60-day public comment period will begin on October 14, 2020 and close on December 14, 2020.

Since the proposal includes an increase to the Fixed Costs of more than 2.0%, the Authority's policy is to hold a public forum. Due to the current Covid-19 pandemic and the Governor's Executive order 202.10 as amended, the Authority will not be holding a public forum for the Westchester County Governmental Customer rates this year. The Customers and the General Public are encouraged to send in any comments concerning these rates during the 60-day public comment period under SAPA.

Upon closure of the aforementioned public comment period, Authority staff will take into consideration any concerns that have been raised and return to the Trustees at their January 2021 meeting to seek final adoption of this proposal.

**BACKGROUND**

The Authority provides electricity to 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 in this group, accounting for about one-third of total 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 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, and allow the Authority to apply an Energy Charge Adjustment ('ECA') mechanism to the Customers' bills each month.

The current 2020 base production rates were adopted by the Trustees at their January 2020 meeting, when they approved a 13.52% decrease over the 2019 rates. Staff is proposing a rate increase for 2021, which is largely due to the projected higher purchase power capacity expenses and non-recurring Operations and Maintenance for the Small Hydro facilities ('Small Hydros').

**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 2021 COS for the Westchester Customers is \$26.78 million, compared to \$24.95 million in 2020.

The Fixed Costs component is projected to increase in 2021, from \$1.26 million to \$1.77 million, an approximate \$506,000, or 40.0%, increase as compared to the Final 2020 COS. This increase is primarily driven by Operations and Maintenance expenses for Small Hydros due to an increase in non-recurring projects. The largest of these projects is the Crescent dam B abutment concrete repairs, which is expected to incur \$5.0 million in contractor services. Additionally, more labor hours are forecasted for Small Hydros in 2021 than 2020, driving the \$902,000, or 23%, increase in total site payroll.

The Variable Costs component is projected to increase from \$23.69 million to \$25.01 million, an approximate \$1.32 million, or 5.6%, increase as compared to those costs included in the rates that are currently in effect. The primary cost element, Energy Purchase Power cost, is \$16.68 million and accounts for 62% of the total production costs. Although these Customers receive a pro-rated share of energy revenues from the Small Hydro generation facilities, their energy requirements are purchased from the market. The 2021 Energy Purchase Power costs are expected to decrease by \$2.10 million as compared to those prices projected for 2020 and incorporated into the rates that are currently in effect. More than offsetting the decreased Energy Purchase Power costs, Capacity Purchase Power costs are projected to increase by \$3.07 million, or 80.1%, from \$3.83 million in 2020 to \$6.91 in 2021. Though customer capacity requirements decreased, capacity prices in Lower Hudson Valley are expected to more than double. This increase is primarily due to the retirement of Indian Point 3, the nuclear plant's last operating unit, in April 2021, which will decrease the capacity supply in the area by 1000 MW. Further increasing the Variable Costs, NYISO Charges are expected to increase by \$289,000, or 16.8%, driven mainly by a 46.8% increase in the NTAC price.

Applying current rates to the 2021 Customer sales forecast results in projected revenues of \$24.91 million, representing an under-collection of \$1.86 million from the Customers. Therefore, staff is proposing a 7.49% increase in base production rates.

Under SAPA, there is a 60-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 2021 meeting to request an approval of the final production rate modification, to become effective with the January 2021 billing period. Subsequent to the approval of this proposed action by the Trustees, the Final Staff Report containing the Final 2021 COS will be made available to the Customers.

#### 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 Director – Revenue & Pricing Analysis and the Senior 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 Senior Director – Key Account Management, 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 recommended by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That the Senior Director – Key Account Management, 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 7.49% 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, 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.**



**e. Canal Corporation**

**i. Procurement (Services) Contract –  
Refuse/Recycling Services – Contract Award**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Board of Directors' approval is requested to award five-year contracts with an aggregate value of \$300,000 for Refuse/Recycling Services selected through a competitive bid process to:

County Waste & Recycling Service Inc.,  
Controlled Waste Systems, Inc.,  
K & D Disposal, Inc. (a NYS Small Business Enterprise), and  
Waste Management of New York, LLC.

Interim awards are also requested for K & D Disposal, Inc. **(4400005207)** and Waste Management of New York, LLC **(4400005206)** in an aggregate amount not to exceed \$20,000, which is included in the total recommended amount noted above, commencing September 1, 2020. The contracts awarded to County Waste & Recycling Service, Inc. and Controlled Waste Systems, Inc. will commence October 1, 2020.

New York State Canal Corporation's ('NYSCC') Expenditure Authorization Procedure requires the Canal Board's approval for any service contract that exceeds one year.

**BACKGROUND**

On January 1, 2017, NYSCC was transferred from New York State Thruway Authority and became a subsidiary of the New York Power Authority ('NYPA'). NYSCC is responsible for managing the New York State Canal System which is a navigable 524-mile inland waterway that spans upstate New York. The waterway connects the Hudson River with Lake Champlain, Lake Ontario, Cayuga Lake, Seneca Lake, and Lake Erie via the Niagara River.

Since January 1, 2017, the NYSCC has prepared individual Purchase Orders for refuse/recycling services to various providers, some of which were on the New York State Office of General Services ('NYS OGS') Recycling and Trash Removal Services, OGS Group No. 79013, as well as some open market companies.

**DISCUSSION**

NYSCC posted this Refuse/Recycling Services Contracting Opportunity in the *NYS Contract Reporter* on May 14, 2020. Vendor contacts were obtained from the OGS Contractor Information Summary as well as an internet search for refuse and recycling by county.

The Evaluation Committee consisting of the Eastern and Western Division Canal Engineers recommended that the Refuse and Recycling Services contracts be awarded to the four most technically qualified, cost effective bidders.

**Vendor Name**

**OGS Region (County) / NYS Canals Section**

County Waste & Recycling Service Inc.  
1927 Route 9 PO Box 431  
Clifton Park, NY 12065

Washington County / Section #1  
Schenectady County / Section #2  
Saratoga County / Section #2  
Montgomery County / Section #3

**Vendor Name**

**OGS Region (County) / NYS Canals Section**

Controlled Waste Systems, Inc.  
1331 Belle Avenue  
Utica, NY 13501

Oneida County / Section #4

K & D Disposal, Inc.  
5076 Route 31W  
Newark, NY 14513-9613

Wayne / Section #6

Waste Management of New York, LLC  
1661 Mounty Read Boulevard  
Rochester, NY 14606

Oswego County / Section #5  
Cayuga / Section #6  
Monroe County / Section #7  
Orleans County / Section #7  
Niagara County / Section #8  
Orleans County / Section #8

**FISCAL INFORMATION**

All associated expenditures will be paid from the Canal Corporation's Capital or Operating fund, as appropriate.

**RECOMMENDATION**

The Eastern and Western Division Canal Engineers recommends that the Board of Directors award five-year contracts for Refuse/Recycling Services for an aggregate amount of \$300,000 to County Waste & Recycling Service Inc., Controlled Waste Systems, Inc., K & D Disposal, Inc., and Waste Management of New York, LLC. This includes an interim aggregate award amount of \$20,000.00 to K & D Disposal, Inc. (a NYS Small Business Enterprise) and Waste Management of New York, LLC.

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

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

**RESOLVED, That pursuant to the Canal Corporation's Procurement Guidelines and Expenditure Authorization Procedures, approval is hereby granted to award non-personal services contracts to Controlled Waste Systems, Inc. of Utica, NY, County Waste and Recycling Service, Inc. of Clifton Park, NY, K&D Disposal, Inc. of Newark, NY, and Waste Management of New Jersey, Inc. dba Waste Management of New York, LLC of Rochester, NY in the aggregate amount of \$300,000 for a duration of five years to include interim funding in the aggregate amount not to exceed \$20,000 for K&D Disposal, Inc. (Section 6 – 4400005207) and Waste Management of New Jersey, Inc. dba Waste Management of New York, LLC of Rochester, NY (Section 8 - 4400005206) for services beginning on September 1, 2020, as recommended in the foregoing report of the President and Chief Executive Officer;**

<u>Contractor</u>	<u>Location</u>	<u>Contract Award</u>
Controlled Waste Systems, Inc.	Utica, NY	
County Waste and Recycling Service, Inc.	Clifton Park, NY	
K&D Disposal, Inc.	Newark, NY	
Waste Management of New Jersey, Inc. dba Waste Management of New York, LLC	Rochester, NY	
K20-10305531-JM		<u>\$300,000.00</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 Canal Corporation are, and each of them hereby is, authorized on behalf of the Canal Corporation 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) Contract – Lake Champlain Maritime Museum’s Development of a Historic Context Document for Canal Vessels – Contract Award**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Board of Directors (‘Board’) is requested to approve a no cost extension to the single-source personal services contract (**4400004355**) for the development of a historic context document for New York State Canal Corporation (‘NYSCC’) vessels aged 40 years or older to Lake Champlain Maritime Museum at Basin Harbor, Inc. dba Lake Champlain Maritime Museum (‘LCMM’) of Vergennes, Vermont.

The historic context document is a requirement of the Letter of Resolution that was executed between the NYSCC and the New York State Historic Preservation Office (‘SHPO’) in 2015. The LCMM’s Historic Vessel Context document for Canal Vessels is expected to conclude by the extended contract completion date of December 31, 2020.

In accordance with the NYSCC’s Procurement Guidelines and Expenditure Authorization Procedures (‘EAPs’), the Board’s approval is required when the award of service contracts and/or purchase order releases exceeds one year in term.

BACKGROUND

On September 1, 2019, Contract 4400004355 was awarded to LCMM with a term through April 30, 2020. In-field visits to survey and research the NYSCC-owned vessels aged 40 years or older were scheduled for October through December 2019. This schedule was delayed, in part, by high water levels on the canal that prevented site visits until mid- to late-November 2019, and additional setbacks. The schedule was further impacted by the widespread ‘market pause’ resulting from the SARS-CoV-2 (Covid-19) outbreak which disrupted LCMM’s ability to complete any remaining scheduled research and report drafting. As a result of these disruptions to the schedule, NYPA issued a contract extension through August 31, 2020.

A partially completed draft of the Historic Context document was received by NYPA on Friday, June 19, 2020. LCMM was not prepared at that time to provide the sections for several vessel types, the list with justifications for the exemplar vessels, the conclusion, and the appendices. NYPA and NYSCC completed an internal review of the incomplete report and provided comments to LCMM on July 22, 2020. An updated report was submitted to NYPA on July 30, 2020. In reviewing the document, several deficiencies were identified that require revisions by LCMM and additional opportunities for comment by NYPA and NYSCC before the document can be finalized.

FISCAL INFORMATION

No cost time extension.

RECOMMENDATION

The Director of Environmental Health and Safety, and the Senior Cultural Resource Specialist recommend that based on the evaluation, the Board of Directors approve a no cost extension to the personal services contract (**4400004355**) to Lake Champlain Maritime Museum at Basin Harbor, Inc. dba Lake Champlain Maritime Museum (‘LCMM’) for the development of a historic context document for New York State Canal Corporation (‘NYSCC’) vessels aged 40 years or older, to conclude by the contract completion date of December 31, 2020.

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

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

**RESOLVED, That pursuant to the Canal Corporation's Procurement Guidelines and Expenditure Authorization Procedures, approval is hereby granted to award a no cost extension to the personal services contract (4400004355) to Lake Champlain Maritime Museum at Basin Harbor, Inc. dba Lake Champlain Maritime Museum ("LCMM") of Vergennes, Vermont, for development of a historic context document for New York State Canal Corporation ("NYSCC") vessels aged 40 years or older, to conclude by the contract completion date of December 31, 2020, as recommended in the foregoing report of the President and Chief Executive Officer;**

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

- i. Minutes of the Regular Joint Meeting of the  
New York Power Authority's Trustees and Canal  
Corporation's Board of Directors held on July 28, 2020**

On motion made and seconded, the Minutes of the Regular Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held on July 28, 2020 was unanimously adopted.

