



**NY Power
Authority**

**Canal
Corporation**

**MEETING OF
NEW YORK POWER AUTHORITY
NEW YORK STATE CANAL CORPORATION
NEW YORK RENEWABLE ENERGY DEVELOPMENT HOLDINGS CORPORATION**

PROPOSED AGENDA

May 20, 2025 at 8:30 A.M.

NYPA/CANAL Members: Chair John R. Koelmel, Dennis Trainor, Bethaida Gonzalez, Cecily Morris, Lewis Warren, Jr., Laurie Wheelock, Michael Cusick

NYRED Members: Chair John R. Koelmel, Dennis Trainor, Bethaida Gonzalez, Cecily Morris, Lewis Warren, Jr., Laurie Wheelock, Michael Cusick, Justin Driscoll (ex officio), Adam Barsky (ex officio)

- 1. Adoption of the May 20, 2025 Proposed Meeting Agenda**
- 2. MOTION TO CONDUCT AN EXECUTIVE SESSION**
- 3. MOTION TO RESUME MEETING IN OPEN SESSION**
- 4. DISCUSSION AGENDA:**
 - a. Strategic Initiatives**
 - i. President and Chief Executive Officer's Report -- (Justin E. Driscoll)
 - b. Utility Operations**
 - i. Chief Operating Officer's Report -- (Joseph Kessler)
 - c. Financial Operations**
 - i. Chief Financial Officer's Report -- (Adam Barsky)
 - d. Risk and Resiliency**
 - i. Chief Risk and Resiliency Officer's Report -- (Alexis Harley)



e. Finance Committee Report -- (Chair Koelmel)

i. Finance Committee Recommendations for Approval:

1. Release of Funds in Support of the New York State Canal Corporation for Q3 2025 – Resolution (Adam Barsky)
2. Extension of 2019 Revolving Credit Agreement, 2020 Revolving Credit Agreement and 2020 Note Purchase Agreement for a period not to exceed five years – Resolution (Adam Barsky)
3. Smart Path Connect Project Capital Expenditure Authorization Request – Resolution (Timothy Poe)
4. Information Technology (IT) Contingent Staffing – Contract Award - Resolution (Lisa Beaty)
5. Legal Services Recommendations for Contract Awards – Resolution (Debra Hopke)
6. Release of Funds in Support of the Agricultural Consumer Electricity Discount Program – Resolution (Adam Barsky)

5. CONSENT AGENDA:

a. Customer Solutions

- i. Expansion Power Allocations and Hydropower Allocation Modifications -- Resolution (Maribel Cruz Brown)
- ii. Annual Compliance Review – Recharge New York Power Program – Resolution (Maribel Cruz Brown)
- iii. Annual Compliance Review – High Load Factor Power Program – Resolution (Maribel Cruz Brown)
- iv. ReCharge New York Power Program Tariff Amendment – Notice of Adoption – Resolution (Maribel Cruz Brown)
- v. Recommendation for Award of Fund Benefits from the Western New York Economic Development Fund by the Western NY Power Proceeds Allocation Board – Resolution (Maribel Cruz Brown)



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- vi. Proposed Renewed Relicensing Contracts for the Sale of Hydroelectric Power and Energy and Notice of Public Hearing – Resolution (Maribel Cruz Brown)
- vii. Industrial Incentive Award and Economic Development Plan for Buffalo Niagara Partnership and Crescent Duck Farm, Inc. – Resolution (Maribel Cruz Brown)

b. Procurement (Services) Contracts

- i. Procurement (Services) and Other Contracts – Business Units and Facilities – Awards, Extensions, and/or Additional Funding -- Resolution (John Canale)
- ii. Automotive Tools and Equipment for “Charging Forward: New York State ZEV Train-the-Trainer Program.” Transfer of Ownership to Rockland BOCES and The State University of New York at Oswego – Resolution (John Canale)

c. Governance Matters

- i. Minutes of the Joint Meeting of the New York Power Authority’s Board of Trustees and Canal Corporation’s Board of Directors held on March 25, 2025.

d. New York Renewable Energy Development Holdings Corporation

- i. Appointment of Chair of New York Renewable Energy Development Holdings Corporation (“NYRED”) – Resolution (Bethaida Gonzalez)
- ii. Committee Appointments – Resolution (John Koelmel)
- iii. Approval of January 28, 2025 Minutes of the New York Renewable Energy Development Holdings Corporation (“NYRED”)

6. NEXT MEETING



May 20, 2025

Motion to Conduct an Executive Session

I move that the Board conduct an executive session to discuss the financial and credit history of a particular corporation (pursuant to §105f of the Public Officers Law).



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May 20, 2025

Motion to Resume Meeting in Open Session

I move to resume the meeting in Open Session.



President & CEO Report

Justin E. Driscoll
President & CEO

May 20, 2025

VISION 2030 Renewed

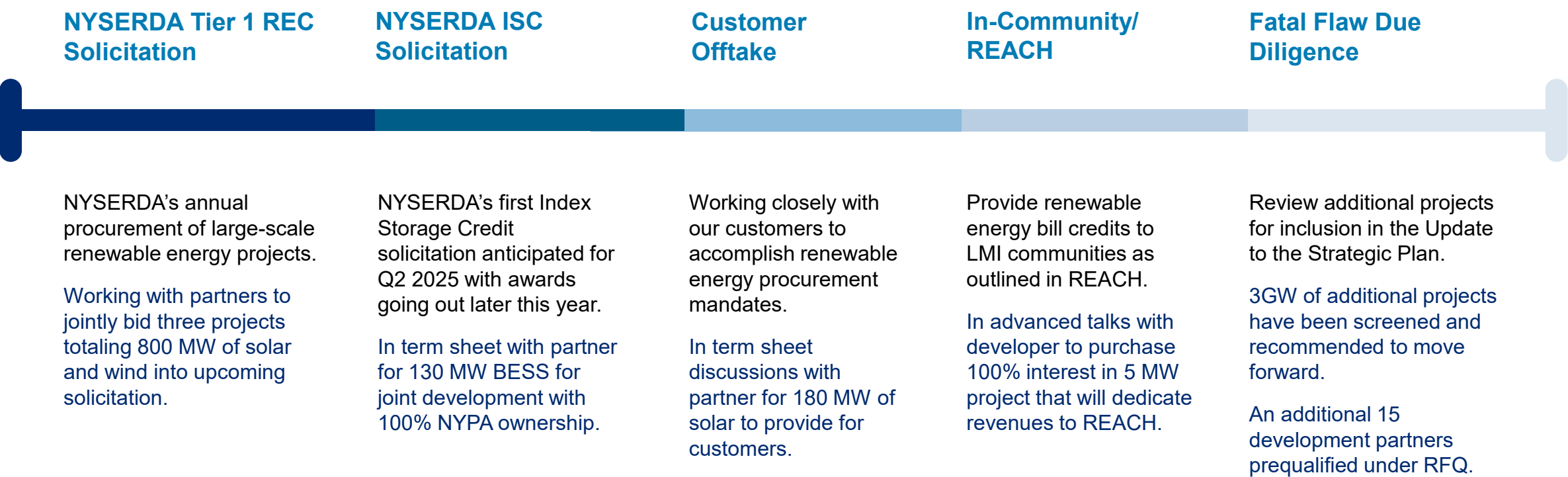
CLEAN ENERGY

TRANSMISSION

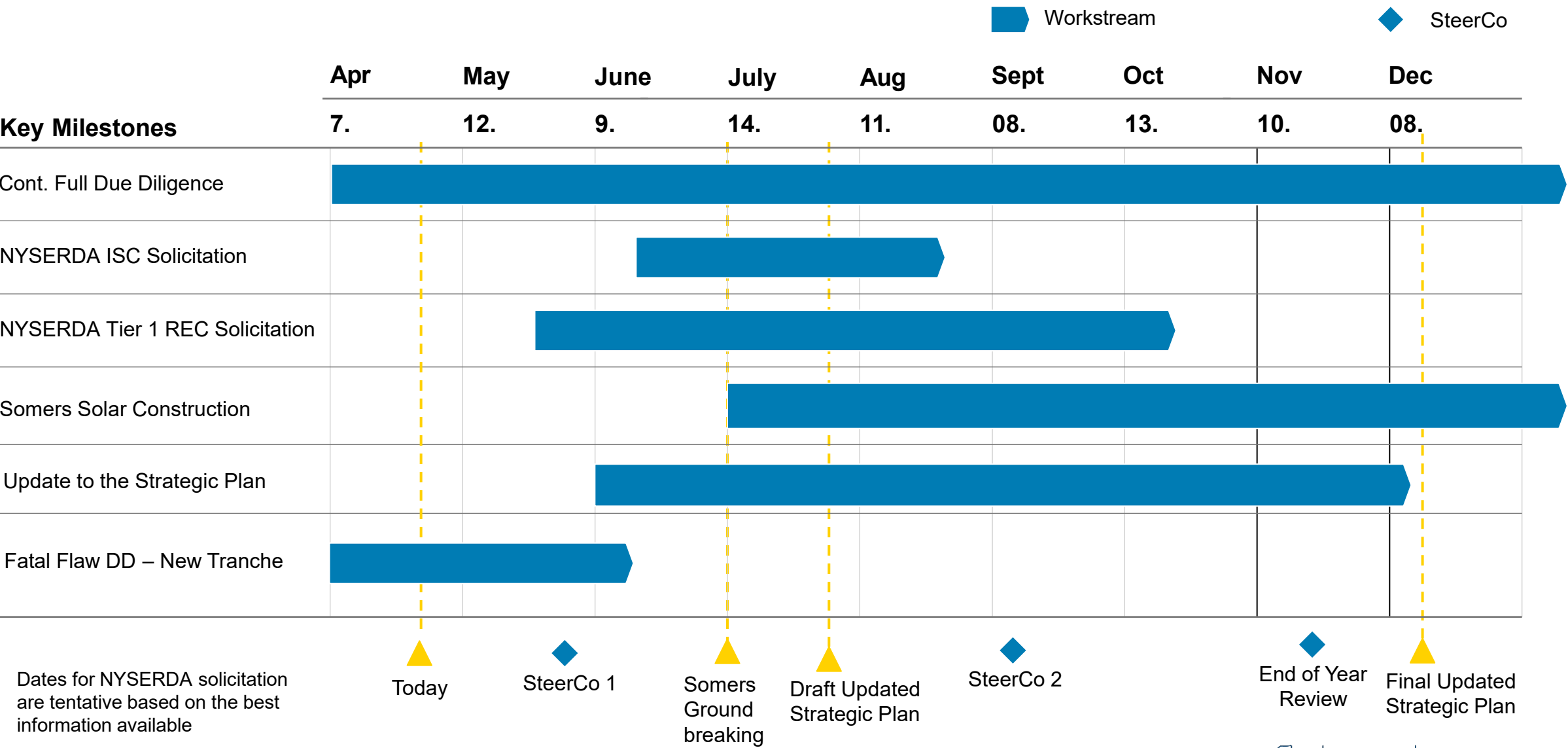
STRONG CANAL SYSTEM

DECARBONIZATION

Renewables Pipeline: Key Priorities & Milestones



Renewables Pipeline: Key Priorities & Milestones





2025 | SUPPLIER DIVERSITY EXPO



AGILE



- **National Leadership in Grid Innovation**
- **Driving Internal Value Across NYPA**
- **Strategic Partnerships Expanding Reach**
- **Cost-Efficient and Mission-Critical Capabilities**
- **Continued Expansion and Innovation**

Decommissioning and Stabilization of the Former Alcoa Powerhouse





Diamond Level Safety Award
of Excellence for 2024 for
safe operating practices

Diamond Level Reliable
Public Power Provider (RP3)



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Small Natural Gas Power Plant Transition Plan



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200

NEW YORK STATE
CANALS



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Chief Operating Officer's Report

Joseph F. Kessler, P.E.
EVP & Chief Operating Officer

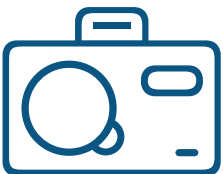
May 20, 2025

Environmental, Health and Safety (EHS)



Safety as a Foundation of Resilience

- EHS Digital Solution – Maximo Application Suite (MAS 9)



Sustainability and our People

- “Why I Work Safely” Campaign



Proactive Safety Culture Leads to Success

- Safety Culture Training



Statistics

DART Rate (through March)

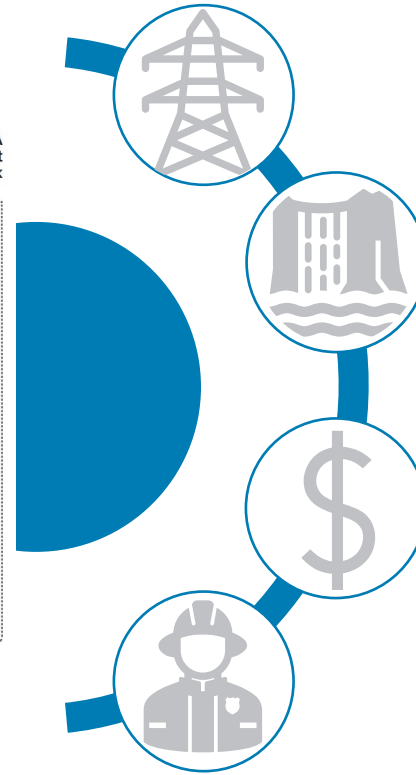
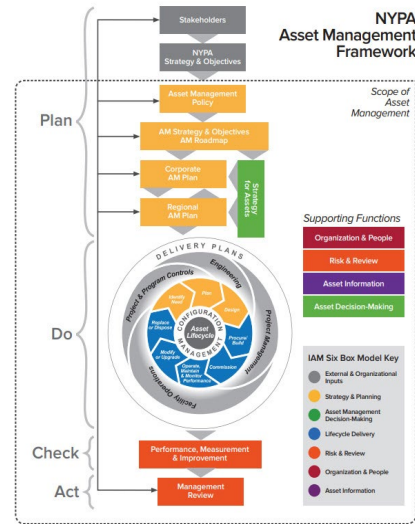
	NYPA	CANALS
DART Rate	0.61	7.17
Target	0.78	3.25
BLS Average *	1.70	3.80

Type of Injuries (through March)

	NYPA	CANALS
Vehicle Incident	1	
Slip, Trip, Fall	1	2
Ergonomic	2	3
Struck by/Against		3
Allergic Reaction		1
2025 March YTD Total	4	9
2024 March YTD Total	4	6

*BLS – Bureau of Labor Statistics; data for Utilities and Port & Harbor Operations, respectively.

VISION2030 Renewed: Leaning in on Managing Infrastructure Risk



Asset Strategy

Optimizing cost risk & performance through Reliability Centered Maintenance

Dam Safety Program

Applying a risk management framework to monitor dam infrastructure

Investments

Ensuring assets are in state of good repair by delivering on the portfolio

Emergency Preparedness

Working with trusted partners & communities



- Re-certification – June 2025
- Enhancing asset management capabilities to optimize generation & transmission asset performance



- NYPA recognized as a Diamond-level Reliable Public Power Provider (RP3) by APPA for three consecutive terms
- This recognition is due to NYPA's high proficiency in reliability, safety, workforce development, and system improvement

VISION2030 Renewed: Implementation through Quality Standards

Engineering & Project Management Standards

Climate Adaptability

Engineering and Sustainability updating existing G&T standards and specifications for climate change projections

Renewable Generation Standard

Design Criteria for Renewable Generation projects issued and detailed design standard in progress

Interconnections

Improved project lifecycle and asset base through detailed design standards and specifications for new substation interconnections

Safety & Security

Engineering standards incorporate safety by design and security standards across projects

Project & Construction Management

Integrated Project Management Information System to ensure quality infrastructure build-out.

Build



Reliability Centered Maintenance (RCM)

Operational Excellence

Operational efficiency with standardization and optimal condition-based maintenance

Asset Reliability

Support predictive maintenance, asset life and Asset Performance decision making

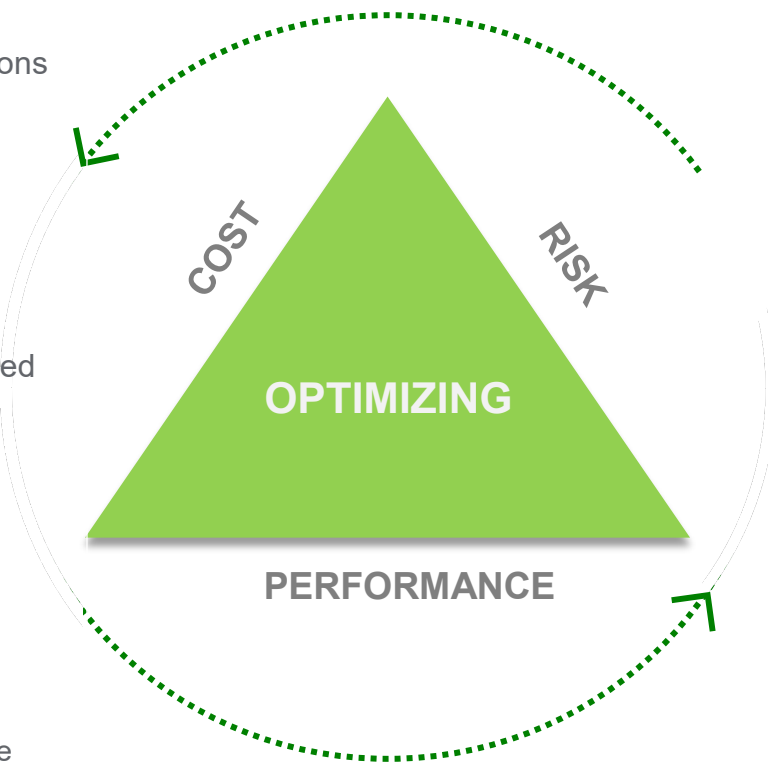
Improved Compliance

Audit reporting with digitized regulatory inspections and record keeping

Safety & Security

Support enhanced worker safety, physical security and event response

Operate & Maintain



Infrastructure Investments: Managing Risk, Resilience and Sustainability

| North Country Energy Storage System



Utility Operations

Preparation

- Designed with an emphasis on safety using lessons learned, codes, standards and expertise
- Fire suppression water runoff containment on site

Detection

- Numerous monitoring and detection systems monitored by the STL control room and original equipment manufacturer.
- Automated safety mechanisms linked to various detection systems.

Response

- Written response plan developed in coordination with local first responders

Recovery

- Extended service agreement with original equipment manufacturer
- Qualified clean up contractors on retainer

Infrastructure Investments: Managing Risk, Resilience and Sustainability

| Exploring NYPA-Sited Solar PV Opportunities



Zeltmann Solar Array

PV – photovoltaic; EO – Executive Order

Utility Operations

Cross-functional team exploring opportunities on NYPA-owned property for siting of PV installations.

