



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

September 26, 2017

Table of Contents

<u>Subject</u>	<u>Page No.</u>	<u>Exhibit</u>
Introduction	2	
1. Adoption of the September 26, 2017 Proposed Meeting Agenda	3	
2. Motion to Conduct an Executive Session	4	
3. Motion to Resume Meeting in Open Session	5	
4. CONSENT AGENDA:	6	
a. Governance Matters	7	
i. Minutes of the Regular New York Power Authority Trustees' Meeting held on July 25, 2017	7	
ii. Appointment of Authority Treasurer	8	
iii. Motor Vehicle and Equipment Policy	9	4a iii-A
iv. Approval of Authority Policy on Internal Controls	11	4a iv-A
b. Rate Making	13	
i. Decrease in Westchester County Governmental Customer Revenue Collection – Notice of Proposed Rulemaking	13	
c. Power Allocations	16	
i. Contract for the Sale of Replacement Power – Transmittal to the Governor	16	4c i-A - 4c i-C
ii. Hydropower Allocations – Extensions of Western New York Hydropower Allocations – Notice of Public Hearing	19	4c ii-A-1 - 4c ii-A-4
iii. Extension of Hydropower Contracts with Upstate Investor-Owned Utilities for the Benefit of Rural and Domestic Consumers – Notice of Public Hearing	24	4c iii-A - 4c iii-C

<u>Subject</u>	<u>Page No.</u>	<u>Exhibit</u>
d. Procurement (Services) Contracts	27	
i. Procurement (Services) and Other Contracts – Business Units and Facilities – Awards, Extensions and/or Additional Funding	27	4d i-A; 4d i-B
e. Capital Expenditure Authorization Requests	36	
i. St. Lawrence-FDR Power Project – Generator Rotor Modifications for Stress Redistribution Project – Phase 1 – Capital Expenditure Authorization Request and Contract Award	36	
ii. Moses-Adirondack Smart Path Reliability Project – Phase 1 - Capital Expenditure Authorization Request and Increase in Contract Award	39	
f. Finance	43	
i. Approval of Budget Report for Submission Pursuant to Section 2801 of the Public Authorities Law and Agency Procedures	43	4f i-A
ii. Authorization to Amend License Agreement with Consolidated Edison Energy, Inc. for the Use of Transmission Capacity on the Hudson Transmission Partners, LLC Transmission Line	45	
iii. New York State Canal Corporation (NYCC) – Self-Insure Workers' Compensation Program	48	
Resolution		
5. DISCUSSION AGENDA:	50	
a. Strategic Initiatives	50	
i. President and Chief Executive Officer Report	50	5a i-A
b. Risk Management	53	
i. Chief Risk Officer – Report	53	5b i-A
c. Operations & Finance	55	
i. Financial Report	55	5c i-A
ii. Utility Operations Report	57	5c ii-A
iii. Commercial Operations Report	59	5c iii-A

<u>Subject</u>	<u>Page No.</u>	<u>Exhibit</u>
iv. Informational Item: Customer Solutions Business Plan	61	5c iv-A
v. Procurement (Services) Contract – 500MW Combined Cycle Power Plant – Long-Term Service and Extended Parts Agreement Resolution	64	
vi. Procurement (Services) Contract – Digital Utility Strategic Partnership – Contract Award Resolution	67	
vii. Transmission Life Extension and Modernization Program - St. Lawrence Region - Massena Substation - Capital Expenditure Authorization Request Resolution	72	
viii. Procurement (Services) Contracts - Asset Management Support Services - Contract Awards Resolution	74	
ix. Replacement Power Allocation and Notice of Public Hearing Resolution	77	5c ix-A; 5c ix-B
x. Award of Fund Benefits from the Northern New York Economic Development Fund Recommended by the Northern New York Power Proceeds Allocation Board Resolution	81	5c x-A 5c x-B 5c x-C-1 - 5c x-C-3
6. Board Committee Reports:	85	
a. Audit Committee	85	
b. Governance Committee	85	
c. Finance Committee	85	
d. Strategic Planning Committee	85	
7. Resolution – Brian McElroy Resolution	86	
8. Next Meeting	87	
Closing	88	

Minutes of the Regular Meeting of the Power Authority of the State of New York held at the Clarence D. Rappleyea Building, 123 Main Street, White Plains, New York at approximately 9:50 a.m.

Members of the Board present were:

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

Dr. Anne M. Kress, Trustee - Excused
Anthony J. Picente, Jr., Trustee - Excused

Gil Quiniones	President and Chief Executive Officer
Justin Driscoll	Executive Vice President and General Counsel
Jill Anderson	Executive Vice President and Chief Commercial Officer
Joseph Kessler	Executive Vice President and Chief Operating Officer
Robert Lurie	Executive Vice President and Chief Financial Officer
Parija Soubhagya	Senior Vice President and Chief Risk Officer
Ken Lee	Senior Vice President and Chief Information Officer
Kimberly Harriman	Senior Vice President – Public & Regulatory Affairs
Kristine Pizzo	Senior Vice President – Human Resources
Bradford Van Auken	Senior Vice President - Operations Support Services & Chief Engineer
Karen Delince	Vice President and Corporate Secretary
Joseph Gryzlo	Vice President and Chief Ethics and Compliance Officer
John Canale	Vice President – Strategic Supply Management
Ruth Colón	Vice President – Enterprise Shared Services
Keith Hayes	Vice President – Economic Development
Joseph Leary	Vice President – Community & Government Relations
Patricia Lombardi	Vice President – Project Management
Ethan Riegelhaupt	Vice President – Corporate Communications
Scott Tetenman	Vice President – Finance
Thomas Concadoro	Vice President and Controller
Kenneth Carnes	Chief Information Security Officer – Cyber Security
Christopher Carey	Operations Superintendent
Tim Zandes	Regional Manager – SENY
Susan Craig	Director – Media Relations
Ronald Johnston	Director – Marketing Strategy
Genevieve Fabela	Treasurer
Mary Cahill	Manager – Executive Office
Jillian Nelson	Chief of Staff – Public and Regulatory Affairs
Lorna Johnson	Senior Associate Corporate Secretary
Sheila Quatrocci	Senior Assistant Corporate Secretary
Peter Prunty	Senior Director – Infrastructure
Jaiah Gottor	Manager – Network Services – Infrastructure
Joseph Rivera	Network Architect – Infrastructure
Glenn Martinez	Senior Network Analyst – Infrastructure
Brian McElroy	Retiree

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

Introduction

Chairman Koelmel welcomed the Trustees 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 26, 2017 Proposed Meeting Agenda**

Upon motion made by Vice Chairman Nicandri and seconded by Trustee McKibben, the meeting Agenda was adopted.

Conflicts of Interest

Chairman Koelmel, Vice Chairman Nicandri and Trustees McKibben, Balboni and Trainor declared no conflicts of interest.

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

Mr. Chairman, I move that the Authority conduct an executive session to discuss the financial and credit history of a particular corporation (pursuant to §105 of the Public Officers Law). Upon motion made by Vice Chairman Nicandri and seconded by Trustee McKibben, the members held an executive session.

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

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

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

4. CONSENT AGENDA:

Upon motion made by Trustee Balboni and seconded by Trustee Trainor, the Consent Agenda was approved.

a. Governance Matters:

i. Approval of the Minutes

The Minutes of the Regular Meeting held on July 25, 2017 were unanimously adopted.

ii. **Appointment of Authority Treasurer**

The Chair of the Governance Committee submitted the following report:

"SUMMARY

The Trustees are requested to consider the appointment of Genevieve Fabela as Authority Treasurer, with an annual salary of \$158,620, effective immediately, to hold such office until her successor is chosen and qualified or her earlier removal, resignation or death.

BACKGROUND AND DISCUSSION

The appointment of officers is governed by Article IV of the Authority Bylaws, which provides that the officers shall be appointed by formal resolution adopted by the Trustees upon the recommendation of the Governance Committee. The Authority's Governance Committee Charter further provides that the Committee shall review and make recommendations to the Board of Trustees concerning the election and compensation of officers, consistent with the By-laws, the needs of the Authority, good organizational management practices and such other criteria the Committee deems appropriate.

RECOMMENDATION

It is recommended by the Governance Committee that, pursuant to the Authority's By-laws, Genevieve Fabela be appointed as Authority Treasurer, with an annual salary of \$158,620, effective immediately, to hold such office until her successor is chosen and qualified or her earlier removal, resignation or death.

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

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

RESOLVED, That pursuant to Article IV, of the Authority's By-Laws, Genevieve Fabela is hereby appointed as Authority Treasurer, with an annual salary of \$158,620, effective immediately, to hold office until her successor is chosen and qualified or her earlier removal, resignation or death.

iii. Motor Vehicle and Equipment Policy

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The Trustees are requested to approve the Motor Vehicle and Equipment Policy, Company Policy Number CP 2-8. This Policy addresses the management of company motor vehicles, mobile specialized work equipment and trailers, including fleet management, acquisition and disposal, assignments, maintenance, usage, and reporting. This is a revision of the current policy which updates its format, adds definitions and enumerates the responsibilities of the Fleet Department. (Exhibit 4a iii-A)

BACKGROUND

Section 8 of the Company Policy CP-2-8 states that the Director of Fleet Operations reviews and updates this Policy as business needs require. Nevertheless, a mandatory review will be required on the anniversary date of the approved document. The Director is also responsible for keeping the Authority's Motor Vehicle Policy aligned with the New York State Policy. At this moment, the Director of Fleet Operations deems it necessary to update the Policy in order to capture new responsibilities, align it with the Authority's new Emergency Management Program and to follow, more closely, the New York State Vehicle Policy.

DISCUSSION

The mission of the Fleet Management Operations is to effectively procure, maintain, manage and dispose of New York Power Authority's fleet of vehicles and equipment in a safe, reliable, and cost-effective manner consistent with the company's current and future business needs. The Director of this Department is in charge of reviewing its policies periodically. In carrying out these duties, the Director of Fleet Operations and its staff reviewed, edited and updated the Authority's Policy, drafting the Policy that is now being presented to the Trustees for its approval. This Policy serves to clearly establish the procedures to be followed by Authority staff in order to use an Authority Vehicle, defined assigned vehicle, pool vehicle and departmental vehicle, and explain the responsibilities of the Fleet Department and Authority staff that uses its vehicles. The staff of all Authority Business Units and Departments shall adhere to this Policy. All procedures shall be prepared, as necessary, to provide appropriate guidance in meeting the management controls.

FISCAL INFORMATION

There is no fiscal impact in implementing this Policy.

RECOMMENDATION

The Senior Vice President – Human Resources and Enterprise Shared Services and the Vice President – Enterprise Shared Services recommend that the Trustees approve the Authority's Motor Vehicle and Equipment Policy.

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

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

RESOLVED, that the Trustees hereby authorize and approve the Motor Vehicle and Equipment Policy —

Company Policy Number CP 2-8 — 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.

iv. **Approval of Authority Policy on Internal Controls**

"SUMMARY

The Trustees are requested to accept the recommendation of the Audit Committee and approve the Authority's policy on internal controls as required by Section 2931 of the Public Authorities Law.

BACKGROUND AND DISCUSSION

Section 2931 of the Public Authorities Law requires the Authority's governing board to establish and maintain a system of internal controls that are in accordance with New York State's Internal Control Act and internal control standards for the Authority's guidelines.

This Authority's policy, titled *CP 2-5 Internal Controls* and attached as Exhibit '4a iv-A,' establishes guidelines for the Authority's system on internal controls in accordance with internal control standards established by the Office of the State Comptroller and based on the internal control integrated framework of the Committee of Sponsoring Organizations of the Treadway Commission ('COSO'). This policy replaces NYPA's former *Financial and Accounting Controls* policy.

Under the Authority's By-Laws, the Audit Committee provides oversight of management's internal controls, compliance and risk assessment practices. Accordingly, the Audit Committee has reviewed *CP 2-5 Internal Controls* and recommends its approval by the Board.

RECOMMENDATION

It is recommended that the Trustees accept the recommendation of the Audit Committee and approve the Authority's policy on internal controls which are applicable to all Authority personnel, including the chief executive and senior management. It is further recommended that the Trustees delegate to the President and Chief Executive Officer the authority to modify this policy, as necessary, except in the event that any powers, duties or obligations of the Trustees would be affected by such modification.

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

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

RESOLVED, That pursuant to Section 2931 of the Public Authorities Law, CP 2-5 Internal Controls (Revision 1) relating to internal controls, is hereby approved; and be it further

RESOLVED, That the President and Chief Executive Officer is authorized to modify the foregoing policy, as necessary, except in the event that any powers, duties or obligations of the Trustees would be affected by such 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 and take any and all actions and execute and deliver any and all agreements,

September 26, 2017

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. Rate Making:

i. Decrease in Westchester County Governmental Customer Revenue Collection – 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 decrease revenue collection by 2.42% or \$0.83 million (including Zero Emission Credits ('ZECs') charge) for 2018, as compared to the 2017 revenue collection for the Westchester County Governmental Customers ('Customers').

In addition, the Trustees are requested to direct the Corporate Secretary to file the NOPR with the New York State Department of State for publication in the New York *State Register* in accordance with the requirements of the State Administrative Procedure Act ('SAPA'). Following the publication of this NOPR in the *State Register*, the 45-day public comment period will begin on October 11, 2017 and close on November 25, 2017.

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 December 2017 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; permit the Customers to fully terminate service on one year's written notice, which, if given, could be effective no earlier than January 1, 2019; and allow the Authority to apply an Energy Charge Adjustment ('ECA') mechanism to the Customers' bills each month.

The current 2017 base production rates were adopted by the Trustees at their January 31, 2017 meeting, when they approved an 8.74% revenue collection increase (including ZECs) over 2016 rates. Staff is proposing a 2018 revenue collection decrease due to lower fixed costs and lower purchase power expense.

DISCUSSION

Consistent with the Authority's past rate-making practices and with the rate-setting process set forth in the Agreements, the proposed production revenue collection is based on a pro forma COS for next year. When including ZECs, the Preliminary 2018 COS for the Westchester Customers is \$33.42 million, compared to \$34.25 million in the Final 2017 COS.

The Fixed Costs component is expected to decrease from \$3.09 million to \$2.54 million, an approximate \$0.54 million, or 18%, decrease as compared to the Final 2017 COS. The proposed

decrease is mainly driven by an approximate \$0.59 million decrease in Operations & Maintenance ('O&M') costs due to a planned decrease in non-recurring work at the Small Hydro facilities.

The Variable Costs component is projected to decrease from \$31.17 million to \$30.88 million, an approximate \$0.28 million or 0.9% decrease as compared to the Final 2017 COS. The primary cost element, energy purchases, is \$23.31 million and accounts for 70% of the total production costs. Although these Customers receive a pro-rated share of energy from the small hydro generation facilities, most of their energy requirements are purchased from the market (in NYISO Zones 'G' (Hudson Valley) and 'A' (Western New York)). The projected 2018 prices for Zones A and G are expected to be lower than those that were projected for 2017 and incorporated into the rates that are currently in effect. Also, contributing to the decrease in Variable Costs are lower capacity costs due to projected lower Rest of State capacity prices. Slightly offsetting the decrease is an increase of approximately \$0.45 million in the Clean Energy Standard ('CES') charges related to ZECs. These charges have been developed by the New York Public Service Commission to support the adoption of the Clean Energy Standard. ZECs are payments made to nuclear plants to support the preservation of existing at risk nuclear zero emissions attributes. It is estimated to cost the Customers approximately \$1.83 million to purchase ZECs for their load. Even though the ZECs charges are included in the Preliminary 2018 COS, the same as in 2017, they will not be included in the Customer rates for 2018, but, rather, will be passed through to the Customers as a separate line item on their bill to allow for precise tracking of the incurred costs for the Customers.

The Preliminary 2018 COS is \$33.42 million. Excluding the estimated ZECs charges, the Preliminary 2018 COS is \$31.60 million. At existing 2017 rates, estimated revenues would be \$32.97 million, an over-recovery of \$1.37 million. As a result, staff is recommending that the rates be revised to decrease revenue collection by 4.34%.

Under SAPA, there is a 45-day public comment period on the rate change. At the close of the comment period, Authority staff will review any comments which have been filed and, if warranted, staff will make any necessary changes to the proposed revenue collection to address any concerns raised. Staff will return to the Trustees at their December 2017 meeting to request an approval of the final rate modification, to become effective with the January 2018 billing period.

FISCAL INFORMATION

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

RECOMMENDATION

The Director – Revenue & Pricing Analysis and the Vice President – Finance recommend that the Trustees authorize the Corporate Secretary to file a Notice of Proposed Rulemaking in the New York *State Register* for the adoption of a production revenue collection decrease applicable to the Westchester County Governmental Customers.

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

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

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

RESOLVED, That the Vice President – Finance, or his designee, be, and hereby is, authorized to issue written notice to the affected Customers of this proposed action by the Trustees for a projected 2.42% decrease in the production revenue collection 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 revenue collection decrease and proposed tariff modification; and be it further

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

c. Power Allocations

i. Contract for the Sale of Replacement Power – Transmittal to the Governor

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to:

- 1) Approve the proposed final contract ('Contract') for the sale of 1,500 kilowatts ('kW') of Replacement Power ('RP') to Sumitomo Rubber USA, LLC ('Sumitomo' or 'Company') in accordance with Public Authorities Law ('PAL') §1009, the terms of which are summarized below and in Exhibit '4c i-A.'
- 2) Authorize transmittal of the Contract to the Governor for his review and requested authorization for the Authority to execute the Contract pursuant to PAL §1009.

The Contract is attached as Exhibit '4c i-B.'

BACKGROUND

Under PAL §1005(13), the Authority may allocate and sell directly or by sale for resale, 250 megawatts ('MW') of Expansion Power ('EP') and 445 MW of RP (collectively, 'WNY Hydropower') to businesses located within 30 miles of the Niagara Power Project, provided that the amount of EP allocated to businesses in Chautauqua County on January 1, 1987 shall continue to be allocated in such county. Under PAL §1005(13), the Authority may allocate and sell directly or by sale for resale, 490 MW of Preservation Power to businesses located in Jefferson, Franklin and St. Lawrence Counties.

As required by PAL §1009, when the Authority has reached agreement with its co-party on a power sale contract, it is required to transmit the proposed contract to the Governor and other elected officials and hold a public hearing on the proposed contract. At least 30-days' notice of the hearing must be given by publication once in each week during such period in each of six selected newspapers. Following the public hearing, the contract may be modified, if advisable.

Upon approval of the final proposed contract by the Authority, the Authority 'reports' the proposed contract, along with its recommendations and the public hearing record, to the Governor and other elected officials. Upon authorization of the Governor, the Authority may execute the contract.

DISCUSSION

At their meeting on May 2, 2017, the Trustees awarded a 1,500 kW RP allocation to Sumitomo, as described in Exhibit '4c i-A.' At this meeting, the Trustees also authorized a public hearing on the proposed Contract for the sale of this allocation pursuant to PAL §1009.

In summary:

- The Contract before the Board would provide for the sale of the allocation to the Company under a direct sale arrangement.
- Transmission and delivery service would be provided by the Company's local utility in accordance with the utility's Public Service Commission-filed delivery service tariff.

- The Contract would provide for the direct billing of all production charges (*i.e.* demand and energy) as well as all New York Independent System Operator, Inc. charges, plus taxes or any other required assessments, as set forth in the Trustee-approved Service Tariff No. WNY-1.
- The Contract includes the Company's agreed-upon commitments with respect to employment, power utilization and capital investments. The Authority would retain the right to reduce or terminate the allocation if employment, power utilization, or capital investment commitments are not met.
- The Contract provides for the sale of additional allocations of WNY Hydropower to the Company in appropriate circumstances by incorporating new allocations into Schedule A of the Contract. The Trustees approved this convention in the 2010 long-term extension contract for hydropower, which simplifies contract administration.
- To accommodate non-payment risk that could result from the direct billing arrangement with the Authority, the Contract includes commercially reasonable provisions concerning, among other things, the ability to require deposits in the event of a customer's failure to make payment for any two monthly bills. This is consistent with broader Authority contract template changes that incorporate direct billing, including the Authority's Recharge New York contract forms.
- The Contract requires the Company to perform an energy efficiency audit at least once within five years at the facility receiving the low-cost power to help ensure the hydropower is utilized as effectively as possible.
- The Contract provides for collection of a Zero Emission Credit Charge and a Renewable Energy Credit Charge to allow the Authority to recover costs it would incur relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the load of the Company.

The Authority has discussed the Contract with Sumitomo and has received its consent to the Contract. The Company has also acknowledged application of the appropriate tariff, discussed above, to the allocation.

A public hearing on the Contract was held on June 21, 2017 at the Power Vista (Visitors Center) at the Niagara Power Project in Lewiston. No oral statements were given at the public hearing. The official transcript of the public hearing is attached as Exhibit '4c i-C.' Staff has not identified any substantive changes to the Contract as a result of the public hearing process.

RECOMMENDATION

The Manager – Power Contracts recommends that the Trustees approve the Contract for the sale of Replacement Power to Sumitomo and authorize the transmittal of the Contract to the Governor for his review and to seek his authorization for the Authority to execute the Contract pursuant to PAL §1009.

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

RESOLVED, That the contract ("Contract") for the sale of 1,500 kilowatts ("kW") of Replacement Power to Sumitomo Rubber USA, LLC is in the public interest, and in accordance with Public Authorities Law §1009 should be submitted to the Governor for his review and to seek his authorization for the Authority to execute the Contract,

along with a copy of the record of the public hearing thereon, and copies of the Contract along with the record of the public hearing thereon, be forwarded to the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee; and be it further

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

RESOLVED, That the Executive Vice President and Chief Commercial Officer, or his or her designee, be, and hereby is, authorized, subject to the approval of the form thereof by the Executive Vice President and General Counsel, to negotiate and execute any and all documents necessary or desirable to implement the Contract with Sumitomo Rubber USA, LLC as set forth in the foregoing report of the President and Chief Executive Officer; and be it further

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

ii. Hydropower Allocations – Extensions of Western New York Hydropower Allocations – Notice of Public Hearing

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve extensions of the following Western New York hydropower allocations:

- 1)** 250 kilowatt ('kW') Replacement Power ('RP') allocation awarded to Time Release Sciences, Inc. ('TRS') on April 4, 2011, which is scheduled to expire on March 31, 2018;
- 2)** 1,000 kW RP allocation and a 1,600 kW RP allocation, awarded to the Ceres Crystal Industries Inc. ('Ceres') on March 21, 2013, which are scheduled to expire on June 30, 2018;
- 3)** 10,000 kW RP allocation awarded to Greenpac Mill, LLC ('Greenpac') on June 29, 2010, which is scheduled to expire on June 30, 2018; and
- 4)** 100 kW RP allocation awarded to Hammond Manufacturing Company Inc. ('Hammond') on March 21, 2013, which is scheduled to expire on June 30, 2018.

All of the aforementioned allocations would each be extended to June 30, 2020.

The Trustees are also requested to authorize a public hearing pursuant to Public Authorities Law ('PAL') §1009 on proposed direct sale contracts for the foregoing allocations, the current forms of which are attached as Exhibits '4c ii-A-1,' '4c ii-A-2,' '4c ii-A-3' and '4c ii-A-4.'

BACKGROUND

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

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 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.

Chapter 313 of the Laws of 2005 established the Preservation Power ('PP') program. In summary, PAL § 1005(13) authorizes the allocation of 490 megawatts ('MW') of PP to businesses in Franklin, Jefferson and St. Lawrence counties, and applies the same allocation criteria that pertain to the allocations of RP and EP.

DISCUSSION

1) Time Release Sciences, Inc.

TRS is a packaging company with facilities located in Buffalo, NY, that conducts die cutting, debossing, compression, and various packaging-related operations. One of the primary products TRS produces at this location is the 'Magic Eraser' sponge.

The Authority and TRS are parties to a power sale contract that covers three RP allocations. Two of the allocations, a 200 kW allocation of RP and a 250 kW allocation of RP, are scheduled to expire in 2020. The third allocation, for 250 kW of RP, is scheduled to expire on March 31, 2018 and is associated with a commitment by TRS to maintain 77 jobs at the Buffalo facility.

TRS has requested an extension of the 250 kW RP allocation that is due to expire on March 31, 2018. The company credits the low-cost power associated with its hydropower allocations for allowing it to remain competitive while producing products in an efficient and cost-effective manner, and successfully supplying its largest customer, Proctor and Gamble. TRS indicates that if it does not continue to remain competitive, the viability of its operations could be threatened.

TRS is willing to commit to maintain 77 jobs through June 30, 2020, in exchange for an extension of the 250 kW RP allocation through this date. The company is currently in compliance with its contractual commitments for job creation and capital investments.

Staff recommends that the Trustees approve an extension of the 250 kW RP allocation through June 30, 2020.

2) Ceres Crystal Industries Inc.

Ceres, a manufacturer of cubic zirconia crystal ('CZ') for the use in jewelry is located in Niagara Falls, NY. The Authority and Ceres are parties to a power sale contract covering two allocations, a 1,000 kW allocation of RP and a 1,600 kW allocation of RP. These RP allocations are scheduled to expire on June 30, 2018. The two allocations are tied to a commitment by Ceres to maintain 50 jobs through the term of the allocation.

Ceres has requested an extension of its two RP allocations. Ceres indicates that it currently produces the highest quality CZ rough in the industry, but is facing competition from East Asia and high import taxes and material costs, and its New York operations sometimes struggle to stay competitive. Ceres desires to expand market potential by targeting new customers in the electronic and aviation fields. Ceres indicates that its hydropower allocations are critical to the viability of its operations in New York and possible expansion.

At their meeting of July 25, 2017, the Trustees authorized the Authority to adjust this customer's commitments as part of the Authority's annual contract compliance process. Ceres is willing to commit to maintain 35 jobs at the Niagara Falls facility through June 30, 2020, in exchange for an extension of its 1,000 kW and 1,600 RP allocations.

Staff recommends that the Trustees approve an extension of Ceres' 1,000 kW and 1,600 RP allocations through June 30, 2020.

3) Greenpac Mill, LLC

Greenpac is a manufacturer of lightweight liner board, operating in Niagara Falls, NY. The Authority and Greenpac are parties to a power sale contract that covers a 10,000 kW RP allocation that is scheduled to expire on June 30, 2018. Greenpac made a commitment to maintain 108 jobs through the term of the allocation in connection with the 10,000 kW RP allocation.

Greenpac has requested an extension of the 10,000 kW RP allocation, indicating that its hydropower allocation has saved it significant costs and is necessary to support the viability of the company's Niagara Falls operations, going forward.

Greenpac is willing to agree to commit to maintain a minimum of 108 jobs at the facility through June 30, 2020, in exchange for an extension of the 10,000 kW RP allocation through June 30, 2020. Greenpac is above its job commitment and is in compliance with its other contractual requirements.

Staff recommends that the Trustees approve an extension of Greenpac's 10,000 kW RP allocation through June 30, 2020.

4) Hammond Manufacturing Company Inc.

Hammond, located in Cheektowaga, NY, is a manufacturer of outlet strips and electronic transformers. The Authority and Hammond are parties to a power sale contract that covers a 100 kW RP allocation that is scheduled to expire on June 30, 2018. The 100 kW RP allocation corresponds to a commitment by Hammond to maintain 24 jobs through the term of the allocation.

Hammond indicates that its RP allocation helps to lower costs for its manufacturing plant, and desires to continue to receive the allocation to remain competitive. Electricity is a major cost component of its manufacturing operations.

Hammond is willing to commit to maintain a minimum of 24 jobs at its facility through June 30, 2020, in exchange for an extension of the 100 kW RP allocation through this date. Hammond is in compliance with its current job commitment.

Staff recommends that the Trustees approve an extension of Hammond's 100 kW RP allocation through June 30, 2020.

CONTRACT INFORMATION

Each of the extended allocations would be covered by its own contract between the Authority and the customer. Staff intends to discuss the proposed form of customer agreement with the customers identified above, and anticipates reaching agreement with them on contracts substantially similar to the form attached as Exhibits '4c ii-A-1,' '4c ii-A-2,' '4c ii-A-3,' and '4c ii-A-4.' Accordingly, the Trustees are requested to authorize a public hearing, pursuant to PAL §1009, on the proposed form of the contracts attached as Exhibits '4c ii-A-1,' '4c ii-A-2,' '4c ii-A-3,' and '4c ii-A-4.'

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, RP or PP, it will transmit the proposed form of the contract to the Governor and other elected officials, and hold a public hearing on the contract. At least 30-days' notice of the hearing must be given by publication once in each week during such period in each of six selected newspapers. Following the public hearing, the form of the contract may be modified, if advisable. Staff will report to the Board of Trustees on the public hearing and the proposed contract at a later time and make additional recommendations regarding the proposed contract. Upon approval of the final proposed contract by the Authority, the Authority must 'report' the proposed contract, along with its recommendations and the public hearing records, to the Governor and other elected officials. Upon approval by the Governor, the Authority is authorized to execute the contract.

The general form of the proposed contracts is consistent with recently-approved contracts for the sale of Authority hydropower. Some pertinent provisions of the proposed form of the contracts include: (i) the provision for direct billing of all production charges (i.e., demand and energy) as well as all New York Independent System Operator, Inc. ('NYISO') charges, plus taxes or any other required assessments, as set forth in the relevant Authority service tariff (Service Tariff No. WNY-1 or ST-10); (ii) the collection of a Zero Emission Credit Charge and a Renewable Energy Credit Charge to allow the Authority to recover costs it would incur relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the customer's load; (iii) commercially reasonable provisions relating to financial security to reflect a direct billing arrangement between the Authority and the customers; (iv) and provisions authorizing data transfers and addressing other utility-driven requirements which are necessary for efficient program implementation; and (v) enforceable employment, capital investment and power usage commitments, as relevant. The recommended allocations would be sold pursuant to the relevant Authority service tariff, and, in each case, transmission and delivery service would be provided by the customer's local electric distribution utility.

RECOMMENDATION

The Vice President – Economic Development recommends that the Trustees award extensions of the following allocations through June 30, 2020: (1) the 250 kW Replacement Power allocation to Time Release Sciences, Inc.; (2) the 1,000 kW RP and 1,600 kW RP allocations to Ceres Crystal Industries Inc.; (3) the 10,000 kW RP allocation to Greenpac Mill, LLC; and (4) the 100 kW RP allocation to Hammond Manufacturing Company Inc.