**7. Board Resolution – Harry Francois**

Chairman Koelmel said that the Board wanted to recognize two people who have contributed significantly to the success of NYPA over the years, Mr. Harry Francois and Mr. Kenneth Carnes (KC). He said the members wanted to ensure that there was public appreciation not only for their efforts, but, more importantly, the outcomes that they delivered to make NYPA a better organization.

Chairman Koelmel then invited Mr. Joseph Kessler, Chief Operations Officer, to provide comments regarding Harry Francois' contributions to NYPA's operations.

Mr. Joseph Kesler, Chief Operations Officer, provided the following remarks:

"Harry Francois ('Harry'), is retiring as Regional Manager of Niagara Power Project ('Project') in Western New York, the crown jewel of NYPA's fleet of operations, and its 300-member workforce, after 30 years of service, eight years being the Regional Manager.

Harry is one of the most inspiring and revered leaders the Niagara Power Project has ever had and he was very instrumental in advancing all of the Governor's Recharge New York programs and other programs that the Project is a key element in funding. Based on the history of the Project, and the work that is done there, a significant amount of capital work has been undertaken there since the early '90s, and, since that time, Harry played a leadership role on virtually every project, as the entire Niagara Power Project was being modernized. He then kicked off the Next Generation Niagara initiative that is going on today.

He continued that Harry was one of the first persons he met when he started working at the Niagara Power Project. Harry gave him a tour of the project, was his mentor, and, from a personal perspective, later became his friend as well. He recalled that Harry is the person that if you were troubleshooting an issue at the Project and you saw Harry coming down the gallery, you get a sense of relief knowing that you were going to get this issue fixed.

Harry's unfettered optimism, friendliness, kindness, and willingness to share with others - all with a complete sense of humility - is something to be admired. Never wanting the spotlight, he makes clearheaded decisions on all technical matters, and personnel matters as well. Mr. Francois should also be credited with working very closely with the IBEW Local 2104.

Although there have been leadership changes at NYPA during his tenure those 30 years, Harry has had different responsibilities, but always kept a very close working relationship with the working staff at the grassroots, making sure that everything was done safely. He is to be credited for the significant reduction in the "Dart Rate" over the past several years under his leadership at the Niagara Project.

From a broader perspective, Harry is the manifestation of the "American Dream." He was raised in Haiti and, as a teenager, he was moved to the United States, Brooklyn, NY. English was a second language for him, but he successfully made it through High School. He continued his education and was also very successful at Pratt Institute of Technology where he received his Bachelor of Engineering degree. He joined NYPA in 1991 and was a member of the National Society of Black Engineers. He was always willing to "give back" personally and professionally. Last fall, he was working on one of the panels of the National Society of Black Engineers to discuss ways that one could get more involved, getting exposure in the energy industry, and what one needs to do to be successful in the energy industry.

In addition, Harry provided strong support for NYPA's Environmental Justice ('EJ') STEM activities. He always participated in EJ activities in Western New York, demonstrating to his staff what it takes to 'give back' to the community. He has been an inspiration to many people in the Western New York Community as well."

Chairman Koelmel then invited Mr. Francois to share his thoughts as he closed-down this chapter with the Authority.

Mr. Francois thanked the Chairman and Board of Trustees and Authority staff for taking the time to recognize him during this special meeting and said that he really appreciated it. He said he had a great career at NYPA and met many wonderful people over the years and appreciates everything NYPA has done for him. Raising his family while working with NYPA did so much for him, he will remember his life at NYPA which has been great.

He said that he also wanted to thank the Chairman and Board of Trustees for approving the projects he has managed over the years. He said the Authority's Executive Management Committee team has also been supportive to him over the years and also wanted to acknowledge the Engineering Department and all the staff at the Niagara Project with whom he had a great working relationship. In addition, he wanted to say special thanks to Chairman Koelmel for his support over the years in dealing with the customers and with the activities in Buffalo.

He thanked President Quiniones for his support over the years. He also thanked Joseph Kessler, Phil Toia, Carol Geiger-Wank and Justin Driscoll for their support over the years, adding that he had a few challenges over time; however, when he called on them, they were always quick to respond."

Chairman Koelmel said that the Board's proclamation is a small token of the Board's appreciation of all that Mr. Francois has done for the Authority, and that the thoughts expressed are deep and incredibly genuine, as he has been the best and exemplify all that there is about NYPA. He thanked Harry for everything he has done for the Authority and wished him all the best as he turned the page to "sunny" days ahead.

Trustee McKibben added that Harry Francois on-boarded her when she first joined the Board of Trustees. She said that he gave her a tour of the Niagara Project which she thoroughly enjoyed. The tour that Harry gave her provided her with confidence starting through her on-boarding process that NYPA had some good employees. She told him that he made her very excited about joining NYPA's Board of Trustees with employees like him because he was so humble and warm."

On motion made by Trustee Balboni and seconded by Vice Chair Nicandri, the attached resolution was unanimously adopted by the Board (Exhibit "7-A").



**8. Board Resolution – Kenneth Carnes (KC)**

Chairman Koelmel said that the Information Technology department has a key loss on the team this year with KC Carnes moving on to the Tennessee Valley Authority. While his time was shorter, like Harry Francois, KC's impact and contributions to the Authority were incredibly significant. He then invited Mr. Robert Piascik, Chief Technology Officer, to provide comments regarding KC's contributions to NYPA.

Mr. Robert Piascik, Chief Technology Officer, provided the following comments:

"Mr. Piascik said that he was extremely honored today to submit a resolution (Exhibit '8-A') to the Board to recognize KC and his tremendous service and contributions to NYPA and its success. He said KC starts a new journey, a new chapter in his career, which is very exciting. He then highlighted some of KC's major accomplishments.

"KC has been with NYPA for nearly four years as the Vice President and Chief Information Security Officer. KC established a solid foundation and built a great team. He has leveraged the talent that was there and helped to develop both the Cyber Security and Information Technology ('IT') teams.

KC helped to institute critical services and key technologies that helped to support not only cyber security but also Information Technology ('IT') operations, i.e., infrastructure and production applications.

He continued that when KC came on board, he asked him to take on more responsibilities and KC did a great job in not only to advance cyberspace, but also his additive responsibilities.

KC lead the development of a clear cyber vision, which is the hallmark for NYPA, prioritized multi-year strategy and execution of a roadmap of the critical technologies and cyber capabilities which Information Technology has been executing for a number of years now. These technologies have helped NYPA to not only enable, but also protect its evolving and expanding digital ecosystem.

KC promoted very close collaboration between IT and Operations Technology ('OT') across the enterprise and all the sites to strategize, plan, and implement the critical services capabilities. This helped to develop a better and more constructive relationship across the NYPA.

KC developed strong and deep external relationships and partnerships in New York State with Federal agencies, numerous industry leaders and partners such as Department of Energy, Department of Homeland Security, the FBI, numerous national Information Sharing Analysis Centers ('ISACs'), Large Public Power Council, the American Public Power Association, EPRI, to name a few. KC developed those relationships to be able to share and thread information insights, best practices and to develop centers of excellence. He did not do this from a passive perspective, he did it from a very active perspective, in that he led, co-chaired, facilitated, and advised with all these partners; this helped to build a brand of recognition for NYPA, as well as himself.

KC led the engagement of cyber security exercises and workshops with government agencies and energy sectors in simulated cyber-attacks on the power grid, not just talk about hypotheticals, but actually some hands-on experience to understand the impact on the grid, and be able to develop mitigation and remediation plans to protect critical data. This is unique in the industry and the Authority will continue with that endeavor.

As an evangelist, KC promoted programs and campaigns to continuously educate, not only the NYPA's employees and customers, but also stakeholders in New York State, on the evolving cyber risks and threats, and how to avoid them through proper cyber hygiene and discipline. During cyber campaigns led by KC, he always reminded people of cyber risks to raise awareness. Many will fondly remember him as the "Cyber Guy" or "Cyber Warrior with the sword and shield." Mr. Piascik said he appreciated KC's taking on that role, because it helped to raise the awareness and built his brand.

Overall, KC's leadership, expertise, and partnerships put NYPA on the map as a leader in cyber security in the New York State and the national electric sector.

Mr. Piascik ended by saying that KC should be proud of his legacy in leaving NYPA in a better protected, and stronger industry-leading position, going forward. It is with confidence that he is expressing that the entire NYPA community thanks KC and will miss him. He wished KC, his wife, Kelly, and his children great success in their move to warmer a climate, and challenges that will fulfill his aspirational desires. He also expressed his personal heartfelt thanks to KC for all he has done for the organization."

Chairman Koelmel then invited KC to provide his comments to the Board.

Mr. Carnes thanked Mr. Piascik for his remarks and said that it was a humbling opportunity to be here today. He said, "We do not triumph as an individual in a team effort and, as Harry said, it takes all the people that you work with -- the team members, co-workers and the unparalleled support, not just from the senior leadership but executive management and everyone on the Board."

He said that he has no doubt that NYPA will continue to lead the way in cyber security and resilience since he knows the depth and level of skill which accompanies that true passion to serve and deliver every day on that excellence that NYPA is known for, and are driven to make a difference for NYPA and New York State. He said he loves the innovation, the opportunity, and the forward-drive of New York to enable and push the industry forward. He thanked Robert Piascik, Gil Quiniones, and Trustee Balboni, for the support and the guidance and governance.

Chairman Koelmel said the Board could not thank KC enough for sharpening NYPA's focus. He thanked KC for all he brought and contributed to the organization. He said, "As always, you hope to leave someplace better than you found it," and added that "KC did so in a very notable and significant way" and he enthusiastically endorsed and supported the resolution acknowledging KC's wonderful and highly committed service to NYPA and the State of New York. Chairman Koelmel ended by saying that on behalf of the Board he thanks KC very much and expressed their collective best wishes for what they know will be tremendous success in the years ahead for him and his family.

Trustee Michael Balboni added that in this cyber security world, skillset such as that of KC Carnes are priceless. KC combines intelligence, competence, experience, and a passion to serve. KC is recognized within the State of New York as truly one of the leaders in cyber security for the entire state government. For example, when asked to step up and assist another state agency that had suffered a breach, without hesitation KC took his team and went in and embedded themselves for weeks and solved the issue. He continued that he had the chance to travel international with KC and observed his interactions with other Cyber Security professionals. The Tennessee Valley Authority is getting a great asset, but KC has left in his wake a tremendously strong foundation of security for the largest public utility in the United States.

President Quiniones added that he endorsed the Board's comments, and on behalf of all the employees of NYPA and Canals he wanted to thank Harry and KC for their contributions to NYPA and wished them all the best as they go from strength to strength."

On motion made by Trustee Balboni and seconded by Vice Chair Nicandri, the attached resolution was unanimously adopted by the Board (Exhibit "8-A").

**9. Next Meeting**

The regular joint meeting of the New York Power Authority's Trustees and the Canal Corporation's Board of Directors will be held on December 9, 2020, unless otherwise designated by the Chairman with the concurrence of the Trustees.

**Closing**

On motion made by member Michael Balboni and seconded by member Dennis Trainor, the meeting was adjourned at approximately 1:12 p.m.