Complete: Phase 1 – Feasibility Study and Assessment

BuildSmart NY 2025 (EO22)

- Behind-the-meter
- Developed Land: 73 Acres
 - Parking lots / Roofs
 - Brownfields
- Viable: 30 Acres

Expanded Authority

- Front-of-the-meter
- Undeveloped Land: 8,751 Acres
 - Never developed parcels
 - Vacant lots
- Viable: 177 Acres

Next Steps: Phase 2 – Business Case

- Business case: Opportunities being evaluated for further development

Infrastructure Investments: Managing Risk, Resilience and Sustainability

| *Brockport Pedestrian Bridge*



Revitalize the Canals

A 605-foot pedestrian bridge is being constructed to connect SUNY Brockport to the Empire State Trail. The project, led by an all-women leadership team, is scheduled to open on June 13, 2025.

Low-Carbon Emissions

- A concrete-free deck
- Locally fabricated steel sections

LED Lighting

- Technology for conservation of energy and dark-sky compliance

Local, Sustainable Materials

- Black Locust planking for quick reforestation

Low-VOC Emissions

- Natural finish with epoxy and polyurethane for longevity of decking surface

VOC – Volatile Organic Compounds

Infrastructure Investments: Managing Risk, Resilience and Sustainability

| *City of Batavia Ice Rink Chiller and Energy Measures*



Customer Solutions

NYPA is supporting the City of Batavia in enhancing the McCarthy Ice Rink with a state-of-the-art chiller system, reflecting commitment to sustainable solutions and carbon emission reduction.

Grant Funding: \$1.2 M from NYS DEC Climate Smart Communities Grant

Community and Facility Impact:

The McCarthy Ice Rink operates from September through March, serving as a central hub for youth, adult, and high school programs, while hosting key community events.

CO2 Emissions Reduction: 7.5 tons

Leadership in Low Global Warming Potential (GWP) Refrigerants

The new chiller will utilize carbon dioxide (CO₂), a natural refrigerant, setting a high standard for sustainability.



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Chief Financial Officer's Report

Adam Barsky

EVP & Chief Financial Officer

May 20, 2025

Year-To-Date Actuals through April 30th

4+8

In \$ Thousands	2025 Budget (\$)	2025 Current (\$)	Variance (\$)
Net Operating Income			
Operating Revenue			
Generation Revenue	\$290,199	\$353,337	\$63,138
Ancillary Service Revenue	12,509	20,796	8,287
Transmission and Other	119,792	126,253	6,462
Non Utility Revenue	20,459	16,231	(4,228)
Pass Through Revenue	657,635	788,066	130,431
Operating Revenue Total	1,100,594	1,304,684	204,090
Operating Expense			
Purchase Power	(3,997)	(20,147)	(16,150)
Fuel Consumed	(10,873)	(11,891)	(1,018)
Transportation and Delivery	(31,702)	(31,732)	(30)
Pass Through Expense	(657,635)	(788,066)	(130,431)
Operations & Maintenance	(245,348)	(234,057)	11,291
Other Expense	(30,184)	(53,889)	(23,705)
Monetized Funds Support	(10,012)	(20,253)	(10,241)
Allocation to Capital	17,704	8,016	(9,688)
Operating Expense Total	(972,048)	(1,152,021)	(179,973)
Operating Income Total	128,546	152,663	24,117
Non Operating			
Interest and Other Expenses			
Investment and Other Income	26,118	39,481	13,364
Mark to Market Adjustments	0	10,812	10,812
FADS Total	154,664	202,957	48,293
Interest & Other Expenses	(11,613)	(9,441)	2,172
Depreciation	(119,105)	(111,383)	7,722
Interest and Other Expenses Total	(104,600)	(70,530)	34,070
NET INCOME	\$23,946	\$82,133	\$58,187

Margins - Generation **\$54,465**

Margins - Transmission **6,251**

Margins - Non Utility **(4,255)**

Operating Expenses **(32,344)**

Non-Operating Net **34,070**

\$58,187

FADS: Funds Available for Debt Service

2025 Year-End Projection

4+8

In \$ Thousands	2025 Budget (\$)	2025 Current (\$)	Variance (\$)
Net Operating Income			
Operating Revenue			Current vs Budget
Generation Revenue	\$926,341	\$979,255	\$52,914
Ancillary Service Revenue	36,966	45,838	8,872
Transmission and Other	400,229	416,694	16,465
Non Utility Revenue	60,631	56,397	(4,233)
Pass Through Revenue	1,912,440	2,115,812	203,372
Operating Revenue Total	3,336,606	3,613,996	277,390
Operating Expense			
Purchase Power	(12,472)	(31,495)	(19,023)
Fuel Consumed	(35,297)	(44,662)	(9,365)
Transportation and Delivery	(96,763)	(96,813)	(50)
Pass Through Expense	(1,912,440)	(2,115,812)	(203,372)
Operations & Maintenance	(743,333)	(741,743)	1,589
Other Expense	(90,553)	(119,137)	(28,584)
Monetized Funds Support	(17,806)	(43,807)	(26,001)
Allocation to Capital	52,589	39,789	(12,800)
Operating Expense Total	(2,856,074)	(3,153,681)	(297,607)
Operating Income Total	480,532	460,315	(20,217)
Non Operating			
Interest and Other Expenses			
Investment and Other Income	77,887	92,589	14,702
Mark to Market Adjustments	0	10,812	10,812
FADS Total	558,419	563,716	5,297
Interest & Other Expenses	(35,249)	(34,896)	352
Depreciation	(357,316)	(349,593)	7,722
Interest and Other Expenses Total	(314,677)	(281,089)	33,588
NET INCOME	\$165,855	\$159,896	\$179,226
		<i>Low Case</i>	<i>Expected</i>
			<i>High Case</i>
			\$13,371

Margins - Generation** **\$32,764**

Margins - Transmission **17,237**

Margins - Non Utility **(4,422)**

** Includes Merchant Gross Margin Variance of (\$26,385):
Budget @ \$349,371 vs Current @ \$322,986

Operating Expenses **(65,796)**

Non-Operating Net **33,588**

FADS: Funds Available for Debt Service

Low/High case taken from Risk's Merchant Portfolio Daily Performance Summary

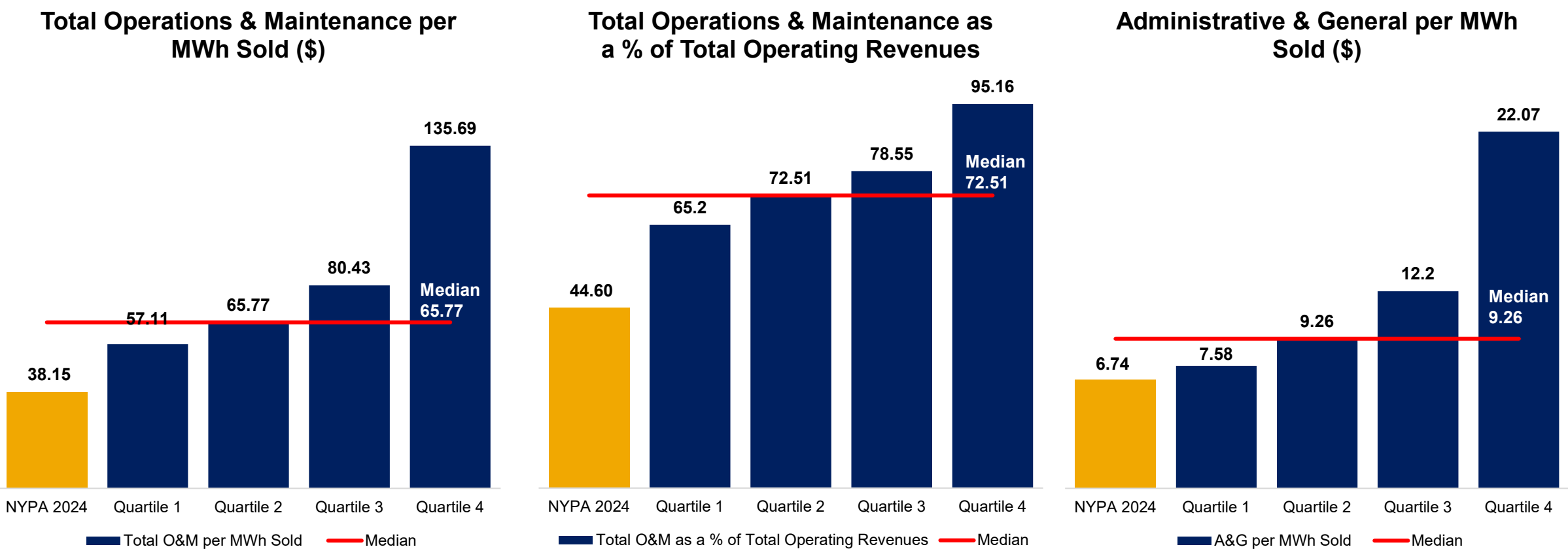
NYPA's expense ratios remain among the lowest in the sector, signaling strong cost management across operations



O&M and A&G Expense Ratios

NYPA consistently outperforms peers in Operations & Maintenance and Administrative & General Expense efficiency.

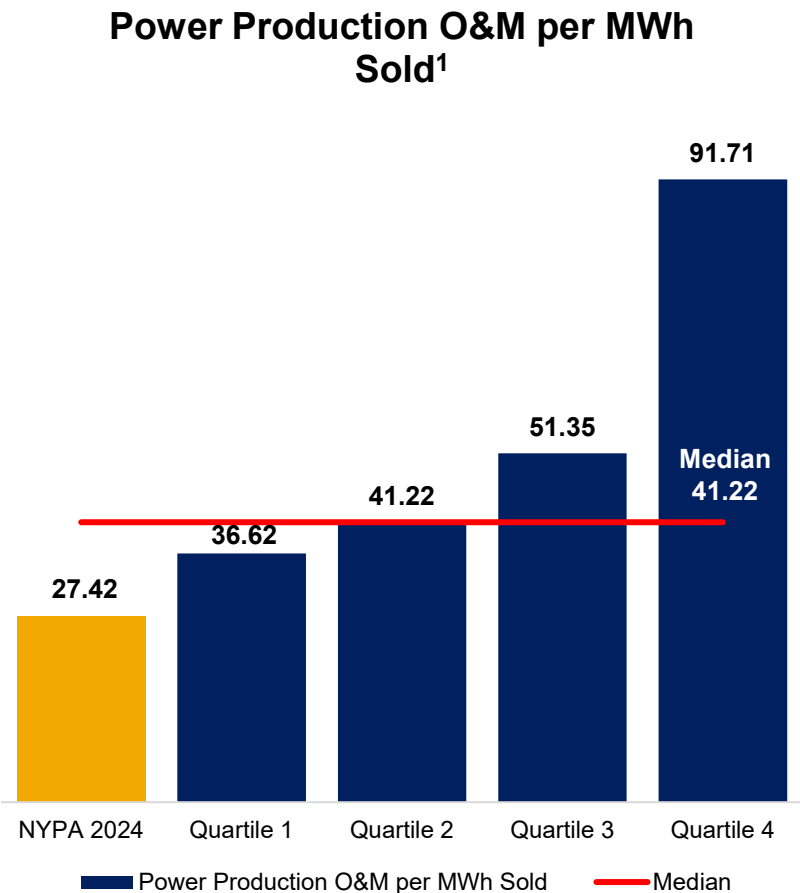
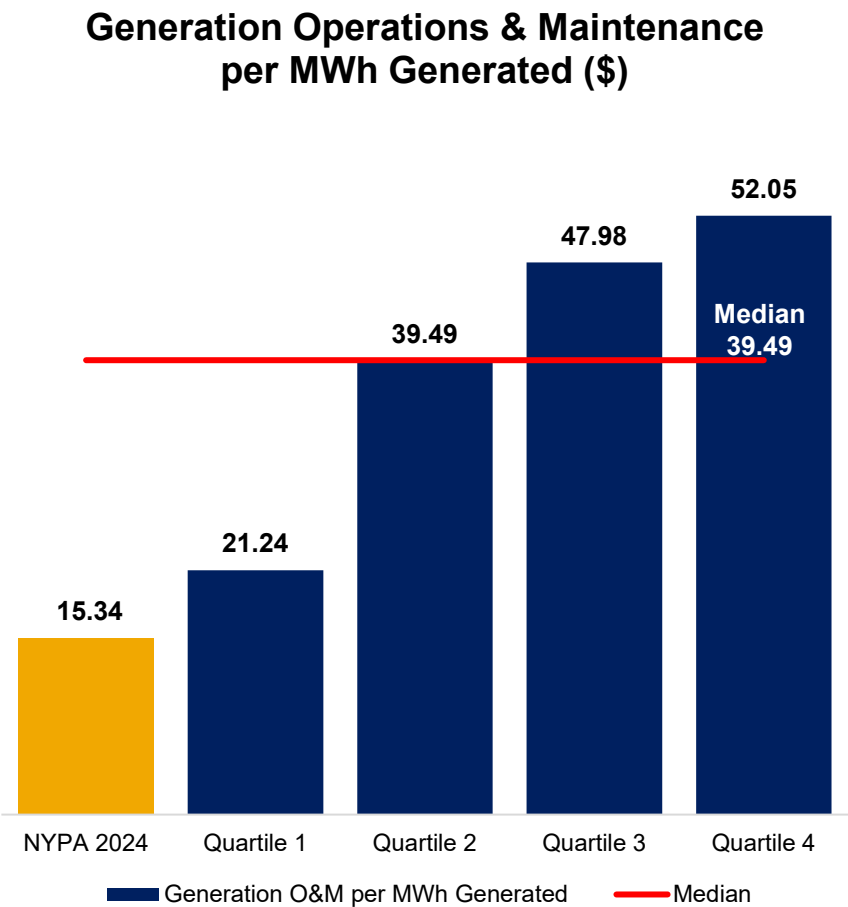
- Total O&M per MWh Sold of \$38.15 is well below the sector median and places NYPA in first quartile
- Administrative & General Expense per MWh Sold was \$6.74 in 2024



Source: Survey conducted by a member of the Large Public Power Council in 2024; results reflect data from 2023.

Generation Expense Ratios

NYPA’s Generation and Power Production Operations & Maintenance costs are substantially below peer medians, demonstrating strong cost discipline

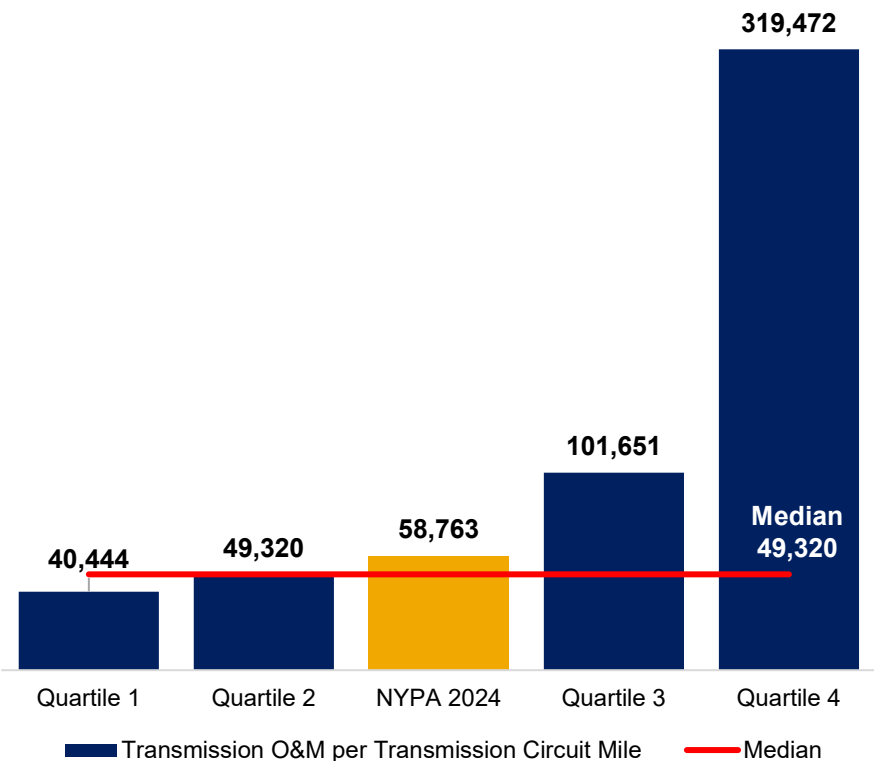


¹Includes Generation + Purchased Power + other Power supply
Source: Survey conducted by a member of the Large Public Power Council in 2024; results reflect data from 2023.

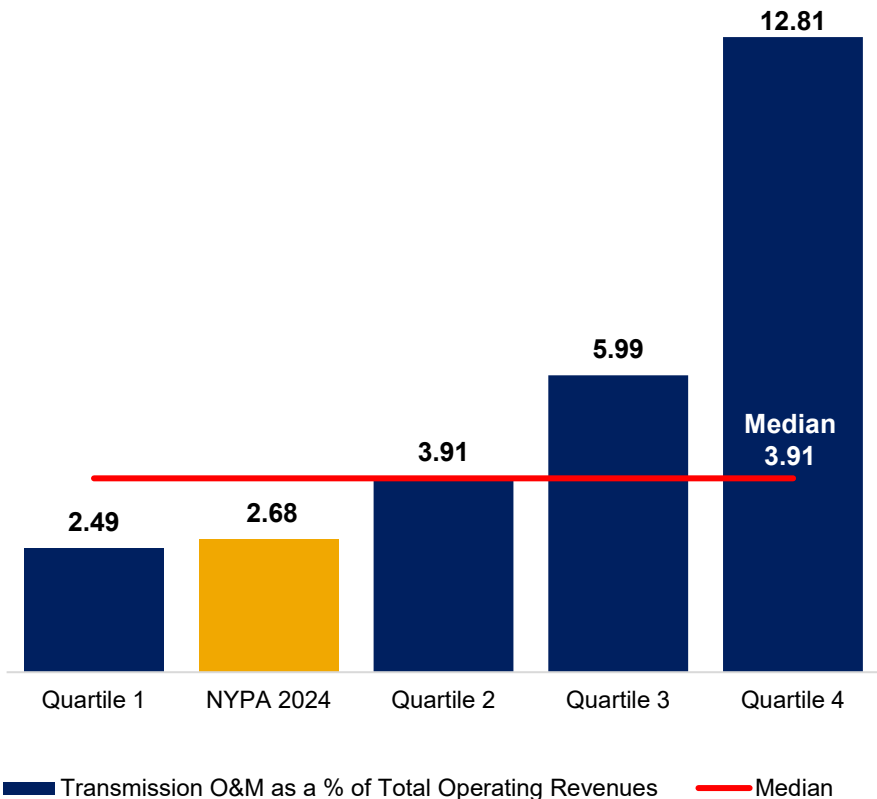
Transmission Expense Ratios

While NYPA’s per-mile Transmission O&M costs are above the peer median, its cost relative to revenue is lower than peers, suggesting, opportunities to enhance operational efficiency.