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

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

RESOLVED, That the Trustees hereby approve an extension of the 250 kilowatt (“kW”) Replacement Power (“RP”) allocation awarded to Time Release Sciences, Inc. on April 4, 2011, as detailed in the foregoing report of the President and Chief Executive Officer, for a term ending June 30, 2020, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby approve an extension of the 1,000 kW and 1,600 kW RP allocations, respectively, awarded to the Ceres Crystal Industries Inc. on March 21, 2013, as detailed in the foregoing report of the President and Chief Executive Officer, for a term ending June 30, 2020, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize an extension of the 10,000 kW RP allocation awarded to Greenpac Mill, LLC on June 29, 2010, as detailed in the foregoing report of the President and Chief Executive Officer, for a term ending June 30, 2020, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize an extension of the 100 RP allocation awarded to Hammond Manufacturing Company Inc. on March 21, 2013, as detailed in the foregoing report of the President and Chief Executive Officer, for a term ending June 30, 2020, subject to rates previously approved by the Trustees, and be it further

RESOLVED, That the Trustees hereby authorize a public hearing pursuant to Public Authorities Law (“PAL”) §1009 on the terms of the proposed form of the direct sale contracts finally negotiated with the aforementioned companies (the “Contracts”), the current forms of which are attached as Exhibits “4c ii-A-1,” “4c ii-A-2,” “4c ii-A-3,” and “4c ii-A-4,” subject to rates previously approved by the Trustees; and be it further

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

RESOLVED, That in connection with the proposed Contracts, the Corporate Secretary be, and hereby is, authorized to arrange for the publication of a notice of public hearing in six newspapers throughout the state, in accordance with the provisions of PAL §1009; and be it further

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

iii. Extension of Hydropower Contracts with Upstate Investor-Owned Utilities for the Benefit of Rural and Domestic Consumers – 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, 2020, 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) 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 (the '2017 Amendments'). The proposed 2017 Amendments, each entitled '2017 Amendment to 1990 Service Agreement,' are attached as Exhibit '4c iii-A' (National Grid), Exhibit '4c iii-B' (NYSEG) and Exhibit '4c iii-C' ('RGE'), respectively. The peaking power allocations and the current contracts providing for their sale to the Utilities are scheduled to expire on December 31, 2017.

The proposed 2017 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 2017 Amendments; (2) transmittal of the 2017 Amendments to the Governor and legislative leaders as provided for in PAL §1009; and (3) if necessary, the execution of the 2017 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 three-year terms. The 1990 Hydro Contracts, as extended, provides for the sale of the peaking power through December 31, 2017.

DISCUSSION

The proposed 2017 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, 2020, 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 2017 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 2017 Amendments. In addition, because the 2014 extensions are scheduled to expire on December 31, 2017, staff recommends that it be authorized to execute the 2017 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 2017 Amendments would provide that the Utilities continue to pay for firm peaking hydropower at the same rates they are currently charged, *i.e.*, the cost-based rates that are currently charged to the Authority's preference customers and determined in accordance with the Authority's rate-setting methodologies and principles. The Trustees approved a preference power rate increase at their November 2011 meeting, which became effective in the December 2011 billing period. The proposed 2017 Amendments would reflect the new preference power rates. Accordingly, there will be no fiscal impact to the Authority associated with these contract extensions.

RECOMMENDATION

The Manager – Power Contracts recommends that the Trustees: (i) approve extension of the peaking power allocations for a term of up to three years through December 31, 2020; (ii) approve the proposed 2017 Amendments, the current version of which is attached hereto as Exhibits '4c iii-A,' '4c iii-B' and '4c iii-C'; (iii) authorize the Corporate Secretary to convene a public hearing on the final negotiated 2017 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 2017 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 submitted 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, 2020 is hereby approved; and be it further

RESOLVED, That each “2017 Amendment to 1990 Service Agreement” attached to the foregoing report of the President and Chief Executive Officer as Exhibits “4c iii-A,” “4c iii-B” and “4c iii-C” (collectively, the “2017 Amendments”), are hereby approved; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit copies of the proposed 2017 Amendments to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chair of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chair 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 2017 Amendments in accordance with the procedures set forth in PAL §1009; and be it further

RESOLVED, That the Vice President – Economic Development 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 2017 Amendments on a month-to-month basis, if necessary, pending gubernatorial approval of the 2017 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 Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

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

BACKGROUND

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

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

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

DISCUSSION

Awards

The terms of these contracts will be more than one year; therefore, the Trustees’ approval is required. Except as noted, all of these contracts contain provisions allowing the Authority to terminate the services for the Authority’s convenience, without liability other than paying for acceptable services rendered to the effective date of termination. Approval is also requested for funding all contracts, which range in estimated dollar value from \$91 thousand to \$9 million. Except as noted, these contract awards do not obligate the Authority to a specific level of personnel resources or expenditures.

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

Extensions

Although the firms identified in Exhibit ‘4d i-B’ have provided effective services, the issues or projects requiring these services have not been resolved or completed and the need exists for continuing

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

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

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

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

Utility Operations

Operations – Small Clean Power Plants

The proposed contract with **EmeraChem, Inc. ('EmeraChem') (Q17-6199JT; PO# TBA)** would provide for CO Catalyst and Cleaning and Refurbishment Services to the Authority's Small Clean Power Plants ('SCPPs'). Bid documents were developed by staff and were accessible through an (SAP) ARIBA Event. The Request for Quotations was advertised in the New York State *Contract Reporter* and noticed on the Authority's Strategic Supply Management (Procurement) website. Eight firms / entities were invited or requested to participate in the bidding process. 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 EmeraChem, 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 offerers. The contract would become effective on or about October 1, 2017, for an intended term of up to 5 years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the term of the contract, \$2 million.

The proposed contract with **RESA Power Solutions ('RESA') and Longo Electric-Mechanical, Inc. ('Longo') (Q17-6200JT; PO# TBA)** would provide for Breaker Repair and Maintenance Services to the Authority's Small Clean Power Plants ('SCPPs'). Bid documents were developed by staff and were accessible through an (SAP) ARIBA Event. The Request for Quotations was advertised in the New York State *Contract Reporter* and noticed on the Authority's Strategic Supply Management (Procurement) website. Twelve firms / entities were invited or requested to participate in the bidding process. Three proposals were received electronically via ARIBA and were evaluated, as further set forth in the Award Recommendation documents. RESA was the lowest-priced qualified bidder and Longo was comparable. Staff recommends the award of a contract to RESA and Longo, as both vendors are technically and commercially qualified and meet the bid requirements. The contracts would become effective on or about October 1, 2017, for an intended term of up to 5 years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contracts, \$5 million.

Operations – St. Lawrence / FDR Power Plant Operations and Maintenance

Due to the need to commence services, the contract with **Barrett Paving Materials, Inc. ('Barrett') (4500288660)** became effective August 18, 2017, for the initial interim award amount of \$1.5 million, subject to the Trustees' approval as soon as practicable, in accordance with the Authority's Guidelines for Procurement Contracts and EAPs. The contract provides for reclamation and paving services for certain areas of the St. Lawrence / FDR Power facilities. Management expedited this project from 2018 to 2017. To meet the expedited request, a mini-bid was performed among three technically and commercially qualified bidders under NYS Office of General Services ('OGS') contracts. A pre-bid walk-down was held on August 1, 2017 where all three bidders were invited to attend. Only one vendor, Barrett, attended the walk-down and submitted their proposal. Staff recommends the award of a contract to Barrett, which is technically and commercially qualified, meets the bid requirements and proposes a price deemed fair and reasonable based on past experience with similar projects. The intended term of this contract is one year, 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, \$4,438,464.

Operations – Technology & Innovation

Due to the need to commence services, contracts with **RTDS Technologies, Inc. ('RTDS') and OPAL-RT Technologies ('OPAL') (Q17-6256MH; PO# TBA)** became effective September 11, 2017, for the interim award amount of \$2.9 million, subject to the Trustees' approval as soon as practicable, in accordance with the Authority's Guidelines for Procurement Contracts and EAPs. These contracts would provide for Digital Real-Time Simulation Systems for the Advanced Grid Innovation Laboratory for Energy (AGILE) project. The Trustees approved AGILE development at their July 25, 2017 meeting, and a core component of the AGILE laboratory will be a digital, real time, simulations system capable of monitoring in high-fidelity and simulating in real time the entire New York State transmission grid or multiple smaller portions of the grid and interfacing, as needed, with external hardware and software systems. The interim award allows RTDS and OPAL to effectively initiate simulator fabrication in order to expedite delivery and startup of AGILE until full contracts are authorized by the Trustees. Bid documents were developed by staff and were accessible through an (SAP) ARIBA Event. The Request for Quotations was advertised in the New York State *Contract Reporter* and noticed on the Authority's Strategic Supply Management (Procurement) website. Seventy-four firms / entities were listed as having downloaded the bid documents from the NYPA website. 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 RTDS and OPAL, as both vendors are technically and commercially qualified and meet the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerers. The contracts would become effective on or about October 1, 2017, for an intended term of up to 5 years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contracts, \$8 million.

Due to the need to commence services, the contract with **Hydro-Quebec Research Institute ('IREQ') (4500288933)** became effective August 31, 2017, for the initial interim award amount of \$40,000, subject to the Trustees' approval as soon as practicable, in accordance with the Authority's Guidelines for Procurement Contracts and EAPs. This interim award allows IREQ to effectively mobilize resources to complete the work according to timelines required by NYPA. The contract provides for the performance of an engineering study on behalf of the Authority entitled '*Advanced Stability Controls to Combat Transmission Bottlenecks in High Performing Grid: Economic and Feasibility Studies.*' In January 2017, the Authority and IREQ jointly submitted a proposal to the New York Research and Development Authority's ('NYSERDA's') Program Opportunity Notice 3997 entitled '*Electric Power Transmission and Distribution High Performance Grid Program.*' The proposal, which identified NYPA as the project lead and IREQ as NYPA's sub-contractor, was reviewed and selected for funding under agreement 112759. As the Authority's proposal identified IREQ as its contractor, NYSERDA's award is contingent on IREQ being the Authority's contractor. Staff recommends the award of a contract to IREQ on a sole-source basis to perform the engineering study entitled '*Advanced Stability Controls to Combat Transmission*

Bottlenecks in High Performing Grid: Economic and Feasibility Studies' as the price was deemed fair and reasonable based on past experience with similar projects. The intended term of this contract is up to thirty 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, \$650,000. Under the terms of the NYSERDA agreement number 112759, executed between the Authority and NYSERDA, \$400,000 of this requested expenditure will be reimbursed to the Authority.

Energy Solutions

Energy Solutions - Project & Business Development

Due to the need to commence services, a value contract with **Black and Veatch, LLP ('B&V') (PO# 4600003364)** became effective August 29, 2017 with an interim award to B&V with a not-to-exceed value of \$100,000 to support the Large Scale Renewables initiative already underway, subject to the Trustees' approval as soon as practicable, in accordance with the Authority's Guidelines for Procurement Contracts and EAPs. This interim award allows B&V to effectively mobilize resources to complete the work according to timelines required by NYPA. Additionally, proposed value contracts with **DNV KEMA Renewables, Inc. ('DNV'), and Burns and McDonnell Consultants, Inc. ('B&McD') (Q16-6093MH; PO#s TBA)** would provide for qualified consulting services to assist in identifying opportunities for new renewable solar generation projects in support of New York State Energy Plan goals to supply 50% of New York's electricity needs with renewable resources by 2030. Bid documents were developed by staff and were accessible through an (SAP) ARIBA Event. The Request for Quotations was advertised in the New York State *Contract Reporter* and noticed on the Authority's Strategic Supply Management (Procurement) website. One hundred eighty seven firms / entities were listed as having downloaded the original bid document from the NYPA website. Sixteen proposals were received electronically via ARIBA and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a value contract to B&V, DNV and B&McD for solar development engineering support services on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerers. The contracts are for an intended term of up to 5 years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the value contracts, \$1.5 million.

Energy Solutions - Economic Development

The proposed personal service contract with **Management Mentors, Inc. ('MM') (Q17-6212JMT; PO# TBA)** would provide services to the Talent Development group responsible for the development and implementation of a Mentoring Program. NYPA intends to manage this program via in-house resources to maintain mentoring expertise, and the objective of this consulting engagement is to provide support and access to mentoring software with the incorporation of industry best practices. Bid documents were developed by staff and were accessible through an (SAP) ARIBA Event. The Request for Quotations was advertised in the New York State *Contract Reporter* and noticed on the Authority's Strategic Supply Management (Procurement) website. Ten firms / entities were invited or requested to participate in the bidding process. 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 Management Mentors, Inc., 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 offerers. The contract would become effective on or about October 1, 2017, for an intended term of up to 5 years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the term of the contract, \$91,000.

Human Resources ('HR') & Enterprise Shared Services ('ESS')

ESS - Facility Management

The proposed contracts with **LeChase Construction Services, LLC ('LeChase')**, **Royal Diamond Construction Corporation ('RDCC')** and **Scully Construction, LLC ('Scully')** (Q17-6222JW; PO# TBA) would provide for on-call General Contractor ('GC') services for the Centroplex Building ('CB'), located at 123 Main Street, White Plains, NY. The 420,000 square-foot, 17-story office building is sited on a 2.67 acre lot. The aforementioned GC's were the incumbent GC's at the CB, who all shared an evaluated not-to-exceed value contract in the aggregate total amount of \$6 million set to expire December 31, 2018. Due to a higher than expected rate of GC work performed at the CB, the preponderance of the original \$6 million was expended, making it necessary to rebid this contract before the full five-year term expired. Bid documents were developed by staff and were accessible through an (SAP) ARIBA Event. The Request for Quotations was advertised in the New York State *Contract Reporter* and noticed on the Authority's Strategic Supply Management (Procurement) website. Ten firms / entities were invited or requested to participate in the bidding process. Five proposals were received electronically via ARIBA and were evaluated, as further set forth in the Award Recommendation documents. All proposals covered labor costs for each labor discipline, as well as annual escalation costs and material markup for the five-year period. Based on the (best value) hourly rates and the demonstrated work performance of the incumbent bidders, staff recommends the award of contracts to LeChase, RDCC and Scully for on-call GC services for the CB. NYPA Facility Management will continue to mini-bid all projects that are estimated to be \$50,000 or above to all three contractors in an attempt to ensure competitive pricing. The contracts would become effective on or about October 1, 2017, for an intended term of up to 5 years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contracts, \$9 million.

HR & Organizational Development

The proposed personal service contracts with **Development Dimensions International, Inc. ('DDI')**, **KJR Consulting ('KJR')** and **Mind Gym ('MG')** (Q17-6202JMT; PO# TBA) would provide training services for skills enhancement around the Authority's core competencies of Build Talent and Learn. Enhancing organizational talent is one NYPA's main Business Drivers. This Business Driver, which includes cascading competencies of Build Talent, for managers, and Learn, for individual contributors, includes behaviors that target coaching, providing support, employee development, and gaining knowledge and new skills. Bid documents were developed by staff and were accessible through an (SAP) ARIBA Event. The Request for Quotations was advertised in the New York State *Contract Reporter* and noticed on the Authority's Strategic Supply Management (Procurement) website. Twenty-seven firms / entities were invited or requested to participate in the bidding process. Fifteen proposals were received electronically via ARIBA and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to DDI, KJR and MG for skills enhancement around Build Talent and Learn competencies on the basis they were technically and commercially qualified and meet the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerers. The contracts would become effective on or about October 1, 2017, for an intended term of up to 5 years (initial three-year award with an option for a two-year renewal) subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contracts, \$311,000.

The proposed personal service contracts with **Development Dimensions International, Inc. ('DDI')**, **KJR Consulting ('KJR')** and **Mind Gym ('MG')** (Q17-6193JMT; PO# TBA) would provide training services for skills enhancement around the Authority's core competencies of Manage Execution and Execute. Creating alignment and accountability is one of NYPA's main Business Drivers. This Business Driver, which includes cascading competencies of Manage Execution, for managers, and Execute, for individual contributors, includes behaviors that drive accountability and create a culture of ongoing and sustainable performance. Bid documents were developed by staff and were accessible

through an (SAP) ARIBA Event. The Request for Quotations was advertised in the New York State *Contract Reporter* and noticed on the Authority's Strategic Supply Management (Procurement) website. Twenty-five firms / entities were invited or requested to participate in the bidding process. Eleven proposals were received electronically via ARIBA and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to DDI, KJR and MG for skills enhancement around Manage Execution and Execute competencies on the basis that they were technically and commercially qualified and meet the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerers. The contracts would become effective on or about October 1, 2017, for an intended term of up to 5 years (initial three-year award with an option for a two-year renewal) subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contracts, \$311,000.

The proposed personal service contracts with **Dale Carnegie and Associates ('DC&A')**, **Development Dimensions International, Inc. ('DDI')**, **Ignition Coaching ('Ignition')**, **Inspire Improv and Coaching ('II&C')**, **KJR Consulting ('KJR')** and **Mind Gym ('MG')** (Q17-6203JMT; PO# TBA) would provide training services for skills enhancement around the Authority's core competencies of Energize the Organization, Communicate and Collaborate. Shifting the organizational paradigm is one NYPA's main Business Drivers. This Business Driver, which includes cascading competencies of Energize the Organization, for managers, and Communicate and Collaborate, for individual contributors, includes behaviors that aim to inspire and create culture of openness, transparency and teamwork. Bid documents were developed by staff and were accessible through an (SAP) ARIBA Event. The Request for Quotations was advertised in the New York State *Contract Reporter* and noticed on the Authority's Strategic Supply Management (Procurement) website. Thirty-one firms / entities were invited or requested to participate in the bidding process. Fifteen proposals were received electronically via ARIBA and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to DDI, KJR and MG for skills enhancement around Energize the Organization, Communicate and Collaborate competencies on the basis they were technically and commercially qualified and meet the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerers. The contracts would become effective on or about October 1, 2017, for an intended term of up to five years (initial three-year award with an option for a two-year renewal) subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contracts, \$311,000.

HR - Benefits

Due to the need to effectively continue services the personal service contract with **Corporate Counseling Associates ('CCA')**; (PO# 4600003367) became effective September 1, 2017 with an interim award to CCA of \$10,000 to ensure uninterrupted Employee Assistance Program ('EAP') services for employees and their families. As the incumbent, CCA lowered their fee 7% in January and 25% in their proposal. In addition to offering performance guarantees, their fee includes many unlimited services for which other firms charge hourly rates. A portion of the award value is associated with services in support of Canal Corporation. Bid documents (Q17-6179MR) were developed by staff and were accessible through an (SAP) ARIBA Event. The Request for Quotations was advertised in the New York State *Contract Reporter* and noticed on the Authority's Strategic Supply Management (Procurement) website. Seven firms / entities were invited or requested to participate in the bidding process. 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 CCA, 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 offerers. The intended term of this contract is up to 5 years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the term of the contract, \$250,000.

The proposed personal service contract with **Sovos Compliance, LLC ('Sovos')** (Q17-6183MR; PO# TBA) would provide certain tax reporting services required under the Affordable Care Act. A portion

of the award value is associated with services in support of Canal Corporation. Bid documents were developed by staff and were accessible through an (SAP) ARIBA Event. The Request for Quotations was advertised in the New York State *Contract Reporter* and noticed on the Authority's Strategic Supply Management (Procurement) website. Six firms / entities were invited or requested to participate in the bidding process. 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 Sovos, 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 offerers. The contract would become effective on or about October 1, 2017, for an intended term of up to five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the term of the contract, \$122,977.

Information Technology ('IT')

IT – Project Management

The proposed contract with **Hartigen Solutions, LLC ('Hartigen') (Q17-6143RM; PO# TBA)** would provide support for the implementation of a Bid-to-Bill and Generation Bidding software solution. The software solution is inclusive of software licensing fees, hosting and maintenance fees, implementation services, travel and living expenses, and annual support through the life of the proposed contract. The solution will implement an 'end-to-end' automated processing that can seamlessly integrate the Authority's existing Load Scheduling and Metering processes, replace Bidding processes to the New York Independent System Operator (NYISO), monitor and track confirmations and settlement information received from the NYISO and integrate with SAP for accounting review. Bid documents were developed by staff and were accessible through an (SAP) ARIBA Event. The Request for Quotations was advertised in the New York State *Contract Reporter* and noticed on the Authority's Strategic Supply Management (Procurement) website. Twenty-eight firms / entities were invited or requested to participate in the bidding process. Five 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 Hartigen which is technically and commercially qualified and meets the bid requirements as the lowest-priced bidder among responsive and responsible offerers. The contract is intended for a term of up to 5 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, \$2,180,000.

The proposed contract with **/NSPRO, Inc. ('/NSPRO') (PO# TBA)** would provide support for the implementation of a SuccessFactors (Mosaic) software solution. The software solution is inclusive of implementation services, travel and living expenses, and annual support through the life of the proposed contract. The solution will implement the remaining pre-purchased SuccessFactors product modules including Recruitment Management, Recruitment Marketing, On-Boarding and Off-Boarding, Succession Planning, Career Development Planning and Workforce Analytics. Bid documents were developed by staff and were accessible through an (SAP) ARIBA Event. The Request for Quotations was advertised in the New York State *Contract Reporter* and noticed on the Authority's Strategic Supply Management (Procurement) website. Twenty-one firms / entities were invited or requested to participate in the bidding process. Six 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 /NSPRO 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 offerers. The contract is intended for a term of up to 5 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, \$1,660,305.

Extensions and/or Additional Funding Requests:

Law

The contract with **Fox Rothschild, LLP ('Fox') (4500276754)** provides for legal representation of the Authority in connection with construction litigation. This contract became effective on August 29, 2016 for a term of up to one year with a total approved amount of \$350,000. The associated construction project is ongoing and the litigation matters continue. The Trustees are requested to ratify and approve extension of the contract for three years, through August 28, 2020. The Trustees are also requested to approve additional funding in the amount of \$500,000 to continue with the legal services.

Energy Efficiency

The City of New York Department of Citywide Administrative Services assigned the Authority a lighting upgrade project at 3 UN Plaza at E 44th St, New York, NY. The Authority competitively bid the labor services for the work following its Procurement guidelines (**Q16-6020AT**). After evaluating the proposals received, the Authority deemed **Candela Systems Corporation ('Candela')** the lowest priced qualified bidder and awarded the labor services contract in the amount of \$289,501. Subsequent change orders increased the value of this contract to \$326,228. The term of the contract was one year effective August 31, 2016. Due to projects delays, including material availability, work did not commence until September 19, 2016 and work is not expected to be completed until December 31, 2017. Due to the need to continue project services, the contract with **Candela (#4500276379)** has been extended 6 months, through February 28, 2018, with no additional funding, subject to the Trustees' approval as soon as practicable, in accordance with the Authority's Guidelines for Procurement Contracts and EAPs.

FISCAL INFORMATION

Funds required to support contract services for various Business Units/Departments and Facilities have been included in the 2017 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 – Human Resources and Enterprise Shared Services; the Senior Vice President – Technology & Innovation; the Senior Vice President – Operations Support Services and Chief Engineer; the Senior Vice President – Power Supply; the Vice President – Project Management; the Vice President – Project & Business Development; the Vice President – Strategic Operations; the VP – Enterprise Shared Services; the Vice President – Total Compensation and Human Resources Information Systems; the Vice President – Human Resources & Organizational Development; the Vice President – Economic Development; the Regional Manager – Northern New York, the Regional Manager – Central New York and the Regional Manager – Southeastern New York recommend that the Trustees approve the award of multiyear procurement (services) and other contracts to the companies listed in Exhibit '4d i-A' and the extension and/or funding of the procurement (services) contracts listed in Exhibit '4d i-B,' for the purposes and in the amounts discussed within the item and/or listed in the respective exhibits.

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

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 "4d i-A," attached hereto, are hereby approved for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing report of the President and Chief Executive Officer; and be it further

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

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

e. Capital Expenditure Authorization Requests:

i. St. Lawrence-FDR Power Project – Generator Rotor Modifications for Stress Redistribution Project – Phase 1 – Capital Expenditure Authorization Request and Contract Award

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are hereby requested to approve the current request of capital expenditures in the amount of \$5.35 million for Phase 1 of the Generator Rotor Modifications for the Stress Redistribution Project ('Project') which includes upgrades to three of the sixteen generating units at the St. Lawrence-FDR Power Project. The total cost for Phase 1 of the Project is estimated at approximately \$7.2 million.

This capital expenditure request is part of a larger program to upgrade all sixteen generating units, which is currently estimated at \$32 million. Based on lessons learned and actual cost data obtained from the first three units, the request for approval for the balance of the capital expenditures is anticipated in 2020.

The Trustees are also requested to ratify the award of two competitively bid four-year contracts in support of the Project, one in the amount of \$417,329.08 to NRC NY Environmental Services, Inc. ('NRC') of Syracuse, NY, to perform abatement and painting, and the second in the amount of \$162,247.06 to Bolttech Mannings, Inc., ('BM') of North Versailles, PA, to provide post-weld heat treatment services. Interim funding for both contracts in the aggregate amount of \$80,000 was previously approved by the Chief Operating Officer, to allow for project initiation costs.

BACKGROUND

In accordance with the Authority's Capital Planning and Budgeting Procedures, capital expenditures in excess of \$3 million require the Trustees' approval.

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.

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 would have rendered the units inoperable or potentially leading to a catastrophic failure. The cracks were immediately repaired and the units returned to service with no additional cost or 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.

DISCUSSION

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

The majority of the work will be performed by Authority craft personnel with support from external contractors, primarily for paint abatement and post-weld heat treatment.

After issuance of Requests for Proposals and a competitive bidding process, contracts were awarded for the abatement and painting, and the post-weld heat treatment services in support of this project. NRC was awarded a contract for the abatement and painting in the amount of \$417,329.08. NRC's award is limited to \$50,000 pending approval of these capital expenditures. BM was awarded a contract for the post-weld heat treatment in the amount of \$162,247.06. BM's award is limited to \$30,000 pending approval of these capital expenditures. Both companies have performed satisfactorily on previous projects for the Authority and are the lowest qualified bidders. The work being performed on the first three generator units is planned to be completed by the end of 2020.

Preliminary capital funding in the amount of \$1,878,216 was previously approved to perform the engineering and design for the Project.

The total Project cost for Phase 1, inclusive of preliminary funding and this current capital request, is estimated at \$7,223,600, and is summarized as follows:

Engineering/Design	\$ 445,700
Procurement	\$ 990,000
Construction/Installation	\$3,544,600
Authority Indirect and Direct Expenses	\$ 365,100
Current Capital Request	\$5,345,400
Previous Authorized Funding	\$1,878,200
TOTAL ESTIMATED PHASE 1 PROJECT COST	\$7,223,600

FISCAL INFORMATION

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

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Regional Manager – Northern New York, the Vice President – Strategic Supply Management, the Vice President – Project Management, and the Project Manager, recommend that the Trustees approve the current request for capital expenditures in the amount of \$5.35 million, and the ratification of four-year contracts to NRC NY Environmental Services, Inc. of Syracuse, NY, in the amount of \$417,329.08, and to Bolttech Mannings, Inc., of North Versailles, PA, in the amount of \$162,247.06 to support the work associated with Phase 1 of the Generator Rotor Modifications for Stress Redistribution Project at 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.”

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 \$5.35 million are hereby authorized for Phase 1 of the Generator Rotor Modifications for the Stress

Redistribution Project at the St. Lawrence-FDR Power Project in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer;

<u>Capital</u>	<u>Expenditure Authorization</u>
Generator Rotor Modifications for Stress Redistribution	<u>\$5.35 million</u>

AND BE IT FURTHER RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted to award four-year contracts to NRC NY Environmental Services, Inc., of Syracuse, NY, and to Bolttech Mannings, Inc., of North Versailles, PA, to support the work associated with Phase 1 of the Generator Rotor Modifications for Stress Redistribution Project at the St. Lawrence-FDR Power Project, as recommended in the foregoing report of the President and Chief Executive Officer;

<u>Contractor</u>	<u>Contract Approval</u>
NRC NY Environmental Services, Inc. Syracuse, NY (Q17-6170JMT)	\$417,329.08
Bolttech Mannings, Inc. North Versailles, PA (Q17-6192HM)	\$162,247.06

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. Moses-Adirondack Smart Path Reliability Project –
Phase 1 - Capital Expenditure Authorization Request
and Increase in Contract Award**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are hereby requested to approve capital expenditures in the amount of \$9.1 million for continuation of Phase 1 of the Moses-Adirondack Smart Path Reliability Project ('Project'). Phase 1 of the Project includes support for the New York State Public Service Article VII application and engineering design. Previous funds in the amount of \$9.5 million were approved for this phase of the Project.

This capital expenditure request is part of the larger Project which is currently estimated at \$440 million. Request for approval of the balance of the capital expenditures is anticipated after the Article VII application is approved.

The following Change Order requests are due to the NYS Public Service Commission's ('PSC') Order adopting a Clean Energy Standard ('CES') and feedback received from the New York Transmission Owners ('NYTO') that modified the original Project scope.

The Trustees are requested to ratify an increase in the funding for the five-year contract with Burns & McDonnell Consultants, Inc. (4500268363), of Kansas City, MO for engineering, design and construction support services for this Project, in the amount of \$1,250,000 for a total contract amount of \$6,725,448. The requested increase includes a Change Order in the amount of \$994,797 and is for changes in engineering scope. Additional funds in the amount of \$255,203 are being requested should additional engineering work be required. Interim funding for engineering services of the Project in the amount of \$50,000 were previously approved by the Chief Operating Officer, in early September 2017, to allow the Project to maintain its schedule.

The Trustees are also informed that a Change Order to the Louis Berger & Associates, P.C. (4500264233) contract, in the amount of \$444,347, was issued in early September and approved by the Business Unit Head in accordance with the Authority's Expenditure Authorization Procedures. This Change Order supports the additional licensing and environmental work required for the change in project scope. This contract was originally approved by the Trustees on September 29, 2015.

BACKGROUND

In accordance with the Authority's Capital Planning and Budgeting Procedures, capital expenditures in excess of \$3 million require the Trustees' approval.

In accordance with the Authority's Expenditure Authorization Procedures, Change Orders in excess of \$500,000 for personal services contracts, require the Trustees' approval.

The existing Moses-Adirondack 1&2 Lines ('MA 1&2 Lines') originate in the St. Lawrence Moses Substation in Massena, New York. From the Moses Substation, the lines generally traverse in a south and southwestern direction for approximately 86 miles, terminating in the Adirondack Substation in Croghan, New York. The MA 1&2 Lines are on double circuit steel lattice structures for the first eight miles, and the remaining 78 miles are attached onto single circuit wooden H-frame structures. The two circuits were originally constructed by the United States Department of Defense in 1942 and acquired by the Authority in 1953. The portion of the lines attached onto the wooden H-frame structures have reached the end of their useful life, require frequent maintenance, and are at risk of catastrophic failure.

This Project will provide a statewide reliability benefit in support of the NYISO's System Restoration Program ('Blackstart'), access to renewable integration and low-cost generation, as well as a

reduction in costs to consumers due to maintenance and unexpected outages on the MA 1&2 Lines and the 765kV Massena Substation - Utica Line ('765kV MSU Line').