*Karen Delince*

Karen Delince  
Corporate Secretary

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

# **EXHIBITS**

**For**

**September 23, 2020**

**Joint Regular**

**Meeting Minutes**



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

**Gil Quiniones**

**President & Chief Executive Officer**

September 23, 2020

# COVID-19 Update



**NY Power  
Authority**

**Canal  
Corporation**

# Guiding Principles – Keeping our People Safe while Returning to the Workplace

## NYPA/CANALS Return to the Workplace Guide

VERSION 1.4

7.17.2020

### Note to Employees

This is a "living" document that may be updated at any time given the fluidity of this situation.

### Disclaimer – Legal Statement

NYPA/ Canals reserves the right to modify, amend or terminate the provisions in this guide at any time without advance notice. Nothing in this guideline shall give rise to any contractual rights to employment, benefits or other terms and conditions of employment.



- The **health and safety** of our employees and customers is our first priority.
- Business **need** is the primary driver; let the work lead the decisions. Secondary focus is to accommodate employees that prefer to re-enter the workplace.
- **Employee training and refreshers** on the NYPA / NYCC Return to the Workplace Guide (and Supervisors quick guide).
- Reinforce with supervisors the need to **monitor adherence** to the guidelines, including spot checks by Sr. Leadership.
- Advocate the use of **technology** (i.e. conference calls, video-conferencing) to limit physical interactions and optimize work (i.e. 360 Degree Cameras, Drones)
- Make use of **scheduling processes** to manage floor density at WPO, limit foot traffic, and restrict access to common areas to **limit interactions** among personnel
- Limit **travel** between floors, to sites and field locations to **essential only** in order avoid contamination.
- Limit in-person meetings and invitations to **visitors and vendors**.



# NYPACanals response to cluster of cases (Aug/Sept 2020)

## One employee breach of protocol:

- Tested due to symptoms but reported to work
- Later confirmed to be COVID positive
- 20 employees exposed
- 7 employees tested positive; additional family members tested positive

## Response

- Reinforced that all supervisors need to monitor adherence to the guidelines, including spot checks by Sr. Leadership
- Mandatory Safety Stand-down conducted with all employees
- Reinforced the importance of honest responses to the daily health screening questions
- Launched 2 new LMS eLearning's for all staff:
  - Basic COVID-19 Infection Prevention
  - COVID-19 Daily Health Screening

Recent NYPACanals COVID-19 Trend



- **Self Quarantine** ➤ Employees that reported that they quarantined due to possible exposure
- **Tested Cases** ➤ Total test results provided voluntarily during this time
- **Negative Cases** ➤ Testing results shared with NYPACanals were negative during this time
- **Travel Cases** ➤ Employees that traveled to a state that has been on the travel
- **Positive Cases** ➤ Testing results shared with NYPACanals were positive during this time



**NY Power  
Authority**

**Canal  
Corporation**

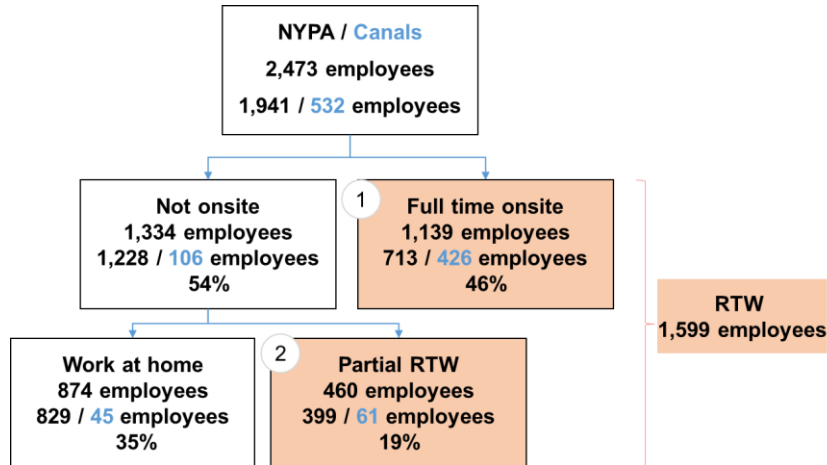
# Controlled and Thoughtful Return to the Workplace

## # EMPLOYEES ON SITE



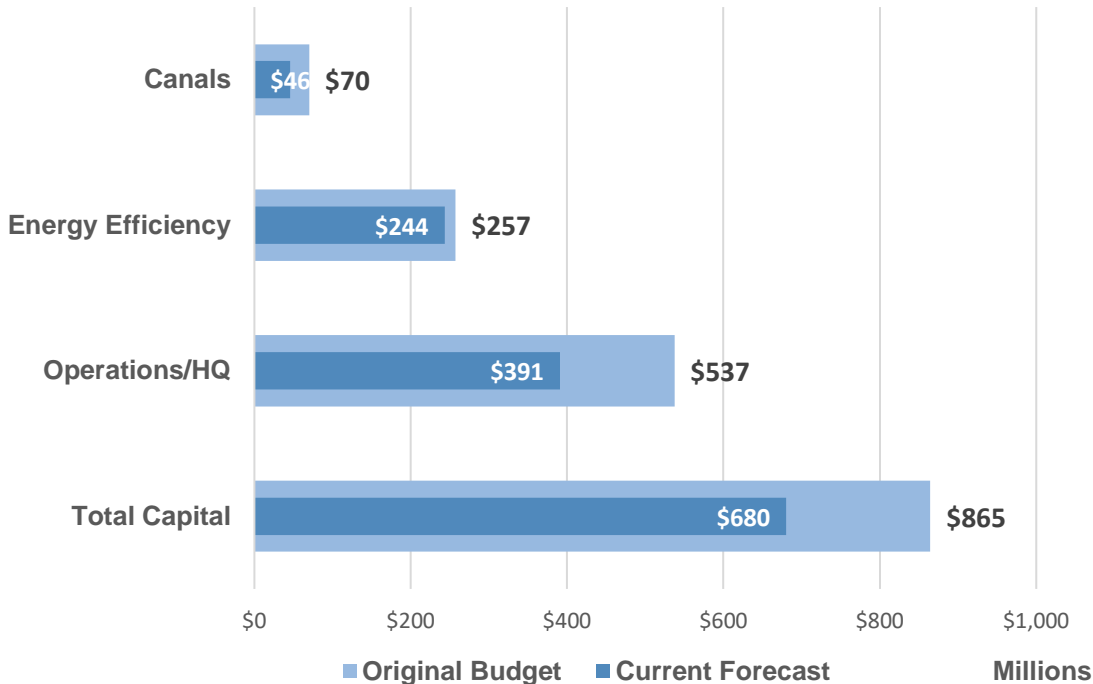
In general, as of October 5<sup>th</sup>, there will be 1,599 staff in the workplace on a full-time/part-time basis; an increase of 258 (~19%) since May

- 1,139 full-time
- 460 part-time
- 874 remote



# Capital Summary – Original Budget vs. Current Forecast

Total Capital Plan Summary  
(Construction & Non-Construction Efforts)



## Construction Unpausing Status (Entire Organization)

Current plan following COVID impact is to Restart Construction on **292** Projects valued at **\$492M**

100%  
Goal

**All** projects planned for construction restart in 2020 have been approved/vetted. External project media/comms occurring as work resumes.

100%  
Complete

**100** Projects valued at **\$334M** have Restarted and are in Active Construction

68%  
Complete

# Q4 Items

## October

- **Strategy Workshop**

## December

- **Audit Committee Meeting**
- **Board Meeting**
  - Vision2030 Strategic Plan
  - 2021 Budget
  - Four-Year Financial Plan (2021-2024)

## November

- **Strategy Workshop**
- **Finance Committee Meeting**
  - 2021 Budget and Four-Year Financial Plan (2021-2024)



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# **Chief Operations Officer's Report**

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

**Executive Vice President & Chief Operating Officer**

September 23, 2020

# Level 1 KPIs: YTD July 2020

KPI	YTD July 2020			
	Status	Target	Actual	Variance
Generation Market Readiness		99.40%	99.96%	0.56%
Transmission System Reliability		92.85%	96.37%	3.52%
Environmental Incidents (Corporate)		28	18	-10
Dart Rate (Corporate)		0.78	0.08	-0.70

## Legend:



Meeting or exceeding target



Missing target



Significantly missing target



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# JW Niagara Vessel Replacement – Breaker II

- Dock Trials and Sea Trials were completed in July; NYPA attended Trials in compliance with COVID-19 restrictions
- Breaker II departed Rhode Island Aug. 18th via LI Sound and Hudson River to Buffalo, through the Canals. Delivery was Aug. 27th in Buffalo.
- Vessel turnover to NYPA and blessing Ceremony was completed Sept. 9th.
- Total Cost of \$5M with 50% shared under Joint Works Agreement.



Sea trials: performing bollard pull to simulate capabilities and flushing (breakup ice with propellers).  
1650 RPM @ 100% Load





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# **Chief Commercial Officer Report**

**Sarah Orban Salati**

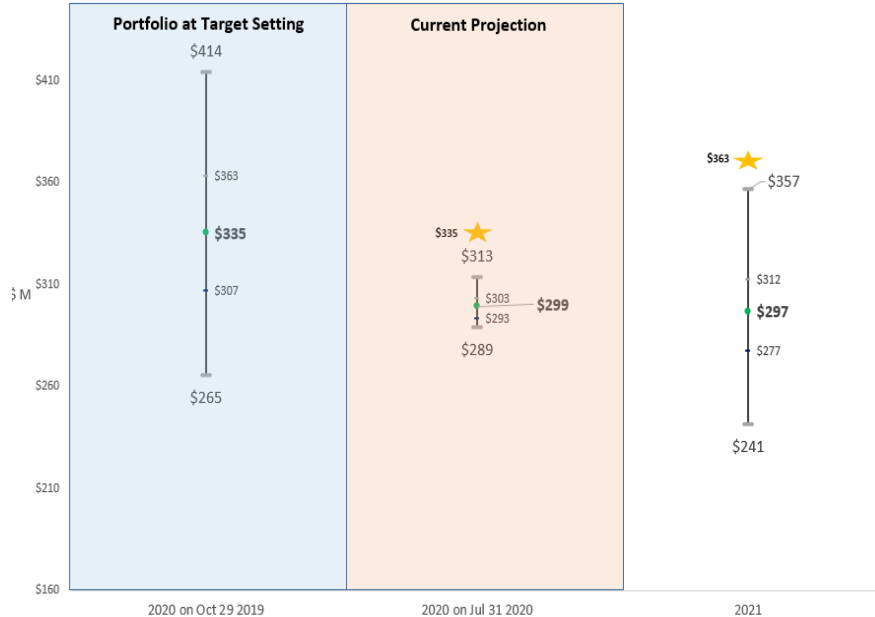
**EVP & Chief Commercial Officer**

September 23, 2020

# Electricity Supply



## Merchant Gross Margin



### Key Targets:



YTD Actual \$158M Jan-Jul

YTD Target of \$203.4M Jan-Jul



## Economic Development



Power Allocated  
1,520  
Megawatts



410,376  
Jobs Retained



\$23.3 Billion  
Capital Committed

### Legend



Within  
Target



Outside of  
Target



Significantly Outside  
of Target Range



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# Customer Offerings – Key Targets as of July 2020

## KPI

## Year to Date

## Year End Target



Clean Energy  
Solutions



\$119.5M Executed Contracts

\$220M



\$9.5M YTD Non-Utility Revenues

\$21.2M

## EVolve



3 Public DCFC projects in Construction  
with 18 charging ports

40 Public DC Fast Charging Ports

New York Energy  
Manager



561.1M Data Records

600 million data records



### Legend



Within  
Target



Outside of  
Target



Significantly Outside  
of Target Range

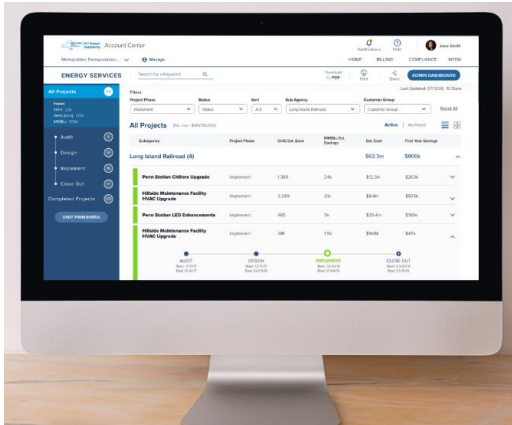


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# Key Milestones in Customer Support

## Account Center

- Completed access to commercial & industrial customers
- Completed online compliance
- Designed transparent access to efficiency portfolios



## NYS Economic Development

Economic Development power awards since March:

- 70 businesses/NFPs
- Nearly 52,500 jobs committed
- More than \$1.6 billion in capital investment committed

## Customer Satisfaction – COVID Survey

How would you rate your utility's COVID Response?