Transmission Operations & Maintenance
per Transmission Circuit Mile (\$)



Transmission Operations & Maintenance as
a % of Total Operating Revenues



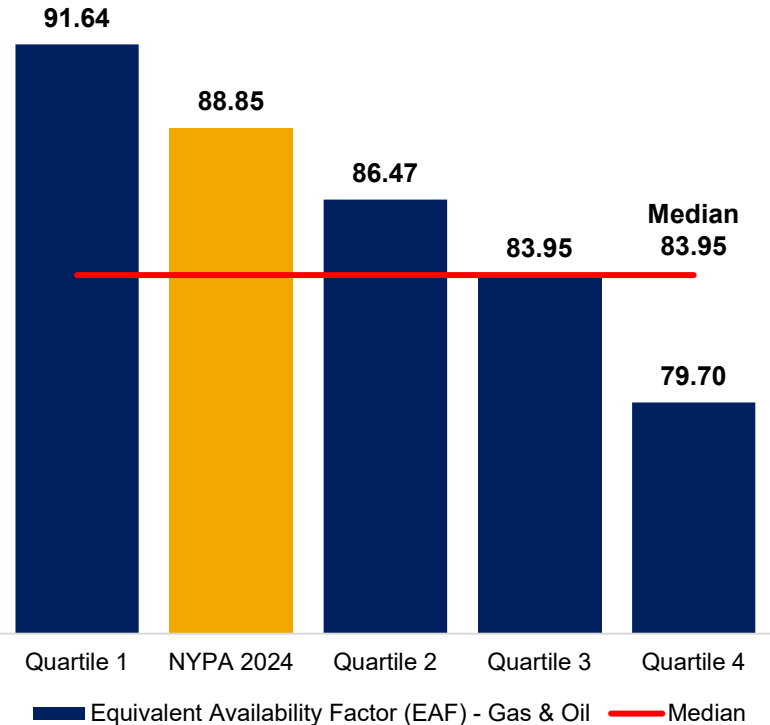
Source: Survey conducted by a member of the Large Public Power Council in 2024; results reflect data from 2023.

Performance Metrics

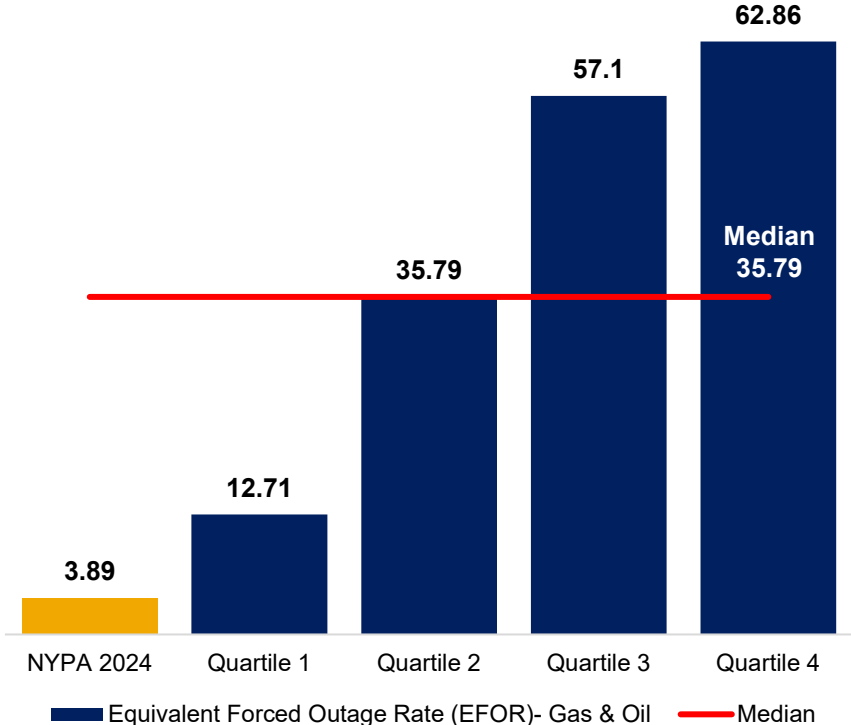
Strong reliability with minimal forced outages

- Equivalent Availability Factor (88.85%) exceeds sector median (83.95%), reflecting high unit availability
- Equivalent Forced Outage Rate (3.89%) and Equivalent Forced Outage Rate - Demand (1.84%) are both below medians (35.79 and 10.09%, respectively), indicating excellent plant reliability and asset readiness

Equivalent Availability Factor (EAF)¹



Equivalent Forced Outage Rate (EFOR)²



¹ Equivalent Availability Factor (EAF): The percentage of time in a year that a unit is available for power generation.
² Equivalent Forced Outage Rate (EFOR): The percentage of time that a unit is unavailable due to unplanned maintenance or repair work.
Source: Survey conducted by a member of the Large Public Power Council in 2024; results reflect data from 2023

**NYPA's strong
financial metrics
compares favorable
to A1 and above
rated public power
utilities**



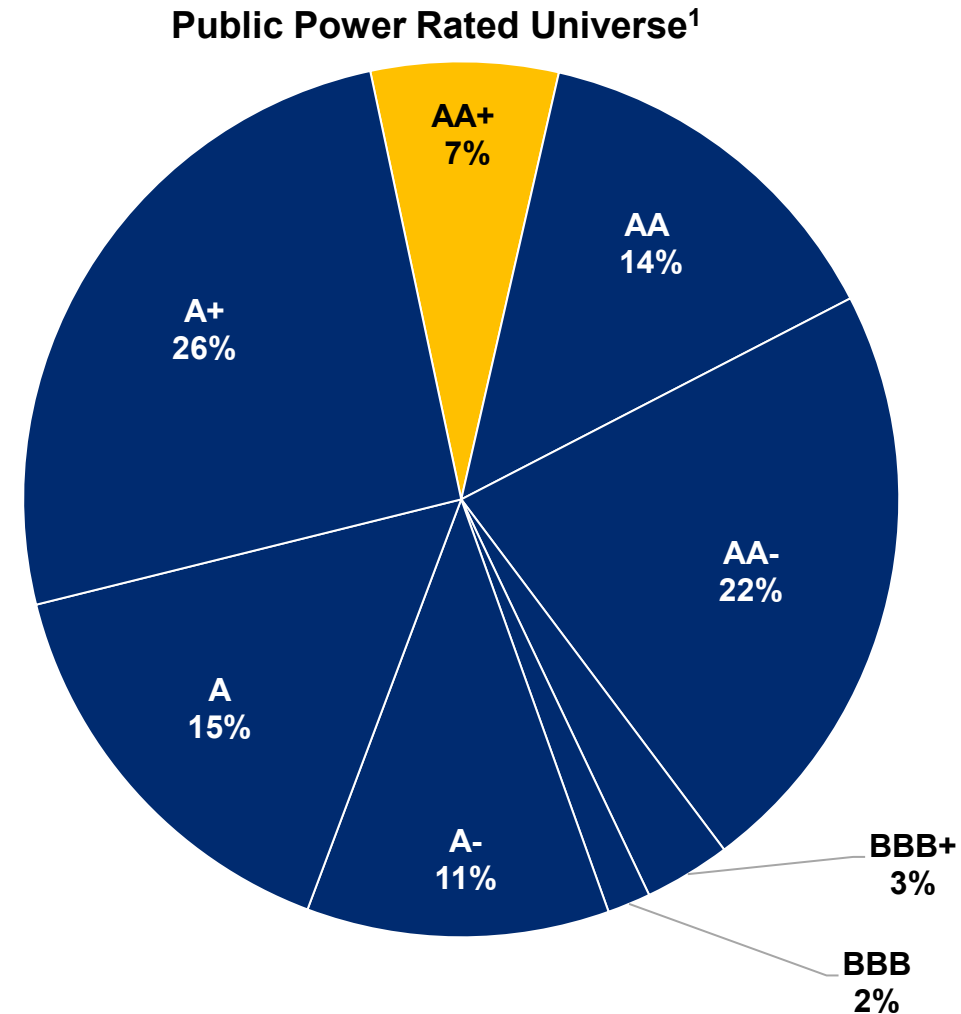
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NYPA rating of AA+, places it among the top 7% of all Moody's rated public power entities

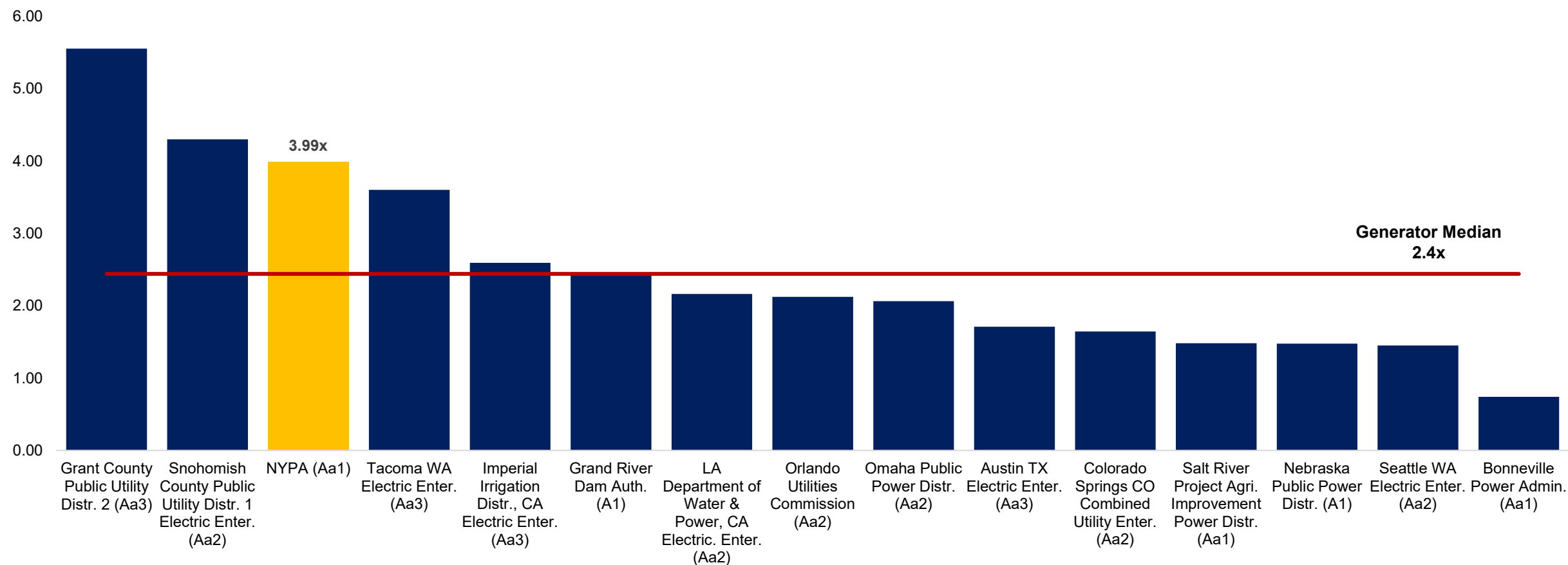
Only 13 out of 188 entities are rated AA+, and none are rated AAA, meaning AA+ is currently one of the highest ratings awarded.



Peer Public Power Generators - Fixed Charge Coverage Ratio (x)

The median FCCR ratio of public power utilities that own generation was 2.40x in 2023, up from 2.14x in 2022, supported by declining prices for natural gas and purchased power, which lowered expenses.

- In 2024, NYPA's FOCR was 3.99x

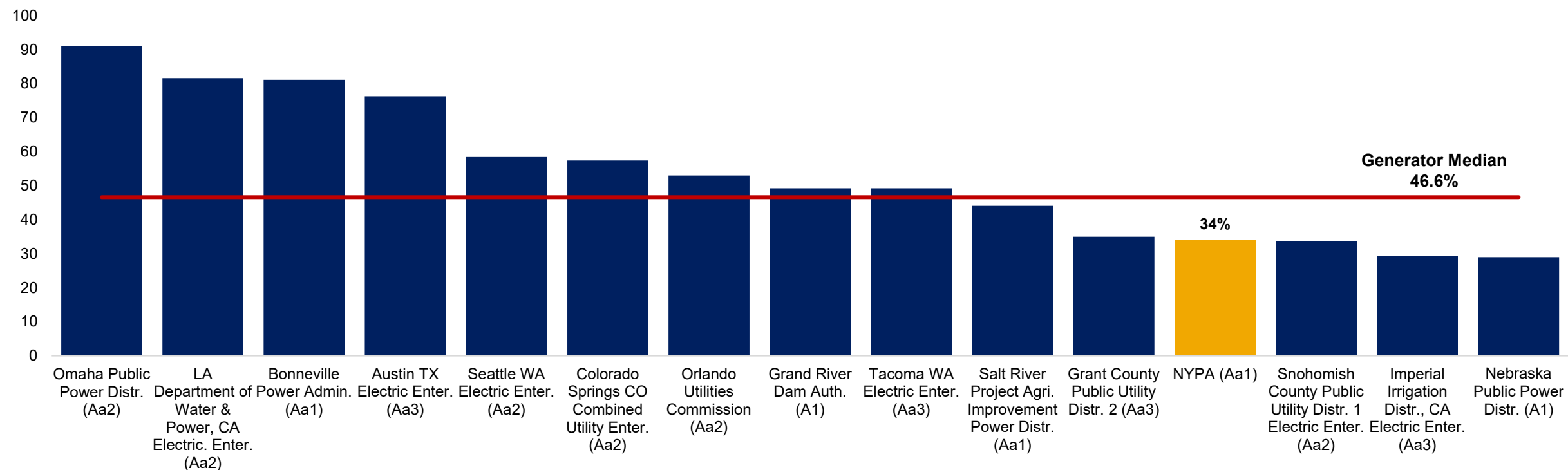


Source: Moody's - Represent entities that have a minimum annual revenue of \$500M and are rated A or higher

Peer Public Power Generators - Adjusted Debt Ratio

For public power utilities that own generation, the median debt ratio declined to 43% in 2023 from 49% in 2022 because of higher market returns.

- NYPA’s debt ratio of 34% in 2024 is below the median

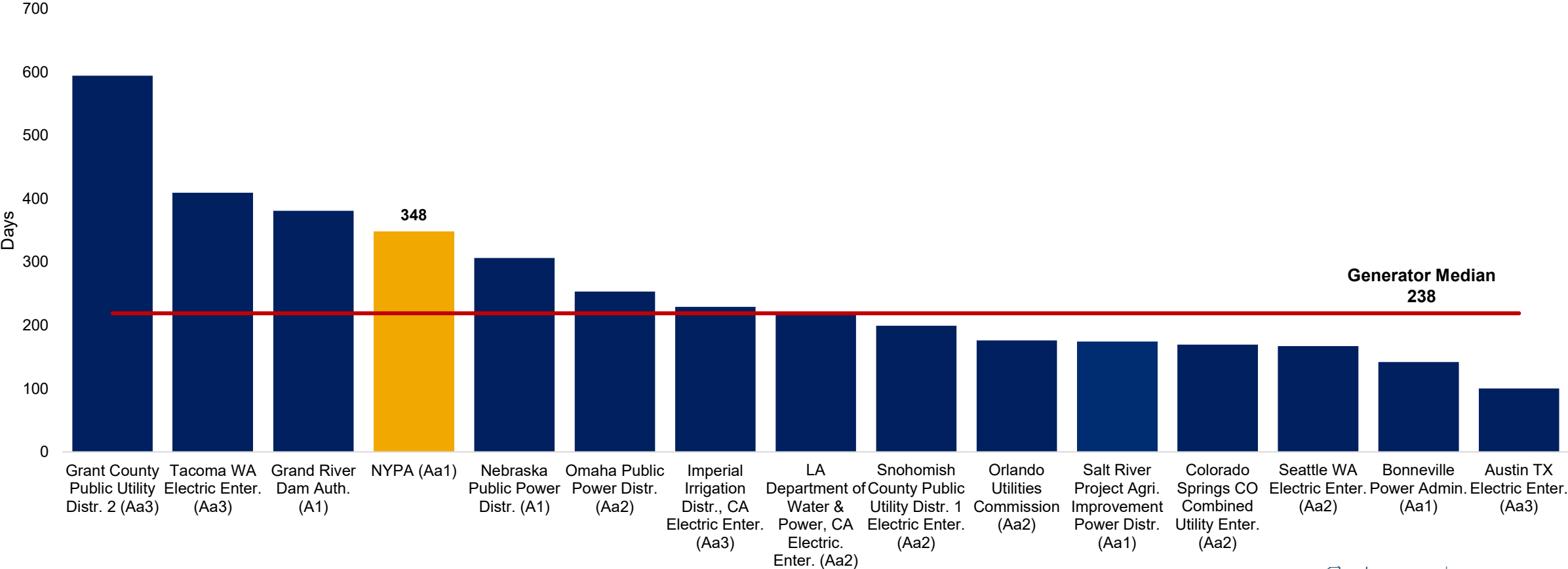


Source: Moody's - Represent entities that have a minimum annual revenue of \$500M and are rated A or higher

Peer Public Power Generators – 2023 Adjusted Days Cash on Hand

Liquidity improved on lower operating expenses and moderate capital investment. For public power utilities that own generation, the median adjusted days cash on hand rose to 238 days in 2023 from 230 in 2022

- In 2024, NYPA’s adjusted days cash on hand on hand was 348 days, well above the median



Source: Moody's - Represent entities that have a minimum annual revenue of \$500M and are rated A or higher



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Chief Risk & Resiliency Officer's Report