DISCUSSION

At their September 29, 2015 and December 17, 2015 meeting, the Trustees authorized capital expenditures and contract awards to begin obtaining environmental permits, licensing certificates, and preliminary engineering work for the Project which original scope included replacing the existing MA 1&2 Lines with 230kV lines on double circuit steel monopole structures.

The PSC CES order issued on August 1, 2016 adopted the State Energy Plan goal of 50% of the state's electricity being generated by renewable sources by 2030 as a strategy to reduce statewide greenhouse gas emissions. By upgrading the MA 1&2 Lines to support future 345kV, the state enhances its ability to bring renewable energy resources from northern New York to the southern New York load zones.

Pursuant to the terms of the Authority's September 30, 2016 transmission rate settlement in FERC docket ER16-835, on May 4, 2017 the Authority submitted a proposal to the NYTOs, Con Edison/Orange & Rockland, NYS Electric & Gas/Rochester Gas & Electric, National Grid, Central Hudson, and the Long Island Power Authority to include the cost of upgrading the MA 1& 2 Lines in the NYPA Transmission Adjustment Charge ('NTAC'). Pursuant to the Settlement Agreement, the NYTOs elected not to vote on the proposal on July 3, 2017. As such, consistent with the terms of the Settlement Agreement, the costs of the Project will be included in NTAC.

The Project will rebuild the 78 miles of wooden transmission structures that were originally constructed in 1942. The new structures will be single circuit monopoles built to support 345kV transmission, but will operate at 230kV until the full length of the transmission system is upgraded. The new structures will be located within the Authority's existing Right-of-Way. Construction will be sequenced to minimize outages on the MA 1&2 Lines and the 765kV MSU Line. Optical Ground Wire will also be installed along the entire transmission line, over both circuits to facilitate the Authority's Communication Backbone Program.

Engineering and environmental assessments are already in progress. The procurement and contracting strategy will be reviewed and further developed to mitigate risk and determine the most cost effective method of implementing this Project, anticipated to be completed in 2023.

The capital expenditure authorization request is comprised of the following:

Licensing and Preliminary Engineering	\$ 4,700,000
Engineering Design	\$ 2,900,000
Authority Direct and Indirect Expenses	<u>\$ 1,500,000</u>
TOTAL	\$ 9,100,000

FISCAL INFORMATION

Payment associated with this Project will be made from the Authority's Capital Fund and will be recovered under the NTAC, adopted in 2016.

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Senior Vice President – Power Supply, the Vice President – Project Management, the Vice President – Project & Business Development, and the Project Manager recommend that the Trustees approve capital expenditures in the amount of \$9.1 million for continuation of Phase 1 of the Moses-Adirondack Smart Path Reliability Project and increase to the authorized amount for the contract awarded to Burns & McDonnell Consultants, Inc. in support of this Project.

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

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

RESOLVED, That pursuant to the Authority’s Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$9.1 million for Phase 1 of the Moses-Adirondack Smart Path Reliability Project, are hereby authorized in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer;

<u>Capital</u>	<u>Expenditure Authorization</u>
Moses-Adirondack Smart Path Reliability Project - Phase 1	<u>\$9,100,000</u>

AND BE IT FURTHER RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, approval is hereby granted to authorize the increase in the contract awarded to Burns & McDonnell Consultants, Inc., from approximately \$5,475,448 to \$6,725,448, to fund additional engineering scope in support of the Moses-Adirondack Smart Path Reliability Project, as recommended in the foregoing report of the President and Chief Executive Officer;

<u>Contractor</u>	<u>Contract Approval</u>
Burns & McDonnell Consultants, Inc. Kansas City, MO (4500268363)	5 years
Change Order Request	\$ 994,797
Additional Funding Request	<u>\$ 255,203</u>
Total Request	<u>\$1,250,000</u>
Previous Authorization	<u>\$5,475,448</u>
Total Contract Award	<u>\$6,725,448</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. Finance

**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 '4f 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 beginning with the Authority's fiscal year 2017. 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 2017. 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 and maintenance and capital expense. The Authority is not required to update the Budget Report at any point during the remainder of 2017 or in 2018 prior to submittal of the Budget Report for fiscal year 2018.

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 2017-2020 are indicative forecasts. The Trustees are not being asked to approve any revenue or expenditure amounts for those years at this time.

RECOMMENDATION

The Executive Vice President and 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 the Public Authorities Reporting Information System ('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 submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That pursuant to Public Authorities Law § 2801, the Budget Report attached as Exhibit "4f 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. Authorization to Amend License Agreement with Consolidated Edison Energy, Inc. for the Use of Transmission Capacity on the Hudson Transmission Partners, LLC Transmission Line

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to authorize the execution of an amended License Agreement (or ‘License’) between NYPA and Consolidated Edison Energy, Inc. (‘CEE’) regarding the management of energy-related transactions using NYPA’s transmission capacity on the Hudson Transmission Partners, LLC (‘HTP’) merchant transmission line. Trustee authorization is sought for an increase in the monthly compensation amount assessed by CEE in recognition of the increased level of transmission capacity that the Authority will be acquiring on the HTP facility, once the HTP transmission line is brought back in service. NYPA’s previous entitlement on the line was 495 megawatts (‘MW’), but in the renegotiated Firm Transmission Capacity Purchase Agreement (‘FTCPA’) between NYPA and HTP that the Trustees authorized in March 2017, this entitlement was increased to 575 MW. To reflect this higher transmission capacity, the Authority’s monthly cost to CEE under the License will rise from the existing \$25,000 per month to \$29,040 per month. The cost per MW will remain unchanged.

Upon Trustee authorization, NYPA will enter into an amended License Agreement which, in addition to establishing the higher monthly assessment by CEE, will include other ministerial changes to reflect the increased transmission capacity that NYPA will receive under the revised FTCPA, updates to certain commercial practices and the elimination of certain obsolete provisions. NYPA will otherwise retain its existing rights and responsibilities under the amended License Agreement, including NYPA’s current termination rights.

BACKGROUND

On March 21, 2013, the Board of Trustees authorized NYPA’s entering into the License Agreement with CEE, a subsidiary of Consolidated Edison Company of New York, Inc., for a three-year term. NYPA staff explained that the License Agreement arose from its Request for Proposals for services related to the management of NYPA’s transmission capacity on the HTP line, which included the need for expertise on selling energy and capacity originating in the PJM Interconnection, LLC (‘PJM’) control area into relevant New York markets.

On March 29, 2016, the Trustees authorized entering into an extension of the License Agreement for a second three-year term, which included the option to extend the contract for two subsequent three-year terms at NYPA’s discretion.

At its March 21, 2017 meeting, the Trustees authorized the finalization of negotiations and execution of an amended FTCPA between NYPA and HTP. That renegotiated FTCPA provided NYPA with, among other things, an increase in transmission capacity on the line from 75% to 87.12%. Put another way, NYPA’s entitlement rose from 495 MW to 575 MW of firm transmission capacity on the HTP line. The revisions to the FTCPA also included provisions for HTP’s replacement of the undersea portion of the line, which was damaged in November 2016 and rendered the HTP line out of service since that time.

The increase in the monthly assessment described in this report is an appropriate and necessary adjustment to the License to conform to the higher amount of transmission capacity that will be managed by CEE on NYPA’s behalf once the HTP line is fully repaired and made operational.

DISCUSSION

Under the current License Agreement, CEE's base level compensation is set at \$300,000 per year or at a 'threshold' of \$25,000 per month. Beyond the monthly \$25,000 threshold, the License prescribes a revenue sharing arrangement between CEE and NYPA, where NYPA receives 85% of the revenues above the threshold, while CEE obtains the remaining 15%. An annual true-up applies to ensure CEE's \$300,000 annual minimum floor.* The License will retain existing revenue sharing percentages, but going forward (and commencing upon the date on which the HTP line is made operational after the above-described line replacement is completed), the monthly threshold amount will be increased to \$29,040 per month to reflect the increased amount of transmission capacity that CEE will be managing in light of the increased NYPA entitlements under the revised FTCPA.

This increase in the monthly threshold is proportional to the increase in transmission capacity from 495 MW to 575 MW. While this License amendment would increase the minimum compensation to CEE, it does not constitute an increase in the rate, or cost per MW, to NYPA for the services provided by CEE.

As noted, NYPA's other rights and responsibilities under the License will remain intact, including the current termination provisions which allow NYPA to terminate the License for any reason upon 90 days' written notice.

FISCAL INFORMATION

On an annual basis, the minimum compensation paid by NYPA for the increased quantity of transmission capacity on the HTP line managed by CEE will grow from \$300,000 per year to \$348,480 per year.

As to revenues earned on the HTP line through transactions managed by CEE, NYPA has averaged between \$5.5 and \$6.0 million in annual revenues since the License has been in effect and when the line is fully operational. NYPA would expect similar annual earnings when the HTP line operations resume, and notes that such revenues would likely be higher in view of the additional 80 MW of transmission capacity that NYPA will have for energy-related transactions managed by CEE.†

RECOMMENDATION

The Executive Vice President and Chief Commercial Officer, the Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Vice President – Technical Compliance, and the Vice President – Procurement recommend that the Trustees authorize staff to execute an amended License Agreement with CEE to effectuate the increased minimum compensation in accordance with discussion above.

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

* Unrelated to the authorization sought here, NYPA and CEE have agreed to establish a twenty-four (24) month true-up period under the License Agreement which will limit the instances in which NYPA would need to make any payments to CEE under the License Agreement due to the lack of offsetting energy revenues, which could occur when the HTP line is in an outage condition for an extended period.

† Note that the revenues earned under the License Agreement are the result of financial arbitrage between nodal points within PJM and New York Independent System Operator, Inc. control areas and are variable due to transmission system dynamics and interregional load capabilities.

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted for the modification to the minimum compensation level contained in the Authority's License Agreement with Consolidated Edison Energy, Inc. ("CEE"), for the management of energy-related transactions with respect to the Authority's increased transmission capacity entitlements on the Hudson Transmission Partners, LLC ("HTP") merchant transmission line, as recommended in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman of the Authority is authorized to supervise, review, monitor and participate in any of the negotiations described above, with the purposes of minimizing the Authority's costs and liabilities relating to CEE's management of all energy and capacity transactions using NYPA's entitlements on the HTP transmission line; and be it further

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

**iii. New York State Canal Corporation (NYCC) –
Self-Insure Workers' Compensation Program**

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The Trustees are requested to approve self-insuring the New York State Canal Corporation ('NYCC') workers compensation program which is currently insured through the State Insurance Fund ('NYSIF').

It is anticipated that a self-insured plan will provide the New York Power Authority ('NYPA') cost savings and will afford the NYCC enhanced claims administration.

BACKGROUND

Workers' Compensation coverage is statutorily mandated in the State of New York. Coverage can be purchased through a third-party insurer such as the New York State Insurance Fund ('NYSIF'), or an employer may qualify as a self-insured. The purchase of the coverage through a commercial insurer has historically been the most expensive alternative. Currently, the NYCC Workers' Compensation program is insured with NYSIF. Premiums paid to NYSIF have risen significantly in recent years prompting the Authority to investigate the feasibility of self-insuring the NYCC Workers' Compensation program.

DISCUSSION

Based upon an analysis by the Risk Management Department, it was concluded that there would be significant savings by self-insuring the Workers' Compensation program for NYCC. It is estimated that the savings will be approximately \$600,000/year which will be realized through a combination of premium reduction and efficient and transparent claims management.

NYPA currently self-insures its Workers' Compensation program utilizing a third-party claims administrator. This administrator provides claims administration, including claims investigation, statutory filings, hearing representation and the expertise to assure medical cost containment and catastrophic medical case management. The Authority will use the same third-party administrator to manage the NYCC Self-Insured Workers' Compensation program.

FISCAL INFORMATION

The estimated savings will be approximately \$600,000/year through a NYCC Self-Insured Workers' Compensation program compared to the current Workers' Compensation program insured through the NYSIF.

RECOMMENDATION

The Senior Vice President and Chief Risk Officer recommends that the Trustees approve the New York State Canal Corporation obtaining self-insured status for its Workers' Compensation program.

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

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

RESOLVED, That the New York State Canal Corporation election to self-insure its Workers' Compensation program is hereby approved by the Trustees; 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.

5. DISCUSSION AGENDA:

a. Strategic Initiatives

i. President and Chief Executive Officer's Report

Hurricanes Irma and Maria - Puerto Rico

President Quiniones provided an update regarding the Authority's assistance to Puerto Rico after the devastations caused by hurricane Irma and Hurricane Maria. He said that Governor Cuomo marshalled the resources and assets of the state and private sector to help Puerto Rico after Hurricane Irma and Hurricane Maria. He said, to that end, on Friday, September 22, under the leadership of Governor Cuomo, he and ten NYPA employees who are experts in transmission generation flew to Puerto Rico with generators, and other supplies, to help Puerto Rico in damage assessment. In addition, Drone Pilots from the State Department of Energy Conservation came to assist in the damage assessment of Puerto Rico's transmission and distribution systems.

President Quiniones explained that the grid in Puerto Rico is completely out of service so there is no power available to approximately 3.5 million Puerto Ricans. Cell towers are 95 percent out of service, so communication is very difficult. NYPA has been communicating with its team mostly through cellphone and satellite phones. The team and Governor Rossello of Puerto also inspected the damages from Hurricane Maria in San Juan.

The Authority's team was tasked with three mission goals: 1) help in the damage assessment; 2) help triage / prioritize the work that needs to be done; and 3) help them fill out the necessary applications to the Puerto Rican government and FEMA, so that assets, largely from the federal government, can be deployed to Puerto Rico.

Based on the assessment of the experts, it will take a very long time to restore and rebuild Puerto Rico's power grid, especially if certain assets have to be raised above ground. President Quiniones said that from his observation, it is much more dire than what we have been seeing on the News -- conditions are really very difficult.

The Governor has also organized a public/private campaign to raise money for goods and services to be deployed to Puerto Rico. The National Guard set up collection points across the state, and, in partnership with Jet Blue, will transport those resources to Puerto Rico.

The Authority's team is adding a lot of value to these efforts, working with its sister utility in Puerto Rico, Puerto Rico Electric Power Authority ("PREPA").

The Authority has the right expertise to assist, since PREPA's system is very similar to NYPA's. They have 230 KV and 130 KV transmission systems, familiar technology to NYPA's employees. The Authority will be able to work very closely with PREPA and give them its opinion and advice, as needed.

Staff reported that they have assessed approximately 40 percent of Puerto Rico's transmission system and 80 percent of that 40 percent has been destroyed and cannot be repaired. This means that the system will have to be rebuilt. If that trend continues, both on the transmission and distribution system, 80 to 90 percent will probably not be salvageable.

NYPA's employees will be in Puerto Rico on a two-week commitment basis since the type of help needed will change over time. The Authority will submit its findings to FEMA, which will then coordinate with the electricity subsector coordinating council, a group comprised of the utility trade associations, American Public Power Association, Edison Electric Institute, a trade association of investor-owned utilities and NRECA, a trade association of rural cooperatives. In addition, the federal government will deploy the mutual-aid utility crews to Puerto Rico for the rebuilding of the grid.

Since the Authority has a similar transmission system to Puerto Rico's and is therefore very familiar with that technology and the operation of those assets, at present, the Authority's assistance is more advisory and intellectual resources and NYPA will continue to do so if PREPA needs that assistance for an extended period of time.

President Quiniones thanked the team, who are mainly from the Massena and Utica areas, for volunteering to assist on such short notice. He also thanked Joseph Kessler and Saul Rojas for leading the team. He added that Joseph Kessler, with the assistance of Saul Rojas, is the incident commander for NYPA's emergency response process and they have been doing a great job, not only organizing and deploying the team, but also monitoring, supporting and assisting them from New York. He is proud of the team and the Power Authority for being a part of addressing this humanitarian crisis in Puerto Rico. He ended by saying that further information will be provided to the Board at a later time.

Chairman Koelmel also thanked Joe Kessler and the team for mobilizing so quickly and for being part of a rapid response effort to stabilize what has to be an incredible unstable situation.

President Quiniones then provided highlights of the Authority's Digital Strategy, to date. (Exhibit "5a i-A").

NYPA's Digital Strategy - Economic Basis

NYPA is aspiring to be the first digital utility in the United States. The electric utility industry is one of the most capital-intensive industries in the world. However, utilization of the infrastructure in the electric utility

industry is very low. Compared to other capital-intensive industries, the electric utility industry's utilization is about 55 percent. The grid in New York was built to meet the hottest temperatures during July and August; therefore, for most of the year, the capacity utilization is low.

NYPA's Digital Strategy - Technology Basis

Governor Cuomo initiated a policy "Reforming the Energy Vision" to deploy distributed and decentralized resources to operate the grid. Over time, NYPA can increase the capacity utilization of the power grid, optimize the amount of capital investments, and make the grid more affordable, resilient and cleaner.

By using digital technology, NYPA will be able to decentralize its operations and have the necessary distributed resources -- IT infrastructure -- to make sure that it can evolve to this new, distributed, decentralized, smart-grid utility and take the lead in becoming a completely digital utility.

NYPA Digital Strategy Enterprise-wide

NYPA is digitizing because it is a necessary strategy for it to be able to evolve from the current one-way flow grid to a distributed, decentralized, multi-flow power grid. This would be the key enabler for NYPA in putting the customer at the center of this transformation and creating value for its customers, going forward. Digitization is the foundation from which NYPA will deliver the four key customer goals outlined in its refreshed "NYPA 2020" Strategic Plan presented to the Board in July.

In addition, NYPA will infuse cyber security at the beginning of every digitization process or project it plans to implement. To that end, the Authority's Chief Information Security Officer has been tasked to be a part of this process.

The Authority is making the right adjustments to accelerate the implementation of its refreshed strategy. At the December Board meeting, NYPA plans to celebrate the opening of its iSOC with a ribbon-cutting ceremony on the 8th Floor of the White Plains Office building.

b. Risk Management:

i. Chief Risk Officer's Report

Mr. Soubhagya Parija, Chief Risk Officer, provided highlights of the Risk Management activities to the Trustees. (Exhibit "5b i-A"). He said the Executive Risk Management Committee ("ERMC"), using an integrated management approach, is chaired on a rotational basis by executives and meets every month to discuss any potential change to the risk profile.

Key Risk Management Initiatives:

- **Insurance**

Integrated Risk Programs

Insurance is a key function of NYPA's business. NYPA is conducting a Cost of Risk analysis, considering alternative financing options, in order to ensure that the coverage that NYPA is buying corresponds with its exposure and that the amount NYPA is paying for premiums compares favorably with the market. NYPA is also looking at insurance as an alternative risk financing option to protect the Authority against catastrophic type risks. NYPA plans to integrate the Canal Corporation's property liability programs with NYPA's; this will result in savings of approximately \$300,000 to \$600,000 in premiums per year.

Owner-Controlled Insurance Program

NYPA also plans to implement an Owner Controlled Insurance program for service providers and construction contractors. If NYPA aggregates the insurance for smaller companies that are unable to buy insurance coverage because they have to pay higher, expensive premiums and also compliance of the insurance, which is a challenge for smaller companies, NYPA would save, in terms of its total spend on construction, approximately \$9 million, over five years.

Canals Self-insured Worker's Compensation

The Canal Corporation Worker's Compensation Program is presently with the State Insurance Fund. The Authority plans to manage that program in the same way that it manages the NYPA Worker's Compensation Program; this will result in savings in premium of more than \$600,000 per year.

- **Enterprise Risk Management**

Enterprise Risk Management has been working closely with Internal Audit, Ethics and compliance and Cyber Security teams to put together an enterprise Governance, Risk and Compliance tool targeted to be implemented by Q4 of next year. This risk taxonomy tool will result in the warehousing of Risk Data, among the different functions that are looking at risks, in a consistent format.

- **Business Resiliency**

There are three aspects to Business Resiliency:

1. Risk Management - Business Continuity and Insurance
2. Utility Operations - Emergency Management and Physical Security
3. Technology/Cyber - Disaster Recovery and Cyber Incident Response

All aspects of Business resiliency are very important and require collaboration across the organization -- Information Technology, Operations and Risk Management -- to be successful.

The business resiliency framework is completed and a Corporate Crisis Management Team tabletop exercise with all of the executives, conducted by the Operations team, was successfully completed.

c. Operations & Finance

i. Financial Report

Mr. Robert Lurie, Chief Financial Officer, provided an update of the financial report to the Trustees. (Exhibit "5c i-A").

Net Income

Net Income for the eight months ended August 31, 2017 was \$170.8 million, which was \$110.2 million higher than the budget of \$60.6 million.

The increase in net income was primarily attributable to higher margins on energy (\$18.9 million) and transmission sales (\$19.7 million), lower operating expenses (\$44.3 million), lower depreciation (\$11.4 million), receipt of a one-time payment from Entergy (\$8.0 million, NDTF transfer) and higher investment income (\$8.0 million). The higher margin on energy was primarily attributable to higher hydro production (9.9%). The positive Transmission variance was primarily due to lower capacity payments resulting from the continuing HTP line outage.

Depreciation was lower due to a Transmission rate settlement adjustment and less than planned capital spending. The lower than planned operating expenses reflected underspending in O&M expenses due to timing and less than expected spending in maintenance, consulting, and health insurance costs, and less than anticipated spending in several programs.

Net income for the month was \$22.5 million, which was \$15.3 million higher than budgeted. The positive variance was primarily attributable to higher margins on transmission sales (\$2.9 million), lower O&M (\$4.9 million), lower depreciation (\$2.0 million, rate settlement), and lower other operating expenses (\$2.5 million). Lower operating expenses included the true-up of Pension and FERC fee costs based on billing information received during the month. The higher than budget Investment income was primarily attributable to a mark to market gain on the Authority's investment portfolio due to lower market interest rates.

The Authority had net income of \$170.8 million for the eight months ended August 31, 2017, compared with a net income of \$50.4 million in the prior year. The primary contributors to this improvement were higher margins (\$64.9 million), absence of payment (\$71.0 million) of the voluntary contribution to NY State, and partially offset by higher operating expenses, primarily Canals. Net margins on sales in 2017 were higher than last year reflecting higher hydro generation, lower HTP capacity payments (line outage) and a transmission rate increase.

The Authority's budgeted year-end net income projection was \$77 million; this is now forecasted to be \$134 million. Hydro volume has been better than expected and is projected to stay that way through the

end of the year. Energy prices and capacity prices have declined, but the hedging program has largely offset those declines.

Asset Write-down

Pursuant to the Authority's agreement with General Electric, staff expects to schedule major parts replacements at the Authority's 500 megawatt Plant. While this is going to result in long-term savings and more efficiency at the Plant - greater output - it will also mean that the existing parts that are being replaced, which are on the Balance Sheet and are depreciating, are no longer a value. Staff is of the opinion that the appropriate way to treat this issue is to write-down those assets before the end of the year. The estimated value of those parts is approximately \$65 million. The Board will be requested to approve a proposal for a long-term service contract relating to the Plant at a later time.

ii. Utility Operations Report

Mr. Joseph Kessler, Chief Operations Officer, provided an update of the Utility Operations' activities for the month of August to the Trustees (Exhibit "5c ii-A").

Performance Measures

Utility Operations' performance for the reporting period exceeded expectations.

Generation Market Readiness

Generation market readiness is a measure used at the Power Authority for commercial availability.

- Generation Market Readiness factor for the month of August was at 99.90%. This is above the target of 99.40%.

Transmission reliability

- Transmission reliability factor for the month of June was 97.20%. This is above the monthly target of 96.17%.

Environmental Incidents

Environmental incidents are occurrences that the Authority has to report to the DEC and other agencies

- There were three minor environmental incidents for the month of August.
- Year-to-date, there were 12 reportable incidents. The Annual Target is not to exceed 22 incidents.

Safety

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

- There were no DART injuries reported for the month of August.
- The year-to-date DART Rate is 0.77. The target is 0.78.

Emergency Management

- Reviewed and updated the Emergency Management, IT/Cyber, Business Continuity programs for NYPA to ensure a comprehensive emergency preparedness program.

- Development of Incident Notification and Response Guidebooks (“playbooks”).
- Key stakeholder emergency response training at NYPA sites.
- Training and distribution of the “playbooks” for the Corporate Crisis Management Team.
- Canal Corporation update is on schedule to be completed by September 30.
- Coordinated efforts to assist Puerto Rico post Hurricane Irma; NYPA was ready to deploy equipment and staff to assist in power restoration.

Canal Corporation - Update

- Improvements in employee and public safety.
- Implementation of programs to improve Canal Corporation’s assets and to increase efficiencies within operations and maintenance:
 - Dam safety programs; capital improvements; transfer of jurisdiction
 - Code compliance review of all major maintenance facilities; implementation of new policies and procedures
 - Assessment of over 100 vessels; development of fleet repair, retrofit and replacement schedules
- Implementation of Maximo Work Order Asset Management system to plan, schedule and track maintenance activities.
- Completion of 25 of 41 Transitional Service Agreement Exit Plans.

iii. **Commercial Operations Report**

Ms. Jill Anderson, Chief Commercial Officer, provided an update of Commercial Operations' year-to-date August activities to the Trustees (Exhibit "5c iv-A"). She said that the energy market could be very volatile depending on in the weather.

WHOLESALE

○ Customer usage

Customer usage for the reporting period is down slightly compared to budget. This was due to the mild summer months, but is now starting to converge with the forecast.

○ Generation

Generation is approximately five percent above the forecast and trending close to budget.

○ Electric and Fuel Prices

Electric prices are low compared to budget. This is mainly driven by fuel prices which are lower than projected.

ECONOMIC DEVELOPMENT

Business Development

On September 8, the Authority received more than 130 proposals from 51 developers to its Request for Proposals for the large-scale renewables. NYSERDA also issued a solicitation for renewable energy. Both NYPA and NYSERDA received more than four times as much project proposals for new renewable energy than originally solicited. This is very encouraging for the opportunity to meet the very aggressive clean energy goals that the Governor has laid out. It also shows that there are viable projects in and out of New York State that could be imported and that will be necessary for NYPA to meet the Governor's goal of 50 percent renewables by 2030.

Economic Development

Staff will be requesting that the Trustees approve awards for NYPA's hydropower. This is a constant marketing activity for the Authority to get the maximum amount of jobs and investments for New York through its low-cost hydropower.

CUSTOMER

The Authority is planning to do a deep-dive on its Customer Business Plan. Total customer investments and net revenues that NYPA uses to cover its costs for managing those investments are ahead of the forecast, year-to-date. NYPA is continuing investment in its customer business; as a result, its expenses continue to outpace its revenues, as projected.

LED Lighting Projects

The Authority's LED lighting projects continues to grow. The Authority is undertaking lighting projects around the state and this is a driver for its business growth. The Authority is working on approximately 28,000 LED lighting replacements at SUNY Stony Brook, working at 48 different residence halls and classroom buildings on its campus. This is a great opportunity for NYPA to bring immediate value to the customer and the payback period is very short.

In addition to targets for its investment revenues and its expenses in order to make sure that it is building a robust pipeline, NYPA has targets for executing new contracts. NYPA is on track with monitoring how many new contracts it executes each year. For example, last year staff executed \$220 million of new contracts that will come to fruition in the following year and years forward. Paul Belnick and the Business Development team for the Customer Business are aggressively moving forward with building the Authority's pipeline for lighting and other projects.

iv. Informational Item: Customer Solutions Business Plan

Ms. Jill Anderson introduced Mr. Ron Johnston, Director of Marketing for the Business and Marketing Development Department, and Ms. Genevieve Fabela, the Authority's new Treasurer, and said that they would be providing a report on the Authority's Customer Energy Solutions Business Plan. She said that this is a vision forward initiative on how the Authority can continue to deliver value for its customers and grow its business and how it plans to finance that initiative.

Mr. Ron Johnston, provided highlights of the Customer Energy Solutions' Business Plan. He gave an overview of NYPA's current market environment, describing the voice of the customer; how NYPA's energy-efficiency services offered addresses the customers' needs; and NYPA's financial strategy to help the customers realize their vision.

- **The Changing Energy Marketplace**

The energy marketplace is changing. It has moved from a central generating facility and one-way distribution of electrons to a multiple bi-directional interaction with NYPA's customers. The customers have gone from taking power from NYPA to being able to generate their own power through renewable sources such as wind or solar. There is a rise in the use of electric vehicles and opportunities with utility-level battery storage systems, smart transmission and distribution and renewable energy resources.

To address all of these opportunities, NYPA has projects in the marketplace in the development stage valued at \$1.8 billion. NYPA also has \$770 million in projects that are currently in construction to meet those needs.

- **View of the future**

NYPA plans to lead the way with \$350 million of annual loans to help its customers realize these energy-efficiency capital projects. In addition, NYPA will use the New York Energy Manager and its sub-metering capabilities to assist the Authority in understanding its customers' needs and identify future projects for them focusing on the new technologies.

- **Microgrids**

NYPA's microgrids are leading the way with \$150 million of microgrid projects in development. NYPA will also help its customers by operating up to 100 million megawatts of customer-sited microgrid capability.

- **Electric Vehicle Infrastructure**

Research has shown that by 2040, fifty-four percent (54%) of all new car sales will be electric vehicles. Therefore, NYPA will lead the way by designing, creating and installing electric vehicle charging stations in all 28 New York State Thruway rest stops.

- **Solar Energy and Battery Storage**

NYPA is going to be involved, and lead the way with developing 125 megawatts of public power. NYPA also plans to roll out wide-scale energy battery storage.

- **Smart Lighting**

NYPA will lead the way with the smart lighting technology, converting more than 100 municipalities within the state to LED street lighting. These smart lighting functions include traffic monitoring, air quality, occupancy and other items that could be included in those capabilities. NYPA's goal is to be the leader in converting over 100 percent of all of the street lighting in the state to LED within the next twenty (20) years.

Revenue streams

The Authority's goal is to ensure the revenue streams (in fees) from the existing energy efficiency services and New energy Technology sales, combined with new services derived from developing a marketplace for the digital foundry. The New York Energy Manager will allow revenues to overcome expenses in 2019 for NYPA's Customer Energy Solutions function.

Ms. Genevieve Fabela provided information on the Capital financing needed and proposed financial strategy for the Business Plan to the Trustees.

Capital Financing Needed

NYPA's traditional business is generation and transmission and energy efficiency. Based on its traditional business, NYPA has two strengths, a large cash balance and its AA credit rating. In order to expand and support the new revenue streams NYPA can leverage those two strengths. The proposed financial strategy is to take a conservative portion of the Authority's cash reserves and invest it into growth segment areas, while still protecting its credit rating and its existing bondholders.

There are two different types of financing needs, depending on the revenue stream of the businesses, which NYPA would support: 1) self-financing projects such as large-scale renewables and microgrids, and 2) start-up businesses. Cash injection would be used under the self-financing category, and start-up working capital for the start-up businesses. Once those revenues are established, then the traditional financing methods through banks would be used.