7.43



NYPA Customers

7.01



JD Power National Score

6.79



JD Power Eastern Utilities



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# Chief Financial Officer's Report

**Adam Barsky**  
**EVP & Chief Financial Officer**

September 23, 2020

# Full-Year Forecast

## YEAR END PROJECTION (JANUARY - DECEMBER 2020)

In \$ Thousands	2020 Budget (\$)	2020 [6+6] (\$)	2020 Current (\$)	Variance (\$)
<b>Net Operating Income</b>				Current vs Budget
Operating Revenue				
Customer Revenue	\$1,786,465	\$1,653,806	\$1,647,251	(\$139,214)
Market-Based Power Sales	524,543	390,079	389,853	(134,690)
Non Utility Revenue	30,128	24,166	24,118	(6,009)
Ancillary Service Revenue	45,417	37,258	32,397	(13,019)
NTAC and Other	193,707	213,666	214,627	20,920
<b>Operating Revenue Total</b>	<b>2,580,259</b>	<b>2,318,975</b>	<b>2,308,247</b>	<b>(272,012)</b>
Operating Expense				
Purchase Power	(612,391)	(485,105)	(484,248)	128,143
Ancillary Service Expense	(58,270)	(54,441)	(53,830)	4,439
Fuel Consumed	(158,717)	(96,405)	(99,596)	59,121
Wheeling	(644,109)	(648,878)	(638,324)	5,785
Operations & Maintenance	(612,582)	(608,630)	(602,759)	9,823
Other Expense	(119,785)	(123,916)	(127,503)	(7,718)
Covid-19 Expense*	0	(6,337)	(8,450)	(8,450)
Allocation to Capital	22,156	24,696	26,108	3,952
<b>Operating Expense Total</b>	<b>(2,183,698)</b>	<b>(1,999,016)</b>	<b>(1,988,602)</b>	<b>195,096</b>
<b>EBIDA Total</b>	<b>396,561</b>	<b>319,960</b>	<b>319,645</b>	<b>(76,917)</b>
EBIDA NYPA	487,588	407,758	408,627	(78,961)
EBIDA Canals	(91,027)	(87,798)	(88,982)	2,045
<b>Non Operating</b>				
Interest and Other Expenses				
Interest & Other Expenses	(120,919)	(120,306)	(119,317)	1,602
Investment and Other Income	28,726	37,817	36,586	7,859
Mark to Market Adjustments	(359)	(5,503)	(4,993)	(4,634)
Depreciation	(262,536)	(258,918)	(258,749)	3,788
<b>Interest and Other Expenses Total</b>	<b>(355,088)</b>	<b>(346,910)</b>	<b>(346,473)</b>	<b>8,615</b>
<b>NET INCOME</b>	<b>\$41,473</b>	<b>(\$26,950)</b>	<b>(\$56,828)</b>	<b>(\$68,302)</b>
			<i>Low Case</i>	<i>Expected High Case</i>

Margins - Generation\*\* (\$55,613)

Margins - Transmission\* (12,830)

Margins - Non Utility (6,081)

\*\* Includes Merchant Gross Margin Variance of (\$38,766):  
Budget @ \$335,449 vs Current @ \$296,682

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

Operating Expenses (2,392)

Non-Operating Net 8,615

EBIDA: Earnings Before Interest Depreciation & Amortization

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



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# Full-Year Variance Analysis

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

Operating Variances			Variance Drivers
Margins – Generation	<i>Unfavorable</i>	<b>(55,613)</b>	Driven by lower market prices and the resulting decrease of projected market-based power sales.
Margins – Transmission	<i>Unfavorable</i>	<b>(12,830)</b>	Due to higher than budgeted HTP RTEP payments, offset by increased Transmission Revenue Requirement.
Margins – Non-Utility	<i>Unfavorable</i>	<b>(6,081)</b>	Due to lower than budgeted Energy Efficiency revenue.
Operating Expenses	<i>Unfavorable</i>	<b>(2,392)</b>	Due primarily to an increase in operating & maintenance expenses as the YTD reductions driven by the Covid-19 pandemic are expected to reverse within the balance of the forecast period. Other Expenses have also increased driven primarily the COVID-19 response efforts.

## Non-Operating Variances

Interest Expense, Net	<i>Favorable</i>	<b>8,615</b>	Primarily due to a realized gain on sale of securities and lower than budgeted depreciation, partially offset by mark-to-market losses on the Authority's investment portfolio.
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**FORECASTED YEAR-END NET INCOME** **(\$26,828)**



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Retention-Based Allocations

	Company	City	County	Economic Development Region	IOU	Description	Current kW Amount	Recommended kW Amount	Job Commitments	Capital Investment Commitment (\$)	Contract Term (years)
1	Autronic Plastics, Inc.	Central Islip	Suffolk	Long Island	LIPA	Manufacturer of plastic products	436	436	96	\$800,000	7
	Long Island Region Sub-totals:						436	436	96	\$800,000	
2	Carlisle Construction Materials, LLC	Montgomery	Orange	Mid-Hudson	CHUD	Manufacturer of construction products	716	716	84	\$500,000	7
	Mid-Hudson Region Sub-totals:						716	716	84	\$500,000	
3	New York University	New York	New York	New York City	CONED	Institution of higher education	5,000	5,000	9,700	\$250,000,000	7
	New York City Region Sub-totals:						5,000	5,000	9,700	\$250,000,000	
4	Soucy USA, Inc.	Champlain	Clinton	North Country	NYSEG	Leasing facility for warehousing & manufacturing	170	170	4	\$250,000	7
	North Country Region Sub-totals:						170	170	4	\$250,000	
5	Culinary Arts Specialties Inc.	Cheektowaga	Erie	Western New York	NGRID	Manufacturer of frozen dessert products	220	220	91	\$1,500,000	7
	Western New York Region Sub-totals:						220	220	91	\$1,500,000	

Totals

6,542	6,542	9,975	\$253,050,000
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Retention-Based Allocations

Line	Company	City	County	Economic Development Region	IOU	Description	Recommended kW Amount	Final Job Commitments	Final Capital Investment Commitment (\$)	Contract Term (years)
1	CBS Broadcasting Inc.	New York	New York	New York City	CONED	Television & radio broadcasting	7,350	3,551 <sup>(1)</sup>	\$200,000,000	7

(1) Represents modified/corrected job commitment amount. The customer was previously extended for an RNY Power allocation with an employment commitment of 3,400 jobs. The revised employment commitment will apply to multiple facilities/addresses and the change will be implemented in the customer's power contract.

Line	Company	City	County	Economic Development Region	IOU	Description	kW Request	kW Recommendation	Jobs Retained	Jobs Created	Capital Investment (\$)		Contract Term (years)
1	Plug Power Inc.	Latham & Clifton Park	Albany & Saratoga	Capital District	NGRID	Manufacturer of fuel cell solutions	648	320	600	0	\$5,000,000	(1)	7
	Capital District Region Sub-totals:							320	600	0	\$5,000,000		
2	Once Again Nut Butter Collective Inc.	Nunda	Livingston	Finger Lakes	RGE	Manufacturer of organic nut butter products	715	356	65	0	\$300,000		7
	Finger Lakes Region Sub-totals:							356	65	0	\$300,000		

Totals								676	665	0	\$5,300,000		
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(1) The recommendation and associated commitments will apply to multiple facilities/addresses. This configuration will be implemented accordingly in the customer's power contract.

Line	Company	City	County	Economic Development Region	IOU	Description	kW Request	kW Recommendation <sup>(1)</sup>	Base Employment <sup>(2)</sup>	Job Creation Commitment	Project Capital Investment (\$)		Contract Term (years)
1	Zweigle's, Inc.	Rochester	Monroe	Finger Lakes	RGE	Manufacturer of meat products	88	60	48	9	\$6,000,000	<sup>(3)</sup>	7

Totals								60	0	9	\$6,000,000		
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(1) All expansion-based RNY Power allocations are recommended to be “up to” the amount indicated pending the applicant’s compliance with contractual commitments, including commitments relating to job creation, capital investment spending, and power utilization.

(2) The number of new jobs committed will be above a base employment level specified in the power sale contract with the applicant.

(3) This applicant was previously approved for an RNY Power allocation. The base employment level refers to the applicant's current retained jobs which are already associated with an existing power allocation.

Retention-Based Allocations

Line	Company	City	County	Economic Development Region	IOU	Description	kW Request	kW Recommendation	Jobs Retained	Jobs Created	Capital Investment (\$)		Contract Term (years)
1	Rotork Controls Inc.	Rochester	Monroe	Finger Lakes	RGE	Manufacturer of valve actuators	126	60	125	0	\$250,000	(1)	7
	Finger Lakes Region Sub-totals:							60	125	0	\$250,000		
2	Parkell, Inc.	Edgewood	Suffolk	Long Island	LIPA	Manufacturer of dental tools & devices	180	90	82	0	\$81,500	(1)	7
	Long Island Region Sub-totals:							90	82	0	\$81,500		
3	Linda Tool & Die Corporation	Brooklyn	Kings	New York City	CONED	Manufacturer of precision machined components	130	60	13	0	\$125,000		7
4	NYU Langone Hospitals	Brooklyn	Kings	New York City	CONED	Hospitals & healthcare centers	5,829	1,940	4,000	0	\$250,000,000	(2)	
	New York City Region Sub-totals:							2,000	4,013	0	\$250,125,000		

Retention-Based Totals

2,150	4,220	0	\$250,456,500
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Expansion-Based Allocations

Line	Company	City	County	Economic Development Region	IOU	Description	kW Request	kW Recommendation (3)	Base Employment	Job Creation Commitment	Project Capital Investment (\$)		Contract Term (years)
5	Rotork Controls Inc.	Rochester	Monroe	Finger Lakes	RGE	Manufacturer of valve actuators	300	150	125	56	\$10,800,000	(1), (4)	7
	Finger Lakes Region Sub-totals:							150	0	56	\$10,800,000		
6	HydrOrganic Farms LLC	East Setauket	Suffolk	Long Island	LIPA	Robotic & vertical hydroponic farm	80	40	1	1	\$400,000		7
7	Parkell, Inc.	Edgewood	Suffolk	Long Island	LIPA	Manufacturer of dental tools & devices	100	50	82	20	\$668,500	(1), (4)	7
	Long Island Region Sub-totals:							90	1	21	\$1,068,500		

Expansion-Based Totals

240	1	77	\$11,868,500
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Retention & Expansion-Based Totals

2,390	4,221	77	\$262,325,000
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- (1) The applicants are being recommended for both RNY retention and expansion-based allocations.
- (2) The recommendation and associated commitments will apply to multiple facilities/addresses. This configuration will be implemented accordingly in the customer's power contract.
- (3) All expansion-based RNY Power allocations are recommended to be “up to” the amount indicated pending the applicant’s compliance with contractual commitments, including commitments relating to job creation, capital investment spending, and power utilization.
- (4) The number of new jobs committed will be above a base employment level specified in the applicant's retention-based allocation recommendation.