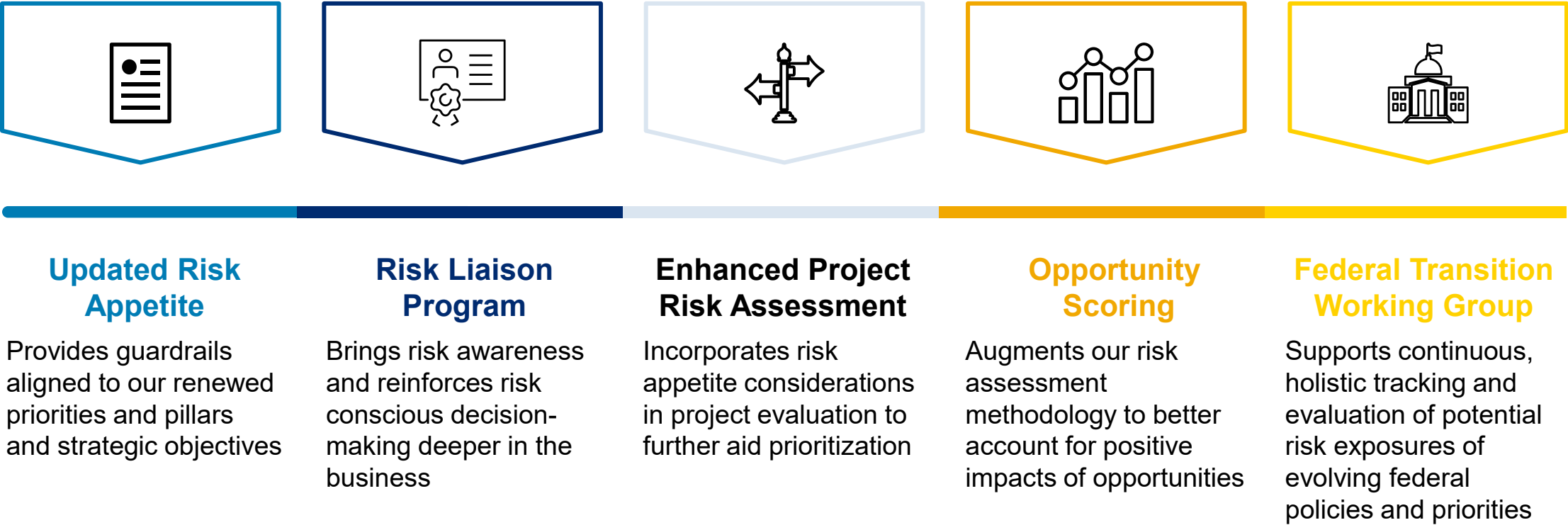
Alexis Harley

SVP & Chief Risk & Resiliency Officer

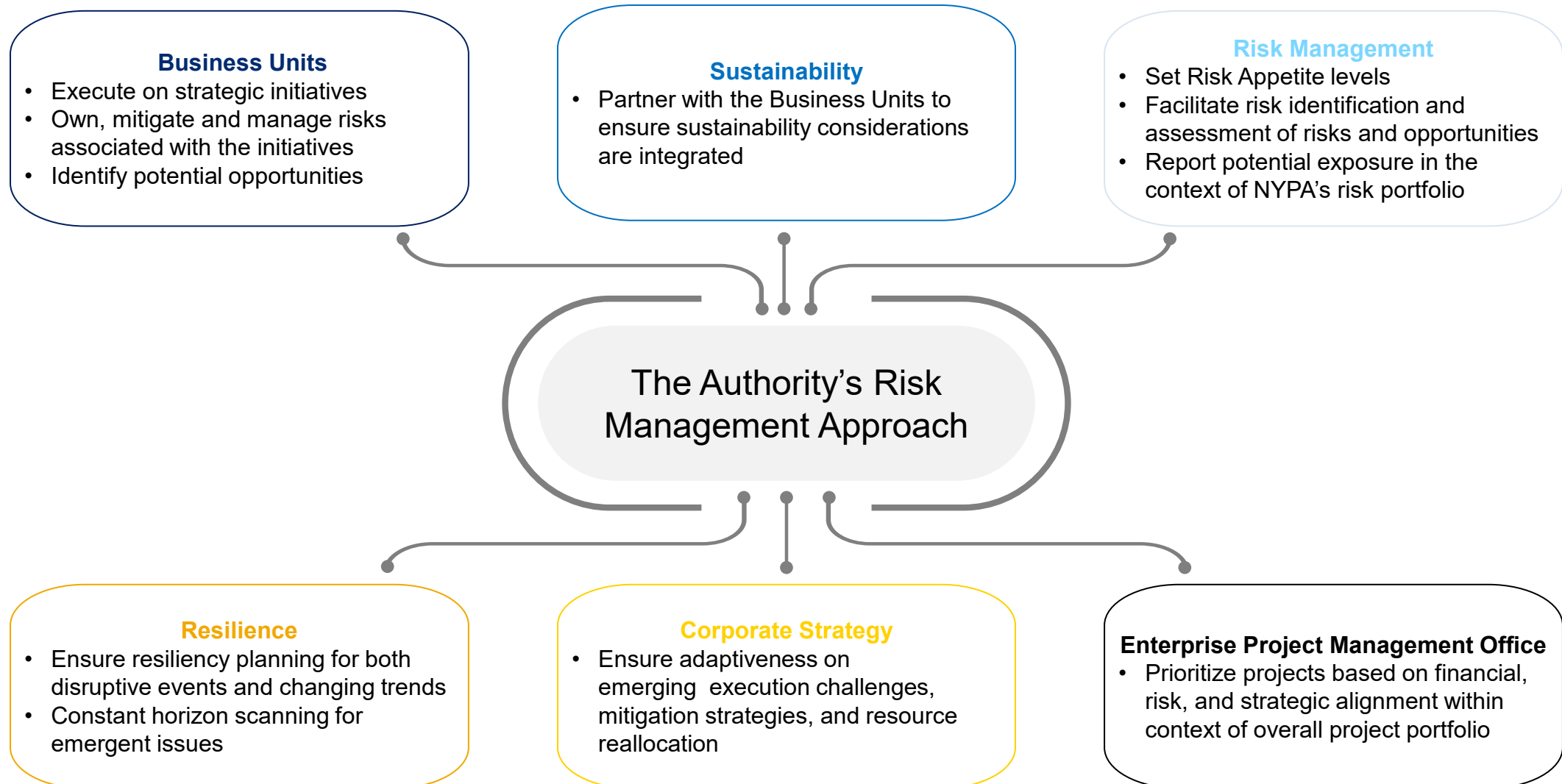
May 20, 2025

Putting VISION2030 Renewed Into Action

Evolving the Authority’s risk management approach helps ensure we remain proactive, resilient, and well-prepared to execute VISION2030 Renewed and course-correct as needed

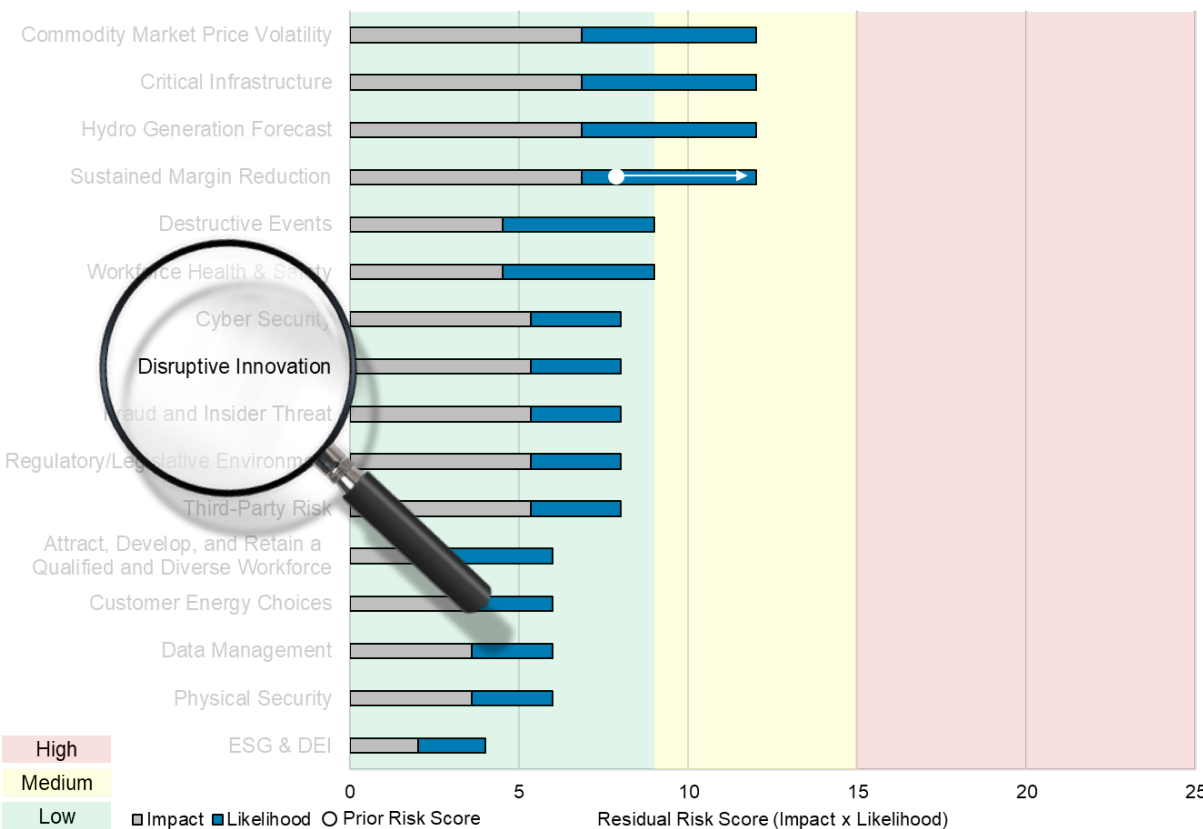


VISION2030 Renewed Requires Collaboration for Effective Risk Management

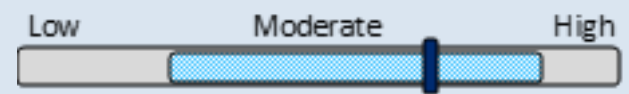


May Risk Spotlight: Disruptive Innovation

NYPA Enterprise Risk Snapshot – 2024 Year End



Risk Appetite Category: New Ventures & Strategic Initiatives



Overview

- Disruptive Innovation risk is mapped to the New Ventures & Strategic Initiatives risk appetite category
 - This appetite increased based on our updated strategy
- Risk management focus is to pursue more opportunities
 - This is mainly driven via the revised Innovation pillar
 - Operational, project and emerging risk processes help identify opportunities and assess and advise on controls / mitigations

Highlights of how we are actioning

- Innovation working groups (e.g., emerging technology, AI); Advanced Grid Innovation Lab for Energy (AGILe)
- Employee programs (e.g., Sustainability & Innovation Series)
- Horizon monitoring (e.g., federal developments, macroeconomic outlook, etc.) and risk-based prioritization
- Partnership/collaboration (e.g., with EPRI, APPA, etc.)



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Date: May 20, 2025

To: NEW YORK POWER AUTHORITY BOARD OF TRUSTEES AND NEW YORK STATE
CANAL CORPORATION BOARD OF DIRECTORS

From: PRESIDENT & CHIEF EXECUTIVE OFFICER

Subject: Finance Committee Recommendations for Approvals

SUMMARY

The Finance Committee met on May 6, 2025, and adopted the resolutions set forth below. The Board of Trustees are requested to acknowledge receipt and consideration of the materials submitted to the Finance Committee and accept, approve, and adopt as Trustees the recommendations set forth in the resolutions of such committee.

BACKGROUND

After discussion and consideration, the Finance Committee adopted on May 6, 2025, the following resolutions:

i. Release of Funds in Support of the New York State Canal Corporation for Q3 2025

“RESOLVED, that the Finance Committee hereby recommends that the New York Power Authority Board of Trustees authorize the release of up to \$27.0 million in the funding to the Canal Corporation to support operations of the Canal Corporation in Q3 2025, as discussed in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, that the Finance Committee recommends that the New York Power Authority Board of Trustees affirm that amounts presently set aside as reserves in the Operating Fund are adequate for the purposes specified in Section 503.2 of the Authority’s General Resolution Authorizing Revenue Obligations, dated February 24, 1998, as amended and supplemented (the “General Bond Resolution”), that the amount of up to \$27.0 million in funding as described in the foregoing report is not needed for any of the purposes specified in Section 503.1(a)-(c) of the General Bond Resolution of that the release of such amount is feasible and advisable; and be it further

RESOLVED, that the Finance Committee recommends that the New York Power Authority Board of Trustees affirm that as a condition to making the payments specified in the foregoing report, on the day of such payments, either the Executive Vice President & Chief Financial Officer or the Treasurer shall certify that such monies are not then

needed for any of the purposes specified in Section 503.1(a)-(c) of the General Bond Resolution; and be it further”

ii. **Extension of 2019 Revolving Credit Agreement, 2020 Revolving Credit Agreement and 2020 Note Purchase Agreement for a period not to exceed five years**

“RESOLVED, that the Finance Committee hereby recommends that the Board of Trustees approve the extension of the 2019 Revolving Credit Agreement, the 2020 Revolving Credit Agreement, and the 2020 Note Purchase Agreement, for terms not to exceed five years from the current respective expiration dates thereof as discussed in the foregoing report of the President and Chief Executive Officer; with such amendments, supplements, changes, insertions and omissions thereto as may be approved by the Chair or the President and Chief Executive Officer, which amendments, supplements, insertions and omissions shall be deemed to be part of such resolution as approved and adopted hereby; and be it further”

iii. **Smart Path Connect Project Capital Expenditure Authorization Request**

“RESOLVED, that the Finance Committee recommends that the Board of Trustees, pursuant to the Authority’s Capital Planning and Budgeting Procedures, approve an increase in capital expenditures for the Smart Path Connect Project of \$42.8 million, from the current total authorized amount for the Project of up to \$877.6 million bringing the aggregate authorized amount for the Project to \$920.4 million, as recommended in, the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, that the Finance Committee recommends that the Authority use Capital Funds, which may include proceeds of debt issuances, to finance the costs of this Project; and be it further

RESOLVED, that the Finance Committee recommends that the Trustees declare in accordance with Treasury Regulation Section 1.150-2, the Authority’s official intent to finance as follows: The Authority intends to reimburse to the maximum extent permitted by law with the proceeds of tax-exempt obligations to be issued by the Authority, all expenditures made and which may be made in accordance with the Project described in the foregoing report of the President and Chief Executive Officer; and be it further”

iv. **Information Technology (IT) Contingent Staffing - Contract Award**

“RESOLVED, that the Finance Committee recommends that the Trustees approve, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, the award of eleven (11) contracts for Information Technology (IT) Contingent Staffing, each for a term of five (5) years, to: Ampcus Inc located in Chantilly, VA; Cogent Infotech Corporation located in Pittsburgh, PA; Eclaro international, Inc. located in New York, NY; GCOM Software, Inc. located in Columbia, MD; Infojini, Inc located in Columbia, MD; InfoPeople Corporation located in New York, NY; LanceSoft, Inc. located in Herndon, VA; Rose International, Inc. located

in Chesterfield, MO; Trigyn Technologies, Inc. located in Edison, NJ; US Tech Solutions, Inc. located in Jersey City, NJ; and Veterans Sourcing Group, LLC located in New York, NY in the aggregate amount of \$24.5 million; and be it further”

v. Legal Services - Contract Award

“RESOLVED, that the Finance Committee recommends that the New York Power Authority Trustees approve, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, the award of twenty-five (25) contracts for Legal Services, each for a term of five (5) years, to: Baker Botts L.L.P. located in Houston, TX, Barclay Damon LLP located in Syracuse, NY, Bleakley, Platt & Schmidt, LLP located in White Plains, NY, Bond, Schoeneck & King, PLLC located in Syracuse, NY, Carter Ledyard & Milburn LLP located in New York, NY, Couch White, LLP located in Albany, NY, Dellaverson PC located in New York, NY, Dentons US LLP located in Chicago, IL, Fried, Frank, Harris, Shriver & Jacobson LLP located in New York, NY, Gibbons P.C. located in Newark, NJ, Harris Beach Murtha Cullina PLLC located in Albany, NY, Hawkins Delafield & Wood LLP located in New York, NY, Holland & Knight LLP located in Brandon, FL, Husch Blackwell LLP located in St. Louis, MO, Katten Muchin Rosenman, LLP in New York, NY, Jackson Lewis P.C. located in West Harrison, NY, Mintzer Mauch PLLC located in New York, NY, Nixon Peabody LLP located in Rochester, NY, Norton Rose Fulbright US LLP located in Houston, TX, Orrick, Herrington & Sutcliffe LLP located in Wheeling, WV, Sive Paget & Riesel PC located in New York, NY, Stinson LLP located in Kansas City, MO, Stoel Rives LLP located in Portland, OR, Troutman Pepper Locke LLP located in Atlanta, GA, Van Ness Feldman, LLP located in Baltimore, MD, in the aggregate amount of \$35 million; and be it further”

vi. Release of Funds in Support of the Agricultural Consumer Electricity Discount Program

“RESOLVED, that the Finance Committee hereby recommends that the New York Power Authority Board of Trustees authorize the release of up to \$5 million from the Operating Fund during 2025 to support monthly payments for the Agricultural Consumer Electricity Discount Program as authorized by Chapter 60 of the Laws of 2011 (as amended by Part QQ of Chapter 56 of the Laws of 2023) and as discussed in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, that the Finance Committee recommends that the New York Power Authority Board of Trustees affirm that an amount up to \$5 million to support the Agricultural Consumer Electricity Discount Program described herein is not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, that the Finance Committee recommends that the New York Power Authority Board of Trustees affirm that as a condition to making the payments specified in the foregoing resolutions, on the day of such payment the Executive Vice President

and Chief Financial Officer or the Treasurer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further"

RECOMMENDATION

Each of the Officers of the Authority responsible for the items submitted to the Finance Committee at its meeting on May 6, 2025, recommends that the Board of Trustees acknowledge receipt and consideration of the materials submitted to the Finance Committee and accept, approve, and adopt as Trustees the recommendations set forth in the resolutions of such committee set forth above

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

Justin E. Driscoll
President and Chief Executive Officer

RESOLUTION

RESOLVED, that the Trustees acknowledge receipt and consideration of the materials submitted to the Finance Committee on May 6, 2025, and accept, approve, and adopt as Trustees the recommendations set forth in the resolutions of such committee as set forth in the foregoing report of the President and Chief Executive Officer.

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

Date: May 20, 2025

To: NEW YORK POWER AUTHORITY BOARD OF TRUSTEES

From: PRESIDENT & CHIEF EXECUTIVE OFFICER

Subject: Expansion Power Allocations and Hydropower Allocation Modifications

SUMMARY

The New York Power Authority Board of Trustees (“Board of Trustees”) is requested to:

- (a) approve an allocation of 630 kilowatts (“kW”) of Expansion Power (“EP”) to Food Nerd Inc. (“Food Nerd”) for a term of ten years to support the company’s proposed expansion at 11342 Main Street, Clarence, New York (Erie County);
- (b) approve an allocation of 1,290 kW of EP to Polaris Cold Storage Corporation (“Polaris”) for a term of ten years to support the company’s proposed expansion at 6410 Inducon Drive West, Sanborn, New York (Niagara County);
- (c) approve an allocation of 2,060 kW of EP to Saint-Gobain Ceramics & Plastics, Inc. (“Saint-Gobain”) for a term of ten years to support the company’s proposed expansion at 6600 Walmore Road, Niagara Falls, New York (Niagara County);
- (d) approve an allocation of 2,080 kW of EP to Deckorators, Inc. (“Deckorators”) for a term of ten years to support the company’s proposed expansion at 300 Commerce Drive, Lackawanna, New York (Erie County);
- (e) authorize a public hearing, in accordance with Public Authorities Law (“PAL”) § 1009, on a proposed form of contract (“Proposed Contract”) with Food Nerd, Polaris, and Deckorators that would, along with Authority Service Tariff No. WNY-2 (“ST WNY-2”), apply to the sale of EP to these companies;
- (f) approve a modification to existing hydropower allocations to International Imaging Materials, Inc. (“IIMAK”) that would allow the company to utilize its allocations at an additional address; and
- (g) authorize a modification to an existing Replacement Power (“RP”) allocation to RubberForm Recycled Products LLC (“RubberForm”) to convert it to an EP allocation.

These matters are discussed in more detail below and in Exhibits “A”, “B”, “C” and “D” (background on the proposed new EP allocations). Copies of the proposed contracts for Food Nerd, Polaris, and Deckorators and ST WNY-2 are attached as Exhibits “A-1”, “B-1” and “D-1”. If awarded, the EP allocation for Saint-Gobain would be added to its existing contract.