The projection is that cash equity investments of \$50 million to \$400 million, through 2020, will be necessary to finance these new businesses. NYPA will determine how much cash is appropriate, the Authority's risk appetite for these business and, annually, request the Board's approval for cash allocation in support of these new businesses.

Next Steps

1. Finalize Capital Needs and Financing Forecast
2. Establish Risk Tolerances for New Business Segments
3. Develop Formal Investment Credit Policy
4. Board Approval

v. Procurement (Services) Contract – 500MW Combined Cycle Power Plant – Long-Term Service and Extended Parts Agreement

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve the award of a competitively bid contract to General Electric International Inc. ('GE'), Atlanta, Georgia, in the amount of \$165 million, inclusive of all maintenance services and parts, at the 500MW Combined Cycle Power Plant, for a 24-year term or 128k Factored Fired Hours ('FFH').

The GE contract will provide for parts, labor, and upgrades in order to maintain the two Combustion Turbines and Steam Turbine for the term of the Agreement.

BACKGROUND

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

The Authority's Expenditure Authorization Procedures ("EAPs") require the Trustees' approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts in excess of \$3 million.

The Authority's 500MW Combined Cycle plant was commissioned in December 2005 and has contracted with Ethos Energy (formerly known as The Wood Group) since September 29, 2006 to maintain its Combustion and Steam Turbines. It is expected that by the spring of 2018 the majority of the Combustion Turbine's major components will reach the end of their useful life. In an effort to maximize the opportunity to reposition this facility from a financial, technical and longevity posture, site management determined that it was essential to rebid the maintenance service agreement in order to remain competitive and flexible in the market place.

Based upon projected run profiles, this Agreement will include but not be limited to anticipated maintenance expenditures for the Covered Units through 2035, with a Sunset Date at 24 years after the Effective Date, (2041). At the inception of the Agreement, GE will provide all Parts and Services, (collectively "Work") necessary to upgrade the gas turbines, which will extend the existing 12,000 operating hours (FFH), maintenance intervals to 32,000 FFH, as well as increasing the combined cycle output by 7.5% and improve plant heat rate, (efficiency) by 1.3%. It is anticipated that GE will perform the last major maintenance on these Covered Units at 128,000 FFH (year 2035). As of year 24 of the Agreement, if the units have not achieved the 2nd Major Inspection ("MI"), NYPA has the ability to either:

- extend the Agreement until the major maintenance milestone is reached;
- have GE perform the last maintenance event early; or
- end the term on the sunset date without performing the last maintenance event.

DISCUSSION

In response to the Authority's Request for Proposal (Q16-6018JT) advertised in the New York State *Contract Reporter* on Thursday, August 25, 2016, three proposals were received on Tuesday, October 18, 2016 to provide parts, labor, and upgrades for the Authority's 500MW plant for a twenty-four-year term or 128k FFH.

The proposals were reviewed by an Evaluation Committee consisting of SENY and WPO staff – Regional Manager (T. Zandes), Operations and MRM Superintendent (J. Anderson), Director of Operations (D. Padron), SSM (J. Travis and D. Keough), WPO Mechanical Engineering (E. Szpynda) and IEM Energy Consulting Services (J. Fassett).

Ethos Energy Group - The technical portion of the proposal received from Ethos Energy was acceptable; however, its pricing was the highest of the three bidders and it did not have the capabilities to provide upgrade to improve heat rate or increase plant output. Accordingly, Ethos Energy's bid was no longer evaluated nor considered for award.

Power Systems Manufacturing ('PSM') - PSM also provided an adequate proposal and options to improve the plant's heat rate and increase the plant's output. However, its pricing was higher than the lowest bid proposal. Subsequently, the company was no longer considered for evaluation or award.

General Electric International Inc. - General Electric is the lowest priced, technically qualified bidder. General Electric is qualified to perform such services, capable of providing the Authority's 500MW plant a variety of options that will improve the plant's heat rate and increase its output, and has demonstrated full compliance with the RFP requirements.

FISCAL INFORMATION

Payments associated with this contract will be made from the Authority's 500MW Plant O&M and Capital budget.

RECOMMENDATION

The Vice President – Strategic Supply Management, the Regional Manager – SENY and the Assistant General Counsel recommend that the Trustees approve the award of a twenty-four-year or 128K Factored Fired Hours ('FFH') contract to General Electric International Inc. of Atlanta, Georgia in the amount of \$165 million.

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

Upon motion made by Vice Chairman Nicandri 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, a contract award in the amount of \$165 million is hereby authorized to provide for parts, labor, and upgrades in order to maintain the two Combustion Turbines and Steam Turbine at the Authority's 500MW Combined Cycle Power Plant;

Contractor

**General Electric
International Inc.
Atlanta, Georgia**

(Q16-6018JT)

Contract Approval

\$165 million

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

**vi. Procurement (Services) Contract – Digital Utility
Strategic Partnership – Contract Award**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to approve the awards of five-year contracts for the Digital Utility Strategic Partnership in support of the Authority's Digital Transformation in the aggregate not-to-exceed amount of \$50 million to the ten most technically qualified firms:

- Accenture LLP of New York, NY ('Accenture')
- General Electric International of Atlanta, GA ('GE')
- GP Strategies Corporation of Columbia, MD ('GP Strategies')
- Indigo Advisory Group, LLC of Brooklyn, NY ('Indigo')
- Lockheed Martin Energy of Malta, NY ('Lockheed Martin')
- MaRS Discovery District of Toronto, Ontario, Canada ('MaRS')
- PA Consulting Group, Inc. of New York, NY ('PA Consulting')
- Siemens Industry, Inc. of Fairfax, VA ('Siemens')
- Talisen Technologies, Inc. of St. Louis, MO ('Talisen')
- C3 IoT, Inc. of Redwood City, CA ('C3 IoT')

The Trustees are further requested to fund these agreements by approving the transfer of \$50 million from the Information Technology Co-sourcing Services agreements previously approved by the Trustees at their May 2, 2017 meeting.

BACKGROUND

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

The Authority's Expenditure Authorization Procedures ('EAPs') require the Trustees' approval for the award of Personal Services contracts in excess of \$1 million and for a period in excess of one year.

The energy industry is in the early stages of transformative changes that are expected to dramatically alter the way electric power is generated, delivered and used. These changes are only likely to accelerate, due not only to technological advances but also to regulatory and market changes that will enable greater customer empowerment. The Authority, with unique generation and transmission assets across the state and a long history of achievements in customer-side energy services, is well-positioned to help turn uncertainty in the industry into opportunity and to deliver still greater benefits to the people and businesses of New York.

The electric grid of the future will look like an Integrated Energy Network, driven by the Authority's customers demanding cleaner energy and data-intensive advanced technologies:

- Customer choice and empowerment will grow rapidly as technology becomes available that provides benefits that customers demand.
- Orchestration of choice will require an energy system that drives efficiency through a combination of technology and market forces.
- Reliably integrating clean energy resources will require a responsive, flexible grid that uses artificial intelligence to manage variability in demand and generation.

The changes in markets and technology create the potential for profound benefits to be created for users of energy. It also creates the need for the electric grid and the large power generating stations to become more tightly integrated into the distribution network. The grid must become more adaptable, intelligent, and agile in responding to the massive number of individual decisions made by consumers as they use and generate electricity.

The Authority's 2020 Strategic Plan aims to position the Authority as an integral and valuable part of the future electric system and will support our customers through the following five aims:

- The first enterprise-wide digitized utility in the United States.
- The market leader for both energy efficiency and grid scale / behind the meter renewable energy services
- Offering the best deal, in electric supply and electricity commodity management for our supply customers
- Having the most impactful transmission and large scale renewable projects either deployed or in active development.
- Striving to be the most innovative and active service provider in the fields of energy storage and electric vehicle infrastructure

Successful execution of the first of these aims is critical in order for the NYPA to achieve the others. To support implementation of the above, the Authority has sought to create strategic partnerships for which a \$50 million authorization for a five-year term is being requested.

DISCUSSION

In response to the Authority's noticed in the New York State *Contract Reporter* and Request for Proposal ('RFP') documents were posted on the Authority's Strategic Supply Management website. On August 8, 2017, twenty-eight proposals were received in response to this RFP. The RFP sought expertise in the following three focus areas:

1. Management Consulting

The notion of a digitized utility is central to the Authority's overall strategic vision and Strategic Plan. As the Authority continues to leverage technology in the advancement of new/leading business models as well as products and services, it is critical that a Digital Utility Strategy be in place to support the overall business strategy – to act as a bridge between IT, Strategy, Operations and the Authority's Customers.

Building, developing and executing a Digital Utility strategy will require the Authority to make strategic decisions around technology, software, IT infrastructure, data, processes and organizational design that allows it to extract the value of digitization in service of the Authority's strategic imperatives and customer needs.

2. Technology Implementation

The road to becoming a Digital Utility starts with a careful evaluation of where the Authority is today. The next step is to develop a collaborative, multi-generational, prioritized plan that will combine the right process enhancements with the right technology to accelerate the Authority's path to excellence, while maximizing the value from the existing investments that have already been made. This requires diverse expertise in architecting and blueprinting, implementing IoT and data analytics in the electric utility sector.

3. iSOC and NYEM Support /Training

NYPA has an established Integrated Smart Operations Center ('iSOC') and New York Energy Manager ('NYEM') currently monitoring a limited number of assets and customer facilities. These continue to grow in terms of assets and facilities being monitored (customer, generation, transmission and back-office) and NYPA is in the process of transitioning to a new physical location at its White Plains Office that will provide for a more collaborative environment and improved situational awareness.

A complete bid review and analysis was performed based on the following, but not limited to, vendor qualifications, experience, and alignment with the Authority's vision, proposed execution approach, and experience with existing Authority platforms to identify the most qualified vendors to support the above focus areas. The ten firms selected will be awarded Value Contracts for a five-year term. Individual tasks will be assigned by issuance of a Purchase Order Release ('POR') against the established values contracts after a mini-bid among the firms. Since market conditions continue to change, the Authority may evaluate the need to pre-qualify additional firms on an annual basis.

FISCAL INFORMATION

Services under these contracts will be provided on an as-needed basis and/or availability. Payments associated with this project will be made from the Authority's Capital or Operations Fund, as appropriate.

In efforts to optimize the Authority's execution strategy and as a result of this new Digital Utility Strategic Partnership, the previously approved Information Technology Co-sourcing Services award to Ernst & Young LLP, Deloitte Consulting LLP, and Cognizant Technology Solution shall be reduced from the aggregate amount of \$75 million to \$25 million. The Trustees initially approved these contracts at their May 24, 2017 meeting.

RECOMMENDATION

The Senior Vice President – Technology & Innovation, the Senior Vice President – Chief Information Officer, the Vice President – Strategic Operations, and the Vice President – Procurement, recommend that the Trustees approve awards of five-year contracts for the Digital Utility Strategic Partnership in support of the Authority's Digital Transformation in the aggregate not-to-exceed amount of \$50 million to the ten most technically qualified firms: Accenture LLP, General Electric International, GP Strategies Corporation, Indigo Advisory Group, LLC, Lockheed Martin Energy, MaRS Discovery, PA Consulting Group, Inc., Siemens Industry, Inc., Talisen Technologies, Inc., and C3 IoT, Inc.

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

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures approval is hereby granted to award a five-year Contract for the aggregate total of \$50 million to Accenture LLP of New York, NY ("Accenture"), General Electric International of Atlanta, GA ("GE"), GP Strategies Corporation of Columbia, MD ("GP Strategies"), Indigo Advisory Group, LLC of Brooklyn, NY ("Indigo"), Lockheed Martin Energy of Malta, NY ("Lockheed Martin"), MaRS Discovery District of Toronto, Ontario, Canada ("MaRS"), PA Consulting Group, Inc. of New York, NY ("PA Consulting"), Siemens Industry, Inc. of Fairfax, VA ("Siemens"), Talisen Technologies, Inc. of St. Louis, MO ("Talisen"), and C3 IoT, Inc. of Redwood City, CA ("C3 IoT") as recommended in the foregoing report of the President and Chief Executive Officer;

<u>Contractor</u>	<u>Location</u>	<u>\$50 million aggregate</u>
Accenture	New York, NY	
GE	Atlanta, NY	
GP Strategies	Columbia, MD	
Indigo	Brooklyn, NY	
Lockheed Martin	Malta, NY	
MaRS	Toronto, Ontario, CA	
PA Consulting	New York, NY	
Siemens	Fairfax, VA	
Talisen	St. Louis, MO	
C3 IoT	Redwood City, CA	

AND BE IT FURTHER RESOLVED, That in efforts to optimize the Authority's execution strategy, the aggregate amount of the Technology Co-Sourcing Services contract awards to Ernst & Young LLP, Deloitte Consulting LLP, and Cognizant Technology Solution be reduced from \$75 million to \$25 million; 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.

**vii. Transmission Life Extension and Modernization Program -
St. Lawrence Region - Massena Substation -
Capital Expenditure Authorization Request**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are hereby requested to approve a Capital Expenditure Authorization Request in the amount of \$42,460,881 for the Transmission Life Extension and Modernization Program: St. Lawrence Region - Massena Substation ('Project').

BACKGROUND

In accordance with the Authority's Capital Planning and Budgeting Procedures, capital expenditures in excess of \$3 million require the Trustees' approval.

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

The circuit breakers at the Massena Substation were installed in the 1970s. Based on field assessments, data analysis and the expected service life of similar equipment, the 765kV power circuit breakers, 13.8kV switchgear, station service transformers and 480V station service switchgear have reached the end of their useful lives and will be replaced as part of this Project.

DISCUSSION

The Project has been structured to prioritize the replacement of the equipment outlined above. Replacement of equipment will be sequenced in conjunction with ongoing planned work, outages, and internal resource availability. Major construction of the project is scheduled to start in spring of 2019 and be complete in late 2023.

Expenditure authorization is being requested for the entire Project which will cover the cost of engineering, equipment procurement, construction, and direct and indirect costs.

Preliminary funding in the amount of \$860,708 was previously approved to perform feasibility studies and preliminary engineering for the Project.

The total Project cost is estimated at \$42,460,881, including the previously authorized funding, as follows:

Preliminary Engineering/Engineering Design	\$ 6,139,897
Material Procurement	\$ 15,808,387
Construction/Installation	\$ 14,400,000
Authority Direct and Indirect Expenses	<u>\$ 6,112,597</u>
TOTAL	\$ 42,460,881

FISCAL INFORMATION

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

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Regional Manager – Transmission, the Vice President – Project Management, and the Project Manager recommend that the Trustees approve capital expenditures in the amount of \$42,460,881 for the Transmission Life Extension and Modernization Program: St. Lawrence Region - Massena Substation Project.

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

Upon motion made by Vice Chairman Nicandri 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 \$42,460,881 are hereby authorized in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer;

<u>Capital</u>	<u>Expenditure Authorization</u>
Transmission Life Extension and Modernization: St. Lawrence Region – Massena Substation	<u>\$42,460,881</u>

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

**viii. Procurement (Services) Contracts -
Asset Management Support Services -
Contract Awards**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to approve the award of five-year contracts for the Asset Management Support Services in support of the Asset Management Strategic Initiative in the aggregate not-to-exceed amount of \$15 million to five technically qualified firms:

- Burns & McDonnell Engineering Company, Inc. of Kansas City, MO ('Burns and McDonnell')
- Deloitte and Touche of Jericho, NY ('Deloitte')
- Ernst & Young LLP of New York, NY ('Ernst & Young')
- Turner and Townsend AMCL, Inc. of New York, NY ('AMCL')
- WSP Parsons Brinckerhoff of New York, NY ('WSP')

BACKGROUND

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

The Authority's Expenditure Authorization Procedures ('EAPs') require the Trustees' approval for the award of Personal Services contracts in excess of \$1 million and for a period in excess of one year.

As the energy industry enters a period of transformation, with the deployment of new generation and transmission ('G&T') technologies as well as the emergence of new customer consumption patterns, the demands on the Authority's assets are set to change and this will have a corresponding impact on the investment needs of both existing and new assets. These emerging demands require sustaining an asset management framework to ensure that the Authority has greater understanding and visibility of the assets installed on its system to allow informed decisions to be made with respect to the allocation of investments required to manage its portfolio of G&T infrastructure.

With this in context, the Asset Management Strategic Initiative is a central component of the Authority's 2020 Vision both from an organizational and state perspective. The Asset Management Strategic Initiative is comprised of the Integrated Smart Operations Center and data analytics work streams underpinned by a Strategic Asset Management Plan.

In September 2015, the Authority commenced the development of its first Strategic Asset Management Plan ('SAMP'). A key part of the production of the SAMP was the completion of an Asset Management maturity assessment against the thirty-nine subject areas described by the Institute of Asset Management ('IAM'). Various improvement actions were identified through the maturity assessment and facilitated the creation of the Authority's Asset Management Maturity Roadmap.

The Authority's Asset Management strategy is the long-term optimized approach to management of assets, derived from, and consistent with, the Authority's organizational strategic plan and the asset management policy. The Authority's Asset Management Maturity Roadmap sets out the tasks that the Authority will need to undertake to enable its moving from being competent to effective at Asset Management and achieving ISO5500X compliance.

External support is required to achieve the following primary objectives:

- *Institutionalizing a Strategic Asset Management Program that is consistent across the organization where structure, authority and responsibilities are supported by governance.*
- *Integrating optimal business processes that support strategic risk-based investment decision-making on a whole-life basis.*
- *Improving data management to support regulatory compliance, operations & maintenance and asset lifecycle decision-making.*
- *Providing defensible information to stakeholders to support business investment decisions.*
- *Benchmarking maturity against internationally recognized standards for Asset Management.*
- *Ensuring all asset system objectives and metrics align with Authority objectives.*

The Asset Management framework integrates the Authority's detailed Asset Management processes to ensure its assets are planned, created, operated, maintained, and disposed of in a consistent manner commensurate with leading practices. It is underpinned by the Authority's corporate management system, and the key principle that will be used manage the Authority's assets in a safe, reliable and sustainably cost efficient manner to reduce general public and workforce safety risk as reasonably practicable.

DISCUSSION

In response to the Authority's notice in the New York State *Contract Reporter* and request for proposal ('RFP'), documents were made available as an ARIBA event. On August 4, 2017, nine proposals were received.

A complete bid review and analysis was performed to identify qualified vendors to support a comprehensive Strategic Asset Management Plan and the ongoing implementation of its individual component activities. As the Authority began the Asset Management journey aligning with ISO5500X and its standards and measures, maintaining a consistent approach is paramount for the selected vendor and, thus, each awarded vendor is required to be certified as an Endorsed Assessor under the IAM. The selected vendors meet that qualification.

The selected vendors each displayed suitable asset management experience in, but not limited to, Strategic Asset Management Plan; Asset Management Planning; Investment Prioritization; Maintenance Strategy; Lifecycle Strategies; Resources Strategy; Program Delivery; Maintenance & Failure Management; Asset Information Strategy & Standards; Asset Information Systems & Data; and Procurement.

The five firms selected will be awarded Value Contracts for a five-year term. Individual tasks will be assigned by issuance of a Purchase Order Release ('POR') against the established values contracts after a mini-bid among the firms.

FISCAL INFORMATION

Services under these contracts will be provided on an "as-needed" basis and/or availability. Payments associated with this project will be made from the Authority's Capital or Operating Fund, as appropriate.

RECOMMENDATION

The Senior Vice President – Technology & Innovation, the Vice President – Strategic Operations, and the Vice President – Procurement, recommend that the Trustees approve awards of five-year contracts for the Asset Management Support Services in support of the Asset Management Strategic Initiative in the aggregate, not-to-exceed amount of \$15 million to the five most technically qualified firms:

Burns and McDonnell **Engineering Company, Inc.**, Deloitte and Touche, Ernst and Young LLP, Turner and Townsend AMCL, Inc., and WSP Parsons Brinckerhoff.

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

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures approval is hereby granted to award a five-year Contract for the aggregate total of \$15 million to Burns & McDonnell Engineering Company, Inc. of Kansas City, MO (“Burns and McDonnell”), Deloitte and Touche of Jericho, NY (“Deloitte”), Ernst & Young LLP of New York, NY (“Ernst & Young”), Turner and Townsend AMCL, Inc. of New York, NY (“AMCL”), and WSP Parsons Brinckerhoff of New York, NY (“WSP”) as recommended in the foregoing report of the President and Chief Executive Officer;

<u>Contractor</u>	<u>Location</u>	<u>\$15 million aggregate</u>
Burns and McDonnell	Kansas City, MO	
Deloitte and Touche	Jericho, NY	
Ernst and Young	New York, NY	
Turner and Townsend AMCL	New York, NY	
WSP Parsons Brinckerhoff	New York, NY	

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.

ix. Replacement Power Allocation and Notice of Public Hearing

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve an allocation of 4,000 kilowatts (‘kW’) of Replacement Power (‘RP’) to Moog Inc. (‘Moog’) which is proposing to construct a new building at its facility in the Town of Elma in Erie County, as described in further detail below and in Exhibit ‘5c ix-A.’ The term of the allocation would be 7 years. The allocation would support capital investment of at least \$33.8 million and the creation of at least 69 jobs in Western New York (‘WNY’).

The Trustees are also requested to authorize a public hearing pursuant to Public Authorities Law (‘PAL’) §1009 on the proposed direct sale contract for Moog, the current form of which is attached as Exhibit ‘5c ix-B.’

BACKGROUND

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

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

The Authority works closely with business associations, local distribution companies and economic development entities to garner support for the projects to be recommended for allocations of Authority hydropower. Discussions routinely occur with National Grid, Empire State Development, Invest Buffalo Niagara, the Niagara County Center for Economic Development, and the Erie County Industrial Development Agency to coordinate other economic development incentives that may help bring economic development to New York State. Staff confers with these entities to help maximize the value of hydropower to improve the economy of WNY and the State of New York. Each organization has expressed support for the recommended allocation.

At this time, 35,560 kW of unallocated EP and 84,741 kW of unallocated RP is available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).

DISCUSSION

Founded in East Aurora (Erie County) in 1951 and eventually located in the Town of Elma (Erie County), Moog remains a world-wide leader in the design, manufacturing and integrator of precision motion control products and systems with recent annual sales topping \$1 billion.

Moog’s high performance systems control military and commercial aircraft, satellites and space vehicles, launch vehicles, missiles, industrial machinery, wind energy, marine applications and medical equipment. Customers include the U.S. Government, Boeing, Lockheed Martin, Northrup and Airbus Group.

Moog is planning to add a new, 95,000 square-foot facility to support additional production, engineering and new product development within its aircraft group. The building will be located on Moog-owned property north of buildings #1 and #3 at its Elma campus.

Specific examples of products that will be produced include F-35 flight control actuators, A350 hydraulic pump-motor assemblies and next generation flight control development products. Moog also plans to relocate to the new building several existing aircraft flight control programs to allow growth in other areas of Moog's facilities.

The total cost of construction is estimated at \$24.7 million plus an additional \$9.1 million for lighting and HVAC equipment, electrical infrastructure upgrades, hydraulic pump and chiller systems and other miscellaneous improvements. Moog's goal is to start full operations in November 2018.

Moog indicates that at least 69 new jobs (average \$124,637 salary/benefits) would be created within the first three years of project completion.

Moog is already an Authority customer and currently receives five allocations of hydropower totaling 5,350 kW, and a 1,116 kW allocation of Recharge New York power. The current allocations are tied to 3,155 jobs and nearly \$84 million in capital investment commitments. Moog is in compliance with its current contractual obligations for these allocations.

Other support for this project includes Empire State Development Excelsior Jobs Tax Credit of \$4 million, and an Erie County Industrial Development Agency standard PILOT incentive and sales tax package.

The job creation ratio for the proposed allocation of 4,000 kW is 17 new jobs per MW. This ratio is below the historic average of 30.5 new jobs per MW based on allocations made during the past seven years. The total project investment of at least \$33.8 million would result in a capital investment ratio of \$8.45 million per MW. This ratio is below the seven-year historic average of \$23.7 million per MW.

Staff recommends that an allocation of 4,000 kW of RP for a term of 7 years be awarded to Moog in support of its proposed expansion.

CONTRACT INFORMATION

Staff intends to discuss the proposed form of customer agreement with Moog and anticipates reaching agreement with Moog on a contract substantially similar to the form attached as Exhibit '5c ix-B.' Accordingly, the Trustees are requested to authorize a public hearing, pursuant to PAL §1009, on the proposed form of contract for Moog attached as Exhibit '5c ix-B.'

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

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

The general form of the proposed contract is consistent with recently-approved contracts for the sale of PP and/or other hydropower. Some pertinent provisions of the proposed form of the contract

include: (i) the provision for direct billing of all production charges (i.e., demand and energy) as well as all New York Independent System Operator, Inc. ('NYISO') charges, plus taxes or any other required assessments, as set forth in the Authority's Service Tariff No. WNY-1; (ii) the collection of a Zero Emission Credit Charge and a Renewable Energy Credit Charge to allow the Authority to recover costs it would incur relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the customer's load; (iii) commercially reasonable provisions relating to financial security to reflect a direct billing arrangement between the Authority and its PP customers; and (iv) and provisions authorizing data transfers and addressing other utility-driven requirements which are necessary for efficient program implementation.

In addition, the provision of electric service for all hydropower allocations is subject to enforceable employment, capital investment and power usage commitments. The standard contract form includes annual job and capital investment reporting requirements and a compliance threshold of 90%. If the relevant compliance threshold is not met, the Authority has the right to reduce the allocation as provided for in the contract.

The recommended allocation would be sold pursuant to the Authority's Service Tariff No. WNY-1, which applies to all allocations of EP and RP. Transmission and delivery service would be provided by the customer's local electric distribution utility.

RECOMMENDATION

The Vice President - Economic Development, recommends that the Trustees approve an allocation of 4,000 kW of RP to Moog for a term of 7 years as further described herein and in Exhibit '5c ix-A.'

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

Upon motion made by Vice Chairman Nicandri and seconded by Trustee Trainor, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That an allocation of 4,000 kilowatts ("kW") of Replacement Power ("RP") to Moog Inc. for a term of 7 years as detailed in the foregoing report of the President and Chief Executive Officer and Exhibit "5c ix-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 for the sale of RP finally negotiated with Moog Inc. (the "Contract"), the current form of which is attached as Exhibit "5c ix-B," subject to rates previously approved by the Trustees; and be it further

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

RESOLVED, That in connection with the proposed Contract, the Corporate Secretary be, and hereby is, authorized to arrange for the publication of a notice of public hearing in six newspapers throughout the state, in accordance with the provisions of PAL §1009; and be it further

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

x. Award of Fund Benefits from the Northern New York Economic Development Fund Recommended by the Northern New York Power Proceeds Allocation Board

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to accept the recommendations of the Northern New York Power Proceeds Allocation Board (the ‘Allocation Board’) and make awards of Fund Benefits from the Northern New York Economic Development Fund to the eligible applicants listed in Exhibit ‘5c x-A’ in the amounts indicated on Exhibit ‘5c x-A’ as discussed in more detail below and in Exhibits ‘5c x-C-1,’ ‘5c x-C-2’ and ‘5c x-C-3,’ and authorize the other actions described herein with respect to such applicants and recommended awards.

If the recommendations are accepted, the awards would be the first to be made from the Northern New York Economic Development Fund.

BACKGROUND

1. Northern New York Power Proceeds Allocation Act

On December 29, 2014, Governor Cuomo signed into law the Northern New York Power Proceeds Allocation Act (the ‘Act’). The Act adds provisions to two chapters of consolidated law, the Economic Development Law (‘EDL’), and the Public Authorities Law within the Power Authority Act, the enabling statute of the New York Power Authority (‘NYPA’) (collectively, the ‘Statutes’). As discussed in more detail below, the Act creates a program, administered by NYPA and the Board, to support economic development in Northern New York (‘Program’). Under the Program, financial assistance known as ‘fund benefits’ may be awarded to ‘eligible applicants’ for ‘eligible projects’ based on criteria set forth in the Statutes.

Under the Act, an ‘eligible applicant’ is a private business, including a not-for-profit corporation that is a private business. ‘Eligible projects’ is defined to mean ‘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’ include, for example, capital investments in buildings, equipment, and associated infrastructure owned by an eligible applicant; 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 the board, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

NYPA and the Town of Massena Electric Department are parties to a contract that provides for NYPA’s sale of up to 20 megawatts (‘MW’) of hydropower known as ‘St. Lawrence County Economic Development Power’ (‘SLCEDP’) to the Town. As detailed in the Statutes, NYPA is authorized to sell unallocated SLCEDP into the market to generate revenue for the Program. The Statutes provide that NYPA will deposit proceeds from such sales into the Fund no less than quarterly.

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

Monies from the Fund – known as 'fund benefits' – are paid to awardees in the form of grants, and staff expects that in most cases fund benefits will be disbursed as reimbursement for expenses incurred by an awardee. Allocations of fund benefits may only be made on the basis of monies that have been deposited in the Fund. No award may encumber funds that have not been deposited in the Fund.

2. Northern New York Power Proceeds Allocation Board

Under the Act, the Allocation Board's primary responsibilities regarding applications for fund benefits under the Program are to (i) administer the application process, (ii) make determinations relating eligibility, and (iii) where an applicant and project are eligible, evaluate applications against the statutory criteria and make a recommendation to the NYPA Board of Trustees on whether an applicant should be awarded fund benefits. The Allocation Board uses the criteria applicable to EP, RP and PP allocations, and for revitalization of industry, provided for in Public Authorities Law §1005.

Additionally, the Allocation Board is authorized to consider the extent to which an award of fund benefits is consistent with the strategies and priorities of the North Country Regional Economic Development Council, which covers the region in which an eligible projects may be proposed.

At its meeting on January 25, 2017, the Allocation Board, in accordance with the Act, adopted by-laws, operating procedures, guidelines related to the application, and a form of application. A copy of the relevant criteria (collectively, 'Program Criteria'), adapted from the Allocation Board's 'Procedures for the Review of Applications for Fund Benefits,' is attached as Exhibit '5c x-B' to this report.

Under the Act, a recommendation for Fund Benefits by the Allocation Board is a prerequisite to an award of Fund Benefits by the Authority, and the Act authorizes the Authority to award Fund Benefits to an applicant upon a recommendation of the Allocation Board. Upon a showing of good cause, the Authority has 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 than proposed by the Allocation Board. In addition, the Authority is authorized to include within the contract covering an award ('Award Contract') such other terms and conditions the Authority deems appropriate.

3. Application Process

In an effort to provide for the efficient review of applications and disbursement of Fund Benefits, the Allocation Board established a schedule of dates through the end of 2017 on which the Allocation Board would meet to consider applications. At this time, applications are being accepted on a rolling basis. A webpage was created that is hosted on WWW.NYPA.GOV/NNYPPAB with application instructions, a link to the approved application form and other program details including a contact phone number and email address staffed by NYPA.