Retention-Based Allocations

Line	Company	City	County	Economic Development Region	IOU	Description	Recommended kW Amount	Final Job Retention Commitments	Final Job Creation Commitments	Final Capital Investment Commitment (\$)	Contract Term (years)
1	Active Retirement Community, Inc.	South Setauket	Suffolk	Long Island	LIPA	Retirement & assisted-living community	290	185 <sup>(1)</sup>	0	\$12,000,000	7

Expansion-Based Allocations

Line	Company	City	County	Economic Development Region	IOU	Description	Recommended kW Amount	Final Job Retention Commitments	Final Job Creation Commitments	Final Project Capital Investment (\$)	Contract Term (years)
2	Active Retirement Community, Inc.	South Setauket	Suffolk	Long Island	LIPA	Retirement & assisted-living community	150	185 <sup>(1)</sup>	22 <sup>(2)</sup>	\$70,000,000	7

- (1) Represents modified/corrected job commitment amount. The customer was previously approved for an RNY Power allocation with an employment commitment of 350 retained jobs. Due to an error in determining the amount of full-time equivalent (FTE) positions, the customer has requested to correct its employment commitment to 185 retained jobs. The revised employment commitment will be implemented in the customer's power contract.
- (2) Represents modified/corrected job commitment amount. The customer was previously approved for an RNY Power allocation with an employment commitment of 41 created jobs. Due to an error in determining the amount of full-time equivalent (FTE) positions, the customer has requested to correct its employment commitment to 22 created jobs. The revised employment commitment will be implemented in the customer's power contract.



Line	Company	City	County	Economic Development Region	IOU	Description	Reason
1	Strong Island Renovations LLC	Oceanside	Nassau	Long Island	LIPA	Construction & home improvement services	Applicant has been unresponsive to requests by staff for additional information, preventing a complete analysis of the application.

<b>Line</b>	<b>Criteria Description</b>
1	The significance of the cost of electricity to the applicant's overall cost of doing business, and the impact that a Recharge New York power allocation will have on the applicant's operating costs;
2	The extent to which a Recharge New York power allocation will result in new capital investment in the state by the applicant;
3	The extent to which a Recharge New York power allocation is consistent with any regional economic development council strategies and priorities;
4	The type and cost of buildings, equipment and facilities to be constructed, enlarged or installed if the applicant were to receive an allocation;
5	The applicant's payroll, salaries, benefits and number of jobs at the facility for which a Recharge New York power allocation is requested;
6	The number of jobs that will be created or retained within the state in relation to the requested Recharge New York power allocation, and the extent to which the applicant will agree to commit to creating or retaining such jobs as a condition to receiving a Recharge New York power allocation;
7	Whether the applicant, due to the cost of electricity, is at risk of closing or curtailing facilities or operations in the state, relocating facilities or operations out of the state, or losing a significant number of jobs in the state, in the absence of a Recharge New York power allocation;
8	The significance of the applicant's facility that would receive the Recharge New York power allocation to the economy of the area in which such facility is located;
9	The extent to which the applicant has invested in energy efficiency measures, will agree to participate in or perform energy audits of its facilities, will agree to participate in energy efficiency programs of the authority, or will commit to implement or otherwise make tangible investments in energy efficiency measures as a condition to receiving a Recharge New York power allocation;
10	Whether the applicant receives a hydroelectric power allocation or benefits supported by the sale of hydroelectric power under another program administered in whole or in part by the New York Power Authority;
11	The extent to which a Recharge New York power allocation will result in an advantage for an applicant in relation to the applicant's competitors within the state; and
12	In addition to the foregoing criteria, in the case of a not-for-profit corporation, whether the applicant provides critical services or substantial benefits to the local community in which the facility for which the Recharge New York power allocation is requested is located.

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

<b>Company:</b>	Premium PPE, LLC (“Premium”)
<b>Location:</b>	Amherst, NY
<b>County:</b>	Erie County
<b>IOU:</b>	National Grid
<b>Business Activity:</b>	The company is a manufacturer of medical supplies related to personal protective equipment (“PPE”).
<b>Project Description:</b>	Premium is proposing to purchase a new facility in Amherst to serve as a manufacturing and storage site for medical PPE. The project would allow the company to sell PPE products to support healthcare providers amidst the COVID-19 pandemic.
<b>Existing Allocation(s):</b>	None
<b>Power Request:</b>	150 kW of EP
<b>Power Recommended:</b>	100 kW of EP
<b>Job Commitment:</b>	
<b>Base:</b>	2
<b>New:</b>	At least 25 jobs
<b>New Jobs/Power Ratio:</b>	250 jobs/MW
<b>New Jobs - Avg. Wage and Benefits:</b>	\$47,020
<b>Capital Investment:</b>	At least \$4.5 million
<b>Capital Investment/MW:</b>	\$45 million/MW
<b>Other ED Incentives:</b>	(1) Erie County Industrial Development Agency and (2) Empire State Development via the Excelsior Jobs Program
<b>Summary:</b>	<p>Premium is proposing to purchase a new facility for the manufacturing and storage of medical PPE. The company’s ownership currently operates a PPE import distribution business in Cheektowaga. The project includes the purchase of a new 43,700 square foot facility in Amherst to serve as a PPE manufacturing and storage site. This facility is approximately twice as large as the current Cheektowaga site.</p> <p>The project includes large machinery and equipment purchases related to the manufacturing and storage of PPE. An allocation of low-cost hydropower, along with additional support for this project, could incentivize Premium to consider additional expansion opportunities at the Amherst facility in the future.</p>

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POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

Premium PPE, LLC

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The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10<sup>th</sup> Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Premium PPE, LLC (“Customer”) with offices and principal place of business at 120 Earhart Drive, Amherst, NY 14221. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

## **RECITALS**

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

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

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

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

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

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

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

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

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

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

## **ARTICLE I**

### **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

## **ARTICLE II**

### **ELECTRIC SERVICE**

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

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

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

### **ARTICLE III**

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

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

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

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

#### **ARTICLE IV**

#### **SUPPLEMENTAL COMMITMENTS**

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

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

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

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

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

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

c. Notice of Completion; Commencement of Electric Service.

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

d. Other Rights and Remedies Unaffected.

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

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

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

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

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

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

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

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

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

## **ARTICLE VIII**

### **BILLING AND BILLING METHODOLOGY**

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

## **ARTICLE IX**

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

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

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

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



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

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

## **ARTICLE X**

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

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

## **ARTICLE XI**

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

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

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

## **ARTICLE XII**

### **NOTICES**

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

To: The Authority

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

Email:

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

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Premium PPE, LLC  
120 Earhart Drive  
Amherst, NY 14221

Email:

Facsimile:

Attention:

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

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

### **ARTICLE XIII**

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

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

### **ARTICLE XIV**

#### **MISCELLANEOUS**

1. Choice of Law

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

2. Venue

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

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

3. Previous Agreements; Modifications; and Interpretation

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

4. Waiver

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

5. Severability and Voidability

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

**ARTICLE XV**  
**EXECUTION**

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

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

**[SIGNATURES FOLLOW ON NEXT PAGE]**

AGREED:

**PREMIUM PPE, LLC**

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

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

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

AGREED:

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

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

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

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

Customer: Premium PPE, LLC				
<b>Type of Allocation</b>	<b>Allocation Amount (kW)</b>	<b>Facility and Address</b>	<b>Trustee Approval Date</b>	<b>Allocation Expiration Date</b>
EP	100 kW	120 Earhart Drive Amherst, New York 14221	September 23, 2020	Ten (10) years from the date of commencement of Electric Service

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

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

1. Employment Commitments

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

2. Capital Investment Commitments

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

3. Power Utilization

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

4. Energy Efficiency and Conservation Program



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

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

1. Employment

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

2. Capital Investments

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

3. Power Usage

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

4. Energy Efficiency and Conservation Program

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

5. Facility Access

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

### **ARTICLE III**

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

1. Employment

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

2. Capital Investment Commitment

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

3. Power Utilization Level

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

4. Additional Compliance Action

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

5. Notice of Intent to Reduce Contract Demand

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

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

## **APPENDIX TO SCHEDULE B**

### **BASE EMPLOYMENT LEVEL**

The Customer shall employ at least 27 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

### **CAPITAL INVESTMENT COMMITMENTS**

1. **Annual Capital Investment Commitment** (if applicable, as specified below)
  - a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.
  - b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.
  - c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.
2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)
  - a. The Customer shall make a minimum capital investment of \$4,500,000 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:

<b>DESCRIPTION</b>	<b>EXPENDITURE</b>
Purchase of building to serve as a manufacturing and storage site for medical personal protective equipment (PPE)	\$2,500,000
Machinery and equipment purchases used in the manufacturing of PPE	\$2,000,000
<b>Total Minimum Expansion Project Capital Investment Commitment:</b>	<b><u>\$4,500,000</u></b>

Total Expansion Project Capital Investment Commitment:

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than September 23, 2023 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

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

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

**I. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

## **II. ZEC CHARGE**

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

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

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

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

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

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

**I. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **II. MONTHLY REC CHARGE**

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

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

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

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

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

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

## 2020 Amendment to 1990 Service Agreement

This 2020 Amendment to 1990 Service Agreement, dated this \_\_\_ day of December, 2020 is made between Niagara Mohawk Power Corporation, d/b/a National Grid (“Company”) and the Power Authority of the State of New York (“Authority”).

WHEREAS, the Company and the Authority are parties to an agreement dated February 22, 1989 under which the Authority has sold certain quantities of hydroelectric power and energy in accordance with Authority Service Tariff (“ST”) No. 41 and ST. No. 42 from Authority’s Niagara and St. Lawrence Projects to Company for resale to its rural and residential consumers (the “1990 Service Agreement”).

WHEREAS, Company and Authority have previously modified and extended the 1990 Service Agreement, most recently by the “2017 Amendment to 1990 Service Agreement” (the “2017 Amendment”).

WHEREAS, by letter dated June 29, 2011, Authority withdrew all 189 MW of Firm Hydroelectric Power and Energy allocated under ST No. 41 and terminated service under the 1990 Service Agreement under ST No. 41 with respect to all 189 MW of Firm Hydroelectric Power and Energy, effective August 1, 2011, for use in the Recharge New York Power Program created pursuant to Chapter 60 (Part CC) of the Laws of 2011 (the “Firm Power and Energy Withdrawal/Termination”).

WHEREAS, Company and Authority agree to further modify and extend certain terms of the 1990 Service Agreement as follows:

- 1) As a result of the Authority’s Firm Power and Energy Withdrawal/Termination, the amount of Firm Hydroelectric Power and Energy allocated to Company under ST No. 41 is zero (0), and the Firm Peaking Power allocation of 175 MW under ST No. 42 will remain unchanged.
- 2) Article E - Rates. The current text is deleted in its entirety and is replaced with the following text.

“The rates charged by the Authority under this Agreement shall be established in accordance with this Article.