BACKGROUND

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

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

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

At this time, 65,303 kW of unallocated EP and 51,537 kW of unallocated RP are available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).

DISCUSSION

Food Nerd

Established in 2019, Food Nerd crafts nutrient-rich, plant-based snack foods and meals aimed at enhancing overall health and wellness. The company indicates it is dedicated to sustainability and ethical sourcing, ensuring that its ingredients are responsibly obtained and minimally processed to retain its nutritional value. The company’s products include the Mega Puffs children’s brand which is made with organic fruits and vegetables.

Food Nerd is proposing to establish a vertically integrated production line in a 27,000 square-foot facility located in Clarence, New York. The project would utilize the existing infrastructure of a former pharmaceutical company to improve seed sprouting in clean rooms.

The company is developing a patent-pending, shelf-stable food production line that would provide end-to-end processing capabilities, from raw ingredients to finished products. The new manufacturing line would have the capacity to produce more than 100,000 product packs per week and would be used to create a variety of items, including those for children and pets. The facility would also offer turnkey manufacturing solutions for other brands.

Food Nerd aims to manufacture products that retain the highest nutrient density without the harmful effects of ultra-processing. The company would begin the project with seed sprouting and continue with subsequent phases, culminating in end stage packaging and fulfillment at the site.

The company’s expansion project would involve a capital investment expenditure of at least \$4.8 million. This includes facility buildout costs (a capital investment expenditure of approximately \$2.2 million) and

new machinery and equipment purchases (a capital investment expenditure of approximately \$2.6 million).

Food Nerd is planning to begin the initial phases of the project this year with additional phases also targeted for completion this year. The company would commit to the creation of 11 new, permanent, full-time jobs at its Clarence facility over the term of the allocation. Average annual compensation/benefits for the new jobs are estimated to be \$65,700 per job.

The company applied for a 985 kW allocation of hydropower in connection with the expansion project. Authority staff ("Staff") recommends an EP allocation in the amount of 630 kW for a term of ten years. ST WNY-2 would apply to the sale of the allocation.

The job creation ratio for the proposed allocation of 630 kW is 17 new jobs per MW. This ratio is below the historic average of 62 new jobs per MW, based on allocations previously awarded. The total investment of at least \$4.8 million would result in a capital investment ratio of \$7.6 million per MW. This ratio is below the historic average of \$20.5 million per MW.

The Economic Development Entities have expressed support for an allocation of EP to Food Nerd.

Polaris

Polaris specializes in providing temperature-controlled storage and warehousing solutions. The company offers a variety of services tailored to meet the needs of industries that require strict temperature regulation for its products, such as the food and beverage, pharmaceutical, and biotechnology sectors.

Polaris is proposing to construct a new 80,000 square-foot cold storage and micro-fulfillment facility in Sanborn, New York. The facility would be designed to meet the increasing demand for temperature-controlled storage and distribution in the region, with the goal of attracting local product lines and new products.

The expansion would feature five separate freezer storage areas totaling 32,000 square-feet and four separate coolers providing 16,000 square feet of climate-controlled space. The project would allot 12,000 square-feet for dry storage purposes with an additional 20,000 square-feet to accommodate potential demand increases. It is anticipated that the facility would be constructed in a single phase with operations scaling up as demand grows.

The company's expansion project would involve a capital investment expenditure of at least \$12.2 million. This includes land purchase and facility construction costs (a capital investment expenditure of approximately \$8 million), new machinery and equipment purchases (a capital investment expenditure of approximately \$4.1 million) and furnishing costs (a capital investment expenditure of approximately \$0.1M).

Polaris is planning to begin the initial phases of the project this year with additional phases targeted for completion in 2026. The company would commit to the creation of 16 new, permanent, full-time jobs at its Sanborn facility over the term of the allocation. Average annual compensation/benefits for the new jobs are estimated to be \$89,600 per job.

The company applied for a 2,010 kW allocation of hydropower in connection with the expansion project. Staff recommends an EP allocation in the amount of 1,290 kW for a term of ten years. ST WNY-2 would apply to the sale of the allocation.

The job creation ratio for the proposed allocation of 1,290 kW is 12 new jobs per MW. This ratio is below the historic average of 62 new jobs per MW, based on allocations previously awarded. The total investment of at least \$12.2 million would result in a capital investment ratio of \$9.5 million per MW. This ratio is below the historic average of \$20.5 million per MW.

The Economic Development Entities have expressed support for an allocation of EP to Polaris.

Saint-Gobain

Saint-Gobain specializes in the production of high-performance materials and products, including catalyst carriers, support media, mass transfer applications, and advanced heat transfer media. The company's products are critical to industries such as petrochemical refining, chemical processing, environmental control, oil and gas extraction, and power generation.

The company is proposing to construct a new 125,000 square-foot manufacturing facility in Niagara Falls, New York, to expand its production of catalyst carriers and ceramic media to meet increased demand. The new facility would be located on the company's existing site in Niagara Falls, which currently receives 3,205 kW of RP.

The project would include the addition of at least two new production lines that would significantly expand Saint-Gobain's manufacturing capabilities for catalyst carriers and ceramic media products.

The company's expansion project would involve a capital investment expenditure of at least \$40 million. This includes machinery and equipment purchases (a capital investment expenditure of approximately \$20 million), property acquisition and refurbishment costs (a capital investment expenditure of approximately \$8 million), mechanical and electrical engineering fees (a capital investment expenditure of approximately \$1 million), and construction costs (a capital investment expenditure of approximately \$11 million).

Saint-Gobain is planning to begin the initial phases of the project this year, with additional phases targeted for completion in 2026. The company would commit to the creation of 30 new, permanent, full-time jobs at its Niagara Falls facility over the term of the allocation. Average annual compensation/benefits for the new jobs are estimated to be \$100,000 per job.

The company applied for a 3,200 kW allocation of hydropower in connection with the expansion project. Staff recommends an EP allocation in the amount of 2,060 kW for a term of ten years. ST WNY-2 would apply to the sale of the allocation.

The job creation ratio for the proposed allocation of 2,060 kW is 15 new jobs per MW. This ratio is below the historic average of 62 new jobs per MW, based on allocations previously awarded. The total investment of at least \$40 million would result in a capital investment ratio of \$19.4 million per MW. This ratio is below the historic average of \$20.5 million per MW.

The Economic Development Entities have expressed support for an allocation of EP to Saint-Gobain.

Deckorators

Founded in 1955 and headquartered in Grand Rapids, Michigan, Deckorators specializes in the design and production of innovative decking materials and accessories, including composite decking, railing systems, and decorative post caps. The company also offers a variety of outdoor lighting solutions and lattice products.

Deckorators is proposing to expand operations through the acquisition and renovation of its first Northeast facility on a 30-acre state-of-the-art campus in Lackawanna, New York. The site would consist of approximately 240,000 square-feet of manufacturing space. The company anticipates doubling the production capacity of its Surestone composite decking products as a result of the project.

The expansion would provide Deckorators with its first Northeast manufacturing presence and offers better proximity to key markets. The new facility would also provide Deckorators with the additional space needed for potential further expansion at the site.

The site of the proposed expansion is located within a disadvantaged community. Accordingly, the company's application for hydropower has been considered under NYPA's Diversity, Equity, and Inclusion Evaluation and Incentive Plan approved by the Board of Trustees on December 7, 2021.

The company's expansion project would involve a capital investment expenditure of at least \$77.2 million. This includes land and building acquisition costs (a capital investment expenditure of approximately \$15.6 million), new machinery and equipment purchases (a capital investment expenditure of approximately \$52.5 million), and additional infrastructure costs (a capital investment expenditure of approximately \$9.1 million).

Deckorators is planning to begin the initial phases of the project in 2025 with additional phases targeted for completion in 2026. The company would commit to the creation of 50 new, permanent, full-time jobs at its Lackawanna facility over the term of the allocation. Average annual compensation/benefits for the new jobs are estimated to be \$69,700 per job.

The company applied for a 3,000 kW allocation of hydropower in connection with the expansion project. Staff recommends an EP allocation in the amount of 2,080 kW for a term of ten years. ST WNY-2 would apply to the sale of the allocation.

The job creation ratio for the proposed allocation of 2,080 kW is 24 new jobs per MW. This ratio is below the historic average of 62 new jobs per MW, based on allocations previously awarded. The total investment of at least \$77.2 million would result in a capital investment ratio of \$37.1 million per MW. This ratio is above the historic average of \$20.5 million per MW.

The Economic Development Entities have expressed support for an allocation of EP to Deckorators.

EP Allocations – Contract Information

The following is a summary of some of the matters addressed in the proposed contracts with Food Nerd, Polaris, Deckorators, and ST WNY-2:

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

- The collection of a Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge to allow the Authority to recover costs it incurs relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the customer's load.

Staff intends to discuss the form of the Proposed Contract with Food Nerd, Polaris, and Deckorators and anticipates reaching agreement on a contract substantially similar to the forms attached as Exhibits "A-1", "B-1", and "D-1". Accordingly, the Board of Trustees is requested to authorize a public hearing, pursuant to PAL §1009, on the forms of the Proposed Contract with Food Nerd, Polaris, and Deckorators attached as Exhibits "A-1", "B-1", and "D-1". The forms of the Proposed Contract are consistent with recently approved contracts for the sale of EP and RP. If approved, the new allocation to Saint-Gobain would be added to the customer's existing hydropower contract. ST WNY-2 would apply to the sale of the allocation.

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

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

Allocation Modification - IIMAK

IIMAK is a current NYPA hydropower customer receiving 2,560 kW of EP and RP allocations. The company, which is a manufacturer of thermal transfer ribbons, utilizes the hydropower at its facility located at 310 Commerce Drive, Amherst, New York (Erie County).

The company has requested the ability to allocate a portion of its total awarded hydropower to a warehouse site located at 1927 Elmwood Avenue, Buffalo, New York (Erie County). The site serves as a key component in IIMAK's overall operations in Western New York.

The company would continue to adhere to the current job and capital investment commitments in its existing contract. Staff supports the requested modification. The change would be implemented through an amendment to IIMAK's existing contract.

Allocation Modification - Rubberform

RubberForm is a current NYPA hydropower customer that receives EP and RP in the amount of 0.51 MW (0.1 MW of EP and 0.41 MW of RP).

The company, which is a manufacturer of products made from recycled rubber and plastic, currently utilizes a total of 0.12 MW at its facility located at 75 Michigan Street, Lockport, New York (Niagara County).

Due to enrollment process issues with the customer's local utility, New York State Electric & Gas, Staff is recommending a modification to convert the 0.41 MW RP award to EP. The allocations must be from a single program to facilitate enrollment and billing protocols with the utility.

The proposed modification would not result in any changes to the current job and capital investment commitments contained in RubberForm's existing contract. Staff supports the requested modification to convert RubberForm's 0.41 MW RP award to EP. The change would be implemented through an amendment to IIMAK's existing contract.

FISCAL INFORMATION

The actions recommended herein are not expected to have a significant negative impact on the Authority's finances.

RECOMMENDATION

The Senior Vice President, Customer Solutions requests that the Board of Trustees:

- 1) approve an allocation of 630 kW of EP to Food Nerd as described herein and in Exhibit "A" for a term of ten years;
- 2) approve an allocation of 1,290 kW of EP to Polaris as described herein and in Exhibit "B" for a term of ten years;
- 3) approve an allocation of 2,060 kW of EP to Saint-Gobain as described herein and in Exhibit "C" for a term of ten years;
- 4) approve an allocation of 2,080 kW of EP to Deckorators as described herein and in Exhibit "D" for a term of ten years;
- 5) authorize a public hearing, in accordance with PAL § 1009, on the Proposed Contracts with Food Nerd, Polaris, and Deckorators attached as Exhibits "A-1", "B-1" and "D-1";
- 6) approve a modification for IIMAK which would allow the company to utilize a portion of its existing EP and RP allocations at an additional site located at 1927 Elmwood Avenue, Buffalo, New York; and
- 7) convert RubberForm's 0.41 MW RP allocation to EP to facilitate enrollment and billing protocols with its local utility.

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

Justin E. Driscoll
President and Chief Executive Officer

RESOLUTION

RESOLVED, That an allocation of 630 kilowatts (“kW”) of Expansion Power (“EP”) to Food Nerd Inc. (“Food Nerd”) for a term of ten years to support the company’s proposed expansion at 11342 Main Street, Clarence, New York, as detailed in the foregoing memorandum of the President and Chief Executive Officer (“Memorandum”), be and hereby is approved, subject to rates previously approved by the Board of Trustees; and be it further;

RESOLVED, That an allocation of 1,290 kW of EP to Polaris Cold Storage Corporation (“Polaris”) for a term of ten years to support the company’s proposed expansion at 6410 Inducon Drive West, Sanborn, New York, as detailed in the foregoing Memorandum, be and hereby is approved, subject to rates previously approved by the Board of Trustees; and be it further;

RESOLVED, That an allocation of 2,060 kW of EP to Saint-Gobain Ceramics & Plastics, Inc. (“Saint-Gobain”) for a term of ten years to support the company’s proposed expansion at 6600 Walmore Road, Niagara Falls, New York, as detailed in the foregoing Memorandum, be and hereby is approved, subject to rates previously approved by the Board of Trustees; and be it further;

RESOLVED, That an allocation of 2,080 kW of EP to Deckorators, Inc. (“Deckorators”) for a term of ten years to support the company’s proposed expansion at 300 Commerce Drive, Lackawanna, New York as detailed in the foregoing Memorandum, be and hereby is approved, subject to rates previously approved by the Board of Trustees; and be it further;

RESOLVED, That the Board of 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 with Food Nerd, Polaris, and Deckorators for the sale of the EP allocations (the “Contracts”); and be it further;

RESOLVED, THAT the Board of Trustees hereby approve a modification to the current hydropower sale contract between the Authority and International Imaging Materials, Inc. (“IIMAK”) to allow the company to utilize a portion of its allocations at an additional site located at 1927 Elmwood Avenue, Buffalo, New York, as detailed in the foregoing Memorandum; and be it further

RESOLVED, THAT the Board of Trustees hereby approve a conversion of a 0.41 MW Replacement Power allocation previously awarded to RubberForm Recycled Products LLC (“RubberForm”) to Expansion Power (“EP”), to facilitate enrollment and billing protocols with the company’s local utility, as detailed in the foregoing Memorandum; and be it further

RESOLVED, That the Chair, the President and Chief Executive Officer, and all other officers of the Authority be, 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.

APPLICATION SUMMARY
Expansion Power (“EP”)

Company:	Food Nerd Inc. (“Food Nerd”)
Location:	Clarence, NY
County:	Erie County
IOU:	National Grid
Business Activity:	Established in 2019, Food Nerd focuses on creating nutrient-dense, plant-based snacks and meals designed to promote overall health and wellness. The company places a strong emphasis on sustainability, ensuring that its ingredients are responsibly sourced and minimally processed.
Project Description:	Food Nerd is proposing to establish a vertically integrated production line in a 27,000 square-foot facility, leveraging existing infrastructure from a former pharmaceutical company to enhance seed sprouting in clean rooms.
Existing Allocation(s):	N/A
Power Request:	985 kW of EP
Power Recommended:	630 kW of EP
Job Commitment:	
Base:	6
New:	At least 11 jobs
New Jobs/Power Ratio:	17 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$65,700
Capital Investment:	At least \$4.8 million
Capital Investment/MW:	\$7.6 million/MW
Other ED Incentives:	Food Nerd is pursuing incentives from Empire State Development through its Start-Up NY Program. The company would also receive funding as a winner of the 2024 43North competition.
Summary:	Food Nerd is developing a shelf-stable production line that would encompass end-to-end processing, from raw ingredients to finished products. The new manufacturing line would have the capacity to produce more than 100,000 product packs per week and would be used to create a variety of items, products for children and pets. Additionally, the facility would offer turnkey manufacturing solutions for other brands. It is anticipated that the proposed facility would be large enough to accommodate the installation of a second manufacturing line in the future. For this reason, an allocation of low-cost hydropower could incentivize Food Nerd to consider additional expansion opportunities at its new Clarence site moving forward.

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

Food Nerd 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 Food Nerd Inc. (“Customer”) with offices and principal place of business at 11342 Main Street, Clarence, New York 14031. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

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

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

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

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

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

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

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

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

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

ARTICLE I **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

ELECTRIC SERVICE

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

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

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

ARTICLE III

RATES, TERMS AND CONDITIONS

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

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

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

ARTICLE IV **SUPPLEMENTAL COMMITMENTS**

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

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

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

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

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

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

c. Notice of Completion; Commencement of Electric Service.

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

d. Other Rights and Remedies Unaffected.

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

ARTICLE V
ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES

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

ARTICLE VI
SERVICE TARIFF; CONFLICTS

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

ARTICLE VII
TRANSMISSION AND DELIVERY

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

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

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

ARTICLE VIII

BILLING AND BILLING METHODOLOGY

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

ARTICLE IX

HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

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

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

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

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

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

ARTICLE X

EFFECTIVENESS, TERM AND TERMINATION

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

ARTICLE XI

EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

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

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

ARTICLE XII

NOTICES

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

To: The Authority

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

To: The Customer

Food Nerd Inc.
11342 Main Street
Clarence, NY, 14031
Email: ilser@foodnerdinc.com
Facsimile:
Attention: Ilser Adiguzel

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

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

ARTICLE XIII

SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER

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

ARTICLE XIV

MISCELLANEOUS

1. Choice of Law

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

2. Venue

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

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

3. Previous Agreements; Modifications; and Interpretation

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

4. Waiver

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

5. Severability and Voidability

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

ARTICLE XV
EXECUTION

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

FOOD NERD INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A
EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Food Nerd Inc.				
Type of Allocation	Allocation Amount (kW)	Facility Address	Trustee Approval Date	Allocation Expiration Date
EP	630 kW	11342 Main Street Clarence, NY, 14031	May 20, 2025	Ten (10) years from the date of commencement of Electric Service

SCHEDULE B
SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER
COMMITMENTS

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments

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

2. Capital Investment Commitments

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

3. Power Utilization

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

4. Energy Efficiency and Conservation Program

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

ARTICLE II
RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

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

2. Capital Investments

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

3. Power Usage

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

4. Energy Efficiency and Conservation Program

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

5. Facility Access

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

ARTICLE III

COMPLIANCE ACTION BY THE AUTHORITY

1. Employment

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

2. Capital Investment Commitment

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

3. Power Utilization Level

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

4. Additional Compliance Action

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

5. Notice of Intent to Reduce Contract Demand

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 17 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. **Annual Capital Investment Commitment** (if applicable, as specified below)
 - a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.
 - b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.
 - c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.
2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)
 - a. The Customer shall make a minimum capital investment of \$4,800,000 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:

DESCRIPTION	EXPENDITURE
Machinery & Equipment Purchases	\$2,600,000
Facility Buildout Costs	\$2,200,000
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$4,800,000</u>

Total Expansion Project Capital Investment Commitment:

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than May 20, 2028 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

SCHEDULE C
TAKEDOWN SCHEDULE

SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. ZEC CHARGE

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

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

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

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

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

SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. MONTHLY REC CHARGE

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

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

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

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

III. ALTERNATIVE REC COMPLIANCE PROGRAM

1. Nothing in this Schedule E shall be construed as preventing the Parties from entering into other agreements for an alternative arrangement for the Authority to meet the Annual REC Percentage Target with respect to the Customer's Allocation, including but not limited to Customer self-supply of RECs, alternative REC compliance programs and cost allocation mechanisms, in lieu of the Monthly REC Charge provided in this Schedule E (collectively, "Alternative REC Compliance Program").
2. The Authority shall communicate at least biennially with the Customer concerning implementation of the RES Compliance Program and potential Alternative REC Compliance Programs, if any, that the Authority is offering or expects to offer.



POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power Service to
Expansion Power and Replacement Power Customers
Located in Western New York

Service Tariff No. WNY-2

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power directly to a qualified business Customer 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 issued by the NYISO

Agreement: An executed written agreement between the Authority and the Customer for the sale of Expansion Power and/or Replacement Power to the Customer.

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 entity that has received an allocation of Expansion Power and/or Replacement Power, and that 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 or **EP** and/or **Replacement Power** or **RP**: 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 type of billing methodology applicable to a Customer's Allocation which determines how a Customer's total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer's other source of electricity supply, if any. LSM 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. 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. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

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-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff 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

The rates to be charged to the Customer by the Authority shall be as follows:

Billing Period	Demand (\$/kW)	Energy (\$/MWh)
January – June 2019	7.60	13.00

1. For RY 2019 (July 2019 through June 2020 Billing Periods), 50% of the Annual Adjustment Factor ("AAF"), as described in Section V, will be applied to the demand and energy rates stated in the table above.
2. For RY 2020 (July 2020 through June 2021 Billing Periods) and each Rate Year thereafter, the AAF will be applied to the then-effective base rates for demand and energy in accordance with Section V.

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) (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 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 Load Split Methodology that is applicable to the Customer as follows:

- 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 follows:

- 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.D shall apply to Estimated Bills.

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

G. Billing Period

The Billing Period is 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

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

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 will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer 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. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

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 base 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

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

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing (“LFS”) in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
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 Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. 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 LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
4. With regard to LFS methodology calculations:
 - a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
 - b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
 - c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
 - i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
 - ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
 - d. All demand values will be adjusted for losses.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Firm Energy during any Billing Period the higher of either (i) the sum of (a), (b) and (c) below, or (ii) the Minimum Monthly 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

The Customer shall compensate the Authority for the following NYISO transmission and related charges (collectively, "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 inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts 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 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. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

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. 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 all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.
2. 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.
3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.
4. 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.
5. 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.
6. 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 discretion to suspend Electric Service to the Customer or terminate the Agreement.

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. Adjustment of Charges – Distribution Losses

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

I. Conflicts

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

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. Subject to the provisions of Section III.A of this Service Tariff, 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 to reflect, the Customer and the Authority may mutually select a substitute Index. The Customer and the Authority agree to mutually select substitute indices within 90 days, once one of them is notified by the other that the indices are no longer available or no longer reflect the relevant factors or changes which the indices were intended 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 the Customer and Authority are unable to reach agreement on substitute indices within the 90-day period, the Customer and the Authority 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 or reflective of their intended purpose 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

Measuring Year -1 (2011)

CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23

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

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

	Measuring Year (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

APPLICATION SUMMARY
Expansion Power (“EP”)

Company:	Polaris Cold Storage Corporation (“Polaris”)
Location:	Sanborn, NY
County:	Niagara County
IOU:	National Grid
Business Activity:	Polaris specializes in providing temperature-controlled warehousing and logistics solutions for perishable goods. The company offers a range of services, including blast freezing, tempering, and cross-docking.
Project Description:	The company is proposing to construct an 80,000 square-foot cold storage and micro-fulfillment facility in Sanborn. The facility would be designed to meet the increasing demand for temperature-controlled storage and distribution in the region, with the goal of attracting local product lines and new products.
Existing Allocation(s):	N/A
Power Request:	2,010 kW of EP
Power Recommended:	1,290 kW of EP
Job Commitment:	
Base:	0
New:	At least 16 jobs
New Jobs/Power Ratio:	12 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$89,600
Capital Investment:	At least \$12.2 million
Capital Investment/MW:	\$9.5 million/MW
Other ED Incentives:	The company is pursuing incentives from the Niagara County Center for Economic Development.
Summary:	Polaris is proposing to construct a new 80,000 square-foot facility in Sanborn that would address the growing need for temperature-controlled storage and distribution in the area. The expansion would include five freezer storage areas and four separate coolers of climate controlled space. The project would also accommodate clients in need of dry storage options. It is anticipated that the facility would be constructed in a single phase, with operations scaling up as demand increases. The project would primarily support the storage and warehousing needs of commercial food manufacturers and pharmaceutical companies. An allocation of low-cost hydropower could incentivize Polaris to consider additional expansion opportunities in Sanborn moving forward.

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

Polaris Cold Storage Corporation

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Polaris Cold Storage Corporation (“Customer”) with offices and principal place of business at 6410 Inducon Drive West, Sanborn, NY 14132. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

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

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

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

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

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

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

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

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

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

ARTICLE I **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

ELECTRIC SERVICE

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

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

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

ARTICLE III

RATES, TERMS AND CONDITIONS

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

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

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

ARTICLE IV **SUPPLEMENTAL COMMITMENTS**

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

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

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

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

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

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

c. Notice of Completion; Commencement of Electric Service.

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

d. Other Rights and Remedies Unaffected.

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

ARTICLE V
ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES

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

ARTICLE VI
SERVICE TARIFF; CONFLICTS

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

ARTICLE VII
TRANSMISSION AND DELIVERY

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

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

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

ARTICLE VIII

BILLING AND BILLING METHODOLOGY

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

ARTICLE IX

HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

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

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

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

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

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

ARTICLE X

EFFECTIVENESS, TERM AND TERMINATION

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

ARTICLE XI

EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

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

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

ARTICLE XII

NOTICES

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

To: The Authority

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

To: The Customer

Polaris Cold Storage Corporation
6410 Inducon Drive West
Sanborn, NY, 14132
Email: gmulvey@mulveyconstruction.com
Facsimile:
Attention: Greg Mulvey

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

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

ARTICLE XIII

SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER

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

ARTICLE XIV

MISCELLANEOUS

1. Choice of Law

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

2. Venue

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

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

3. Previous Agreements; Modifications; and Interpretation

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

4. Waiver

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

5. Severability and Voidability

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

ARTICLE XV
EXECUTION

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

POLARIS COLD STORAGE CORPORATION

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A
EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Polaris Cold Storage Corporation				
Type of Allocation	Allocation Amount (kW)	Facility Address	Trustee Approval Date	Allocation Expiration Date
EP	1,290 kW	6410 Inducon Drive West Sanborn, NY, 14132	May 20, 2025	Ten (10) years from the date of commencement of Electric Service

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

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments

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

2. Capital Investment Commitments

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

3. Power Utilization

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

4. Energy Efficiency and Conservation Program

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

ARTICLE II
RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

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

2. Capital Investments

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

3. Power Usage

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

4. Energy Efficiency and Conservation Program

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

5. Facility Access

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

ARTICLE III

COMPLIANCE ACTION BY THE AUTHORITY

1. Employment

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

2. Capital Investment Commitment

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

3. Power Utilization Level

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

4. Additional Compliance Action

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

5. Notice of Intent to Reduce Contract Demand

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 16 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. **Annual Capital Investment Commitment** (if applicable, as specified below)
 - a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.
 - b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.
 - c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.
2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)
 - a. The Customer shall make a minimum capital investment of \$12,299,200 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:

DESCRIPTION	EXPENDITURE
Land Purchase & Building Construction	\$ 7,985,608
Equipment Purchases	\$ 4,143,592
Furnishing Costs	\$ 100,000
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$ 12,229,200</u>

Total Expansion Project Capital Investment Commitment:

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than May 20, 2028 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

SCHEDULE C
TAKEDOWN SCHEDULE

SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. ZEC CHARGE

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

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

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

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

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

SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. MONTHLY REC CHARGE

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

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

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

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

III. ALTERNATIVE REC COMPLIANCE PROGRAM

1. Nothing in this Schedule E shall be construed as preventing the Parties from entering into other agreements for an alternative arrangement for the Authority to meet the Annual REC Percentage Target with respect to the Customer's Allocation, including but not limited to Customer self-supply of RECs, alternative REC compliance programs and cost allocation mechanisms, in lieu of the Monthly REC Charge provided in this Schedule E (collectively, "Alternative REC Compliance Program").
2. The Authority shall communicate at least biennially with the Customer concerning implementation of the RES Compliance Program and potential Alternative REC Compliance Programs, if any, that the Authority is offering or expects to offer.



POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power Service to
Expansion Power and Replacement Power Customers
Located in Western New York

Service Tariff No. WNY-2

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power directly to a qualified business Customer 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 issued by the NYISO

Agreement: An executed written agreement between the Authority and the Customer for the sale of Expansion Power and/or Replacement Power to the Customer.

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 entity that has received an allocation of Expansion Power and/or Replacement Power, and that 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 or **EP** and/or **Replacement Power** or **RP**: 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 type of billing methodology applicable to a Customer's Allocation which determines how a Customer's total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer's other source of electricity supply, if any. LSM 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. 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. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

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-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff 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

The rates to be charged to the Customer by the Authority shall be as follows:

Billing Period	Demand (\$/kW)	Energy (\$/MWh)
January – June 2019	7.60	13.00

1. For RY 2019 (July 2019 through June 2020 Billing Periods), 50% of the Annual Adjustment Factor ("AAF"), as described in Section V, will be applied to the demand and energy rates stated in the table above.
2. For RY 2020 (July 2020 through June 2021 Billing Periods) and each Rate Year thereafter, the AAF will be applied to the then-effective base rates for demand and energy in accordance with Section V.

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) (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 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 Load Split Methodology that is applicable to the Customer as follows:

- 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 follows:

- 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.D shall apply to Estimated Bills.

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

G. Billing Period

The Billing Period is 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

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

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 will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer 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. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

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 base 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

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

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing (“LFS”) in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
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 Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. 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 LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
4. With regard to LFS methodology calculations:
 - a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
 - b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
 - c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
 - i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
 - ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
 - d. All demand values will be adjusted for losses.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Firm Energy during any Billing Period the higher of either (i) the sum of (a), (b) and (c) below, or (ii) the Minimum Monthly 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

The Customer shall compensate the Authority for the following NYISO transmission and related charges (collectively, "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 inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts 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 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. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

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. 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 all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.
2. 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.
3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.
4. 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.
5. 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.
6. 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 discretion to suspend Electric Service to the Customer or terminate the Agreement.

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. Adjustment of Charges – Distribution Losses

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

I. Conflicts

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

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. Subject to the provisions of Section III.A of this Service Tariff, 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 to reflect, the Customer and the Authority may mutually select a substitute Index. The Customer and the Authority agree to mutually select substitute indices within 90 days, once one of them is notified by the other that the indices are no longer available or no longer reflect the relevant factors or changes which the indices were intended 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 the Customer and Authority are unable to reach agreement on substitute indices within the 90-day period, the Customer and the Authority 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 or reflective of their intended purpose 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

Measuring Year -1 (2011)

CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23

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

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

	Measuring Year (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

APPLICATION SUMMARY
Expansion Power ("EP")

Company:	Saint-Gobain Ceramics & Plastics, Inc. ("Saint-Gobain")
Location:	Niagara Falls, NY
County:	Niagara County
IOU:	National Grid
Business Activity:	Saint-Gobain specializes in the production of high-performance materials and products including catalyst carriers, support media, mass transfer applications, and advanced heat transfer media.
Project Description:	The company is proposing to construct a new 125,000 square-foot manufacturing facility to expand its production of catalyst carriers and ceramic media to meet increased demand. The new facility would be located on its existing site in Niagara Falls.
Existing Allocation(s):	3,205 kW of Replacement Power ("RP")
Power Request:	3,200 kW of EP
Power Recommended:	2,060 kW of EP
Job Commitment:	
Base:	57
New:	At least 30 jobs
New Jobs/Power Ratio:	15 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$100,000
Capital Investment:	At least \$40 million
Capital Investment/MW:	\$19.4 million/MW
Other ED Incentives:	The company is pursuing incentives from Empire State Development and the Niagara County Center for Economic Development.
Summary:	Saint-Gobain is planning to construct a new 125,000 square-foot manufacturing facility on its current site in Niagara Falls. The project would support increased demand projections for catalyst carriers and ceramic media products. The new facility would significantly expand Saint-Gobain's capabilities to manufacture products that are critical to several industries including energy production and refining, biofuels, and chemical manufacturing. An allocation of low-cost hydropower, along with other state support offered for this project, could incentivize Saint-Gobain to consider additional expansion opportunities in Niagara Falls moving forward.

APPLICATION SUMMARY
Expansion Power (“EP”)

Company:	Deckorators, Inc. (“Deckorators”)
Location:	Lackawanna, NY
County:	Erie County
IOU:	National Grid
Business Activity:	Deckorators specializes in the design and production of innovative decking materials and accessories, including composite decking, railing systems, and decorative post caps. The company also offers a variety of outdoor lighting solutions and lattice products.
Project Description:	The company is proposing to expand operations through the acquisition and renovation of its first Northeast facility on a 30-acre campus in Lackawanna.
Existing Allocation(s):	N/A
Power Request:	3,000 kW of EP
Power Recommended:	2,080 kW of EP
Job Commitment:	
Base:	0
New:	At least 50 jobs
New Jobs/Power Ratio:	24 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$69,700
Capital Investment:	At least \$77.2 million
Capital Investment/MW:	\$37.1 million/MW
Other ED Incentives:	The company is pursuing incentives from Empire State Development and the Erie County Industrial Development Agency.
Summary:	Deckorators is proposing to purchase, renovate, and expand a 30-acre site with approximately 240,000 square-feet of dedicated manufacturing and warehousing space. The project represents the company’s initial expansion into the Northeast region and would significantly contribute to economic growth in Western New York. The new facility is anticipated to initially double production capacity for the company’s Surestone composite decking products. The site also supplies the space needed for continued expansion and provides Deckorators with better proximity to key markets. An allocation of low-cost hydropower could incentivize Deckorators to consider additional expansion opportunities in Lackawanna moving forward.

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

Deckorators, 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 Deckorators, Inc. (“Customer”) with offices and principal place of business at 300 Commerce Drive, Lackawanna, New York 14218. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

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

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

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

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

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

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

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

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

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

ARTICLE I **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

ELECTRIC SERVICE

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

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

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

ARTICLE III

RATES, TERMS AND CONDITIONS

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

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

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

ARTICLE IV **SUPPLEMENTAL COMMITMENTS**

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

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

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

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

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

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

c. Notice of Completion; Commencement of Electric Service.

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

d. Other Rights and Remedies Unaffected.

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

ARTICLE V
ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES

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

ARTICLE VI
SERVICE TARIFF; CONFLICTS

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

ARTICLE VII
TRANSMISSION AND DELIVERY

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

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

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

ARTICLE VIII

BILLING AND BILLING METHODOLOGY

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

ARTICLE IX

HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

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

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

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

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

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

ARTICLE X

EFFECTIVENESS, TERM AND TERMINATION

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

ARTICLE XI

EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

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

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

ARTICLE XII

NOTICES

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

To: The Authority

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

To: The Customer

Deckorators, Inc.
300 Commerce Drive
Lackawanna, NY, 14218
Email: nhayes@ufpi.com
Facsimile:
Attention: Nathan Hayes

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

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

ARTICLE XIII

SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER

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

ARTICLE XIV

MISCELLANEOUS

1. Choice of Law

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

2. Venue

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

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

3. Previous Agreements; Modifications; and Interpretation

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

4. Waiver

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

5. Severability and Voidability

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

ARTICLE XV
EXECUTION

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

DECKORATORS, INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A
EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Deckorators, Inc.				
Type of Allocation	Allocation Amount (kW)	Facility Address	Trustee Approval Date	Allocation Expiration Date
EP	2,080 kW	300 Commerce Drive Lackawanna, NY, 14218	May 20, 2025	Ten (10) years from the date of commencement of Electric Service

SCHEDULE B
SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER
COMMITMENTS

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments

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

2. Capital Investment Commitments

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

3. Power Utilization

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

4. Energy Efficiency and Conservation Program

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

ARTICLE II
RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

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

2. Capital Investments

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

3. Power Usage

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

4. Energy Efficiency and Conservation Program

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

5. Facility Access

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

ARTICLE III

COMPLIANCE ACTION BY THE AUTHORITY

1. Employment

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

2. Capital Investment Commitment

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

3. Power Utilization Level

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

4. Additional Compliance Action

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

5. Notice of Intent to Reduce Contract Demand

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 50 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. **Annual Capital Investment Commitment** (if applicable, as specified below)
 - a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.
 - b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.
 - c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.
2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)
 - a. The Customer shall make a minimum capital investment of \$77,225,524 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:

DESCRIPTION	EXPENDITURE
Land/Building Acquisition	\$15,653,312
Machinery & Equipment Purchases	\$52,500,000
Infrastructure Costs	\$ 9,072,212
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$77,225,524</u>

Total Expansion Project Capital Investment Commitment:

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than May 20, 2028 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

SCHEDULE C
TAKEDOWN SCHEDULE

SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. ZEC CHARGE

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

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

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

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

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

SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. MONTHLY REC CHARGE

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

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

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

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

III. ALTERNATIVE REC COMPLIANCE PROGRAM

1. Nothing in this Schedule E shall be construed as preventing the Parties from entering into other agreements for an alternative arrangement for the Authority to meet the Annual REC Percentage Target with respect to the Customer's Allocation, including but not limited to Customer self-supply of RECs, alternative REC compliance programs and cost allocation mechanisms, in lieu of the Monthly REC Charge provided in this Schedule E (collectively, "Alternative REC Compliance Program").
2. The Authority shall communicate at least biennially with the Customer concerning implementation of the RES Compliance Program and potential Alternative REC Compliance Programs, if any, that the Authority is offering or expects to offer.



POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power Service to
Expansion Power and Replacement Power Customers
Located in Western New York

Service Tariff No. WNY-2

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power directly to a qualified business Customer 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 issued by the NYISO

Agreement: An executed written agreement between the Authority and the Customer for the sale of Expansion Power and/or Replacement Power to the Customer.

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 entity that has received an allocation of Expansion Power and/or Replacement Power, and that 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 or **EP** and/or **Replacement Power** or **RP**: 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 type of billing methodology applicable to a Customer's Allocation which determines how a Customer's total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer's other source of electricity supply, if any. LSM 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. 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. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

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-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff 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

The rates to be charged to the Customer by the Authority shall be as follows:

Billing Period	Demand (\$/kW)	Energy (\$/MWh)
January – June 2019	7.60	13.00

1. For RY 2019 (July 2019 through June 2020 Billing Periods), 50% of the Annual Adjustment Factor ("AAF"), as described in Section V, will be applied to the demand and energy rates stated in the table above.
2. For RY 2020 (July 2020 through June 2021 Billing Periods) and each Rate Year thereafter, the AAF will be applied to the then-effective base rates for demand and energy in accordance with Section V.