DISCUSSION

At its August 15, 2017 meeting, the Allocation Board considered applications from: (1) Clarkson University ('Clarkson') seeking \$60,000 in Fund Benefits; (2) Canexsys Networks, Inc. ('Canexsys') seeking \$200,000 in Fund Benefits; and the North Country Children's Museum ('NCCM') seeking \$140,000 in Fund Benefits.

The Allocation Board's staff analyzed the applications and made recommendations to the Allocation Board based on eligibility requirements and Program Criteria. Copies of the recommendation

memoranda provided to the Allocation Board for Clarkson, Canexsys and NCCM are attached as Exhibits '5c x-C-1,' '5c x-C-2' and '5c x-C-3,' respectively. The applications themselves have also been made available to the Trustees for review.

As detailed in Exhibit '5c x-C-1,' the Clarkson application seeks Fund Benefits to support expanding its Damon Hall business incubator, which would include renovations to the building's second and third floors. Clarkson would spend approximately \$300,000 on this phase of the project.

As Exhibit '5c x-C-2' explains, Canexsys' application seeks Fund Benefits to support the purchase of machinery and equipment, inventory, furniture and fixtures, leasehold improvements, employee training and other costs related to their project to locate operations in Ogdensburg, NY. The applicant indicates that it intends to create 29 jobs over the next three years and would spend approximately \$3,200,000 on its proposed project.

The application discussed in Exhibit '5c x-C-3' shows that NCCM seeks Fund Benefits to purchase a building, make improvements, design and install exhibits and support other costs related to establishing a permanent home for its traveling children's museum. The applicant indicates that it intends to create 3 jobs and would spend approximately \$740,000 on its project.

The Allocation Board has recommended that these applicants receive Fund Benefit awards in the amounts indicated on Exhibit '5c x-A.' Given the nascent stage of the proposed projects, it was not possible to make recommendations concerning the terms and conditions that would be applicable to the award and memorialized in an Award Contract between the Authority and the applicants.

If these applicants do receive Fund Benefit awards, it is anticipated that Authority staff would negotiate final terms and conditions with these applicants after receipt of more detailed information concerning the projects and proposed schedules. Award Contracts may include scheduled payments keyed to commitment milestones, such as employment creation and retention. In addition, staff anticipates that Award Contracts will contain provisions for periodic audits of the successful applicants for the purpose of determining contract and program compliance and, where appropriate, terms providing for the partial or complete recapture of Fund Benefits disbursements if an applicant fails to maintain agreed-upon commitments, relating to, among other things, employment levels and/or project element due dates.

RECOMMENDATION

The Vice President – Marketing recommends that:

- (1) the Trustees accept the recommendations of the Allocation Board and make awards of Fund Benefits to the applicants in the amounts identified in Exhibit '5c x-A,' conditioned upon an agreement to be negotiated with each applicant on the final terms and conditions that would be applicable to the awards to be contained in the Award Contract approved by the President and Chief Executive Officer, or his designee, and approved by the Executive Vice President and General Counsel, or his designee, as to form;
- (2) the Chief Commercial Officer – Energy Solutions, or such official's designee, be authorized to negotiate with the applicants concerning such final terms and conditions that will be applicable to the awards; and
- (3) the Chief Commercial Officer – Energy Solutions, or such official's designee, be authorized to execute on behalf of the Authority an Award Contract for the awards listed on Exhibit '5c x-A' subject to the foregoing conditions.

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

Upon motion made by Vice Chairman Nicandri and seconded by Trustee Balboni, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

WHEREAS, The Northern New York Power Proceeds Allocation Board ("Allocation Board") has recommended that the Authority make an award of Fund Benefits from the Northern New York Economic Development Fund ("Fund") to the eligible applicants listed in Exhibit "5c x-A" in the amount indicated;

NOW THEREFORE BE IT RESOLVED, That the Authority hereby accepts the recommendation of the Allocation Board and authorizes an award of Fund Benefits to the applicants listed in Exhibit "5c x-A" in the amounts indicated for the reasons set forth in the foregoing report and the exhibits and other information referred to therein, conditioned upon an agreement between the Authority and the applicants on the final terms and conditions that would be applicable to the awards and set forth in written award contracts ("Award Contracts") between the Authority and the applicants, approved by the President and Chief Executive Officer, or his designee, and approved by the Executive Vice President and General Counsel or his designee, as to form; and be it further

RESOLVED, That the Chief Commercial Officer – Energy Solutions, or such official's designee, is authorized to negotiate with the applicants concerning such final terms and conditions that will be applicable to the awards; and be it further

RESOLVED, That the Chief Commercial Officer – Energy Solutions, or such official's designee, is authorized to execute on behalf of the Authority an Award Contract for each of the awards listed on Exhibit "5c x-A" subject to the foregoing conditions; 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. Board Committee Reports:

a. Audit Committee

Chairman Nicandri reported that some changes in personnel have been made in the Internal Audit Department in order for the department to be more aligned with the goals of the Audit Committee. He said that, in the meantime, Mr. Joseph Gryzlo and Ms. Angela Gonzales has been assigned to head the Internal Audit Department with assistance from Deloitte, filling in the gaps on the Authority's Internal Audit program for 2017. The Audit Committee has started the process for a search to fill the vacant position.

b. Governance Committee

Vice Chairman Nicandri said he acted as Chair of the Governance Committee earlier in Trustee Kress' absence. At that meeting, the Committee recommended that the Authority's Trustees and the Canal Corporation's Board of Directors approve the appointment of Ms. Genevieve Fabela as Treasurer. Upon motion duly made and seconded, the recommendation was unanimously approved.

c. Finance Committee

No Report

d. Strategic Planning Committee

No Report

7. **Resolution - Brian McElroy**

The following resolution, as presented by the Chief Financial Officer, was unanimously adopted.

Whereas, Brian McElroy provided the New York Power Authority with nearly three decades of dedication in essential leadership roles, most recently as Treasurer;

Whereas, Mr. McElroy joined NYPA in 1989 as a Budget Analyst, administering all phases of operating and capital budget preparations and review, and developing annual long-term financial plans for the operating budget;

Whereas, Mr. McElroy was promoted in 1991 and 1994 to more senior budget analyst roles;

Whereas, Mr. McElroy transferred to the Treasury Department in 1997 when NYPA was rewriting its bond covenant to better adapt to the marketplace. Thanks in part to Mr. McElroy—who was serving as an analyst—NYPA refunded its entire portfolio of bonds and notes, saving more than \$700 million in the process. Mr. McElroy was recognized as the department’s Employee of the Year for his contributions;

Whereas, Mr. McElroy progressed through the ranks of the Treasury Department, where he took responsibility for managing NYPA’s investment portfolio of more than \$2 billion. He was promoted to Senior Investment Analyst in 1997, Deputy Treasurer in 2004 and Treasurer in 2007;

Whereas, Mr. McElroy led the effort to improve NYPA’s bond ratings, resulting in ratings that are among the highest of any public power entity in the country. This in turn reduced NYPA’s borrowing costs for the benefit of customers;

Whereas, Mr. McElroy shepherded NYPA through the liquidity crisis of 2007-2008, restructuring NYPA’s bank lending group to ensure continued support for the funding of the Power Authority’s energy efficiency programs;

Whereas, Mr. McElroy was instrumental in the creation of the OPEB Trust Fund that enables NYPA retirees to see that their benefits are appropriately funded and provided;

Whereas, Mr. McElroy’s quiet competence and confidence helped him to be a great leader and mentor. He took a personal interest in the development of his staff, and in doing so, built a loyal “family;”

Whereas, Mr. McElroy retired from the Power Authority in July 2017 after a 28-year tenure in which his talents and expertise have brought immense benefit to NYPA and the people of New York State;

Now Therefore Be It Resolved, That the Trustees of the Power Authority of the State of New York express their thanks and admiration to Brian McElroy for his many achievements and convey to him, and his wife Donna, sincere wishes for many healthy, happy and rewarding years ahead.

September 26, 2017

8. **Next Meeting**

The next meeting of the Board will be held on December 12, 2017 **at the Clarence D. Rappleyea Building, White Plains, New York**, unless otherwise designated by the Chairman with the concurrence of the Trustees.

Closing

Upon motion made by Trustee Balboni and seconded by Vice Chairman Nicandri, the meeting was adjourned at approximately 12:23: p.m.

Karen Delince

Karen Delince
Corporate Secretary

September 26, 2017

EXHIBITS

For

September 26, 2017

Regular Meeting

Minutes

Motor Vehicle and Equipment Policy

Note: Revision # should be listed in descending order starting with most recent version at the top.

Revision Date(For BCG Use Only)	Revision #	Description/Modification	Revision Section (s)	Author
	10	Updated to new company policy format	N/A	Brian Everetts Fleet System Analyst
		Definitions added	3	
		Assigned vehicle use & reporting requirements	5.4	
		Pool & Department assigned vehicle	5.5	
		Responsibilities	5.6	

Printed copies are not controlled.

For the latest revision of this document, refer to the Policy and Procedure PowerNet Site.

Records will be retained in accordance with NYPA's approved records retention schedules and/or in compliance with all applicable legal requirements pertaining to NYPA.

1 PURPOSE AND SCOPE

This Policy addresses the management of company motor vehicles, mobile specialized work equipment, and trailers, including fleet management, acquisition and disposal, assignments, maintenance, usage, and reporting.

2 APPLICABILITY

The staff of all Authority Business Units and Departments shall adhere to this Policy. Implementing procedures shall be prepared as necessary to provide appropriate guidance in meeting the management controls described. Recommendations for changes to this Policy or a new company policy shall be processed in accordance with CP1-1 "Company Policy Program Administration".

3 INITIALISMS (ACRONYMS) AND DEFINITIONS

AFV – Alternate Fuel Vehicles

Assigned Vehicle – Specifically assigned to any one individual

Commercial motor vehicle – any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle

1. Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or
2. **GCWR – Gross Combination Weight Rating** *is the greater of:*
 - i. A value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration, or
 - ii. The sum of the gross vehicle weight ratings (GVWRs) or the gross vehicle weights (GVWs) of the power unit and the towed unit(s), or any combination thereof that produces the highest value. Exception: The GCWR of the power unit will not be used to define a commercial motor vehicle when the power unit is not towing another vehicle.

DFO – Director of Fleet Operations

Department Vehicle – Specifically assigned to any one department for general usage by those in the department.

Printed copies are not controlled.

For the latest revision of this document, refer to the Policy and Procedure PowerNet Site.

Records will be retained in accordance with NYPA's approved records retention schedules and/or in compliance with all applicable legal requirements pertaining to NYPA.

EMP – Employee Management Program

FMVSS – Federal Motor Vehicle Safety Standard

GVW – Gross Vehicle Weight

GVWR – Gross Vehicle Weight Rating is the value specified by the manufacturer as the loaded weight of a single motor vehicle

HR – Human Resources Department

HRFM – Human Resources Facility Manager

LENS – License Event Notification Service

Mobile Specialized Equipment – Equipment such as earthmovers, tractors, diggers, aerial devices, forklifts, etc. intended for use other than on public roads

Motor Vehicle – A vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus

Pool Vehicle – Group of vehicles centrally controlled and dispatched for use when needed.

OGS – Office of General Services

Trailer – Any unpowered vehicle towed by another

4 RESPONSIBILITY

- 4.1** The Director of Fleet Operations (DFO) will have overall responsibility for overseeing this Policy and assuring that all sites are in compliance with it.
- 4.2** The General Maintenance Superintendents will be responsible for compliance with the vehicle policy at their respective sites.
- 4.3** The DFO will oversee the surplus and disposal process for all fleet assets covered by this policy utilizing the existing procurement guidelines.

5 POLICY IMPLEMENTATION

5.1 Acquisition

Printed copies are not controlled.

For the latest revision of this document, refer to the Policy and Procedure PowerNet Site.

Records will be retained in accordance with NYPA's approved records retention schedules and/or in compliance with all applicable legal requirements pertaining to NYPA.

- 5.1.1 Fleet Management will purchase, lease or rent all of NYPA's passenger vehicles and mobile specialized work equipment. All fleet vehicle and equipment purchases covered by this Policy will be funded in the Fleet Management budget. Maintenance and supplies for these vehicles will be funded for each site in the Fleet Maintenance budget.
- 5.1.2 Throughout the year, the DFO and/or his or her designee will request to meet with the site management to develop recommendations for replacement or reassignment of vehicles and equipment.
- 5.1.3 By August 1st of each year, vehicle acquisition requests will be submitted to the DFO by each site manager or business unit head for review and consideration for possible inclusion in the following year's budget. Off cycle request will be handled on an as needed basis.
- 5.1.4 The standard for passenger vehicle replacement analysis will be 75,000 miles or 5 years of service, whichever comes first. The replacement analysis will be based on but not limited to the present condition, service and repair history and anticipated vehicle utilization. For other replacement cycles, Refer to: PowerNet -> Fleet Operations -> Policies and Procedures -> Vehicle and Equipment Replacement Schedule
- 5.1.5 The DFO will standardize the type of vehicle purchased based upon Office of General Services (OGS), group volume discounts and current Procurement Guidelines.
- 5.1.6 Use of Authority Fuel Sites is strictly limited to Authority vehicles and equipment.
- 5.1.7 The use of Alternate Fuel Vehicles (AFV) is both a New York State and NYPA mandate. Effective 2006, all purchases of vehicles weighing less than 8,500 pounds must be AFVs. Alternative fuels will be used in AFVs to the extent practical. Where applicable, electric vehicles may be deployed at all locations for low mileage trips and those functions which fall within the range of the electric vehicle.

5.2 Maintenance

- 5.2.1 The DFO will oversee the maintenance of all assigned fleet vehicles and mobile specialized work equipment. All fleet assets will be maintained according to manufacturer maintenance recommendations.
- 5.2.2 The Fleet Supervisor will be responsible for the continued maintenance and upkeep of all site vehicles.
- 5.2.3 Vehicle maintenance at the sites will be tracked in the Fleet Management Information System, which will be overseen by the DFO.
- 5.2.4 Use of Wright Express Fuel Cards is strictly limited to Authority vehicles and equipment.

5.3 Fuel

- 5.3.1 Preference should be given to using internal Authority Fuel Sites for fueling all Authority vehicles and equipment. Employee ID numbers and vehicle odometer readings must be input into the fuel dispensing system. Failure to accurately input either Employee ID numbers or vehicle odometer readings will prevent the system from dispensing fuel.

Printed copies are not controlled.

For the latest revision of this document, refer to the Policy and Procedure PowerNet Site.

Records will be retained in accordance with NYPA's approved records retention schedules and/or in compliance with all applicable legal requirements pertaining to NYPA.

- 5.3.2 In the event that vehicles and equipment need to be refueled in the field, Wright Express Fuel cards must be utilized. Employee ID numbers and vehicle odometer readings must be input into the fuel dispensing system. Failure to accurately input either Employee ID numbers or vehicle odometer readings will prevent the system from dispensing fuel. Fuel Card purchases are to be limited to regular blend fuel only, no premium blend fuel. Fuel cards are to be used only for the vehicle it is assigned to. Fuel Cards purchases are limited to fuel purchases only.
- 5.3.3 In the event that Wright Express Fuel Cards are not honored at the fuel site, an employee may elect to pay for the fuel in cash or personal credit card. Only computer printed receipts will be honored for reimbursement. Reimbursement for hand written receipts will be considered an exception to this Policy and must be specifically approved by the department head of the individual seeking reimbursement.

5.4 Assigned Vehicles Use and Reporting Requirements

- 5.4.1 Employees shall not be assigned a vehicle for their sole, unrestricted use except where expressly authorized by the President/CEO and SVP Enterprise Shared Services. This authorization shall be provided by the Chairman for such vehicle assignment to the President/CEO. Certain designated NYPA job positions have been identified as eligible for the assignment of a vehicle for their sole and unrestricted use by the NYPA's Emergency Management Program. These designated positions with command responsibilities are essential to ensuring public safety, need to respond to events impacting NYPA and/or the reliability of the electric grid of New York State, or are in roles that require immediate on-site response that is critical to maintaining safe operations for NYPA staff and the public

These positions are:

- Chief Executive Officer (President and CEO)
- Chief Engineering Officer (EVP and Chief Operating Officer)
- Chief Marketing Officer (EVP and Chief Commercial Officer)
- SVP Power Supply
- Regional Manager –Transmission
- SVP Public & Regulatory Affairs
- VP Community & Gov't Affairs
- Regional Manager - Western NY
- Regional Manager – Central NY
- Regional Manager – Northern NY
- Regional Manager – Southeast NY (NYC/LI)
- Director – Emergency Management.

These vehicle assignments will be reviewed and approved annually by the President/CEO and SVP Enterprise Shared Services or otherwise as needed in response to revisions to the Emergency Management Program or applicable personnel changes.

Printed copies are not controlled.

For the latest revision of this document, refer to the Policy and Procedure PowerNet Site.

Records will be retained in accordance with NYPA's approved records retention schedules and/or in compliance with all applicable legal requirements pertaining to NYPA.

- 5.4.2 If an employee is assigned a vehicle for exclusive, unrestricted use, NYPA shall include in that employee's wages the amount required by the IRS (refer to IRS Publication 15-B on Employer's Tax Guide to Fringe Benefits).
- 5.4.3 All personal use of NYPA vehicles must be reported on the vehicle use log unless the personal use is incidental to official business. For any personal use that is not incidental the user of the NYPA vehicle must reimburse the authority the value of such use or the value must be treated as imputed personal income for tax purpose.

5.5 Pool & Department Vehicle use and Reporting Requirements

- 5.5.1 NYPA owned, leased, or rented vehicles/equipment may be used only for official NYPA business, and their use for any personal business is strictly forbidden except under very limited circumstances where (i) assigned vehicle by the Senior Vice President of Enterprise Shared Services and the President/CEO or (ii) the personal use is incidental to official business. Even in cases where personal use is authorized or is incidental to official business, each person operating a state vehicle is expected to exercise good judgment to avoid the appearance of impropriety.
- 5.5.2 Only NYPA employees are authorized to operate NYPA vehicles and/or equipment. Contractors are not allowed to operate NYPA vehicles and/or equipment unless being operated by a vendor for vehicle maintenance purposes. Notwithstanding the foregoing prohibition on contractor usage of vehicles and/or equipment, the Regional Manager, VP of Transmission, or authorized designee may authorize a contractor to use NYPA equipment, such as man-lifts, scissor-lifts, forklifts, welders, compressors, special tools, etc., but only upon receipt of written documentation from the contractor that confirms the following:
- a) that the contractor has inspected the equipment and acknowledges that it is in good working order;
 - b) that the person using the equipment is properly trained, experienced and shows proof of required license and/or certification necessary to lawfully and correctly operate the equipment;
 - c) the contractor agrees to defend and indemnify NYPA for any injuries resulting from its usage or damage to the equipment; and
 - d) The contractor is responsible to provide fuel for usage of the equipment.
- 5.5.3 NYPA vehicles should not be used to transport passengers unless they are: (i) State employees engaged in official business, (ii) non-NYPA employees engaged in official business with NYPA employees, or (iii) persons in the control or custody of the agency. Picking up or dropping off friends or family members at their place of employment or school in a NYPA vehicle, regardless of their status as employees, is strictly prohibited.
- 5.5.4 All vehicles are required to have their daily utilization recorded on a Daily Mileage Log except those assigned to a work activity that will not require the vehicle to leave the NYPA site (property) to which it is assigned. Vehicle use logs shall be collected, reviewed, and approved as to completeness and accuracy by designated supervisor on

Printed copies are not controlled.

For the latest revision of this document, refer to the Policy and Procedure PowerNet Site.

Records will be retained in accordance with NYPA's approved records retention schedules and/or in compliance with all applicable legal requirements pertaining to NYPA.

a regular basis. The frequency of such review and approval (e.g., weekly, monthly), shall be reasonable in light of the overall vehicle use by the authority.

- 5.5.5 Vehicle and equipment assignment and re-assignment will be the responsibility of the DFO

5.6 Responsibilities

- 5.6.1 The driver is responsible for having both a valid and appropriate class driver's license in his/her possession when operating any vehicle while on NYPA business.
- 5.6.2 NYPA's Human Resources (HR) department is responsible for monitoring employee driver's license status via the License Event Notification Service (LENS) program administered by the Department of Motor Vehicles in order to receive reports of driver license revocations, suspensions and restrictions. No person shall be allowed to operate a State vehicle if there has been a change in licensure that restricts driving privileges unless the operation of the state vehicle complies with such restrictions. HR will keep records of all drivers for five (5) years.
- 5.6.3 Supervisors must ascertain that employees under their supervision who operate company motor vehicles for official purposes are properly licensed for the class of vehicle they operate.
- a) Supervisors who knowingly or willfully require any employee to operate a company motor vehicle of any description for which the employee does not have the proper license or proper endorsement(s) will be subject to disciplinary action.
- 5.6.4 Employees shall abide by all applicable federal, state, and local laws or regulations and NYPA policies including but not limited to: (CP 1-6 Restrictions on the Use of Hand-Held Mobile Telephones While Operating a Motor Vehicle, CP 2-13 Use of GPS/ Telematic Technologies on Fleet vehicles and Equipment, CP 2-14 Use of Fleet Motor Pool Vehicles, EP 4.5 Fitness for Duty) while operating any vehicle on NYPA business or property.
- 5.6.5 All traffic and parking laws are to be obeyed. Posted speed limits are not to be exceeded, nor is the vehicle to be operated above safe driving speeds for road conditions. All motor vehicle violations received while operating a NYPA vehicle are the responsibility of the driver involved. Violations include, but are not limited to, parking tickets, moving violations, EZ-Pass speeding fines, and any late fees or penalties.
- 5.6.6 The use of hand held cell phones and other portable electronic device while operating a NYPA vehicle is prohibited. Refer to CP 1-6 Restrictions on the Use of Hand-Held Mobile Telephones While Operating a Motor Vehicle.
- 5.6.7 Drivers and passengers involved in NYPA vehicle/equipment accidents must report such events immediately to their supervisor. If in the event the employee cannot make contact with their supervisor, security at the nearest site should be contacted.
- 5.6.8 All NYPA employees are responsible for abiding by this policy.

Printed copies are not controlled.

For the latest revision of this document, refer to the Policy and Procedure PowerNet Site.

Records will be retained in accordance with NYPA's approved records retention schedules and/or in compliance with all applicable legal requirements pertaining to NYPA.

- 5.6.9 All levels of supervisory employees are responsible for ensuring compliance with this policy and taking corrective action as necessary.
- 5.6.10 Any NYPA employee who operates a company vehicle or piece of equipment shall take care of the condition of the vehicle or piece of equipment while in their custody. Employees are expected to exercise good judgment in the protection of the company's assets. Employees are responsible for identifying any potential damage or defects prior to use, and for quickly reporting any damage or defects after such use. Accumulation of trash shall be removed from the vehicle each day.
- 5.6.11 Unless expressly authorized by the Authority, no banners, advertising, placards, decals, or stickers may be placed on a NYPA vehicle.
- 5.6.12 Any NYPA employee who operates a NYPA vehicle is required to attend the National Safety Council's defensive driving course once every three (3) years. Defensive driving education course completion is tracked by NYPA's Training department with MOSAIC. Reasonable extensions to complete the defensive driver's education course can be made with direct supervisors' approval.
- 5.6.13 Smoking in NYPA vehicles is prohibited.
- 5.6.14 Due to the public nature of the work being performed when operating a state vehicle, persons using a state vehicle have a limited expectation of privacy in connection with such use. State agencies and authorities expressly reserve the right to monitor and record the use of any equipment they issued or assigned for a legitimate work-related purpose, and state vehicles are no exception. Accordingly, the use of a state vehicle may be monitored and recorded at any time by visual, documentary, or electronic means.

5.7 Additional Responsibilities for Commercial Vehicle Drivers

Employees who drive commercial vehicles for work-related purposes must:

- 5.7.1 Give their site Human Resources Facility Manager (HRFM) information on all driving jobs held for the past 10 years when they apply for a position that requires operation of a commercial vehicle.
- 5.7.2 Complete an official driver's vehicle inspection report before operating any of NYPA's commercial vehicles.
- 5.7.3 Notify their site HRFM in writing within 30 days after a conviction for violating any motor vehicle traffic control law (other than a parking violation) regardless of the type (or owner) of vehicle driven when the offense occurred.
- 5.7.4 Notify their site HRFM when their licenses have been suspended, revoked, or canceled, or if they have been disqualified from driving for any reason. This notification must be made before the end of the business day following the day the employee received notice of the suspension, revocation, cancellation, lost privilege, or disqualification regardless of whether the employee is required to report to work on that day.

Printed copies are not controlled.

For the latest revision of this document, refer to the Policy and Procedure PowerNet Site.

Records will be retained in accordance with NYPA's approved records retention schedules and/or in compliance with all applicable legal requirements pertaining to NYPA.

5.8 Accident Reporting

- 5.8.1 If an employee is involved in an accident/collision with a NYPA vehicle, he or she shall do the following:
- a) Call 911 to report the incident if it involves a third party or personal injury.
 - b) Call your supervisor.
 - c) Obtain copy of police report if applicable.
 - d) If the vehicle needs to be towed and is based out of the White Plains, Albany, or other SENY sites, calls Networkfleet at 1-866-227-7323 – select option 2.
 - e) Complete a NYS DMV – MV104 form within 10 days of accident if there is a fatality, personal injury, or damage over \$1,000.00 to the property of any one person. Employee is required to complete and send form to Crash Records Center within 10 days of the accident. Failure to do so may result in suspension of the employee's driver license.
 - f) Employee must also complete a NYPA Vehicle Incident Form and send it to Fleet Operations.
 - g) Fleet Operations will forward information to Insurance Management department.

6 VIOLATIONS

Failure to comply with any provision of this Policy may result in disciplinary action up to and including termination of employment.

7 REFERENCES

- 7.1 CP 1-1 Company Policy Program Administration
- 7.2 CP 2-1 Travel
- 7.3 EP 4.5 Fitness for Duty
- 7.4 CP 1-6 Restrictions on the Use of Hand-Held Mobile Telephones While Operating a Motor Vehicle
- 7.5 CP 2-13 Use of GPS/ Telematic Technologies on Fleet vehicles and Equipment
- 7.6 CP 2-14 Use of Fleet Motor Pool Vehicles
- 7.7 IRS Publication 15-B

8 POLICY REVIEW AND EXPIRATION

This document will be reviewed and updated as business needs require. However, a mandatory review will be required on the anniversary date of the approved document.

Revision cycle: Every Year

Printed copies are not controlled.

For the latest revision of this document, refer to the Policy and Procedure PowerNet Site.

Records will be retained in accordance with NYPA's approved records retention schedules and/or in compliance with all applicable legal requirements pertaining to NYPA.

9 ATTACHMENTS**None**

Printed copies are not controlled.

For the latest revision of this document, refer to the Policy and Procedure PowerNet Site.

Records will be retained in accordance with NYPA's approved records retention schedules and/or in compliance with all applicable legal requirements pertaining to NYPA.

Exhibit A

Internal Controls

Note: Revision # should be listed in descending order starting with most recent version at the top

Revision Date(For BCG Use Only)	Revision #	Description/Modification	Revision Section (s)	Author
	1	Replacing CP 2-5, formerly titled Financial and Accounting Controls; revisions based on revised Committee of Sponsoring Organizations (COSO) 2013 framework.	All	Zlata Latkovic Director, General Accounting and Financial Reporting

Exhibit A**1 PURPOSE AND SCOPE**

It is the Authority's policy to maintain an effective system of internal controls, thereby providing reasonable assurance for the achievement of its mission and for the reliability of internal and external reports, the effectiveness and efficiency of operations, and compliance with applicable laws and regulations.

Internal controls are comprised of plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the Authority. They are a series of actions that occur throughout an organization and are an integral part of the operational processes.

It is the objective of this policy to:

- a) ensure understanding of management's responsibility to make certain that internal controls are established, properly documented, maintained, and followed by all Personnel;
- b) ensure understanding by all Personnel of their responsibility for compliance with internal controls; and
- c) provide guidance for managers and staff about the components of internal control.

2 APPLICABILITY

All Personnel have a role in the system of internal controls and must adhere to this policy. Policies, procedures, and guidelines may be prepared to implement this policy.

3 INITIALISMS (ACRONYMS) AND DEFINITIONS

COSO – The Committee of Sponsoring Organizations of the Treadway Commission.

COSO Internal Control — Integrated Framework – COSO's integrated principle-based framework establishes five control components – Control Environment, Risk Assessment, Control Activities, Information and Communication and Monitoring – designed to assist an organization in achieving the three internal control objectives - effective and efficient operations, accuracy of financial reporting and compliance with laws and regulations. In association with these control components, the COSO framework includes internal control principles which represent the fundamental concepts that are associated with the particular components of the internal control system and provide assistance to management in the design and implementation of a good system of internal control.

ICO – The Authority's Internal Control Officer. The Authority's Board of Trustees (the Board) have designated the V.P. Controller as ICO.

Internal Controls – COSO defines internal control as a process, effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of good internal control objectives relating to effective and efficient operations (including operational and financial performance goals and safeguarding assets against loss), accuracy of financial reporting (internal and external financial and non-financial reporting encompassing reliability, timeliness and transparency as set forth by regulators,

Exhibit A

standard setters or the organizations policies and compliance with laws and regulations to which the Authority is subject to.

Most internal controls can be classified as preventive or detective. Preventive controls are designed to avoid errors or irregularities from initially occurring such as utilizing separation of duties, reading and understanding the Authority's policies and procedures and a manager's review of staff's activities.

Detective controls are designed to identify an error or irregularity after it has occurred. These controls are performed on a routine basis to identify any issues that pose potential risks to the Authority on a timely basis such the use of exception reports to detect and list incorrect or invalid entries or transactions or annual physical inventory of computer equipment to determine if any items have been misplaced or stolen.

Management – Management at the Authority is comprised of the President & Chief Executive Officer and Business Unit Heads (Executive Management, the top/senior levels of management), Department Heads (vice presidents and directors) and Operations/Facilities Managers at all units/divisions/departments (at headquarters and at facilities).

Personnel – Authority employees and contractors.

4 RESPONSIBILITY

4.1 The Board, President and Business Unit Heads of the Authority establish the tone at the top regarding the expected standards of conduct – the presence of integrity, ethics, competence and a positive control environment exhibited in the Authority's By-Laws, Code of Conduct and Company Policies.

- a) The Authority's Audit Committee was established by the Authority's Board to have oversight of the integrity of the Authority's internal control system.
- b) The Authority's Board designates an ICO who is responsible for coordinating with all departments and functional areas of the Authority to ensure the implementation and maintenance of cost-effective internal controls.
- c) Executive Management ensures strategic plans are designed with focus on the long-range direction of the Authority and its major divisions to guide managers in developing short-range operational plans for the major functions within their respective divisions. Strategic plans aide in defining management's organizational and operational objectives. Organizational objectives are the starting points for the specific and detailed operational objectives. Internal controls need to be tied to specific objectives related to operations, reporting or compliance.
- d) Executive management ensures education and training is implemented to provide Personnel awareness and understanding of the Authority's internal controls.