The Authority shall charge and Company shall pay the preference power rates in effect, as such rates may be revised from time to time. Company waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority, except as otherwise provided for below.

Company waives any challenges to any of the following methodologies and principles used by the Authority to set future preference power rates, numbers (i) through (vii) as set forth in the “January 2003 Report on Hydroelectric Production Rates” as modified by the April 2003 “Staff Analysis of Public Comments and Recommendations”:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement



settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “*Auer Settlement*”).

- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (i.e., retiree health benefits).
- (vii) Rate Stabilization Reserve (RSR) methodology.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Company shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.”

- 3) Article F - Transmission. The current text is deleted in its entirety and is replaced with the following text.

“In accordance with the terms of the existing transmission service agreement, which by its terms will expire on August 31, 2007, Company will cease taking transmission service from Authority and will instead take transmission service under the New York Independent System Operator's (“NYISO”) Open Access Transmission Tariff. Company agrees to settle any outstanding transmission charges that may apply prior to September 1, 2007 including any subsequent NYISO true up settlements.”

- 4) Article G - Notification. In the contact address for Authority replace “10 Columbus Circle, New York, NY 10019” with “123 Main Street, White Plains, NY 10601”.
- 5) Article J- Cancellation or Reduction. The following sentence is added at the end of Article J:

Company may also cancel or reduce such service during the period from January 1, 2022 through December 31, 2023, for any reason upon thirty (30) days’ prior written notice to the Authority.

- 6) Article K - Restoration of Withdrawn Power and/or Energy is deleted in its entirety.

- 7) Article L - Term of Service, is revised to read as follows:

“Service under this contract shall commence at 12:01 A.M. on January 1, 1990 and shall continue unless cancelled as provided for in the “Withdrawals of Power and/or Energy” or the “Cancellation or Reduction” provisions until December 31, 2023, subject to earlier termination by the Authority at any time with respect to any or all of the quantities of power and energy provided hereunder on at least thirty (30) days’ prior written notice to Company.”

- 8) Article M - Availability of Energy - Firm and Firm Peaking Hydroelectric Power Service. In the third paragraph, line 1, starting with the words “In the event that...” through “... minimize the impact of such reductions.” on line 10, replace with the following:

“The Authority will have the right to reduce on a pro rata basis the amount of energy provided to Company under Service Tariff No. 42 if such reductions are necessary due to low flow (i.e. hydrologic) conditions at the Authority's Niagara Project hydroelectric generating station. In the event that hydrologic conditions require the Authority to reduce the amount of energy provided to Company, reductions as a percentage of the otherwise required, energy deliveries will be the same for all firm Niagara Project customers. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Company in later billing periods. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Company. The Authority shall provide reasonable notice to Company of any condition or activities that could result, or have resulted, in low flow conditions consistent with the notice provided to other similarly affected customers.”

- 9) This amendment shall be referred to as the “2020 Amendment to the 1990 Service Agreement”.
- 10) Continuation of service under this 2020 Amendment to the 1990 Service Agreement shall be subject to approval of this 2020 Amendment to the 1990 Service Agreement by the Governor of the State of New York pursuant to Public Authorities Law § 1009. If the Governor disapproves this 2020 Amendment to the 1990 Service Agreement, service will cease on the last day of the month following the month during which the Governor disapproved this 2020 Amendment to the 1990 Service Agreement. If the Governor takes no action within the time frame provided for in Public Authorities Law § 1009, service will cease on the last day of the month following the month during which such timeframe expired.
- 11) Except as expressly provided in this 2020 Amendment to the 1990 Service Agreement, the 1990 Service Agreement shall remain unchanged and in full force and effect.
- 12) This 2020 Amendment to the 1990 Service Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts and to be performed in such state, without regard to conflict of laws principles.
- 13) This 2020 Amendment to the 1990 Service Agreement may be signed in any number of

counterparts, each of which shall be an original, with the same effect as if the signature thereto and hereto were upon the same instrument.

14) Upon approval of the Governor of the State of New York pursuant to Public Authorities Law § 1009, and upon execution by the Chairman of the Authority, this 2020 Amendment to the 1990 Service Agreement shall come into full force and effect, provided however that pending such gubernatorial approval and execution, this 2020 Amendment to the 1990 Service Agreement shall take effect upon the expiration of the 2017 Amendment and continue on a month to month basis.

15) This 2020 Amendment to the 1990 Service Agreement may be amended or modified by written agreement signed by the Authority and the Company.

AGREED:

**Niagara Mohawk Power Corporation, d/b/a National Grid**

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

Name: \_\_\_\_\_

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

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

**Power Authority of the State of New York**

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

Name: John R. Koelmel

Title: Chairman

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

## 2020 Amendment to 1990 Hydropower Contract

This 2020 Amendment to 1990 Hydropower Contract, dated this \_\_\_ day of December, 2020 is made between New York State Electric & Gas Corporation (“Company”) and the Power Authority of the State of New York (“Authority”).

WHEREAS, the Company and the Authority are parties to an agreement dated February 22, 1989 under which the Authority sells certain quantities of hydroelectric power and energy from Authority’s Niagara and St. Lawrence Projects to Company for resale to its rural and residential consumers (the “1990 Hydropower Contract”).

WHEREAS, Authority, Rochester Gas and Electric Corporation (“RGE”) and Company are also parties to a letter agreement dated February 14, 2008 which modified Article D - Regulation of Rates and Charges as it pertained to the calculation of the monthly savings realized by the customers of Company and RGE from the purchase of Authority hydropower.

WHEREAS, Company and Authority have previously modified and extended the 1990 Hydropower Contract, most recently by the “2017 Amendment to 1990 Hydropower Contract” (the “2017 Amendment”).

WHEREAS, by letter dated June 29, 2011, Authority withdrew all 167 MW of Firm Hydroelectric Power and Energy allocated under Service Tariff No. 41 and terminated service under the 1990 Hydropower Contract with respect to all 167 MW of Firm Hydroelectric Power and Energy, effective August 1, 2011, for use in the Recharge New York Power Program created pursuant to Chapter 60 (Part CC) of the Laws of 2011 (the “Firm Power and Energy Withdrawal/Termination”).

WHEREAS, Company and Authority agree to further modify and extend certain terms of 1990 Hydropower Contract as follows:

- 1) As a result of the Authority’s Firm Power and Energy Withdrawal/Termination, the amount of Firm Hydroelectric Power and Energy allocated to Company under Service Tariff No. 41 is zero (0). The Firm Peaking Power allocation of 150 MW under Service Tariff No. 42 will remain unchanged.
- 2) Article E - Rates. The current text is deleted in its entirety and is replaced with the following text.

“The rates charged by the Authority under this Agreement shall be established In accordance with this Article.

The Authority shall charge and Company shall pay the preference power rates in effect, as such rates may be revised from time to time. Company waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority, except as otherwise provided for below.

Company waives any challenges to any of the following methodologies and principles used by the Authority to set future preference power rates, numbers (i) through (vii) as set forth in the “January 2003 Report on Hydroelectric Production

Rates” as modified by the April 2003 “Staff Analysis of Public Comments and Recommendations”:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “Auer Settlement”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (i.e., retiree health benefits).
- (vii) Rate Stabilization Reserve (RSR) methodology.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Company shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.”

- 3) Article F - Transmission. The current text is deleted in its entirety and is replaced with the following text.

“In accordance with the terms of the existing transmission Hydropower Contract, which by its terms will expire on August 31, 2007, Company will cease taking transmission service from Authority and will instead take transmission service under the New York Independent System Operator's (“NYISO”) Open Access Transmission Tariff. Company agrees to settle any outstanding transmission charges that may apply prior to September 1, 2007 including any subsequent NYISO true up settlements.”

- 4) Article G - Notification. In the contact address for Authority replace “10 Columbus Circle, New York, NY 10019” with “123 Main Street, White Plains, NY 10601”. For Company, delete the current reference in its entirety and replace with the following “David J. Kimiecik, Vice President, Energy Services, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation, 18 Link Drive, P.O. Box 5224, Binghamton, New York 13902-5224”.
- 5) Article J- Cancellation or Reduction. The following sentence is added at the end of Article

J:

Company may also cancel or reduce such service during the period from January 1, 2022 through December 31, 2023, for any reason upon thirty (30) days' prior written notice to the Authority.

6) Article K - Restoration of Withdrawn Power and/or Energy is deleted in its entirety.

7) Article L - Term of Service, is revised to read as follows:

“Service under this contract shall commence at 12:01 A.M. on January 1, 1990 and shall continue unless cancelled as provided for In the “Withdrawals of Power and/or Energy” or the “Cancellation or Reduction” provisions until December 31, 2023, subject to earlier termination by the Authority at any time with respect to any or all of the quantities of power and energy provided hereunder on at least thirty (30) days' prior written notice to Company.”

8) Article M - Availability of Energy - Firm and Firm Peaking Hydroelectric Power Service. In the third paragraph, line 1, starting with the words “In the event that...” through “... minimize the impact of such reductions.” on line 10, replace with the following:

“The Authority will have the right to reduce on a pro rata basis the amount of energy provided to Company under Service Tariff No. 42 if such reductions are necessary due to low flow (i.e. hydrologic) conditions at the Authority's Niagara Project hydroelectric generating station. In the event that hydrologic conditions require the Authority to reduce the amount of energy provided to Company, reductions as a percentage of the otherwise required, energy deliveries will be the same for all firm Niagara Project customers. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Company in later billing periods. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Company. The Authority shall provide reasonable notice to Company of any condition or activities that could result, or have resulted, in low flow conditions consistent with the notice provided to other similarly affected customers.”

9) This amendment shall be referred to as the “2020 Amendment to the 1990 Hydropower Contract”.

10) Continuation of service under this 2020 Amendment to the 1990 Hydropower Contract shall be subject to approval of this 2020 Amendment to the 1990 Hydropower Contract by the Governor of the State of New York pursuant to Public Authorities Law § 1009. If the Governor disapproves this 2020 Amendment to the 1990 Hydropower Contract, service will cease on the last day of the month following the month during which the Governor disapproved this 2020 Amendment to the 1990 Hydropower Contract. If the Governor takes no action within the time frame provided for in Public Authorities Law § 1009, service will cease on the last day of the month following the month during which such timeframe expired.

11) Except as expressly provided in this 2020 Amendment to the 1990 Hydropower Contract,

the 1990 Hydropower Contract shall remain unchanged and in full force and effect.

- 12) This 2020 Amendment to the 1990 Hydropower Contract shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts and to be performed in such state, without regard to conflict of laws principles.
- 13) This 2020 Amendment to the 1990 Hydropower Contract may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signature thereto and hereto were upon the same instrument.
- 14) Upon approval of the Governor of the State of New York pursuant to Public Authorities Law § 1009, and upon execution by the Chairman of the Authority, this 2020 Amendment to the 1990 Hydropower Contract shall come into full force and effect, provided however that pending such gubernatorial approval and execution, this 2020 Amendment to the 1990 Hydropower Contract shall take effect upon the expiration of the 2017 Amendment and continue on a month to month basis.
- 15) This 2020 Amendment to the 1990 Hydropower Contract may be amended or modified by written agreement signed by the Authority and the Company.