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) (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 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 Load Split Methodology that is applicable to the Customer as follows:

- 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 follows:

- 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.D shall apply to Estimated Bills.

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

G. Billing Period

The Billing Period is 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

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

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 will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer 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. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

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 base 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

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

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing (“LFS”) in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
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 Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. 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 LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
4. With regard to LFS methodology calculations:
 - a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
 - b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
 - c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
 - i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
 - ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
 - d. All demand values will be adjusted for losses.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Firm Energy during any Billing Period the higher of either (i) the sum of (a), (b) and (c) below, or (ii) the Minimum Monthly 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

The Customer shall compensate the Authority for the following NYISO transmission and related charges (collectively, "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 inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts 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 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. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

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. 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 all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.
2. 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.
3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.
4. 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.
5. 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.
6. 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 discretion to suspend Electric Service to the Customer or terminate the Agreement.

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. Adjustment of Charges – Distribution Losses

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

I. Conflicts

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

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. Subject to the provisions of Section III.A of this Service Tariff, 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 to reflect, the Customer and the Authority may mutually select a substitute Index. The Customer and the Authority agree to mutually select substitute indices within 90 days, once one of them is notified by the other that the indices are no longer available or no longer reflect the relevant factors or changes which the indices were intended 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 the Customer and Authority are unable to reach agreement on substitute indices within the 90-day period, the Customer and the Authority 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 or reflective of their intended purpose 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

Measuring Year -1 (2011)

CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23

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

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

	Measuring Year (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: May 20, 2025

To: NEW YORK POWER AUTHORITY BOARD OF TRUSTEES

From: PRESIDENT & CHIEF EXECUTIVE OFFICER

Subject: Annual Compliance Review – Recharge New York Power Program

SUMMARY

New York Power Authority (“NYPA”) staff has completed its annual compliance review of customers receiving power allocations under the ReCharge New York (“RNY”) Power Program (“Program”). The review covered the reporting period of July 1, 2023 through June 30, 2024 (“Reporting Period”). Compliance review examined RNY Power customer contract compliance in three areas: (1) job creation and retention (collectively, “job retention”); (2) capital investment; and (3) power utilization.

This memorandum provides the results of the compliance review for this Reporting Period, and requests that the New York Power Authority Board of Trustees (“Board of Trustees”) approve the compliance actions recommended in this memorandum.¹

BACKGROUND

On April 14, 2011, Chapter 60 (Part CC) of the Laws of 2011, among other things, created the RNY Power Program. The Program makes available 910 megawatts (“MW”) of “RNY Power,” 50% of which is provided by the Authority’s hydropower resources, and 50% of which is procured by the Authority from other sources. RNY Power Program contracts are for a specified term corresponding to a customer’s allocation.

RNY Power is made available to businesses and not-for-profit corporations for job retention and business expansion and attraction purposes. Applications for RNY Power are evaluated based on statutory criteria that include (1) the number of jobs created and retained, and the extent to which an applicant will commit to creating or retaining jobs as a condition to receiving a RNY Power allocation; and (2) the amount of capital investment to which an applicant will commit.

Successful applicants are offered a contract with the Authority for the purchase of their awarded RNY Power allocation. In addition to the requirement that the awardee pay for electric service, the contract provides for several “supplemental” customer commitments relating to such matters as (1) job creation or retention, (2) capital investment, and (3) power utilization (together the “Supplemental Commitments”). The RNY Power contract may contain commitments to create and retain jobs, or simply to retain jobs. On capital investment, the contract typically provides for an aggregate capital investment commitment (“CIC”) over a five-year period.

To facilitate compliance review and contract enforcement, the RNY contract requires customers to report on the performance of their Supplemental Commitments in an annual Compliance Report submitted by August 31 of each year, which covers the prior 12-month period from July through June.

¹ This memorandum incorporates the spreadsheet RNY Annual Compliance Review Exhibits A-C that contain information on staff’s analysis and recommendations.

DISCUSSION

1. Compliance Review Approach

Although the Authority has the right to enforce a customer's compliance with their Supplemental Commitments at a 100% level, it has discretion to enforce Supplemental Commitments at a discounted performance level and has done so in the past. For the Compliance Period being reviewed, staff used a 90% compliance threshold assessing Supplemental Commitment compliance. This approach supports the businesses and organizations in the state that are nearly complying with their Supplemental Commitments and reduces compliance work for de minimis violations that are often temporary.

If a customer's Compliance Report or an Authority audit indicates that a customer's (i) annual average monthly employment for the reporting period is below 90% of the customer's job retention commitment, (ii) its reported average monthly kW utilization is below 90% of the accepted allocation amount for the highest six months, or (iii) its capital investment spending is below 90% of the customer's CIC, the Authority may take the following actions depending upon the customer's circumstances: (1) reduce the customer's allocation, with an adjustment to the relevant Supplement Commitment(s); (2) adjust Supplemental Commitments with no reduction to the customer's allocation; and (3) no allocation reduction or Supplemental Commitment adjustment, in which case staff may monitor the customer's compliance.

In cases where staff recommends adjustments to a Supplemental Commitment, this approach often yields a more realistic commitment, as it may more accurately reflect a customer's ability to retain jobs or make capital investments after the customer's allocation has been in service.

This approach also minimizes the chances that such customers, particularly customers who have been subject to compliance action in previous years, will be subject to compliance action under the contract in the future. As the businesses and organizations in this Program continue to emerge from the impacts of the pandemic and other challenges like inflation, the Authority is recognizing the need to adjust commitments in appropriate circumstances to achievable levels for customers that are unable to sustain job levels and capital investments at pre-pandemic levels. In some cases where customers are non-compliant in capital investment commitments, the Authority will allow additional time and may work with the customers to address the issue in future compliance periods.

2. Compliance Results

Staff has completed their annual compliance review of all in-service RNY Power allocation contracts for compliance with Supplemental Commitments for the reporting Period. A total of 617 customers received at least one year of RNY Power ("Reviewable Customers") during the Reporting Period (July 1, 2023 through June 30, 2024). Of these, 602 customers filed a Compliance Report.

Reviewable Customers are associated with RNY Power allocations totaling 601 MWs, existing employment commitments totaling 363,402 jobs, and capital investment commitments totaling \$16,208,106,250. In aggregate, these customers reported actual employment of 477,377 jobs and \$22,424,333,022 in capital spending. These numbers represent 131% of the total job commitments for all RNY Power customers reporting for the full year, and 138% of total capital investment commitments. From a total Program perspective, RNY is performing above the contracted amounts for commitments for jobs and capital investments.

For this Reporting Period, 104 RNY Power customers did not meet the 90% compliance threshold for one or more of their Supplemental Commitments. Some customers were non-compliant in multiple areas as detailed in the accompanying Exhibits.

Seventy-one customers were not compliant with their Supplemental Commitment for jobs. These customers are identified in Exhibit A.

Twenty-nine customers were non-compliant with their Supplement Commitment for capital investment. These customers are identified in Exhibit B.

Fourteen customers were non-compliant with their Supplemental Commitment for power utilization. These customers are identified in Exhibit C.

3. Compliance Recommendations

a) Non-Compliance with Supplemental Commitment for Job Creation/Retention

A total of 71 RNY Power customers were found to be below a 90% compliance rate for this Supplemental Commitment.

Staff recommends that the Board of Trustees authorize reductions to the allocation amounts and/or adjustments to supplemental job commitments for 41 customers identified in Exhibit "A" that fell below a 90% compliance rate for their job retention commitments based on the job levels reported by such customers.

Staff is not recommending compliance action for 30 customers identified in Exhibit "A" that fell below a 90% compliance rate for jobs. Staff reviewed each customer's situation and determined that compliance action is not warranted for these customers at this time for the following reasons:

- Eleven customers reported difficulties maintaining their workforce. The Authority has exercised discretion to not reduce allocations/contract demands during this compliance review due to the ongoing business and operational reductions brought on by the COVID-19 pandemic, as well as inflation, worker shortage, supply chain issues and other economic uncertainties. Staff plans to reassess these customers in the next Reporting Period.
- For eight customers, Staff addressed non-compliance with contracts that have been issued extended allocations. The new contracts reflect revised allocations and/or commitments that were adjusted to address the customer's ability to meet Supplemental Commitments or to address the customer's request for adjustments to Supplemental Commitments.
- Four customers have recently submitted supplemental information on their current employment levels for the post-Reporting Period five-month period from July 2024 to December 2024, which indicates that employment levels have trended upward. If these levels are sustained each customer will be at or above a 90% compliance rate for its current and/or extended allocation.
- Four customers will be requested to undergo an external audit in the next Reporting Period to resolve questions related to each customer's employment reporting.
- For two customers, Staff has been advised that their allocations were terminated because the companies shut down their facilities.
- For one customer, Staff has been advised that an extension application has not been submitted and that the current contract is scheduled to end on May 31, 2025.

b) Non-Compliance with Supplemental Commitment for Capital Investment

Twenty-nine RNY Power customers were found to be below a 90% compliance rate for this Supplemental Commitment. Staff recommends that the Board of Trustees authorize reductions to the allocation amounts and/or supplemental job commitment adjustments for five customers identified in Exhibit "B" that fell below a 90% compliance rate for their capital investment commitments.

Staff is not recommending compliance action for 24 customers identified in Exhibit “B” that fell below a 90% compliance rate for capital investment. Staff has reviewed each customer’s situation and determined that compliance action is not warranted for these customers at this time for the following reasons:

- Twenty-two customers have reported difficulties with their capital spending commitments. The Authority has exercised discretion to not reduce allocations/contract demands during this compliance review due to the ongoing business and operational reductions brought on by the COVID-19 pandemic, as well as inflation, worker shortage, supply chain issues and other economic uncertainties. Staff plans to reassess these customers in the next Reporting Period.
- One customer has recently submitted supplemental information on their current capital spending levels for the post-Reporting Period five-month period from July 2024 to December 2024, which indicates that capital spending levels have trended upward. If these levels are sustained, the customer would be at or above a 90% compliance rate for its current and/or extended allocation.
- For one customer, Staff has been advised that its allocations were terminated because the company shut down its facility.

c) Non-Compliance with Supplemental Commitment for Power Utilization

A total of 14 RNY Power customers were found to be below a 90% compliance rate for this Supplemental Commitment.

Staff recommends that the Board of Trustees authorize reductions to the allocation amounts and/or supplemental job commitment adjustments for the eleven customers identified in Exhibit “C” that fell below a 90% compliance rate for their power usage commitment based on the job levels reported by such customers.

Staff is not recommending compliance action for the remaining three customers listed in Exhibit “C” for the following reasons:

- One customer will be reassessed in the next reporting period due to business ownership changes and/or transfers in the company’s corporate structure.
- Two customers will be reassessed for a potential allocation reduction outside of the annual compliance review process.

FISCAL INFORMATION

The actions recommended herein will not have a negative impact on the Authority’s finances.

RECOMMENDATION

The Senior Vice President, Customer Solutions requests that the Board of Trustees approve the following:

- 1) Reductions in RNY Power allocations and adjustments to Supplemental Commitments, in the amounts indicated, for the 41 customers identified in Exhibit “A” for non-compliance with Supplemental Commitments for job creation/retention, and no compliance action for the remaining 30 customers identified in Exhibit “A”, for the reasons described in this Memorandum and Exhibit “A”.
- 2) Reductions in RNY Power allocations and adjustments to Supplemental Commitments, in the amounts, indicated, for the five customers identified in Exhibit “B” for non-compliance with Supplemental Commitments for capital investment, and no compliance action for the remaining 24 customers identified in Exhibit “B”, for the reasons described in this Memorandum and Exhibit “B”.

- 3) Reductions in RNY Power allocations and adjustments to Supplemental Commitments, in the amounts indicated, for the 11 customers identified in Exhibit "C", for non-compliance with Supplemental Commitments for power utilization, and no compliance action for the remaining three customers identified in Exhibit "C", for the reasons described in this Memorandum and Exhibit "C".

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

Justin E. Driscoll
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the Board of Trustees hereby accepts the recommendations regarding compliance review for the Recharge New York (“RNY”) Power Program for the compliance period of July 1, 2023 through June 30, 2024; and be it further

RESOLVED, That the Board of Trustees hereby approves (1) the reduction of the RNY Power allocations and/or supplemental job commitment adjustments for the 41 customers identified in the Memorandum, pertaining to non-compliance with Supplemental Commitments for jobs, and (2) authorizes no compliance action for the remaining 30 customers identified in the Memorandum, based on the information and recommendations in the Memorandum; and be it further

RESOLVED, That the Board of Trustees hereby approves (1) the reduction of the RNY Power allocations and/or supplemental job commitment adjustments for the five customers identified in the Memorandum, pertaining to non-compliance with Supplemental Commitments for capital investment, and (2) authorizes no compliance action for the remaining 24 customers identified in the Memorandum, based on the information and recommendations in the Memorandum; and be it further

RESOLVED, That the Board of Trustees hereby approves (1) the reduction of the RNY Power allocations and/or supplemental job commitment adjustments for the 11 customers identified in the Memorandum, pertaining to pertaining to non-compliance Supplemental Commitments for power utilization, and (2) authorizes no compliance action for the remaining three customers identified in the Memorandum based on the information and recommendations in the Memorandum; and be it further

RESOLVED, That the Chair, the President and Chief Executive Officer, and all other officers of the Authority be, and each of them hereby is, authorized on behalf of the Authority and Canal Corporation to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and

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

Exhibit A: NONCOMPLIANCE WITH JOB COMMITMENTS; RECOMMENDED (1) REDUCTIONS IN ALLOCATIONS/CONTRACT DEMANDS, AND (2) ADJUSTMENTS TO JOB COMMITMENTS; AND (3) RECOMMENDATIONS FOR NO COMPLIANCE ACTION AT THIS TIME

Line	Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Job Compliance %	Five-Year Capital Investment Commitment	Cumulative Capital Investment Reported	Capital Investment % Achieved	Revised Allocations/ Commitments			Reductions			Physical Address	City	State	Zip Code	County	Region	Background	Recommendation
									(kW)	Jobs	Capital Investment	(kW)	Jobs	Capital Investment								
1	3M Company	1,750	349	308	88%	\$ 35,000,000	\$ 37,879,758	108%	N/A	342	N/A	N/A	7	N/A	305 Sawyer Ave	Tonawanda	NY	14150-7718	Erie	Western New York	3M Company, a producer of cellulose sponges, participates in the ReCharge New York and Western New York hydropower programs. This is the first time the company has reported a shortfall in employment. The company did not provide a comment to explain the shortfall.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 342 jobs.
2	Albany Molecular Research, Inc.	1,240	254	201	79%	\$ 7,500,000	\$ 30,057,199	N/A	1,110	201	N/A	130	53	N/A	21-30 Corporate Cir	Albany	NY	12203-5183	Albany	Capital District	Albany Molecular Research - Rensselaer, a research pharmaceutical company, stated that the employment shortfall is due to local competition and the residual effects of the COVID-19 pandemic, as many employees are working remotely outside of New York State. The company provided job counts for the period from July 2024 through December 2024, which indicated no additional job growth.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 1,110 kW, and authorize an adjustment of the job commitment to not less than 201 jobs.
3	Albany Molecular Research, Inc.	136	19	17	88%	\$ 500,000	\$ 1,062,963	N/A	N/A	17	N/A	N/A	2	N/A	81 Columbia Tpke	Rensselaer	NY	12144-3411	Rensselaer	Capital District	Albany Molecular Research, Inc. operates as a research pharmaceutical company. Because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of demand and allocation.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 17 jobs.
4	Arch Chemicals, Inc.	1,050	111	91	82%	\$ 60,000,000	\$ 112,118,135	187%	970	91	N/A	80	20	N/A	100 Mckee Rd	Rochester	NY	14611-2013	Monroe	Finger Lakes	Arch Chemicals, Inc. manufactures microbial control products. The company's base employment level was adjusted, effective July 1, 2024, as a result of the 2022-2023 ReCharge NY Compliance period from 150 to 111. The company reported that due to soft demand for products, employment reductions were made.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 970 kW, and authorize an adjustment of the job commitment to not less than 91 jobs.
5	Astro Electroplating LLC	170	38	29	75%	\$ 250,000	\$ -	N/A	N/A	32	N/A	N/A	6	N/A	171 4th Ave	Bay Shore	NY	11706-7303	Suffolk	Long Island	Astro Electroplating LLC, a manufacturer of metallic coatings, reported that the job shortfall is attributed to two major customers losing contracts, which caused a reduction in orders. The company provided job counts for the period from July 2024 through December 2024, which indicated no additional job growth.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 32 jobs.
6	Cascades Holding US Inc.	2,990	137	111	81%	\$ 11,000,000	\$ 25,935,400	236%	N/A	123	N/A	N/A	14	N/A	4001 Packard Rd	Niagara Falls	NY	14303-2202	Niagara	Western New York	Cascades Holding US Inc. manufactures paper products. The company stated that the shortfall is due to permanently decommissioning one of its paper machines.	Staff recommends that the Trustees authorize an adjustment to the job commitment to not less than 123 jobs.
7	Confer Plastics, Inc.	420	175	144	82%	\$ 1,500,000	\$ 2,146,710	N/A	N/A	166	N/A	N/A	9	N/A	97 Witmer Rd	North Tonawand	NY	14120-2421	Niagara	Western New York	Confer Plastics, Inc., a manufacturer of pool ladders and steps, participates in the ReCharge New York and Western New York hydropower programs. The company reported that the employment shortfall is due to a combination of inflation and higher interest rates impacting sales.	Staff recommends that the Trustees authorize an adjustment to the job commitment to not less than 166 jobs.
8	ConMed Corporation	1,390	556	403	72%	\$ 4,000,000	\$ 1,700,000	N/A	N/A	447	N/A	N/A	109	N/A	525 French Rd	Utica	NY	13502-5994	Oneida	Mohawk Valley	ConMed Corporation develops and manufactures surgical and patient monitoring products. The company reported that the employee shortfall is due to the residual effects of the COVID-19 global pandemic on the medical device market. The company provided job counts for the period from July 2024 through December 2024, which indicated no additional job growth.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 447 jobs.
9	Dayton T. Brown, Inc.	100	153	124	81%	\$ 3,000,000	\$ 4,023,460	N/A	N/A	124	N/A	N/A	29	N/A	555 Church St	Bohemia	NY	11716-5031	Suffolk	Long Island	Dayton T. Brown, Inc. provides test systems for industrial, commercial and military requirements. Because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of demand and allocation.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 124 jobs.
10	Empire Merchants, LLC	220	575	501	87%	\$ 250,000	\$ 63,031	25%	190	501	\$ 63,031	30	74	\$ 186,969	1950 48th St	Astoria	NY	11105-1232	Queens	New York City	Empire Merchants LLC, a wholesale alcohol distributor, reported that the shortfalls in the employment, power utilization, and capital investment commitments were caused by a combination of the residual effects of the COVID-19 global pandemic and the power utilization shortfall was affected by a reduction of employees working from the office. Based on current NYPA data, Empire Merchants, LLC remains below the compliance threshold for power utilization.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 190 kW, and authorize an adjustment of the job commitment to not less than 501 jobs. Staff also recommends that the Trustee authorize a reduction in the 5 year Capital Investment Commitment (CIC) to not less than \$63,031.
11	Empire Polymer Solutions, LLC	260	20	15	74%	\$ 500,000	\$ -	N/A	N/A	16	N/A	N/A	4	N/A	7528 State Fair Blvd	Baldwinsville	NY	13027-9183	Onondaga	Central New York	Empire Polymer Solutions, LLC specializes in the recycling and compounding of plastic materials. The company stated that the employment shortfall is due to the economic downturn in the plastic manufacturing industry and the elimination of a wash line from production. The company provided job counts for the period from July 2024 through December 2024, which indicated no additional job growth.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 16 jobs.
12	Evans & Paul Unlimited Corp.	70	39	31	79%	\$ 200,000	\$ 418,283	N/A	N/A	31	N/A	N/A	8	N/A	140 Dupont St	Plainview	NY	11803-1603	Nassau	Long Island	Evans & Paul Unlimited Corp. manufactures solid surface solutions. Because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 31 jobs.
13	Favorite Plastics Corporation	276	18	14	79%	\$ 1,000,000	\$ 211,000	N/A	N/A	14	N/A	N/A	4	N/A	1465 Utica Ave	Brooklyn	NY	11234-1108	Kings	New York City	Favorite Plastics Corporation manufactures plastic and rubber products. Because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of demand and allocation.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 14 jobs.
14	FeedMore WNY Foundation, Inc.	86	223	192	86%	\$ 825,000	\$ 3,383,917	N/A	N/A	192	N/A	N/A	31	N/A	100 James E Casey Dr	Buffalo	NY	14206-2368	Erie	Western New York	FeedMore WNY Foundation, Inc. provides meals to those in need. Because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of demand and allocation.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 192 jobs.