4.2 Department Heads and Operations/Facilities Managers at all units/divisions/departments (at headquarters and at facilities) of the Authority are responsible for the design, implementation and maintenance of internal controls within

Exhibit A

their areas. They are responsible for the documentation and periodic (at least annual) evaluation of internal control procedures, including related cost benefit analyses, for their area of responsibility.

- 4.3 Personnel** of the Authority are responsible for executing control policies and procedures established by the Business Unit Heads, Department Heads, and Operations/Facilities Managers.

An individual's responsibility depends mainly on the level of their position. To ensure an effective system of internal controls, Personnel at all levels need to work within the Authority's management design, implementation and monitoring of internal controls.

4.4 Support Activities:

Internal Audit – Internal Audit is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. Internal Audit independently evaluates the effectiveness of internal controls, including providing analyses, recommendation and information regarding the adequacy and effectiveness of such controls as applied to a particular activity. Business Unit Heads, Department Heads, and Operations/Facilities Managers are responsible for assisting Internal Audit where needed, cooperating with Internal Audit, as well as analyzing Internal Audit findings and responding with appropriate actions, such as augmenting or improving existing controls.

In order to objectively evaluate controls, Internal Audit maintains independence from daily operations. Internal Audit consults with the Authority's Business Unit Heads, Department Heads and Operations/Facilities Managers on the design of controls but does not create and/or own internal controls implemented by the Authority's business units/divisions/departments.

5 POLICY IMPLEMENTATION

5.1 The Key Concepts of Internal Control

- a) Internal control is a process consisting of ongoing tasks and activities.
- b) Internal control is geared to the achievement of objectives in one or more separate but overlapping categories-operations, reporting and compliance
- c) Internal control is effected by people. It is not merely policies, procedure manuals, systems and forms, but includes the Personnel designing and implementing internal controls at every level of the Authority. Internal control will succeed or fail depending on the attention given it by Personnel.
- d) Internal control can be expected to provide only reasonable assurance to the Authority's management and the Board as to the achievement of objectives, not absolute assurance.

Exhibit A

5.2 Components and Principles of Internal Control

Consistent with the COSO Internal Control — Integrated Framework, a strong system of internal control exhibits five integrated components - Control Environment, Risk Assessment, Control Activities, Information and Communication and Monitoring - that must be successfully designed, implemented and operating in order for the internal control system to be effective. In combination with these components, the principle-based framework includes internal control principles which represent the fundamental concepts that are associated with the particular components of the internal control system and provide assistance to management in the design and implementation of a good system of internal control.

In an effective internal control system, the following five components and associated principles work to support the achievement of the Authority's mission, strategies and related business objectives.

a) Control Environment

The control environment is a set of standards, processes and structure provided by the tone at the top of the Authority which influences the control consciousness of Personnel. It is a foundation for all other components of internal control, providing discipline and structure across the Authority. Control environment factors include the integrity, ethical values and competence of Personnel; management's philosophy and operating style; the way management assigns authority and responsibility and organizes and develops Personnel; and the attention and direction provided by the Board.

b) Risk Assessment

Every entity faces a variety of risks from external and internal sources that must be assessed. A precondition to risk assessment is establishment of objectives, linked at different levels and internally consistent. Risk assessment is the identification and analysis of relevant risks to achievement of the objectives, forming a basis for determining how the risks should be managed. Because economic, industry, regulatory and operating conditions will continue to change, mechanisms are needed to identify and deal with the special risks associated with change. Risk management is an ongoing process that needs to include monitoring the changing environment and tracking planned actions to lessen the impact and likelihood of risks. The Authority's Risk Management Department provides guidance and direction to the Authority's management and the Board to ensure the identification, assessment and mitigation of risks.

c) Control Activities

Control activities are documented in policies and procedures that help ensure management directives are carried out. They help ensure that necessary actions are taken to mitigate risks to achieve the Authority's objectives. Control activities occur

Exhibit A

throughout the Authority, at all levels and in all functions. They may be preventive or detective and include a range of manual and automated activities as diverse as approvals, authorizations, verifications, reconciliations, reviews of operating performance, security of assets and segregation of duties.

d) Information and Communication

Pertinent information must be identified, captured and communicated in a form and time frame that enables Personnel to carry out their responsibilities. Information systems produce reports, containing operational, financial and compliance related information, that make it possible to run and control the business. They deal not only with internally generated data, but also information about external events, activities and conditions necessary to allow informed business decision-making and external reporting.

Effective communication must occur in a broader sense, flowing down, across and up the Authority's organizational structure. All Personnel must receive a clear message from top management that control responsibilities must be taken seriously. They must understand their own role in the internal control system, as well as how individual activities relate to the work of others. They must have a means of communicating significant information upstream. There also needs to be effective communication with external parties, such as customers, suppliers, regulators and stakeholders. Methods of communicating information for both internal and external information needs to take into consideration the audience, nature of information provided, availability, cost and legal or regulatory requirements.

e) Monitoring

Internal control systems need to be monitored - a process that assesses the quality of the system's performance over time. This is accomplished through ongoing monitoring activities, separate internal control evaluations or a combination of the two. Ongoing monitoring occurs in the course of operations. It includes regular management and supervisory activities, and other actions personnel take in performing their daily or routine procedures or duties. The scope and frequency of separate internal control evaluations will depend primarily on an assessment of risks and the effectiveness of ongoing monitoring procedures. Internal control deficiencies should be reported upstream, with serious matters reported to top management and the Board.

5.3 Documentation of the Internal Control System

Documentation is required for the effective design, implementation and operating effectiveness of the Authority's internal control system. At a minimum, documentation requirements include the following:

Exhibit A

- a) Management's development and maintenance of documentation of its internal control system;
- b) Management's policies should document the internal control responsibilities;
- c) Management's evaluation and assessment of its operations and risks;
- d) Management's evaluation of the results of its ongoing monitoring to identify internal control issues;
- e) Management's evaluation of internal control issues and determination of appropriate corrective actions for deficiencies on a timely basis; and
- f) Management's completion of corrective actions to remediate internal control deficiencies on a timely basis.

6 VIOLATIONS

Violations of this policy by employees may result in disciplinary action up to and including termination. Violations of this Policy by contractors and other authorized third parties may result in the revocation of such party's access to NYPA's premises and/or electronic access to its systems, and the termination of such party's contract for services. In addition, where the conduct engaged in is illegal, violators may be subject to prosecution under applicable federal, state or local laws.

7 REFERENCES

- By-Laws of the Power Authority of the State of New York
- New York Power Authority Code of Conduct
- COSO Internal Control — Integrated Framework

8 POLICY REVIEW AND EXPIRATION

This document will be reviewed and updated as business needs require. However, a mandatory review will be required on the anniversary date of the approved document.

Revision cycle : Every Other Year

9 ATTACHMENTS

N/A

No.	Company Name	Program	City	County	Base Jobs	New Jobs	Estimated Capital Investment	New Jobs Avg. Wage & Benefits	Power Requested (kW)	Power Recommended (kW)	Contract Term
1	Sumitomo Rubber USA, LLC	RP	Town of Tonawanda	Erie	1,241	30	\$87,000,000	\$66,666	2,000	1,500	7 Years
TOTALS						30	\$87,000,000			1,500	

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

Sumitomo Rubber USA, LLC

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Sumitomo Rubber USA, LLC (“Customer”) with offices and principal place of business at 10 Sheridan Drive, Tonawanda, NY 14150. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

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

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

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

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

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

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

WHEREAS, on May 2, 2017, the Authority’s Board of Trustees (“Trustees”) approved a 1,500 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the expansion and operation of the Facility as further described in this Agreement;

WHEREAS, on May 2, 2017, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

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

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

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

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

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

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

- E. In the event the Customer fails to complete the Facility by May 2, 2020 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

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

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

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the

Customer's local electric utility on terms and conditions that are acceptable to the Authority.

- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

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

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

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

XI. Notification

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

follows:

To: The Authority

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

Email:

Facsimile: _____

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Sumitomo Rubber USA, LLC
10 Sheridan Drive
Tonawanda, NY 14150

Email:

Facsimile:

Attention:

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

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

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

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

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

XVII. Waiver

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

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

SUMITOMO RUBBER USA, LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

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

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Sumitomo Rubber USA, LLC	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Replacement Power	1,500	10 Sheridan Drive Tonawanda, NY 14150	May 2, 2017	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

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

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

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

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

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

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

D. Notice of Intent to Reduce Contract Demand

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

III. Energy Efficiency Audits; Information Requests

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

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

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service, the Customer shall employ at least 1,271 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall make a minimum capital investment of \$87,000,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following specific expenditures:

Phase I: Construction of a 35,000-sq. ft. finishing Building, including the extension of the curing trench and a temporary receiving dock.	\$33.0 Million
Phase II: Construction of a 75,000-sq. ft. chemical weigh building, including a mixer, 32 curing presses, tire building machines and curing trench rework.	\$52.9 Million
<u>Miscellaneous Project Costs</u>	<u>\$ 1.1 Million</u>
Total Minimum Capital Investment:	\$87.0 Million

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than May 2, 2020 (*i.e.*, within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

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

TAKEDOWN SCHEDULE

N/A

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

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

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

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

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

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

5. ZEC Charge

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

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

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

6. REC Charge

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

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

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



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

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

Service Tariff No. WNY-1

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

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

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

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

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

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

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

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

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

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

Service Tariff: This Service Tariff No. WNY-1.

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

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer's local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer's local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer's local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges ("NYISO Charges")

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

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

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

New York State Power Authority

Public Hearing
June 21, 2017



METSCHL
AND ASSOCIATES

COURT REPORTERS • LEGAL VIDEO SERVICES

Buffalo, NY: 716 856-1906

Rochester, NY: 585 697-0969

Toll Free: 800 397-1796

Min-U-Script® with Word Index

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

New York State Power Authority
Wednesday, June 21, 2017
Niagara Power Project Visitors' Center
5777 Lewiston Road
Lewiston, New York 14092

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

SPEAKERS :

MR. SMITH..... 3

1 MR. SMITH: Good afternoon. This is a public
2 hearing required by law and authorized by the New
3 York Power Authority's Board of Trustees on the
4 proposed Customer Contract for the sale of
5 hydropower to Sumitomo Rubber USA, LLC.

6 My name is Richard Smith, and I'm
7 representing the Authority's Corporate Secretary.

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

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

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

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

5 After the hearing, the public will be given
6 access to the hearing transcript, once it is
7 completed, at www.nypa.gov and at the White Plains
8 office.

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

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

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

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

1 The record of the hearing will remain open for
2 additional comments through the close of business,
3 Thursday, June 22, 2017.

4 Additional comments should be mailed, faxed
5 or emailed to the Corporate Secretary at:
6 123 Main Street, 11-P, White Plains, NY 10601; or
7 (914)390-8040; or secretarys.office@nypa.gov.

8 At this point, I would like to provide
9 additional details on the proposed Customer
10 Contract.

11 Good afternoon. My name is Rich Smith, and I
12 am the Business & Project Development Director
13 within NYPA's Economic Development Department. I am
14 here today to present a summary of a proposed new
15 contract for a current customer here in Western New
16 York, for the sale of hydropower generated here at
17 the Niagara Power Project.

18 Regarding the contract, under Public
19 Authorities Law Section 1005 Subsection 13, the
20 Authority may allocate and sell directly or by
21 sale-for-resale, 250 megawatts of Expansion Power,
22 known as EP, and 445 megawatts of Replacement Power,
23 known as RP, to businesses located within 30 miles

1 of the Niagara Power Project, provided that the
2 amount of EP allocated to businesses in Chautauqua
3 County on January 1st, 1987, shall continue to be
4 allocated in Chautauqua County.

5 Sumitomo Rubber USA, LLC was awarded a new
6 1,500 kilowatt hydropower allocation by the
7 Authority's Trustees on May 2nd, 2017, in return for
8 commitments made to create or expand their business
9 in Western New York.

10 Specifically, Sumitomo, a manufacturer of
11 tires for a variety of vehicles, plans to expand its
12 operations in the Town of Tonawanda in Erie County.
13 The expansion calls for Sumitomo to invest at least
14 \$87 million and create at least 30 new jobs above
15 its base jobs level of 1,241.

16 The following is a summary of a few of the
17 pertinent provisions in the proposed contract.

18 The contract provides for the direct billing
19 of all hydropower supply charges and all New York
20 Independent System Operator charges and taxes.
21 The contract includes the customer's agreed-upon
22 commitments with respect to employment, capital
23 investment, and power utilization.

1 Under the contract, the Authority may reduce
2 or terminate the allocation if employment, power
3 utilization, or capital investment commitments are
4 not met.

5 Relatedly, the contract includes an annual
6 job reporting requirement and a job compliance
7 threshold of 90 percent. Should the company's
8 average annual employment fall below the compliance
9 threshold of 90 percent of the employment
10 commitment, the Authority may reduce the amount of
11 the allocation.

12 The contract provides for the company to
13 perform an energy audit at its facility at least
14 once within five years, helping to ensure that the
15 customers use the hydropower efficiently.

16 To address non-payment risk that could result
17 from the direct billing arrangement, the contract
18 includes commercially reasonable provisions
19 concerning the Authority's ability to charge late
20 payment fees and to require deposits in the event of
21 the customer's failure to make payment for any two
22 monthly bills. These contract provisions are
23 consistent with other Authority direct sale

1 contracts, including the Recharge New York sales
2 contracts.

3 The contract will address the allocation,
4 along with the Authority's Service Tariff WNY-1,
5 which specifies rates and other terms applicable to
6 all EP and RP allocations.

7 In 2016, a three-year rate phase-in as
8 specified in the Service Tariff was completed. The
9 Trustee-approved rate phase-in ensures consistency
10 among the Authority's three hydropower programs
11 including Preservation Power.

12 Lastly, transmission and delivery service for
13 the allocation will be provided by National Grid or
14 NYSEG, in accordance with the utilities' Public
15 Service Commission approved delivery service
16 tariffs.

17 The Authority will accept your comments on
18 the proposed contract until the close of business on
19 Thursday, June 22, 2017.

20 We will recess now and reconvene when
21 speakers arrive.

22

23 (Recess.)

1 MR. SMITH: The June 21st, 2017 public
2 hearing on the proposed Customer Contract for
3 Sumitomo Rubber USA, LLC is now officially closed.

4 As I previously stated, the record of the
5 hearing will remain open for additional comments
6 through the close of business, Thursday, June 22nd,
7 2017.

8 Thank you and good night.

9
10 (Hearing closed at 6:30 p.m.)

11
12
13
14
15
16
17
18
19
20
21
22
23

1 STATE OF NEW YORK
2 COUNTY OF ERIE

3 I, Olga Runfola, a Notary Public in and for
4 the State of New York, do hereby certify:

5 That this proceeding was taken pursuant to
6 notice at the time and place herein set forth; that
7 said proceeding was taken down in shorthand by me
8 and thereafter under my supervision transcribed into
9 the English language, and I hereby certify the
10 foregoing proceeding is a full, true and correct
11 transcription of the shorthand notes so taken.

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

15 IN WITNESS WHEREOF, I have hereunto
16 subscribed my name this 22nd day of June, 2017.

17
18
19
20
21
22
23


	7:13	7:10	Director (1)	4:14
\$	Authorities (2)	commitments (3)	5:12	four (1)
\$87 (1)	3:8;5:19	6:8,22;7:3	Dunkirk (1)	3:19
6:14	Authority (6)	Committee (2)	3:23	G
A	3:10;5:20;7:1,10,23;8:17	3:15,17	during (1)	Gazette (1)
ability (1)	Authority's (8)	7:12	E	3:20
7:19	3:3,7;4:2,3;6:7;	company's (1)	Economic (1)	generated (1)
above (1)	7:19;8:4,10	7:7	5:13	5:16
6:14	authorized (1)	completed (3)	efficiently (1)	given (2)
accept (1)	3:2	4:7,13;8:8	7:15	4:1,5
8:17	average (1)	compliance (2)	emailed (1)	Good (3)
access (2)	7:8	7:6,8	5:5	3:1;5:11;9:8
4:1,6	awarded (1)	7:19	employment (4)	Governor (2)
accordance (1)	6:5	consideration (1)	6:22;7:2,8,9	3:13;4:15
8:14	B	4:15	energy (1)	Grid (1)
addition (2)	base (1)	8:9	7:13	8:13
3:18;4:22	6:15	consistency (1)	ensure (1)	H
additional (4)	below (1)	7:23	7:14	hearing (13)
5:2,4,9;9:5	7:8	continue (1)	ensures (1)	3:2,11,12,20;4:4,5,
address (2)	billing (2)	6:3	8:9	6,17,22;5:1;9:2,5,10
7:16;8:3	6:18;7:17	Contract (15)	EP (3)	helping (1)
afternoon (2)	bills (1)	3:4;5:10,15,18;	5:22;6:2;8:6	7:14
3:1;5:11	7:22	6:17,18,21;7:1,5,12,	Erie (1)	hydropower (6)
agreed-upon (1)	Board (1)	17,22;8:3,18;9:2	6:12	3:5;5:16;6:6,19;
6:21	3:3	contracts (6)	event (1)	7:15;8:10
Albany (1)	Buffalo (2)	3:10;4:2,11,14;8:1,	7:20	I
3:22	3:21,21	2	executing (1)	includes (3)
allocate (1)	Business (6)	copy (1)	3:9	6:21;7:5,18
5:20	3:21;5:2,12;6:8;	4:19	expand (2)	including (2)
allocated (2)	8:18;9:6	Corporate (2)	6:8,11	8:1,11
6:2,4	businesses (2)	3:7;5:5	Expansion (2)	Independent (1)
allocation (5)	5:23;6:2	County (3)	5:21;6:13	6:20
6:6;7:2,11;8:3,13	C	6:3,4,12	F	indicate (1)
allocations (1)	calls (1)	create (2)	facility (1)	4:17
8:6	6:13	6:8,14	7:13	invest (1)
along (1)	capital (2)	current (1)	failure (1)	6:13
8:4	6:22;7:3	5:15	7:21	investment (2)
among (1)	certain (1)	Customer (4)	fall (1)	6:23;7:3
8:10	3:10	3:4;5:9,15;9:2	7:8	J
amount (2)	Chair (2)	7:15	faxed (1)	January (1)
6:2;7:10	3:15,17	customer's (2)	5:4	6:3
annual (2)	charge (1)	6:21;7:21	fees (1)	job (2)
7:5,8	7:19	D	7:20	7:6,6
appear (1)	charges (2)	delivery (2)	few (1)	jobs (2)
4:22	6:19,20	8:12,15	6:16	6:14,15
appeared (1)	Chautauqua (2)	Department (1)	final (1)	June (4)
3:18	6:2,4	5:13	4:13	5:3;8:19;9:1,6
applicable (1)	close (3)	deposits (1)	Finance (1)	K
8:5	5:2;8:18;9:6	7:20	3:15	kilowatt (1)
approval (1)	closed (2)	details (1)	First (2)	6:6
4:15	9:3,10	5:9	3:11,21	known (2)
approved (1)	comments (5)	Development (2)	7:14	5:22,23
8:15	4:12;5:2,4;8:17;9:5	5:12,13	five (1)	
arrangement (1)	commercially (1)	direct (3)	following (2)	
7:17	7:18	6:18;7:17,23	3:19;6:16	
arrive (1)	Commission (1)	directly (1)	forth (2)	
8:21	8:15	5:20	3:9;4:9	
Assembly (3)	commitment (1)		forwarded (1)	
3:15,16,17				
audit (1)				

	3:2,8;5:14,15;6:5,9,14,19;8:1	4:3,7;5:6	reconvene (1) 8:20	Senate (2) 3:14,15
L		plan (1) 4:16	record (3) 4:22;5:1;9:4	Senate's (1) 3:13
Lastly (1) 8:12	3:21	plans (1) 6:11	reduce (2) 7:1,10	sent (1) 3:13
late (1) 7:19	3:19	please (1) 4:19	Regarding (1) 5:18	Sentinel (1) 3:22
law (3) 3:2,8;5:19	4:9	pm (1) 9:10	Relatedly (1) 7:5	Service (5) 8:4,8,12,15,15
Leader (2) 3:14,16	3:20;5:17;6:1	point (1) 5:8	remain (2) 5:1;9:5	set (1) 4:9
leading (1) 3:20	9:8	Power (8) 3:3;5:17,21,22;6:1,23;7:2;8:11	Replacement (1) 5:22	sets (1) 3:9
least (3) 6:13,14;7:13	7:16	present (1) 5:14	reporter (1) 4:20	shall (1) 6:3
length (1) 4:21	3:12,13	Preservation (1) 8:11	reporting (1) 7:6	sheet (1) 4:18
level (1) 6:15	3:18	President (1) 3:14	representing (1) 3:7	sign-in (1) 4:17
Lewiston-Porter (1) 3:22	5:6	previously (1) 9:4	require (1) 7:20	SMITH (5) 2:2;3:1,6;5:11;9:1
light (1) 4:11	4:10	prior (2) 3:11;4:4	required (1) 3:2	Speaker (1) 3:16
LLC (3) 3:5;6:5;9:3	5:13	Pro (1) 3:14	requirement (1) 7:6	SPEAKERS (2) 2:1;8:21
located (1) 5:23	8:14	procedures (1) 3:9	requires (1) 3:11	Specifically (1) 6:10
	O	process (1) 4:9	respect (1) 6:22	specified (1) 8:8
M		programs (1) 8:10	result (1) 7:16	specifies (1) 8:5
mailed (1) 5:4	Observer (1) 3:23	Project (3) 5:12,17;6:1	return (1) 6:7	State (1) 3:8
Main (1) 5:6	office (2) 4:3,8	proposed (8) 3:4;4:2,11;5:9,14;6:17;8:18;9:2	review (1) 4:14	stated (1) 9:4
manufacturer (1) 6:10	officially (1) 9:3	provide (2) 4:19;5:8	Rich (1) 5:11	statement (2) 4:16,18
may (5) 4:21;5:20;6:7;7:1,10	once (4) 3:19;4:6,13;7:14	provided (3) 3:12;6:1;8:13	Richard (1) 3:6	statements (2) 4:21,23
Means (1) 3:17	one (1) 4:19	provides (2) 6:18;7:12	risk (1) 7:16	step (1) 4:9
megawatts (2) 5:21,22	open (2) 5:1;9:5	provisions (3) 6:17;7:18,22	RP (2) 5:23;8:6	Street (1) 5:6
met (1) 7:4	operations (1) 6:12	public (8) 3:1,8;4:1,5,11;5:18;8:14;9:1	Rubber (3) 3:5;6:5;9:3	Subsection (1) 5:19
miles (1) 5:23	Operator (1) 6:20		S	Sumitomo (5) 3:5;6:5,10,13;9:3
million (1) 6:14	oral (2) 4:16,23	R	sale (3) 3:4;5:16;7:23	summary (2) 5:14;6:16
Minority (2) 3:14,16		rate (2) 8:7,9	sale-for-resale (1) 5:21	supply (1) 6:19
monthly (1) 7:22	payment (2) 7:20,21	rates (1) 8:5	sales (1) 8:1	System (1) 6:20
N	perform (1) 7:13	reasonable (1) 7:18	Secretary (2) 3:7;5:5	T
name (2) 3:6;5:11	period (1) 4:4	recess (2) 8:20,23	secretarysoffice@nypagov (1) 5:7	Tariff (2) 8:4,8
National (1) 8:13	pertinent (1) 6:17	Recharge (1) 8:1	Section (3) 3:9;4:10;5:19	tariffs (1) 8:16
negotiated (1) 3:10	phase-in (2) 8:7,9	reconsider (1) 4:11	sell (1) 5:20	taxes (1) 6:20
New (9)	Plains (3)			

Temp (1) 3:14	Ways (1) 3:17	9:6		
terminate (1) 7:2	website (1) 4:2	250 (1) 5:21		
terms (1) 8:5	week (1) 3:19	2nd (1) 6:7		
Therefore (1) 3:12	weeks (1) 3:19	3		
three (1) 8:10	Western (2) 5:15;6:9	3 (1) 2:2		
three-year (1) 8:7	White (3) 4:3,7;5:6	30 (2) 5:23;6:14		
threshold (2) 7:7,9	within (3) 5:13,23;7:14	30-day (1) 4:4		
Thursday (3) 5:3;8:19;9:6	WNY-1 (1) 8:4	4		
Times-Union (1) 3:22	written (2) 4:18,21	445 (1) 5:22		
tires (1) 6:11	wwwnypagov (1) 4:7	6		
today (1) 5:14	Y	6:30 (1) 9:10		
today's (1) 4:4	years (1) 7:14	9		
Tonawanda (1) 6:12	York (6) 3:3,8;5:16;6:9,19; 8:1	90 (2) 7:7,9		
Town (1) 6:12	1	914390-8040 (1) 5:7		
transcript (1) 4:6	1,241 (1) 6:15			
transmission (1) 8:12	1,500 (1) 6:6			
Trustee-approved (1) 8:9	1005 (1) 5:19			
Trustees (4) 3:3;4:10,13;6:7	1009 (2) 3:9;4:10			
two (1) 7:21	10601 (1) 5:6			
U	11-P (1) 5:6			
under (2) 5:18;7:1	123 (1) 5:6			
up (1) 3:20	13 (1) 5:19			
USA (3) 3:5;6:5;9:3	1987 (1) 6:3			
use (1) 7:15	1st (1) 6:3			
utilities' (1) 8:14	2			
utilization (2) 6:23;7:3	2016 (1) 8:7			
V	2017 (5) 5:3;6:7;8:19;9:1,7			
variety (1) 6:11	21st (1) 9:1			
vehicles (1) 6:11	22 (2) 5:3;8:19			
W	22nd (1)			

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

to

TIME RELEASE SCIENCES, INC

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Time Release Sciences, Inc. (“Customer”), with offices at 205 Dingens Street, Buffalo, New York 14206. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

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

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

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

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

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

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

WHEREAS, on September 26, 2017, the Authority’s Board of Trustees (“Trustees”) approved an extension of the 250 kilowatt (“kW”) allocation of RP to the Customer through June 30, 2020 (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and/or operation of the Facility as further described in this Agreement;

WHEREAS, on September 26, 2017, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

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

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

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

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

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

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

V. Rules and Service Tariff

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

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

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing

related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall

have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

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

XI. Notification

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

follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Time Release Sciences, Inc.
205 Dingens Street
Buffalo, New York 14206
Email:
Facsimile:
Attention:

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

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

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

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

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

XVII. Waiver

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

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

TIME RELEASE SCIENCES INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

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

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Time Release Sciences, Inc.	Allocation Amount (kW)	Facility	Trustee Approval Date	Allocation/Extension Effective Date	Extended Expiration Date
Type of Allocation					
Replacement Power	250	205 Dingens Street Buffalo, New York	September 26, 2017	April 1, 2018	June 30, 2020

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

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

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

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

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

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

D. Notice of Intent to Reduce Contract Demand

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

III. Information Requests

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

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 77 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

N/A

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

TAKEDOWN SCHEDULE

N/A

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

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is

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

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

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

5. ZEC Charge

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

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

6. REC Charge

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

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



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

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

Service Tariff No. WNY-1

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

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

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

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

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

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

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

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

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

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

Service Tariff: This Service Tariff No. WNY-1.

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

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer's local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer's local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer's local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges ("NYISO Charges")

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

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

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

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

to

CERES CRYSTAL INDUSTRIES INC.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Ceres Crystal Industries Inc. (“Customer”) , with offices at 2250 Liberty Drive, Niagara Falls, New York 14304. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

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

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

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

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

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

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

WHEREAS, on September 26, 2017, the Authority’s Board of Trustees (“Trustees”) approved an extension of two allocations of RP collectively totaling 2,600 kW to the Customer through June 30, 2020 (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and/or operation of the Facility as further described in this Agreement;

WHEREAS, on September 26, 2017, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

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

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

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

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

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

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

V. Rules and Service Tariff

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

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

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing

related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall

have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

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

XI. Notification

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

follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Ceres Crystal Industries Inc.
2250 Liberty Drive
Niagara Falls, New York 14304
Email:
Facsimile:
Attention:

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

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

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

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

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

XVII. Waiver

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

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

CERES CRYSTAL INDUSTRIES INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

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

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Ceres Crystal Industries Inc.	Allocation Amount (kW)	Facility	Trustee Approval Date	Allocation/Extension Effective Date	Expiration Date
Type of Allocation					
Replacement Power	1,000	2250 Liberty Drive, Niagara Falls, New York 14304	September 26, 2017	July 1, 2018	June 30, 2020
Replacement Power	1,600	2250 Liberty Drive, Niagara Falls, New York 14304	September 26, 2017	July 1, 2018	June 30, 2020

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

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

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

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

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

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

D. Notice of Intent to Reduce Contract Demand

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

III. Information Requests

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

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 35 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

For each year, 2018, 2019 and 2020, the Customer’s Rolling Average of capital investments at the Facility as calculated by the Authority on the basis of the Customer’s capital investments at the Facility during each of the previous three years shall be no less than the Historic Average of \$80,000.

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

TAKEDOWN SCHEDULE

N/A

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

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is

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

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

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

5. ZEC Charge

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

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

6. REC Charge

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

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



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

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

Service Tariff No. WNY-1

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

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

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

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

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

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

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

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

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

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

Service Tariff: This Service Tariff No. WNY-1.

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

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer's local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer's local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer's local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges ("NYISO Charges")

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

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

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

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

to

GREENPAC MILL, LLC

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Greenpac Mill, LLC (“Customer”) with offices at 4400 Royal Avenue, Niagara Falls, New York, 14303. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

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

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

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

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

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

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

WHEREAS, on September 26, 2017, the Authority’s Board of Trustees (“Trustees”) approved an extension of the 10,000 kilowatt (“kW”) allocation of RP to the Customer through June 30, 2020 (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and/or operation of the Facility as further described in this Agreement;

WHEREAS, on September 26, 2017, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

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

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

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

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

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

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

V. Rules and Service Tariff

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

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

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing

related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall

have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

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

XI. Notification

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

follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Greenpac Mill, LLC
4400 Royal Avenue
Niagara Falls, New York, 14303
Email:
Facsimile:
Attention:

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

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

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

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

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

XVII. Waiver

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

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

GREENPAC MILL, LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

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

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Greenpac Mill, LLC					
Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Allocation/Extension Effective Date	Expiration Date
Replacement Power	10,000	4400 Royal Avenue Niagara Falls, New York, 14303	September 26, 2017	July 1, 2018	June 30, 2020

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

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

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

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

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

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

D. Notice of Intent to Reduce Contract Demand

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

III. Information Requests

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

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 108 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

N/A

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

TAKEDOWN SCHEDULE

N/A

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

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is

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

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

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

5. ZEC Charge

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

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

6. REC Charge

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

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



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

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

Service Tariff No. WNY-1

Date of Issue: June 1, 2015

Date Effective: July 1, 2015

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

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

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

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

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

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

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

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

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

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

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

Service Tariff: This Service Tariff No. WNY-1.