AGREED:

**New York State Electric & Gas Corporation**

By: \_\_\_\_\_  
Name: Joseph J. Syta  
Title: Vice President, Controller and Treasurer  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Carl A. Taylor  
Title: President and CEO  
Date: \_\_\_\_\_

**Power Authority of the State of New York**

ACCEPTED:

By: \_\_\_\_\_  
Name: John R. Koelmel  
Title: Chairman  
Date: \_\_\_\_\_

## 2020 Amendment to 1990 Hydropower Contract

This 2020 Amendment to 1990 Hydropower Contract, dated this \_\_\_\_ day of December, 2020 is made between Rochester Gas and Electric Corporation (“Company”) and the Power Authority of the State of New York (“Authority”).

WHEREAS, the Company and the Authority are parties to an agreement dated February 22, 1989 under which the Authority sells certain quantities of hydroelectric power and energy from Authority’s Niagara and St. Lawrence Projects to Company for resale to its rural and residential consumers (the “1990 Hydropower Contract”).

WHEREAS, Authority, New York State Electric & Gas Corporation (“NYSEG”) and Company are also parties to a letter agreement dated February 14, 2008 which modified Article D - Regulation of Rates and Charges as it pertained to the calculation of the monthly savings realized by the customers of Company and NYSEG from the purchase of Authority hydropower.

WHEREAS, Company and Authority have previously modified and extended the 1990 Hydropower Contract, most recently by the “2017 Amendment to 1990 Hydropower Contract” (the “2017 Amendment”).

WHEREAS, by letter dated June 29, 2011, Authority withdrew all 99 MW of Firm Hydroelectric Power and Energy allocated under Service Tariff No. 41 and terminated service under the 1990 Hydropower Contract with respect to all 99 MW of Firm Hydroelectric Power and Energy, effective August 1, 2011, for use in the Recharge New York Power Program created pursuant to Chapter 60 (Part CC) of the Laws of 2011 (the “Firm Power and Energy Withdrawal/Termination”).

WHEREAS, Company and Authority agree to further modify and extend certain terms of 1990 Hydropower Contract as follows:

- 1) As a result of the Authority’s Firm Power and Energy Withdrawal/Termination, the amount of Firm Hydroelectric Power and Energy allocated to Company under Service Tariff No. 41 is zero (0). The Firm Peaking Power allocation of 35 MW under Service Tariff No. 42 will remain unchanged.
- 2) Article E - Rates. The current text is deleted in its entirety and is replaced with the following text.

“The rates charged by the Authority under this Agreement shall be established In accordance with this Article.

The Authority shall charge and Company shall pay the preference power rates in effect, as such rates may be revised from time to time. Company waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority, except as otherwise provided for below.

Company waives any challenges to any of the following methodologies and principles used by the Authority to set future preference power rates, numbers (i) through (vii) as set forth in the “January 2003 Report on Hydroelectric Production



Rates” as modified by the April 2003 “Staff Analysis of Public Comments and Recommendations”:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “*Auer Settlement*”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (i.e., retiree health benefits).
- (vii) Rate Stabilization Reserve (RSR) methodology.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Company shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.”

- 3) Article F - Transmission. The current text is deleted in its entirety and is replaced with the following text.

“In accordance with the terms of the existing transmission Hydropower Contract, which by its terms will expire on August 31, 2007, Company will cease taking transmission service from Authority and will instead take transmission service under the New York Independent System Operator’s (“NYISO”) Open Access Transmission Tariff. Company agrees to settle any outstanding transmission charges that may apply prior to September 1, 2007 including any subsequent NYISO true up settlements.”

- 4) Article G - Notification. In the contact address for Authority replace “10 Columbus Circle, New York, NY 10019” with “123 Main Street, White Plains, NY 10601”. For Company, delete the current reference in its entirety and replace with the following “David J. Kimiecik, Vice President, Energy Services, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation, 18 Link Drive, P.O. Box 5224, Binghamton, New York 13902-5224”.

- 5) Article J- Cancellation or Reduction. The following sentence is added at the end of Article J:

Company may also cancel or reduce such service during the period from January 1, 2022 through December 31, 2023, for any reason upon thirty (30) days' prior written notice to the Authority.

- 6) Article K - Restoration of Withdrawn Power and/or Energy is deleted in its entirety.

- 7) Article L - Term of Service, is revised to read as follows:

“Service under this contract shall commence at 12:01 A.M. on January 1, 1990 and shall continue unless cancelled as provided for In the “Withdrawals of Power and/or Energy” or the “Cancellation or Reduction” provisions until December 31, 2023, subject to earlier termination by the Authority at any time with respect to any or all of the quantities of power and energy provided hereunder on at least thirty (30) days' prior written notice to Company.”

- 8) Article M - Availability of Energy - Firm and Firm Peaking Hydroelectric Power Service. In the third paragraph, line 1, starting with the words “In the event that...” through “... minimize the impact of such reductions.” on line 10, replace with the following:

“The Authority will have the right to reduce on a pro rata basis the amount of energy provided to Company under Service Tariff No. 42 if such reductions are necessary due to low flow (i.e. hydrologic) conditions at the Authority's Niagara Project hydroelectric generating station. In the event that hydrologic conditions require the Authority to reduce the amount of energy provided to Company, reductions as a percentage of the otherwise required, energy deliveries will be the same for all firm Niagara Project customers. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Company in later billing periods. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Company. The Authority shall provide reasonable notice to Company of any condition or activities that could result, or have resulted, in low flow conditions consistent with the notice provided to other similarly affected customers.”

- 9) This amendment shall be referred to as the “2020 Amendment to the 1990 Hydropower Contract”.

- 10) Continuation of service under this 2020 Amendment to the 1990 Hydropower Contract shall be subject to approval of this 2020 Amendment to the 1990 Hydropower Contract by the Governor of the State of New York pursuant to Public Authorities Law § 1009. If the Governor disapproves this 2020 Amendment to the 1990 Hydropower Contract, service will cease on the last day of the month following the month during which the Governor disapproved this 2020 Amendment to the 1990 Hydropower Contract. If the Governor takes no action within the time frame provided for in Public Authorities Law § 1009, service will cease on the last day of the month following the month during which such timeframe expired.

- 11) Except as expressly provided in this 2020 Amendment to the 1990 Hydropower Contract, the 1990 Hydropower Contract shall remain unchanged and in full force and effect.
- 12) This 2020 Amendment to the 1990 Hydropower Contract shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts and to be performed in such state, without regard to conflict of laws principles.
- 13) This 2020 Amendment to the 1990 Hydropower Contract may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signature thereto and hereto were upon the same instrument.
- 14) Upon approval of the Governor of the State of New York pursuant to Public Authorities Law § 1009, and upon execution by the Chairman of the Authority, this 2020 Amendment to the 1990 Hydropower Contract shall come into full force and effect, provided however that pending such gubernatorial approval and execution, this 2020 Amendment to the 1990 Hydropower Contract shall take effect upon the expiration of the 2017 Amendment and continue on a month to month basis.
- 15) This 2020 Amendment to the 1990 Hydropower Contract may be amended or modified by written agreement signed by the Authority and the Company.

AGREED:

**Rochester Gas and Electric Corporation**

By: \_\_\_\_\_  
Name: Joseph J. Syta  
Title: Vice President, Controller and Treasurer  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Carl A. Taylor  
Title: President and CEO  
Date: \_\_\_\_\_

**Power Authority of the State of New York**

ACCEPTED:

By: \_\_\_\_\_  
Name: John R. Koelmel  
Title: Chairman  
Date: \_\_\_\_\_

**POWER AUTHORITY OF THE STATE OF NEW YORK**  
**ESTIMATED RECEIPTS AND EXPENDITURES**  
**2020 TO 2024**  
**ACTUAL RECEIPTS AND EXPENDITURES 2019**

Exhibit 6b i-A

<b>2801 Report</b>	Last Year	Curent Year	Proposed	Proposed	Proposed	Proposed
	2019	2020	2021	2022	2023	2024
<b>Revenue &amp; Financial Sources</b>						
<b>Operating Revenues</b>						
Charges for Services	\$2,355,738,377	\$2,288,870,850	\$2,510,954,670	\$2,550,733,292	\$2,648,908,327	\$2,811,177,822
Rentals & Financing Income	-	-	-	-	-	-
Other Operating Revenues	-	-	-	-	-	-
<b>Non-Operating Revenues</b>						
Investment Earnings	18,274,223	36,585,624	20,048,622	18,337,098	20,532,208	15,618,877
State Subsidies / Grants	-	-	-	-	-	-
Federal Subsidies / Grants	-	-	-	-	-	-
Municipal Subsidies / Grants	-	-	-	-	-	-
Public Authority Subsidies	-	-	-	-	-	-
Other Non-Operating Revenues	43,000,000	-	43,000,000	43,000,000	43,000,000	-
<b>Proceeds from the Issuance of Debt</b>	294,402,000	1,234,630,000	-	-	119,823,135	106,614,879
<b>Total Revenues &amp; Financing Sources</b>	<b>2,711,414,600</b>	<b>3,560,086,474</b>	<b>2,574,003,292</b>	<b>2,612,070,390</b>	<b>2,832,263,670</b>	<b>2,933,411,578</b>
<b>Expenditures</b>						
<b>Operating Expenditures</b>						
Salaries and Wages	250,626,520	239,733,382	241,006,867	248,329,128	255,563,773	263,006,957
Other Employee Benefits	137,564,795	121,778,012	143,514,284	146,878,816	150,514,124	154,310,960
Professional Services Contracts	128,865,487	44,370,866	48,754,349	50,030,610	51,345,158	52,699,143
Supplies and Materials	118,707,988	202,747,699	215,689,488	203,261,936	206,727,900	213,729,627
Other Operating Expenditures	1,477,566,284	1,494,990,156	1,644,123,899	1,663,922,411	1,706,680,610	1,785,392,917
<b>Non-Operating Expenditures</b>						
Payment of Principal on Bonds and Financing Arrangements	349,017,000	268,801,202	855,000	2,655,000	895,000	16,815,000
Interest and other Financing Charges	52,752,721	64,628,220	41,402,452	43,181,077	65,053,778	104,382,020
Subsidies to Other Public Authorities	-	1	2	3	4	5
Capital Asset Outlay	391,379,568	607,224,748	681,287,900	555,520,621	380,233,639	351,840,091
Grants and Donations	-	-	-	-	-	-
Other Non-Operating Expenditures	-	-	-	-	-	-
<b>Total Expenditures</b>	<b>2,906,480,363</b>	<b>3,044,274,286</b>	<b>3,016,634,241</b>	<b>2,913,779,602</b>	<b>2,817,013,986</b>	<b>2,942,176,720</b>
<b>Capital Contributions</b>	-	-	-	-	-	-
<b>Excess/(Deficiency)</b>						
<b>of Revenues and Capital Contributions over Expenditures</b>	<b>(\$195,065,763)</b>	<b>\$515,812,188</b>	<b>(\$442,630,949)</b>	<b>(\$301,709,212)</b>	<b>\$15,249,684</b>	<b>(\$8,765,142)</b>