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

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer's local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer's local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer's local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges ("NYISO Charges")

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

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

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

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

to

HAMMOND MANUFACTURING COMPANY INC.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Hammond Manufacturing Company Inc. (“Customer”) with offices at 475 Cayuga Road, Suite 100, Cheektowaga, New York 14225. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

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

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

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

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

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

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

WHEREAS, on September 26, 2017, the Authority’s Board of Trustees (“Trustees”) approved an extension of the 100 kilowatt (“kW”) allocation of RP to the Customer through June 30, 2020 (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and/or operation of the Facility as further described in this Agreement;

WHEREAS, on September 26, 2017, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

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

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

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

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

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

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

V. Rules and Service Tariff

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

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

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing

related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall

have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

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

XI. Notification

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

follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Hammond Manufacturing Company Inc.
475 Cayuga Road, Suite 100
Cheektowaga, New York 14225
Email:
Facsimile:
Attention:

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

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

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

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

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

XVII. Waiver

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

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

HAMMOND MANUFACTURING COMPANY INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

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

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Hammond Manufacturing Company Inc.				Allocation/Extension Effective Date	
Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date		Expiration Date
Replacement Power	100	475 Cayuga Road, Suite 100, Cheektowaga, New York 14225	September 26, 2017	July 1, 2018	June 30, 2020

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

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

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

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

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

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

D. Notice of Intent to Reduce Contract Demand

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

III. Information Requests

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

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 24 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

For each year, 2018, 2019, and 2020, the Customer’s Rolling Average of capital investments at the Facility as calculated by the Authority on the basis of the Customer’s capital investments at the Facility during each of the previous three years shall be no less than the Historic Average of \$5,000.

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

TAKEDOWN SCHEDULE

N/A

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

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is

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

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

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

5. ZEC Charge

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

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

6. REC Charge

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

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



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

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

Service Tariff No. WNY-1

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

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

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

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

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

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

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

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

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

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

Service Tariff: This Service Tariff No. WNY-1.

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

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer’s local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer’s local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer’s local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges (“NYISO Charges”)

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

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

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

2017 Amendment to 1990 Service Agreement

This 2017 Amendment to 1990 Service Agreement, dated this ____ day of _____, 2017 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 “2014 Amendment to 1990 Service Agreement” (the “2014 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 adopted by the Authority on November 15, 2011, 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 on November 15, 2011, 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, 2019 through December 31, 2020, 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, 2020, 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 “2017 Amendment to the 1990 Service Agreement”.

10) Continuation of service under this 2017 Amendment to the 1990 Service Agreement shall be subject to ultimate approval by the Governor of the State of New York pursuant to Public Authorities Law § 1009. If the Governor disapproves this 2017 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 2017 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 2017 Amendment to the 1990 Service Agreement, the 1990 Service Agreement shall remain unchanged and in full force and effect.

12) This 2017 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 2017 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 2017 Amendment to the 1990 Service Agreement shall come into full force and effect, provided however that pending such gubernatorial approval and execution, this 2017 Amendment to the 1990 Service Agreement shall take effect upon the expiration of the 2014 Amendment and continue on a month to month basis.

15) This 2017 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: _____

Title: _____

Date: _____

Power Authority of the State of New York

By: _____

Name: John R. Koelmel

Title: Chairman

Date: _____

2017 Amendment to 1990 Hydropower Contract

This 2017 Amendment to 1990 Hydropower Contract, dated this ____ day of _____, 2017 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 (“February 14, 2008 Letter Agreement”) 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 “2014 Amendment to 1990 Hydropower Contract” (the “2014 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 adopted by the Authority on November 15, 2011, 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 on November 15, 2011, 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, 2019 through December 31, 2020, 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, 2020, 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 "2017 Amendment to the 1990 Service Agreement".

- 10) Continuation of service under this 2017 Amendment to the 1990 Service Agreement shall be subject to ultimate approval by the Governor of the State of New York pursuant to Public Authorities Law § 1009. If the Governor disapproves this 2017 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 2017 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 2017 Amendment to the 1990 Service Agreement, the 1990 Service Agreement shall remain unchanged and in full force and effect.
- 12) This 2017 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 2017 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 2017 Amendment to the 1990 Service Agreement shall come into full force and effect, provided however that pending such gubernatorial approval and execution, this 2017 Amendment to the 1990 Service Agreement shall take effect upon the expiration of the 2014 Amendment and continue on a month to month basis.
- 15) This 2017 Amendment to the 1990 Service Agreement 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: Mark S. Lynch
Title: President
Date: _____

Power Authority of the State of New York

ACCEPTED:

By: _____
Name: John R. Koelmel
Title: Chairman

Date: _____

2017 Amendment to 1990 Hydropower Contract

This 2017 Amendment to 1990 Hydropower Contract, dated this ____ day of _____, 2017 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 (“February 14, 2008 Letter Agreement”) 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 “2014 Amendment to 1990 Hydropower Contract” (the “2014 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 adopted by the Authority on November 15, 2011, 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 on November 15, 2011, 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, 2019 through December 31, 2020, 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, 2020, 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 “2017 Amendment to the 1990 Service Agreement”.

- 10) Continuation of service under this 2017 Amendment to the 1990 Service Agreement shall be subject to ultimate approval by the Governor of the State of New York pursuant to Public Authorities Law § 1009. If the Governor disapproves this 2017 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 2017 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 2017 Amendment to the 1990 Service Agreement, the 1990 Service Agreement shall remain unchanged and in full force and effect.
- 12) This 2017 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 2017 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 2017 Amendment to the 1990 Service Agreement shall come into full force and effect, provided however that pending such gubernatorial approval and execution, this 2017 Amendment to the 1990 Service Agreement shall take effect upon the expiration of the 2014 Amendment and continue on a month to month basis.
- 15) This 2017 Amendment to the 1990 Service Agreement 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: Mark S. Lynch
Title: President
Date: _____

Power Authority of the State of New York

ACCEPTED:

By: _____
Name: John R. Koelmel
Title: Chairman

Date: _____

Proc Awards Exh A

Procurement (Services) and Other Contracts – Awards
(For Description of Contracts See "Discussion")

EXHIBIT "A"
September 26, 2017

<u>Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
UTILITY OPERATIONS - SMALL CLEAN POWER PLANTS	EMERACHEM INC. Knoxville, TN (Q17-6199JT; PO# TBA)	10/01/17 (on or about)	Provide for CO Catalyst Cleaning and Refurbishment Services for the Small Clean Power Plants	09/30/22	B/S			\$2 million*
							*Note: represents total for up to 5-year term	
UTILITY OPERATIONS - SMALL CLEAN POWER PLANTS	Q17-6200JT; 2 Awards: 1. RESA POWER SOLUTIONS Shelton, CT 2. LONGO ELECTRIC-MECHANICAL, INC. Wharton, NJ	10/01/17 (on or about)	Provide for Breaker Repair and Maintenance Services for the Small Clean Power Plants	09/30/22	B/S			\$5 million*
							*Note: represents aggregate total for up to 5-year term	
UTILITY OPERATIONS - PROJECT MANAGEMENT - STL	BARRETT PAVING MATERIALS INC. Watertown, NY PO# 4500288660	08/18/17	Provide for paving and reclamation services for STL / FDR Power Plant facilities	08/16/18	B/S	\$1.5 million		\$4,438,464*
							*Note: represents total for 1-year term including the interim award amount of \$1.5 million	
UTILITY OPERATIONS - TECHNOLOGY & INNOVATION	Q17-6256MH; 2 Awards: 1. RTDS TECHNOLOGIES, INC. Winnipeg, MB Canada 2. OPAL-RT TECHNOLOGIES Montreal, QC Canada	9/11/17	Provide for Digital Real-Time Simulation Systems for the Advanced Grid Innovation Laboratory for Energy (AGILE) project	09/10/22	B/S	\$2.9 million		\$8 million*
							*Note: represents aggregate total for up to 5-year term including the interim award amount of \$2.9 million	

♦ **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 "A"
September 26, 2017

<u>Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
UTILITY OPERATIONS - TECHNOLOGY & INNOVATION	HYDRO-QUEBEC RESEARCH INSTITUTE Montreal, QC Canada (PO# 4500288933)	08/31/17	Provide for performance of an engineering study on behalf of NYPA	02/28/20	S/S	\$40,000		\$650,000*
							*Note: represents total for 30-month term; including the interim award amount of \$40,000 NYSERDA will reimburse \$400,000 to NYPA per agreement 112759	
ENERGY SOLUTIONS - PROJECT & BUSINESS DEVELOPMENT	Q16-6093MH; 3 Awards 1. BLACK & VEATCH, LLP New York, NY (Q17-6093MH; PO# 4600003364) 2. BURNS AND MCDONNELL CONSULTANTS, INC. Wallingford, CT 3. DNV KEMA RENEWABLES, INC. Seattle, WA	08/29/17	Provide for consulting services to identify new renewable solar generation projects in support of NYS Energy Plan goals	07/04/20	B/P	\$100,000		\$1.5 million*
							*Note: represents aggregate total for up to 5-year term including the interim award amount of \$100,000 for Black and Veatch LLP	
ENERGY SOLUTIONS - ECONOMIC DEVELOPMENT	MANAGEMENT MENTORS, INC. Chestnut Hill, MA (Q17-6212JMT; PO# TBA)	10/01/17 (on or about)	Provide for consulting services to provide for development and implementation of NYPA in-house Mentoring Program	09/30/22	B/P			\$91,000*
							*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

Proc Awards Exh A

Procurement (Services) and Other Contracts – Awards
(For Description of Contracts See "Discussion")

EXHIBIT "A"
September 26, 2017

<u>Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
HR & ESS - ENTERPRISE SHARED SERVICES	Q17-6222JW; 3 Awards 1. LECHASE CONSTRUCTION SERVICES, LLC Rochester, NY 2. ROYAL DIAMOND CONSTRUCTION CORP. ♦ Cortlandt Manor, NY 3. SCULLY CONSTRUCTION, LLC White Plains, NY	10/01/17 (on or about)	Provide for on-call General Contractor services for the Centroplex Building at 123 Main Street, White Plains, NY	09/30/22	B/P			\$9 million*
							*Note: represents aggregate total for up to 5-year term	
HR & ESS - ORGANIZATIONAL DEVELOPMENT	Q17-6202JMT; 3 Awards 1. DEVELOPMENT DIMENSIONS INT'L, INC. Bridgeville, PA 2. KJR CONSULTING Framingham, MA 3. MIND GYM New York, NY	10/01/17 (on or about)	Provide for training services for skills enhancement: Build Talent and Learn	09/30/22	B/P			\$311,000*
							*Note: represents aggregate total for up to 5-year term	

♦ M / WBE: New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
 1 Award Basis: B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search
 2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

Proc Awards Exh A

Procurement (Services) and Other Contracts – Awards
(For Description of Contracts See "Discussion")

EXHIBIT "A"
September 26, 2017

<u>Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
HR & ESS - ORGANIZATIONAL DEVELOPMENT	Q17-6202JMT; 3 Awards 1. DEVELOPMENT DIMENSIONS INT'L, INC. Bridgeville, PA 2. KJR CONSULTING Framingham, MA 3. MIND GYM New York, NY	10/01/17 (on or about)	Provide for training services for skills enhancement: Manage Execution and Execute	09/30/22	B/P			\$311,000*
							**Note: represents aggregate total for up to 5-year term	
HR & ESS - ORGANIZATIONAL DEVELOPMENT	Q17-6203JMT; 6 Awards 1. DEVELOPMENT DIMENSIONS INT'L, INC. Bridgeville, PA 2. KJR CONSULTING Framingham, MA 3. MIND GYM New York, NY 4. DALE CARNEGIE AND ASSOCIATES New York, NY 5. IGNITION COACHING Rye, NY 6. INSPIRE IMPROV AND COACHING ♦ Macedon, NY	10/01/17 (on or about)	Provide for training services for skills enhancement: Energize the Organization, Communicate and Collaborate	09/30/22	B/P			\$311,000*
							**Note: represents aggregate total for up to 5-year term	

♦ M / WBE: New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
1 Award Basis: B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search
2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

Proc Awards Exh A

Procurement (Services) and Other Contracts – Awards
(For Description of Contracts See "Discussion")EXHIBIT "A"
September 26, 2017

<u>Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
HR & ESS - BENEFITS	CORPORATE COUNSELING ASSOC. New York, NY (Q17-6179MR; PO# 4600003367)	9/01/17	Provide for Employee Assistance Program services	08/31/22	B/P	\$10,000		\$250,000*
							*Note: represents total for up to 5-year term including the interim award amount of \$10,000	
HR & ESS - BENEFITS	SOVOS COMPLIANCE, LLC Wilmington, MA (Q17-6183MR; PO# TBA)	10/01/17 (on or about)	Provide for tax reporting services associated with the Affordable Care Act	09/30/22	B/P			\$122,977*
							*Note: represents total for up to 5-year term	
INFORMATION TECHNOLOGY - PROJECT MANAGEMENT	HARTIGEN SOLUTIONS, LLC Houston, TX (Q17-6143RM; PO# TBD)	10/01/17	Provide support for the implementation of a Bid-to-Bill and Generation Bidding software solution	09/30/22	B/P			\$2,180,000*
							*Note: represents total award for up to 5-year term	
ENERGY SERVICES IMPLEMENTATION	NSPRO, INC. Stamford, CT (Q17-6205RM; PO# TBD)	10/01/17	Provide support for the implementation of the SuccessFactors (Mosaic) software solution	09/30/22	B/P			\$1,660,305*
							*Note: represents total award for up to 5-year term	

♦ M / WBE: New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
 1 Award Basis: B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search
 2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

Procurement (Services) Contracts – Extensions and/or Additional Funding
(For Description of Contracts See "Discussion")

EXHIBIT "B"
September 26, 2017

<u>Plant Site/ Bus. Unit</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Authorized Expenditures For Life Of Contract</u>
LAW	FOX ROTHSCHILD, LLP New York, NY 4500276754	08/29/16	Provide for legal services in connection with construction litigation matters	08/28/20	Si/L	\$350,000	\$293,034	\$850,000*
						*Note: represents approved original amount of \$350,000 plus the requested additional amount of \$500,000		
ENERGY EFFICIENCY	CANDELA SYSTEMS CORPORATION ♦ Hawthorne, NY 4500276379	08/31/16	Provide for support for the lighting upgrade project at the UNICEF facility	2/28/18	B/S	\$326,228	\$210,685	\$326,228*
						*Note: represents current approved amount for Candela. NO ADDITIONAL FUNDING REQUESTED		

♦ M / WBE: New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
1 Award Basis: B= Competitive Bid; C= Competitive Search; S= Sole Source; Si = Single Source
2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; L= Legal Service

POWER AUTHORITY OF THE STATE OF NEW YORK
ESTIMATED RECEIPTS AND EXPENDITURES 2017 TO 2021
ACTUAL RECEIPTS AND EXPENDITURES 2016

Exhibit A

	Last Year Actual 2016	Curent Year Estimated 2017	Next Year Adopted 2018	Proposed 2019	Proposed 2020	Proposed 2021
Revenue and Financial Sources						
Operating Revenues						
Charges for Service	\$ 2,355,933,000	\$ 2,592,988,048	\$ 2,716,815,409	\$ 2,758,127,832	\$ 2,794,616,573	\$ 2,860,299,946
Rentals and Financing Income	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Operating Revenues	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Non-Operating Revenues						
Investment Earnings	\$ 14,534,000	\$ 16,092,593	\$ 20,783,508	\$ 24,534,545	\$ 28,014,708	\$ 31,645,073
State Subsidies / Grants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Federal Subsidies / Grants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Public Authority Subsidies	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Non-Operating Revenues	\$ 164,078,000	\$ 282,988,358	\$ 214,540,852	\$ 263,415,850	\$ 297,113,892	\$ 237,096,049
Proceeds from the issuance of debt	\$ 109,534,000	\$ 275,468,868	\$ 133,880,160	\$ 418,276,942	\$ 284,116,803	\$ 451,556,020
Total Revenues and Financing Sources	\$ 2,644,079,000	\$ 3,167,537,867	\$ 3,086,019,928	\$ 3,464,355,169	\$ 3,403,861,976	\$ 3,580,597,088
Expenditures						
Operating Expenditures						
Salaries and Wages	\$ 147,961,575	\$ 187,464,499	\$ 188,673,213	\$ 193,562,988	\$ 198,599,456	\$ 203,787,019
Other Employees Benefits	\$ 84,683,270	\$ 115,085,052	\$ 117,042,681	\$ 120,429,222	\$ 123,921,669	\$ 127,523,380
Professional Services Contracts	\$ 31,316,135	\$ 44,670,082	\$ 35,812,983	\$ 41,606,973	\$ 28,354,782	\$ 25,581,025
Supplies and Materials	\$ 175,260,884	\$ 231,550,827	\$ 225,181,196	\$ 227,307,581	\$ 229,471,047	\$ 235,771,248
Other Operating Expenditures	\$ 1,703,341,135	\$ 1,596,611,692	\$ 1,846,034,169	\$ 1,809,395,640	\$ 1,819,191,507	\$ 1,824,995,183
Non-Operating Expenditures						
Payment of principal on bonds and financing	\$ 301,733,000	\$ 148,752,720	\$ 33,620,000	\$ 86,913,102	\$ 127,148,899	\$ 186,227,213
Interest and other financial charges	\$ 54,817,000	\$ 53,863,255	\$ 60,087,832	\$ 63,079,099	\$ 66,460,919	\$ 69,323,197
Subsidies to other public authorities	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Asset outlay	\$ 408,888,000	\$ 528,111,729	\$ 494,351,676	\$ 730,684,566	\$ 704,203,771	\$ 696,250,727
Grants and Donations	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Non-Operating Expenditures	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Expenditures	\$ 2,908,001,000	\$ 2,906,109,856	\$ 3,000,803,750	\$ 3,272,979,172	\$ 3,297,352,050	\$ 3,369,458,991
Capital Contributions	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Excess (Deficiency) of Revenues and Capital Contributions over Expenditures	\$ (263,922,000)	\$ 261,428,011	\$ 85,216,178	\$ 191,375,997	\$ 106,509,926	\$ 211,138,097

September 26, 2017



**NY Power
Authority**

**Canal
Corporation**

Trustee Meeting

September 26, 2017



**NY Power
Authority**

**Canal
Corporation**

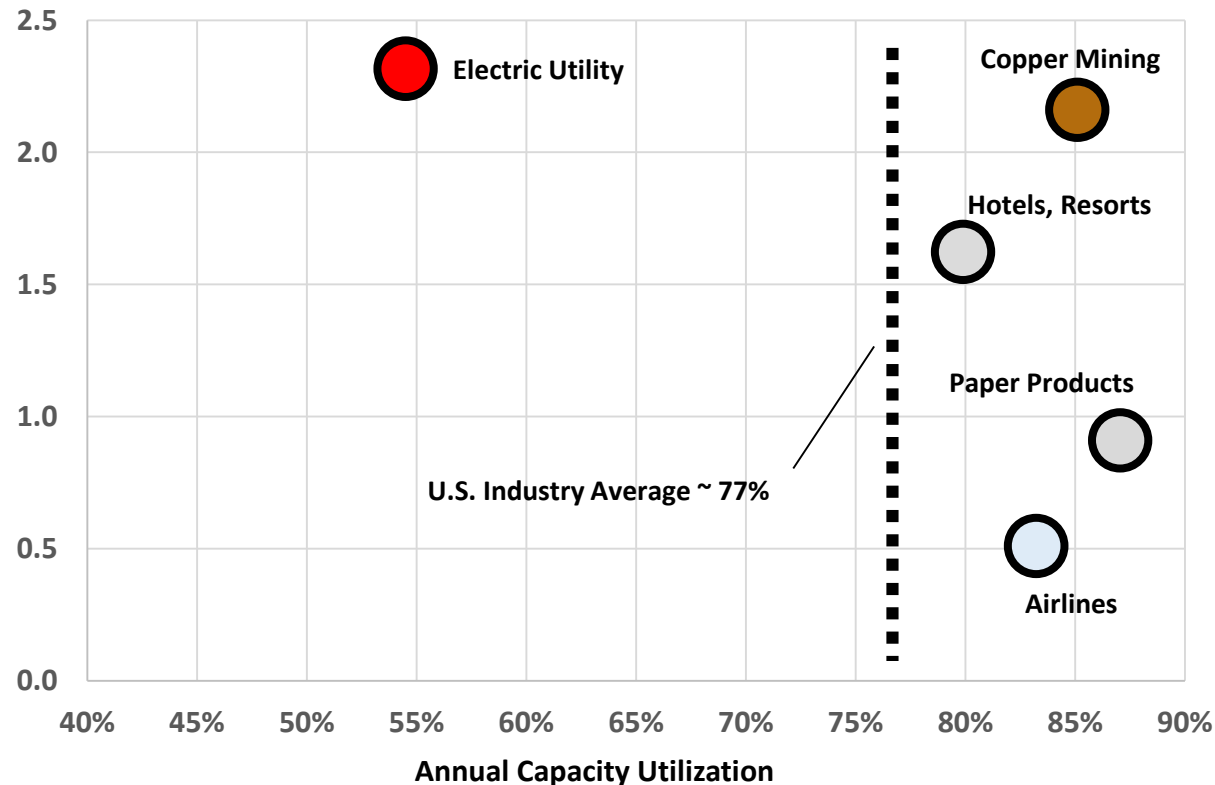
President and CEO Report

Gil Quiniones

President & Chief Executive Officer

Why digitize: economic basis – low capacity utilization

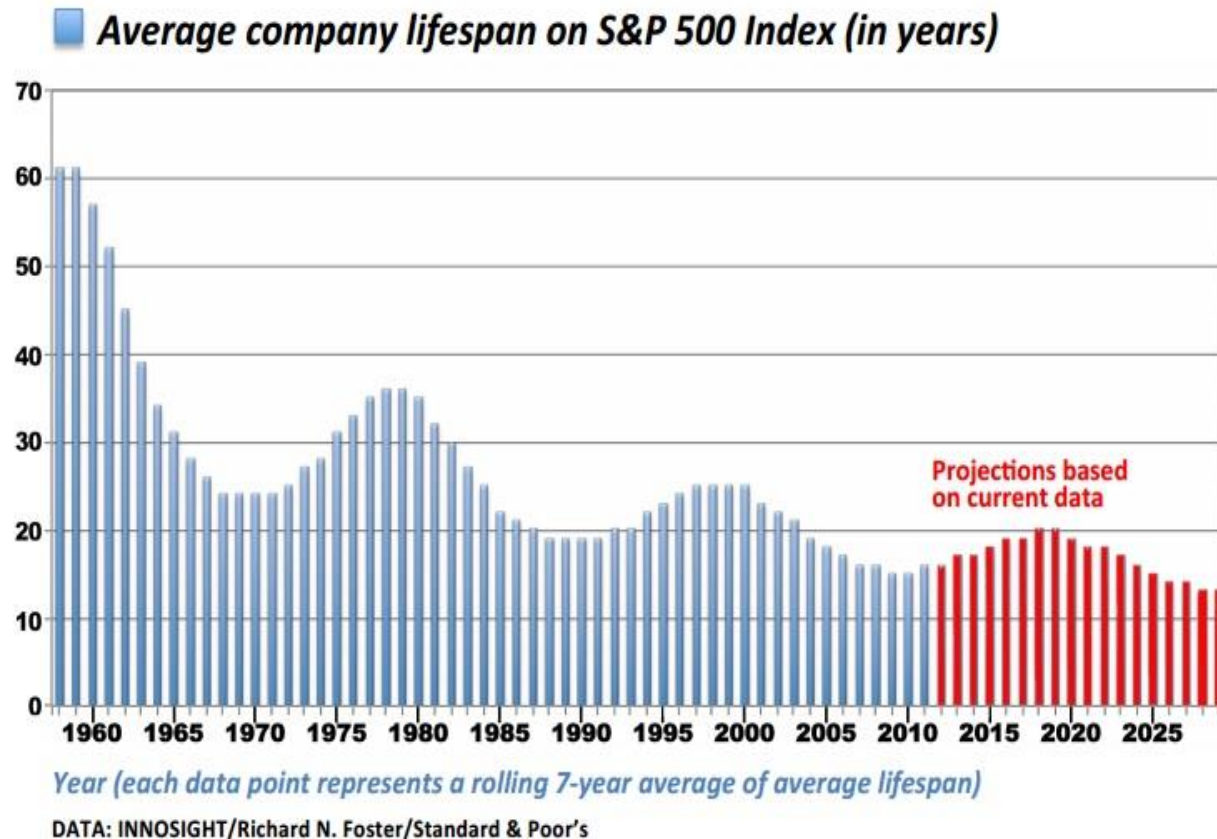
Capital Intensity
(Capital / Revenue)



- Load factor in New York is 55%
- Other capital intensive industries exhibit capacity utilization: 80-90%
- High demand driven by weather drives part of difference
- However, historic challenges in storage and demand response limited higher utilization
- Result is **HUGE** opportunity

Note the outlier industry?

Why digitize: technological basis – faster and broader disruption



- Media, telecom, financial services, retail, travel industries have all been disrupted remarkably by technology
- M&A activity has also played a role
- The average “life span” of a Fortune 500 has been generally falling for 60 years
- This trend shows few signs of abating
- NYPA believes the electric utility industry isn't immune to these trends

When is it the electric utility industry's turn?

Digitization is far more than just technology

Digitization enables an organization to harness the value of data in the following ways...



Streamline business processes and drive operational efficiencies



Innovate and become more responsive to our rapidly changing business environment

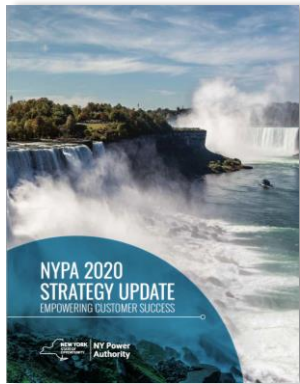


Establish new ways of building stronger working relationships with our customers

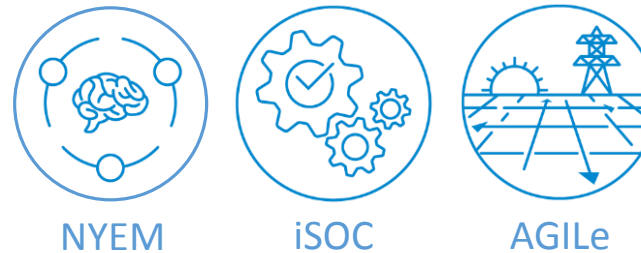


Measure business performance in real time

Why create a enterprise wide digital strategy for NYPA now?



Digitization is the foundation from which we will deliver the four key customer promises in our refreshed strategic plan



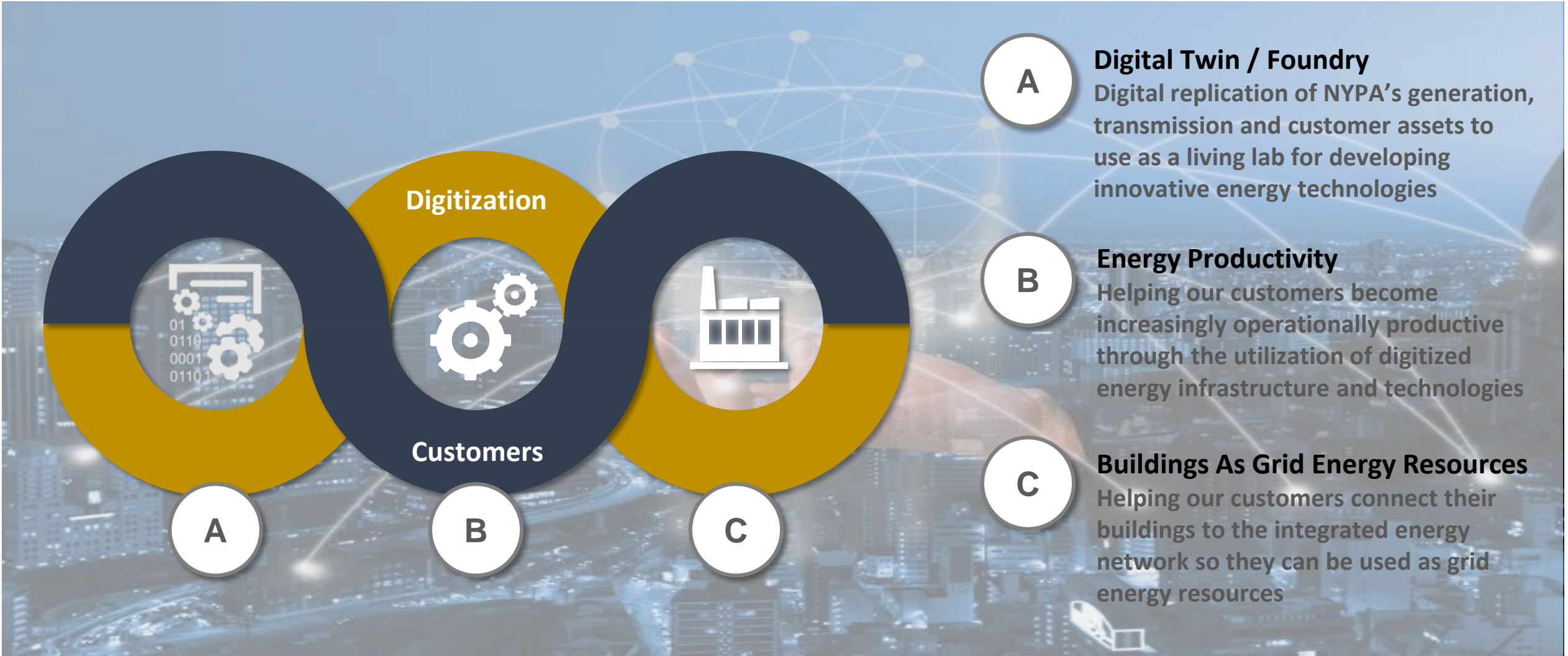
We are already implementing three key digital “hubs” – these shouldn’t be implemented in isolation



Alignment to on-going Process Excellence, IT and cultural change programs taking place across the Authority

Digitization Must Become a Part of NYPA's Future DNA

What value might a digital NYPA provide to its customer and the broader State of New York?





**NY Power
Authority**

**Canal
Corporation**



**NY Power
Authority**

**Canal
Corporation**

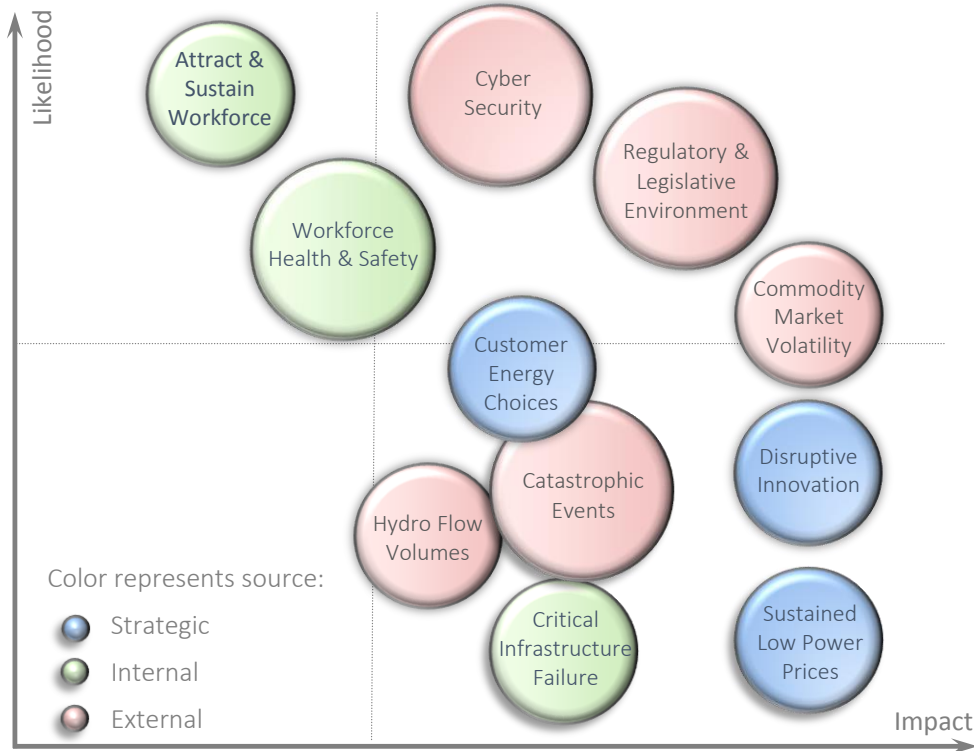
NYPA Risk Management

Soubhagya Parija

Chief Risk Officer, Senior Vice President

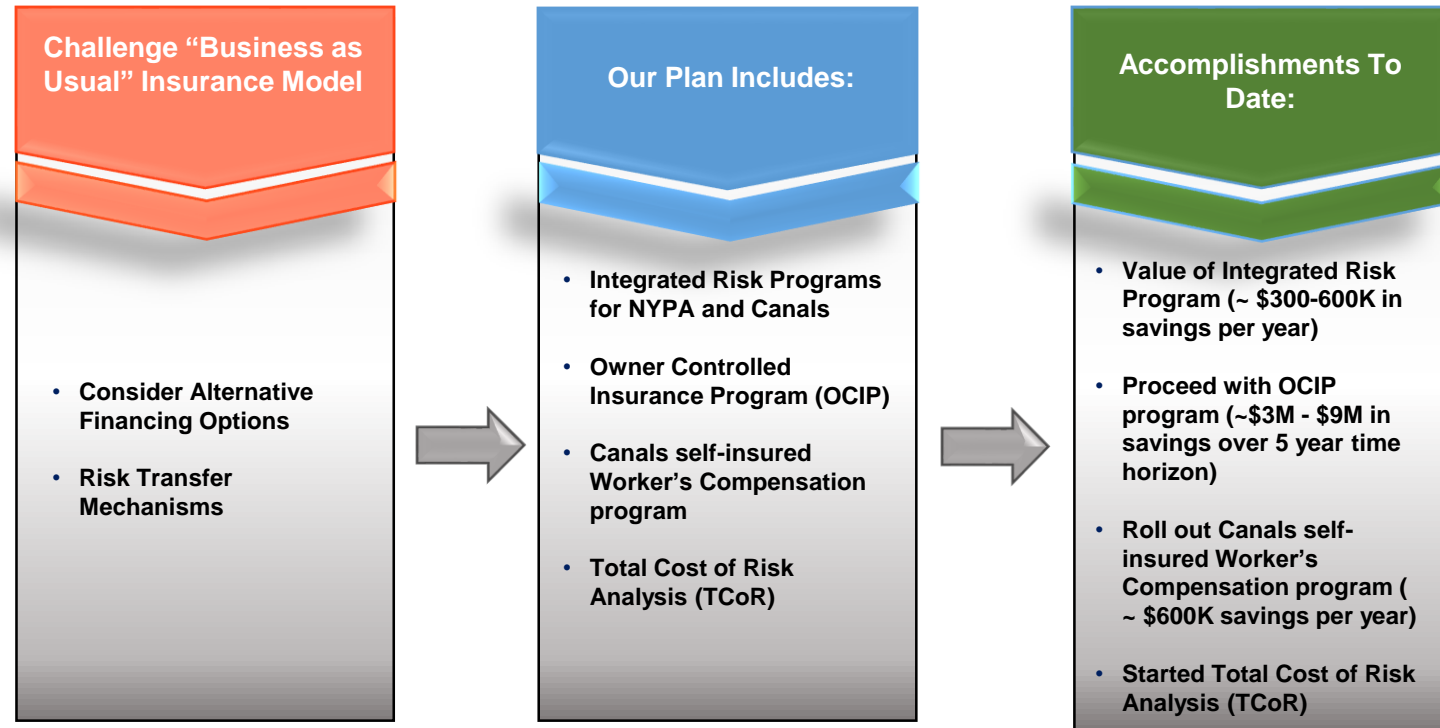
September 26, 2017

NYPA's Risk Team uses an Integrated Management Approach



- Top Risks Updated at Last Board Meeting
- Key Risk Management Initiatives:
 - Insurance
 - Enterprise Risk Management
 - Business Resiliency

Capturing the Strategic Value of Insurance



Integrated Risk Management Through e-GRC Platform

- **Implementation of enterprise Governance, Risk, and Compliance (e-GRC) Tool**

- Warehousing of Risk Data in a consistent format
- Single source of truth for all stakeholders



Q3 2017

- RFP distributed

Q4 2017

- Evaluate responses and award contracts

Q1 2018

- Begin implementation

Q4 2018

- Targeted implementation completion

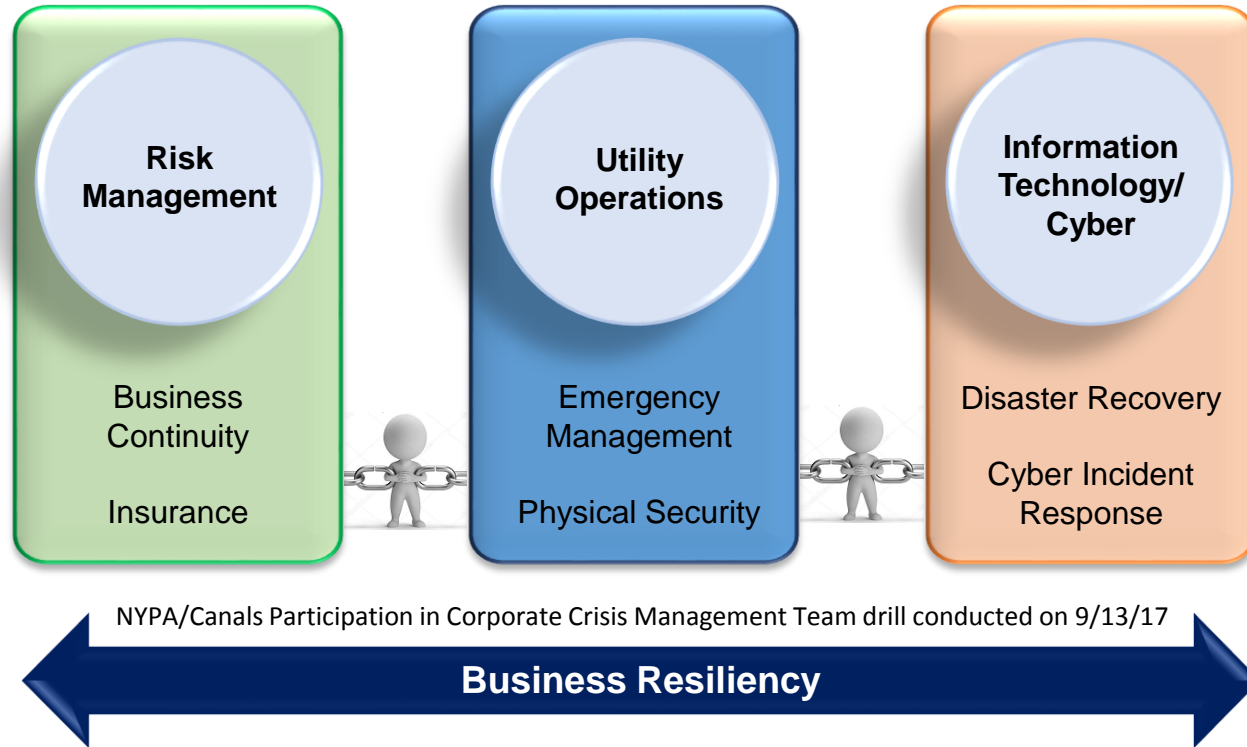


NEW YORK
STATE OF
OPPORTUNITY.

NY Power
Authority

Canal
Corporation

Business Resiliency Requires Collaboration Across NYPA



09/01/17

- NYPA - Incident Response & Notification Management Guidebook and Training

09/30/17

- Canals - Incident Response & Notification Management Guidebook and Training

12/31/17

- NYPA & Canals
 - Emergency Management and Disaster Recovery Governance and Plan
 - Business Continuity Plan, Policies & Procedures

**Detailed breakdown of deliverables and timeline are on appendix page 20*



**NY Power
Authority**

**Canal
Corporation**



**NY Power
Authority**

Chief Financial Officer Report

September 26, 2017

2017 Year to Date as of August – Variance from Budget

(\$) in Millions

Budgeted YTD Net Income	\$ 61
Margins (Energy & Transmission)	39
Operating Expenses	44
Depreciation & Amortization	11
Other Non-Operating	16
Actual YTD Net Income	\$171

2017 Year End Projection – Changes Since Budget

(\$) in Millions

Budgeted YE Net Income	\$ 77
Margins (Energy & Transmission)	68
Operating Expenses	26
Depreciation & Amortization	15
Other Non-Operating	13
Asset Write Down	(65)
Projected YE Net Income	\$134



**NY Power
Authority**

**Canal
Corporation**

Board of Trustees Meeting

Utility Operations Report

Joseph F. Kessler, P.E.
EVP & Chief Operating Officer

September 20, 2017

Performance Measures – YTD August 2017

Utility Operations



Generation Market Readiness

99.90% vs 99.40%
(actual vs target YTD)



Transmission Reliability

97.20% vs 96.17%
(actual vs target YTD)

NYPA Overall



Environmental Incidents

12 vs 22
(actual vs target YTD)



Dart Rate

0.77 vs 0.78
(actual vs target YTD)



NY Power
Authority

Canal
Corporation

Emergency Management

- Review and update of the Emergency Management, IT/Cyber, Business Continuity programs for NYPA to ensure a comprehensive emergency preparedness program
- Development of Incident Notification and Response Guidebooks (“playbooks”)
- Key stakeholder emergency response training at NYPA sites
- Training and distribution of the “playbooks” for the Corporate Crisis Management Team
- Canal Corporation update is on schedule to be completed by September 30
- Coordinated efforts to provide assistance to Puerto Rico post Hurricane Irma; NYPA was ready to deploy equipment and staff to assist in power restoration



Canal Corporation Update

- Improvements in employee and public safety
- Implementation of programs to improve Canal Corporation's assets and to increase efficiencies within operations and maintenance:
 - Dam safety programs; capital improvements; transfer of jurisdiction
 - Code compliance review of all major maintenance facilities; implementation of new policies and procedures
 - Assessment of over 100 vessels; development of fleet repair, retrofit and replacement schedules



Canal Corporation Update

- Implementation of Maximo Work Order Asset Management system to plan, schedule and track maintenance activities
- Completion of 25 Transitional Service Agreement Exit Plans





**NY Power
Authority**



**Canal
Corporation**



Commercial Operations Report

Jill C. Anderson, Chief Commercial Officer

September 26, 2017

Commercial Ops: Wholesale

<u>in twh</u>	<u>Year to Date - August</u>		
	Actual	Budget	
Customer Usage			
	16.5	17.7	
			7%
<u>in twh</u>			
Generation			
	20.3	19.4	
			5%

<u>in \$/mwh</u>	<u>Year to Date - August</u>		
	Actual	Budget	
Electric Prices			
	\$ 42.82	\$ 44.97	
			5%
<u>in \$/mmbtu</u>			
Fuel Prices <i>(unit cost of fuel)</i>			
	\$ 3.29	\$ 4.33	
			24%

Commercial Ops: Economic Development



Business Development

- Large-scale renewables RFP bids received September 8. Awards will be made in first half of 2018.
- Long Term Agreement with NYC Governmental Customers moving forward.





Economic Development

Recharge NY: 760 MW out of 910 MW allocated

All programs: 398,482 jobs, \$33.2 Billion capital committed

*data as of August 31, 2017

Commercial Ops: Customer

<u>in \$ millions</u>	<u>Year to Date - August</u>		
	Actual	Budget	
<i>Customer Investments</i>	167.5	99.8	 5%
Net NYPA Revenues	12.1	11.5	
<u>in \$ millions</u>			 12%
Operating Expenses	18.1	20.5	



Lighting upgrades at SUNY Stony Brook

SUNY Stony Brook University

- Currently \$135MM in audit, design and construction
- Completed 11 projects totaling \$26MM, resulting in \$2.7MM in savings annually

APPLICATION SUMMARY
Replacement Power ("RP")

Company:	Moog Inc. ("Moog")
Project Location:	Town of Elma
County:	Erie County
IOU:	New York State Electric & Gas
Business Activity:	Manufacturer of precision motion control products.
Project Description:	Moog is planning to construct a new, 95,000 square foot manufacturing facility to support its aircraft group on its Elma campus.
Existing Allocation(s):	Five hydropower allocations totaling 5,350 kW and one Recharge NY allocation totaling 1,116 kW. Moog is in compliance with its contractual obligations for all its allocations.
Power Request:	6,000 kilowatts ("kW")
Power Recommended:	4,000 kW RP
Job Commitment:	
Base:	3,155 jobs
New:	At least 69 jobs
New Jobs/Power Ratio:	17 jobs/megawatt ("MW")
New Jobs - Avg. Wage and Benefits:	\$124,637
Capital Investment:	At least \$33.8 million
Capital Investment/MW:	\$8.45 million/MW
Other ED Incentives:	Empire State Development Excelsior Jobs Tax Credit of \$4 million, and an Erie County Industrial Development Agency standard PILOT incentive and sales tax package.
Summary:	Located in Erie County since 1951, Moog remains a world-wide leader in the design, manufacturing and integrator of precision motion control products and systems with annual sales topping \$1 billion. This expansion project would support production and engineering for the aircraft group to accommodate future growth of currently produced products as well as development of new programs and products.

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

to

MOOG INC.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Moog Inc. (“Customer”), having facilities at Jamison Road & Seneca Street, East Aurora, NY 14052-0018. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

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

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

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

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

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

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

WHEREAS, on September 26, 2017, the Authority’s Board of Trustees (“Trustees”) approved a 4,000 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on September 26, 2017, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

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

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

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

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

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

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

- E. In the event the Customer fails to complete the Facility by September 26, 2020 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

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

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

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the

Customer's local electric utility on terms and conditions that are acceptable to the Authority.

- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

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

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

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

XI. Notification

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

follows:

To: The Authority

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

Email:

Facsimile: _____

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Moog Inc.
Jamison Road & Seneca Street
East Aurora, NY 14052-0018

Email:

Facsimile:

Attention:

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

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

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

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

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

XVII. Waiver

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

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

MOOG INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

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

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Moog Inc.	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Replacement Power	4,000	Jamison Road & Seneca St. East Aurora, NY 14052- 0018	September 26, 2017	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

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

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

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

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

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

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

D. Notice of Intent to Reduce Contract Demand

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

III. Energy Efficiency Audits; Information Requests

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

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

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service, the Customer shall employ at least 3,224 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall make a minimum capital investment of \$33,800,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following approximate expenditures on the items indicated:

Building construction (~95,000 sq.ft. addition) -	\$24,700,000
Lighting & HVAC equipment -	\$ 3,000,000
Hydraulic Pump & Chiller Systems -	\$ 1,000,000
Compressed Air System -	\$ 100,000
Further electrical infrastructure upgrades -	\$ 4,500,000
Miscellaneous project costs and contingencies -	<u>\$ 500,000</u>

Total Minimum Capital Investment:	\$33,800,000
-----------------------------------	--------------

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than September 26, 2020 (*i.e.*, within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

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

TAKEDOWN SCHEDULE

N/A

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

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is

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

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

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

5. ZEC Charge

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

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

6. REC Charge

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

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



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

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

Service Tariff No. WNY-1

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

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

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

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

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

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

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

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

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

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

Service Tariff: This Service Tariff No. WNY-1.

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

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer's local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer's local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer's local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges ("NYISO Charges")

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

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

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

Applicants Recommended for an Award of Fund Benefits by the NNY Proceeds Allocation Board

Line	Business	City	County	Economic Development Region	Project Description	Project Type	Recommended Award Amount	Total Project Cost	Jobs Retained	Jobs Created
1	Clarkson University	Potsdam	SLC	North Country	Building renovation for incubator space	Innovation/Entrepreneur	\$60,000	\$300,000	-	-
2	Canexsys Networks Inc	Ogdensburg	SLC	North Country	Establish U.S. manufacturing facility	Business Investment	\$200,000	\$3,210,000	-	29
3	North Country Children's Museum	Potsdam	SLC	North Country	Building renovation, displays for Children's Museum	Tourism/Marketing	\$140,000	\$740,000	-	3
Total:							\$400,000	\$4,250,000	-	32

Total Jobs Created & Retained: 32



Northern NY Power Proceeds Allocation Board

“EXHIBIT B”

Criteria adapted from the “Board Procedures, and Board Policies Relating to the Review of Applications for Fund Benefits”, adopted by the Northern New York Power Proceeds Allocation Board

1. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the North Country Regional Economic Development Council (“NCREDC”). Such strategies and priorities include the following:
 - Energize our communities by building on growth in the aerospace, transit equipment, defense, biotech, energy, and manufacturing industries
 - Leverage our gateway to Canada, the nation’s largest trading partner, to lead the State in global investment
 - Attract and nurture entrepreneurs through innovation to catalyze the highest per capita rate of small business start-ups and expansions in the state
 - Invest in community development infrastructure that expands opportunities and capacity
 - Innovate effective rural healthcare and education delivery networks
 - Elevate global recognition of the region as one of the special places on the planet to visit, live, work and study
 - Activate tourism as a driver to diversify our economies by creating demand to accelerate private investment
 - Invest in agriculture as we help feed the region and the world
 - Create the greenest energy economy in the state
2. Whether the eligible project would occur in the absence of an award of Fund Benefits.
3. 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.
4. Other assistance the eligible applicant may receive to support the eligible project.
5. 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.
6. The eligible applicant's payroll, salaries, benefits and number of jobs at the eligible project for which an award of Fund Benefits is requested.
7. Where applicable, 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.
8. 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



Northern NY Power Proceeds Allocation Board

“EXHIBIT B”

St. Lawrence County and other parts of the State, in the absence of an award of Fund Benefits.¹

9. 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.
10. 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.²

¹ Job creation and retention are key indicators of economic activity. However, the Allocation Board recognizes that certain investments may increase productivity and revitalize areas without immediately increasing permanent employment. Therefore, job creation/retention commitments will be emphasized primarily in the Business Investment Track. While job creation and retention may not be a significant factor for other Tracks, demonstration of economic development benefits to the Region will generally be considered favorably when assessing applications under all Tracks.

² As provided for in Economic development Law § 197-c(4), many of the criteria are adapted from criteria used in determining eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law (“PAL”) § 1005(13). Certain criteria identified in PAL § 1005(13) are relevant to power allocations under these programs and do not have any logical application to the allocation of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits.



Northern NY Power Proceeds Allocation Board

Northern New York Economic Development Fund Recommendation Memo

EXHIBIT C-1

Applicant Name:	Clarkson University ("Clarkson")	REDC Region:	North Country
Project Type:	Innovation/Entrepreneur Development	County:	St. Lawrence
Industry:	Colleges and Universities	Locality:	Potsdam
Amount Requested:	\$60,000	Start Date:	October 2017
		Finish Date:	June 2018
RECOMMENDED OFFER			
Recommended Total Award:	\$60,000		
Total Project Cost:	\$300,000		
% of Project Cost Recommended:	20%		
PROJECT BUDGET (Proposed by Applicant)			
Use of funds	Amount	Source of Funds	Amount
Demolition/Construction	\$190,000	NNY EDF	\$60,000
Environmental Remediation	\$100,000	National Grid	\$100,000
Design/Planning	\$10,000	Northern Border Regional Commission	\$90,000
		Clarkson University	\$50,000
Total:	\$300,000	Total:	\$300,000
REGIONAL IMPACT MEASUREMENTS			
Job Commitments:	The Funding Track under which the application was submitted does not require job-related commitments.		
Average Salary of Jobs:	n/a		
Indirect Jobs Created	n/a		
Other Impact			
PROJECT DESCRIPTION (Adapted from Application)			
Clarkson seeks funding to expand its business incubator program by completing the third and final phase of a \$1.6MM effort to renovate Damon Hall. The project, phase III, would restore the building's second and third floors, comprising 6,600 square feet, where Clarkson would add premium mixed-use space to house additional incubator businesses and provide food storage options (a challenge for many local food producers).			



Northern NY Power Proceeds Allocation Board

Northern New York Economic Development Fund Recommendation Memo

EXHIBIT C-1

OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED			
National Grid – Main Street Grant	\$100,000	Northern Border Regional Commission	\$90,000
PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED			
TYPE	AMOUNT	STATUS	
N/A	\$		
BASIS FOR RECOMMENDATION (Based on Application)			
<p>Clarkson has a strong history of supporting entrepreneurial activity in the North Country as demonstrated by programming offered through its Shipley and Reh Centers and current incubator space. Clarkson’s downtown campus currently provides the only incubator available to the region defined as from Plattsburgh to Watertown and including the Adirondacks. The applicant’s two existing incubators are presently at or near full occupancy so the project will alleviate current space issues and provide program growth opportunities.</p> <p>The proposed project would restore a partially vacant building thereby supporting Potsdam’s redevelopment, is consistent with the strategies and priorities of the North Country Regional Economic Development Council, which include attracting and nurturing entrepreneurs through innovation to catalyze the highest per capita rate of small business start-ups and expansions in the state, and would align well with the Economic Development Study recently completed by McKinsey and Company that calls for the region to energize its entrepreneurial eco-system.</p>			
ANTICIPATED DISBURSEMENT TERMS			
<p>Fund Benefits would be used to reimburse the applicant for a portion of costs associated with renovating the second and third floors of Damon Hall. It is anticipated that funds would be disbursed in arrears in a lump sum upon project completion, as evidenced by such documentation NYPA may require verifying project completion and applicant expenditures of approximately \$300,000.</p>			



Northern NY Power Proceeds Allocation Board

Northern New York Economic Development Fund Recommendation Memo

EXHIBIT C-2

Applicant Name:	Canexsys Networks, Inc. ("Canexsys")	REDC Region:	North Country
Project Type:	Business Investment	County:	St. Lawrence
Industry:	High speed Internet components manufacturer.	Locality:	Ogdensburg
Amount Requested:	\$200,000	Start Date:	June 2017
		Finish Date:	December 2017
RECOMMENDED OFFER			
Recommended Total Award:		\$200,000	
Total Project Cost:		\$3,210,000	
% of Project Cost Recommended:		6%	
PROJECT BUDGET (Proposed by Applicant)			
Use of funds	Amount	Source of Funds	Amount
Machinery & Equipment	\$1,300,000	NNY EDF	\$200,000
Inventory	\$1,000,000	Debt Financing	\$1,400,000
Leasehold Imp./Working Capital	\$700,000	Company Equity	\$710,000
Employee Training	\$180,000	GMEDF	\$150,000
Furniture & Fixtures	\$30,000	RVRDA	\$150,000
		SLC IDA	\$150,000
		OGF	\$150,000
		NCEDF	\$300,000
Total:	\$3,210,000	Total:	\$3,210,000
REGIONAL IMPACT MEASUREMENTS			
Job Commitments:	Applicant would create 29 full time equivalents at the project location over three years.		
Average Salary of Jobs:	n/a		
Indirect Jobs Created	n/a		
Other Impact			
PROJECT DESCRIPTION (Adapted from Application)			



Northern NY Power Proceeds Allocation Board

Northern New York Economic Development Fund Recommendation Memo

EXHIBIT C-2

Canexsys is a recently-formed subsidiary of Comtest, a Canadian manufacturer of products that allow high speed Internet capability over existing coaxial and copper wire, thereby enabling such service to be provided in underserved markets where the cost of installing fiber networks is prohibitive. Canexsys seeks funding to establish its U.S. manufacturing facility in Ogdensburg, NY where it would produce telephony equipment, like DSL splitters and add plastic injection molding capabilities so that it can integrate molded and metal fabricated parts across its supply chain. The project would help Canexsys to add the machinery and equipment, furniture and fixtures, and inventory, and train 29 employees to manufacture products, in order for the company to meet increasing U.S. demand.

OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED

Greater Massena EDF	\$150,000	River Valley Redev. Agency	\$150,000
St. Lawrence Co. IDA	\$150,000	Ogdensburg Growth Fund	\$150,000
North Country EDF	\$300,000		

PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED

TYPE	AMOUNT	STATUS
N/A	\$	

BASIS FOR RECOMMENDATION (Based on Application)

The project would support foreign direct investment in New York State (as opposed to Canadian or U.S. alternatives outside of NY) by helping a Canadian company locate to St. Lawrence County. Canexsys plans to hire 29 people over the next three years and provide them with the skills required to manufacture its products through an on-the-job training program. As Canexsys plans to ship injection molded parts to Canada, this project would support export activity, which would bring additional economic value to the region. The project would also align well with NCREDC strategies and priorities, which in part include energizing communities by building on growth in manufacturing industries and leveraging gateways to Canada.

ANTICIPATED DISBURSEMENT TERMS

Fund Benefits would be used to reimburse the applicant for costs associated with providing newly hired U.S. employees with the training required to manufacture products and for working capital. It is anticipated that funds would be disbursed in arrears in a lump sum upon project completion, as evidenced by such documentation NYPA may require verifying project completion and applicant expenditures of approximately \$3,210,000.



Northern NY Power Proceeds Allocation Board

Northern New York Economic Development Fund Recommendation Memo

EXHIBIT C-3

Applicant Name:	North Country Children's Museum ("NCCM")	REDC Region:	North Country
Project Type:	Tourism/Marketing	County:	St. Lawrence
Industry:	Not-For-Profit	Locality:	Potsdam
Amount Requested:	\$140,000	Start Date:	July 2017
		Finish Date:	February 2018
RECOMMENDED OFFER			
Recommended Total Award:		\$140,000	
Total Project Cost:		\$740,000	
% of Project Cost Recommended:		19%	
PROJECT BUDGET (Proposed by Applicant)			
Use of funds	Amount	Source of Funds	Amount
Exhibits (Design, Constr., Install.)	\$300,000	NNY EDF	\$140,000
Building Acquisition	\$200,000	Individual Donors, Foundations	\$355,000
Infrastructure (plumbing, ac, lighting)	\$85,000	Empire State Development	\$120,000
Demolition/Construction	\$75,000	RVRDA	\$75,000
Salaries & Wages (6 months)	\$45,000	National Grid	\$50,000
Supplies & Materials	\$30,000		
Office Furniture, Supplies, Computers	\$5,000		
Total:	\$740,000	Total:	\$740,000
REGIONAL IMPACT MEASUREMENTS			
Job Commitments:		The Funding Track under which the application was submitted does not require job-related commitments.	
Average Salary of Jobs:		n/a	
Indirect Jobs Created		n/a	
Other Impact			
PROJECT DESCRIPTION (Adapted from Application)			
NCCM seeks funding to establish a permanent home for its children's museum through which it offers science, technology, engineering, arts and math (STEAM) oriented educational programming to children aged 12 and under and their families. The project includes the purchase of a building, exhibit design, construction and installation, building renovations and infrastructure upgrades and other costs.			
OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED			
ESD Grants Program	\$120,000	National Grid Main Street	\$50,000
RVRDA CD/EIP Program	\$75,000	Program	



Northern NY Power Proceeds Allocation Board

Northern New York Economic Development Fund Recommendation Memo

EXHIBIT C-3

PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED		
TYPE	AMOUNT	STATUS
N/A	\$	
BASIS FOR RECOMMENDATION (Based on Application)		
<p>Since 2012, the NCCM has experienced visitation rates of approximately 3,000 people annually to its traveling Museum. Based on this significant response and a recently completed feasibility study, NCCM believes regional demand supporting the establishment of a permanent home for the museum is sustainable.</p> <p>The project would allow NCCM to provide its target market with cultural enrichment and opportunities to experience different STEAM oriented career roles through interactive exhibits and featuring:</p> <ul style="list-style-type: none">• STEAM Power;• ADK Water Play;• Construction Zone;• Kids Co-op;• Early Childhood PlaySpace. <p>There is currently no similar U.S. offering within a two-hour radius of the proposed project's location (the closest children's museum is located in Canada and may be inaccessible to some families). The project would support regional tourism as the Applicant estimates 10,000 annual visitors to downtown Potsdam annually with approximately 20% comprised of tourists. The economic spinoff from children's museums to area restaurants, hotels, and shops is estimated at three times that of its annual operating costs.</p> <p>The project would repurpose a vacant building thereby supporting Potsdam's redevelopment, be consistent with the strategies and priorities of the North Country Regional Economic Development Council, which include mobilizing student capacity through internship and work opportunities, promoting tourism as a pathway to diversifying the economy and attracting private investment that revitalizes communities, and align well with the economic development study recently completed by McKinsey and Company that calls for community revitalization and increased tourism.</p>		



Northern NY Power Proceeds Allocation Board

Northern New York Economic Development Fund Recommendation Memo

EXHIBIT C-3

ANTICIPATED DISBURSEMENT TERMS
Fund Benefits would be used to reimburse the applicant for a portion of costs associated with construction and installation, building renovations and infrastructure upgrades and other costs. It is anticipated that funds would be disbursed in arrears in a lump sum upon project completion, as evidenced by such documentation NYPA may require verifying project completion and applicant expenditures of approximately \$740,000.