**Procurement (Services) and Other Contracts – Awards**  
**(For Description of Contracts See "Discussion")**

**EXHIBIT "6c i-A"**  
**September 23, 2020**

<u>Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis<sup>1</sup> Contract Type<sup>2</sup></u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
COMMERCIAL OPERATIONS - FUEL PLANNING & OPERATIONS	<b>AMSPEC, L.L.C.</b> Cranbury, NJ <b>(QFS-2020-01)</b>	10/01/20	Provide for independent petroleum inspection and other related services	12/31/22	B/S			<b>\$81,000*</b>
							*Note: represents total for up to 27-month term	
UTILITY OPERATIONS – FACILITY MANAGEMENT	<b>A&amp;A MAINTENANCE ENTERPRISE, INC.</b> Yonkers, NY <b>(Q20-6994JM)</b>	01/01/21	Provide Contract Administration and Janitorial Services for the Centroplex building at the WPO	12/31/24	B/S			<b>\$7.75 million*</b>
							*Note: represents total for up to 5-year term	
UTILITY OPERATIONS – PHYSICAL SECURITY & CRISIS MANAGEMENT	<b>TRUVIEW BSI LLC</b> Hicksville, NY <b>(4600003978)</b>	08/24/20	Provide Background Investigation Services	08/23/25	B/P	\$100,000		<b>\$2.5 million*</b>
							*Note: represents total for up to 5-year term including an interim value \$100,000	
UTILITY OPERATIONS – POWER SYSTEM EQUIPMENT	<b>GOPOWER, INC.</b> Medford, MA <b>(N20-10299397AD)</b>	09/23/20 (on or about)	Provide evaluation and engineering analysis of the Robert Moses Niagara Power Project ("RMNPP") High Power Fluid Filled cables	09/22/23	B/P			<b>\$750,000*</b>
							*Note: represents total for up to 3-year term	
UTILITY OPERATIONS – PROJECT MANAGEMENT	<b>CROWN CASTLE INTERNATIONAL CORPORATION dba CROWN CASTLE FIBER LLC</b> Houston, TX <b>(4500323110)</b>	08/18/20	Provide construction services for Smart Generation & Transmission ("SG&T") Communication Backbone Program Dark Fiber from Albany to Niagara	08/17/40	B/C	\$50,000		<b>\$1,243,945*</b>
							*Note: represents total for up to 20-year term (for both Lease and Maintenance Agreement) including an interim value \$50,000	

♦ **M / WBE:** New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)  
**1 Award Basis:** B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search  
**2 Contract Type:** P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

**Procurement (Services) and Other Contracts – Awards**  
**(For Description of Contracts See "Discussion")**

**EXHIBIT "6c i-A"**  
**September 23, 2020**

<b><u>Plant Site</u></b>	<b><u>Company Contract #</u></b>	<b><u>Start of Contract</u></b>	<b><u>Description of Contract</u></b>	<b><u>Closing Date</u></b>	<b><u>Award Basis<sup>1</sup> Contract Type<sup>2</sup></u></b>	<b><u>Compensation Limit</u></b>	<b><u>Amount Expended To Date</u></b>	<b><u>Expected Expenditures For Life Of Contract</u></b>
UTILITY OPERATIONS – PROJECT MANAGEMENT - CENTRAL NY	<b>WINN CONSTRUCTION SERVICES, INC.</b> Waterford, NY <b>(Q20-6932AP)</b>	09/23/20 (on or about)	Provide labor, materials, tools, equipment and supervision for construction services for Crescent Dam A and B Concrete Repairs	09/22/22	B/C			<b>\$3,327,000*</b>
							*Note: represents total for up to 2-year term	
UTILITY OPERATIONS – SITE ADMINISTRATION SENY	<b>BASSON TRADING LLC dba ALADON</b> Wilmington, NC <b>(4600003977)</b>	08/24/20	Provide Reliability Centered Maintenance ("RCM") Facilitator Mentoring Services	08/23/25	B/P	\$75,000		<b>\$2.75 million*</b>
							*Note: represents total for up to 5-year term including an interim value \$75,000	
UTILITY OPERATIONS – SITE ADMINISTRATION SENY	<b>DAIKIN APPLIED AMERICAS, INC. dba DAIKIN APPLIED</b> Minneapolis, MN <b>(A20-002021DW)</b>	09/23/20 (on or about)	Provide Chiller Maintenance and Repairs to the Authority's Small Clean Power Plants ("SCPP")	09/22/25	B/S			<b>\$5 Million*</b>
							*Note: represents total for up to 5-year term	

♦ **M / WBE:** New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)  
1 **Award Basis:** B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search  
2 **Contract Type:** P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

## **RESOLUTION**

**WHEREAS**, Harry Francois, regional manager, Western New York, retired from the New York Power Authority at the end of August after nearly 30 years of devoted service to NYPA and the Niagara Power Project, including the last eight years leading the hydroelectric facility and its more than 300-member workforce of salaried and bargaining-unit employees; and

**WHEREAS**, Mr. Francois, a highly revered and inspiring NYPA leader, steered the Niagara project—the largest source of electricity in New York State—as its low-cost power became even more vital to economic development through Governor Andrew M. Cuomo’s ReCharge NY program, which is directly supporting hundreds of thousands of jobs across the state; and

**WHEREAS**, Mr. Francois had a major role in virtually every major capital improvement program at the Niagara project since the 1990s, from a multiyear upgrade at the Robert Moses Niagara Power Plant, to a Life Extension and Modernization (LEM) Program at the Lewiston Pump Generating Plant, initiated and largely completed during Mr. Francois’s stewardship as Western New York regional manager, to a Transmission LEM at the Niagara switchyard, to the launching this year of “Next Generation Niagara,” a more than \$1 billion, 15-year modernization and digitization program at the Moses plant; and

**WHEREAS**, these and other initiatives, for underpinning the reliability, resilience and performance of the Niagara project, benefited mightily from the technical expertise of Mr. Francois, an electrical engineer, whose perseverance and constant learning made him the preeminent subject matter expert in electrical engineering at the project, whether it was transformers, relays, batteries, inverters or other equipment, and who would always generously share that knowledge with his colleagues; and

**WHEREAS**, Mr. Francois, known for his kindness, humility and genuine interest and concern for others, acted as a mentor to numerous colleagues, who looked to him for guidance in work projects and in their careers and considered him a shining example of someone representing the best qualities of professional excellence. They included a perennially upbeat disposition and calm, clear-headed decision-making, in not only technical matters but in human relations issues requiring evenhanded solutions; and

**WHEREAS**, Mr. Francois worked closely with the leadership of IBEW Local 2104, in promoting a strong management-union relationship. This redounded to the benefit of numerous aspects of Niagara’s operations, from a highly successful apprentice training program to the integration of best-in-class safety practices that resulted in the project achieving a milestone in July of going one year without a DART safety incident. This is demonstrative of the active involvement of staff in a work culture that Mr. Francois repeatedly reinforced in stressing the connection between working safely and being able to take care of one’s family; and

**WHEREAS**, Mr. Francois personified the American Dream, emigrating in the late 1970s from Haiti with his family when he was a teenager, with their taking up residence in Brooklyn, N.Y., where he attended high school and the Pratt Institute, from which he received a Bachelor of

Electrical Engineering. Showing great effort to overcome a hardscrabble life, he learned English, drove a cab to put himself through college and worked as an auto mechanic, as he looked to launch a successful engineering career in the utility industry; and

**WHEREAS**, Mr. Francois was recruited by NYPA in 1991 through the National Society of Black Engineers (NSBE) for the position of electrical engineer I in the Instrumentation and Control department at Niagara and then went on to hold positions of increasing responsibility as electrical engineer II, electric maintenance superintendent and Western New York regional manager, distinguishing himself in each of those roles; and

**WHEREAS**, Mr. Francois provided strong support for NYPA's Environmental Justice and STEM activities, championing those initiatives in Western New York, for expanding the horizons of young people in underserved communities through hands-on learning camps at the Niagara Power Vista. His active community involvement also ranged from serving on the boards of area civic organizations to volunteering for neighborhood clean-ups—all the while remembering his roots, including maintaining a decades-long connection with the NSBE, to make possible the aspirations of young Black engineers at the cusp of their careers; and

**WHEREAS**, Mr. Francois has brought honor to the Power Authority in countless ways, in building upon its reputation for excellence, in meeting the energy needs of Western New York and New York State and being a responsible corporate citizen of the highest order; and

**WHEREAS**, Mr. Francois's decades of dedicated and meritorious service will long be remembered by his NYPA colleagues who were privileged to work with him;

**NOW, THEREFORE BE IT RESOLVED**, That the Trustees of the Power Authority of the State of New York convey their deepest gratitude and appreciation to Harry Francois for all that he has accomplished and extend best wishes to him and his wife, Nerla, as they embark on the next chapter of their lives, in Georgia, as well as to their two wonderful daughters, Ariel and Brianna. Bonne chance and all the best for a happy, healthy and most rewarding future.

September 23, 2020



## **RESOLUTION**

**WHEREAS**, KC (Kenneth) Carnes, Vice President, Critical Secure Services and Chief Information Security Officer, left the New York Power Authority in early September to join the Tennessee Valley Authority (TVA) in Chattanooga, Tenn., after nearly four years of highly accomplished and tireless service in which he has left an indelible mark on NYPA's Information Technology department and cybersecurity; and

**WHEREAS**, Mr. Carnes greatly contributed to ensuring that NYPA's progress toward becoming the first end-to-end digital utility in the country was accompanied by rigorous and exacting safeguards to obtain the full benefits of heightened situational awareness and performance of its generation and transmission equipment while maintaining the resilience of its computer systems and networks against cyber intrusions; and

**WHEREAS**, digitization was a distinct advantage to the Power Authority during the pandemic, including the wide dissemination of laptops and other mobile computer devices, enabling employees to effectively carry out their jobs from home, with Mr. Carnes providing essential leadership for making that possible; and

**WHEREAS**, the cybersecurity measures during Mr. Carnes's tenure were integral to NYPA's operating and business systems in protecting not only the Authority's data but that of its customers, and ensuring that all government and industry compliance requirements were fully met; and

**WHEREAS**, the leveraging of the latest technologies, under Mr. Carnes's leadership, to protect NYPA's digital networks and system put the Power Authority on the map as a leader in cybersecurity in New York State and the national electric sector; and

**WHEREAS**, Mr. Carnes forged close collaboration between IT and Operational Technology personnel in support of the three pillars of cybersecurity, as defined by Data Confidentiality, Integrity and Availability. He was always welcoming and encouraging of the ideas of employees reporting to him in support of those essential qualities, providing them with the guide rails for bringing proposals and solutions to fruition while always being available to consult with to support their success; and

**WHEREAS**, Mr. Carnes spearheaded the Power Authority's engagement in cybersecurity exercises and workshops with the U.S. Department of Energy, other government agencies and the energy sector for responding to simulated cyber-attacks on the power grid and carrying out actions for mitigating and remediating damage to critical infrastructure. The exercises included full-scale operational drills over multiple days in which the participants rehearsed how they would handle potentially crippling cyber-attacks aimed at blocking them from restoring power; and

**WHEREAS**, Mr. Carnes led a multifaceted outreach to employees through special events and various electronic platforms, communicating how to recognize and avoid phishing scams to protect the Power Authority's computer networks as well as employees' home computers; and

**WHEREAS**, Mr. Carnes generously volunteered his time for NYPA-organized student mentoring events, briefing young people on cybersecurity and other IT specializations for their consideration as career opportunities; and

**WHEREAS**, Mr. Carnes has dedicated his working life to public power, including 16 years at the Omaha Public Power District, before coming to the Power Authority, and firmly embraces the values of servant leadership in the public sector for achieving benefits that serve the greater good;

**NOW, THEREFORE BE IT RESOLVED**, that the Trustees of the Power Authority of the State of New York extend their heartfelt thanks to Mr. Carnes for his significant contributions to NYPA and wish him a bright future in his new position as Director of Cyber Operations at the TVA. We know that his thorough knowledge and expertise in IT and cybersecurity matters and devotion to whatever project he is involved with will make an important difference, just as those exemplary qualities stood out during his service at NYPA. The Trustees extend their very best wishes to KC, his wife, Kelle, and their children—Mya, Kye, Sydney and Hayley—for much success, good health and happiness and enjoyment of the new experiences that await them.

*September 23, 2020*