Exhibit A: NONCOMPLIANCE WITH JOB COMMITMENTS; RECOMMENDED (1) REDUCTIONS IN ALLOCATIONS/CONTRACT DEMANDS, AND (2) ADJUSTMENTS TO JOB COMMITMENTS; AND (3) RECOMMENDATIONS FOR NO COMPLIANCE ACTION AT THIS TIME

Line	Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Job Compliance %	Five-Year Capital Investment Commitment	Cumulative Capital Investment Reported	Capital Investment % Achieved	Revised Allocations/ Commitments			Reductions			Physical Address	City	State	Zip Code	County	Region	Background	Recommendation
									(kW)	Jobs	Capital Investment	(kW)	Jobs	Capital Investment								
15	Forteq North America, Inc.	396	110	85	77%	\$ 4,000,000	\$ 1,958,688	N/A	N/A	94	N/A	N/A	16	N/A	150 Park Centre Dr	West Henrietta	NY	14586-9688	Monroe	Finger Lakes	Forteq North America, Inc., a manufacturer of automotive system components, reported the employment shortfall is due to slower than anticipated ramp schedules from customers in the auto industry.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 94 jobs.
16	Garlock Sealing Technologies LLC	1,950	519	463	89%	\$ 10,000,000	\$ 5,716,171	N/A	N/A	514	N/A	N/A	5	N/A	1666 Division St	Palmyra	NY	14522-9383	Wayne	Finger Lakes	Garlock Sealing Technologies LLC manufactures fluid sealing products. The company reported some of the challenges in meeting the employment commitment included retirements and difficulties in hiring skilled tradespeople. The company provided job counts for the period from July 2024 through December 2024, which indicated no additional job growth.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 514 jobs.
17	International Wire Group, Inc.	496	15	13	89%	\$ 520,000	\$ 700,936	135%	N/A	13	N/A	N/A	2	N/A	3 Preston St	Camden	NY	13316-1215	Oneida	Mohawk Valley	International Wire Group, Inc. (Preston) manufactures and distributes a broad range of wire products. Because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of demand and allocation.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 13 jobs.
18	International Wire Group, Inc.	790	55	49	89%	\$ 1,300,000	\$ 2,633,250	203%	N/A	49	N/A	N/A	6	N/A	986 Railroad St	Rome	NY	13440-6900	Oneida	Mohawk Valley	International Wire Group, Inc. (Rome) manufactures and distributes a broad range of wire products. Because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of demand and allocation.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 49 jobs.
19	International Wire Group, Inc.	1,070	68	53	77%	\$ 4,094,000	\$ 2,984,130	73%	940	53	\$ 2,984,130	130	15	\$ 1,109,870	29 Harden Blvd	Camden	NY	13316-1315	Oneida	Mohawk Valley	International Wire Group, Inc. (Harden Blvd) manufactures and distributes a broad range of wire products. The company stated the employment shortfall was due to difficulty in retaining and hiring employees in Central New York. The base employment level was adjusted effective September 1, 2023 as a result of the 2021-2022 ReCharge NY Compliance period from 78 to 68.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 940 kW, and authorize an adjustment of the job commitment to not less than 53 jobs. Staff also recommends that the Trustee authorize a reduction in the 5 year Capital Investment Commitment (CIC) to not less than \$ 2,984,130.
20	J. Rettenmaier USA LP	640	56	48	85%	\$ 1,000,000	\$ 2,281,990	N/A	N/A	48	N/A	N/A	8	N/A	50 Bridge St	North Tonawand	NY	14120-6842	Niagara	Western New York	J. Rettenmaier USA LP produces powdered cellulose and fibers. Because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of demand and allocation.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 48 jobs.
21	Jos. H. Lowenstein & Sons, Inc.	150	72	62	86%	\$ 75,000	\$ 88,218	N/A	N/A	62	N/A	N/A	10	N/A	420 Morgan Ave	Brooklyn	NY	11222-5705	Kings	New York City	Jos. H. Lowenstein & Sons, Inc. manufactures dye products. Because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of demand and allocation.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 62 jobs.
22	Karp Associates Inc.	56	145	118	82%	\$ 4,000,000	\$ 36,188,801	N/A	N/A	118	N/A	N/A	27	N/A	260 Spagnoli Rd	Melville	NY	11747-3505	Suffolk	Long Island	Karp Associates Inc. specializes in the design and manufacture of access doors and panels. Because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of demand and allocation.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 118 jobs.
23	Kilian Manufacturing Corporation	266	151	127	84%	\$ 1,500,000	\$ 1,370,627	91%	256	127	N/A	10	24	N/A	1728 Burnet Ave	Syracuse	NY	13206-3340	Onondaga	Central New York	Kilian Manufacturing Corporation designs and produces precision bearings and motion control components. The company stated the employment shortfall is due to a decrease in sales in the automotive industry. The base employment level was adjusted effective September 1, 2023 as a result of the 2021-2022 ReCharge NY Compliance period from 170 to 151.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 256 kW, and authorize an adjustment of the job commitment to not less than 127 jobs.
24	Kraft Heinz Foods Company	1,920	220	173	79%	\$ 10,000,000	\$ 12,091,482	121%	1,710	173	N/A	210	47	N/A	140 Spring St	Avon	NY	14414-1197	Livingston	Finger Lakes	Kraft Heinz Foods Company is a manufacturer packaged food products. The company was selected for an audit of its employment records by NYPA's third party auditing firm and found to be non-compliant for the reporting year.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 1,710 kW, and authorize an adjustment of the job commitment to not less than 173 jobs.
25	L. & J. G. Stickley Incorporated	890	420	370	88%	\$ 5,000,000	\$ 4,912,886	98%	880	370	N/A	10	50	N/A	1 Stickley Dr	Manlius	NY	13104-2485	Onondaga	Central New York	L. & J. G. Stickley Incorporated designs and manufactures handcrafted furniture. The company did not provide a reason for its employment shortfall. The base employment level was adjusted effective July 1, 2024 as a result of the 2022-2023 ReCharge NY Compliance period from 484 to 420.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 880 kW, and authorize an adjustment of the job commitment to not less than 370 jobs.
26	Long Island Jewish Medical Center	100	813	345	42%	\$ 250,000	N/A	N/A	N/A	383	N/A	N/A	430	N/A	400 Lakeville Rd	New Hyde Park	NY	11042-1121	Nassau	Long Island	This is the second year that Long Island Jewish Medical Center reported a shortfall in employment. The company did not provide a comment to explain the shortfall.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 383 jobs.
27	Losurdo Foods, Inc.	266	60	48	80%	\$ 750,000	\$ 798,421	N/A	246	48	N/A	20	12	N/A	34 Union St	Heuvelton	NY	13654-2200	St. Lawrence	North Country	Losurdo Foods, Inc. is a manufacturer of mozzarella & ricotta products. The company was selected for an audit of its employment records by NYPA's third party auditing firm and found to be non-compliant for the reporting year.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 246 kW, and authorize an adjustment of the job commitment to not less than 48 jobs.
28	Manth-Brownell Inc.	450	92	61	66%	\$ 1,500,000	\$ 1,820,313	N/A	350	61	N/A	100	31	N/A	1120 Fyler Rd	Kirkville	NY	13082-9426	Madison	Central New York	Manth-Brownell, Inc. manufactures custom components for industries including automotive, aerospace, and medical. The company did not provide a reason for its employment shortfall. The base employment level was adjusted effective September 1, 2023 as a result of the 2021-2022 ReCharge NY Compliance period from 120 to 92.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 350 kW, and authorize an adjustment of the job commitment to not less than 61 jobs.
29	Northwell Healthcare, Inc.	236	180	141	79%	\$ 75,000	\$ 463,826	N/A	216	141	N/A	20	39	N/A	1001 S Oyster Bay Rd	Bethpage	NY	11714-1034	Nassau	Long Island	Northwell Healthcare, Inc. - Bethpage, is a medical instrument sterilization facility. The base employment level was adjusted effective September 1, 2023 as a result of the 2021-2022 ReCharge NY Compliance period from 420 to 180. The company provided job counts for the period from July 2024 through December 2024, which indicated no additional job growth.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 216 kW, and authorize an adjustment of the job commitment to not less than 141 jobs.

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Line	Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Job Compliance %	Five-Year Capital Investment Commitment	Cumulative Capital Investment Reported	Capital Investment % Achieved	Revised Allocations/ Commitments			Reductions			Physical Address	City	State	Zip Code	County	Region	Background	Recommendation
									(kW)	Jobs	Capital Investment	(kW)	Jobs	Capital Investment								
30	Pactiv LLC	7,000	684	566	83%	\$ 3,000,000	\$ 8,508,572	284%	6,580	566	N/A	420	118	N/A	5250 North St	Canandaigua	NY	14424-1026	Ontario	Finger Lakes	Pactiv Corporation manufactures plastic packaging products. The base employment level was adjusted effective July 1, 2024 as a result of the 2022-2023 ReCharge NY Compliance period from 700 to 684. The company provided job counts for the period from July 2024 through December 2024, which indicated no additional job growth.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 6,580 kW, and authorize an adjustment of the job commitment to not less than 566 jobs.
31	Parrish Art Museum	76	46	35	76%	\$ 125,000	\$ 298,404	239%	66	35	N/A	10	11	N/A	279 Montauk Hwy	Water Mill	NY	11976-2639	Suffolk	Long Island	Parrish Art Museum's base employment level was adjusted effective September 1, 2023 as a result of the 2021-2022 ReCharge NY Compliance period from 50 to 46. The company did not provide a reason for the employment shortfall.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 66 kW, and authorize an adjustment of the job commitment to not less than 35 jobs.
32	Power Pallet, Inc.	116	124	81	65%	\$ 1,000,000	\$ 2,269,433	227%	96	81	N/A	20	43	N/A	4715 State Highway 30	Amsterdam	NY	12010-7431	Montgomery	Mohawk Valley	Power Pallet manufactures wood pallets. The company stated that the employment shortfall is due to reduced labor in exchange for automation. The base employment level was adjusted effective September 1, 2023 as a result of the 2021-2022 ReCharge NY Compliance period from 134 to 124. The company provided job counts for the period from July 2024 through December 2024, which indicated no additional job growth.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 96 kW, and authorize an adjustment of the job commitment to not less than 81 jobs.
33	Queens Nassau Nursing Home, Inc.	160	143	122	86%	\$ 500,000	\$ 1,230,241	N/A	N/A	122	N/A	N/A	21	N/A	520 Beach 19th St	Far Rockaway	NY	11691-4307	Queens	New York City	Queens Nassau Nursing Home, Inc. operates as a rehabilitation and nursing center. Because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of demand and allocation.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 122 jobs.
34	Sorrento Lactalis, Inc.	1,120	582	510	88%	\$ 23,000,000	\$ 26,261,638	114%	1,100	510	N/A	20	72	N/A	2375 S Park Ave	Buffalo	NY	14220-2653	Erie	Western New York	Sorrento Lactalis, Inc. is a manufacturer of cheese products. The company was selected for an audit of its employment records by NYPA's third party auditing firm and found to be non-compliant for the reporting year.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 1,100 kW, and authorize an adjustment of the job commitment to not less than 510 jobs.
35	Sumet Ceramics Corporation	250	14	12	83%	\$ 500,000	\$ 175,000	N/A	N/A	13	N/A	N/A	1	N/A	699 Hertel Ave Suite 290 & 310	Buffalo	NY	14207-2341	Erie	Western New York	Sumet Ceramics Corporation is a manufacturer of transparent armor products. The company reported that the employment shortfall is due to difficulties in hiring and retaining staff.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 13 jobs.
36	The Gunlocke Company L.L.C.	1,606	184	156	85%	\$ 6,000,000	\$ 3,461,007	58%	1,526	156	\$ 3,461,007	80	28	\$ 2,538,993	1 Gunlocke Dr	Wayland	NY	14572-9515	Steuben	Southern Tier	The Gunlocke Company LLC manufactures office furniture, including seating, desks, and storage solutions. The base employment level was adjusted effective September 1, 2023 as a result of the 2021-2022 ReCharge NY Compliance period from 601 to 184. The company provided job counts for the period from July 2024 through December 2024, which indicated no additional job growth.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 1,526 kW, and authorize an adjustment of the job commitment to not less than 156 jobs. Staff also recommends that the Trustee authorize a reduction in the 5 year Capital Investment Commitment (CIC) to not less than \$3,461,007.
37	The Nursing Care Center At Medford, Inc.	266	248	181	73%	\$ 1,500,000	\$ 2,997,798	N/A	226	181	N/A	40	67	N/A	3115 Horseblock Rd	Medford	NY	11763-2526	Suffolk	Long Island	The Nursing Care Center At Medford Inc. provides rehabilitation & healthcare services. The company reported that the employment shortfall is due to national staffing issues. The base employment level was adjusted effective July 1, 2024 as a result of the 2022-2023 ReCharge NY Compliance period from 323 to 248.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 226 kW, and authorize an adjustment of the job commitment to not less than 181 jobs.
38	Universal Photonics Incorporated	40	80	70	88%	\$ 750,000	\$ 1,443,313	192%	N/A	70	N/A	N/A	10	N/A	85 Jetson Ln	Central Islip	NY	11722-1202	Suffolk	Long Island	Universal Photonics Incorporated manufactures and distributes surfacing and polishing materials. Because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of demand and allocation.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 70 jobs.
39	WestRock - Southern Container, LLC	346	143	108	76%	\$ 1,000,000	\$ 487,283	N/A	N/A	120	N/A	N/A	23	N/A	140 W Industry Ct	Deer Park	NY	11729-4604	Suffolk	Long Island	WestRock - Southern Container, LLC, a manufacturer of corrugated sheets & boxes, did not provide a reason for the employment shortfall.	Staff recommends that the Trustees authorize an adjustment to the company's job commitment to not less than 120 jobs.
40	Wheatfield Gardens, LLC	236	15	10	68%	\$ 5,000,000	\$ 3,100,000	N/A	216	10	N/A	20	5	N/A	7341 Shawnee Rd	North Tonawand	NY	14120-1325	Niagara	Western New York	Wheatfield Gardens, LLC operates a hydroponic greenhouse facility. The company reported that the usage and employment shortfalls were based on idled operations, caused by market conditions. Based on current NYPA data, Wheatfield Gardens remains below the compliance threshold for power utilization.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 216 kW, and authorize an adjustment of the job commitment to not less than 10 jobs.
41	Wieland Rolled Products North America Buffalo, Inc.	1,750	617	547	89%	\$ 33,000,000	\$ 38,604,428	117%	1,740	547	N/A	10	70	N/A	70 Sayre St	Buffalo	NY	14207-2225	Erie	Western New York	Wieland Rolled Products North America Buffalo, Inc., a manufacturer of copper and brass strips, participates in the ReCharge New York and Western New York hydropower programs. The company reported that the employment shortfall is due to the preparation of an acquisition and a decrease in sales. The company provided job counts for the period from July 2024 through December 2024, which indicated no additional job growth.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 1,740 kW, and authorize an adjustment of the job commitment to not less than 547 jobs.
									*Total Reductions Exhibit A (1 & 2)			1,310	1,478	\$3,648,863								

Exhibit A: NONCOMPLIANCE WITH JOB COMMITMENTS; RECOMMENDED (1) REDUCTIONS IN ALLOCATIONS/CONTRACT DEMANDS, AND (2) ADJUSTMENTS TO JOB COMMITMENTS; AND (3) RECOMMENDATIONS FOR NO COMPLIANCE ACTION AT THIS TIME

Line	Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Job Compliance %	Five-Year Capital Investment Commitment	Cumulative Capital Investment Reported	Capital Investment % Achieved	Revised Allocations/ Commitments			Reductions			Physical Address	City	State	Zip Code	County	Region	Background	Recommendation
									(kW)	Jobs	Capital Investment	(kW)	Jobs	Capital Investment								
42	Amneal Pharmaceuticals of New York, LLC	156	58	0	0%	\$ 350,000	\$ 1,397,794	399%	N/A	N/A	N/A	N/A	N/A	N/A	75 Adams Ave	Hauppauge	NY	13309-4917	Suffolk	Long Island	Amneal Pharmaceuticals of New York, LLC's reported that it is using the facility as a warehouse and moved most jobs to its Brookhaven location. Staff will evaluate a potential contract modification.	Staff recommends that the Trustees take no compliance action at this time.
43	Check-Mate International Products, Inc.	180	178	111	62%	\$ 1,288,612	\$ 1,348,490	105%	N/A	N/A	N/A	N/A	N/A	N/A	370 Wyandanch Ave	West Babylon	NY	11704-1524	Suffolk	Long Island	The allocation associated with the commitments under review for Check-Mate International Products, Inc. expired effective March 2024. The company was approved for an allocation extension with new commitments at the March 26, 2024 Trustee meeting.	Staff recommends that the Trustees take no compliance action at this time.
44	Clarkson University	1,466	784	695	89%	\$ 35,000,000	\$ 42,212,082	121%	N/A	N/A	N/A	N/A	N/A	N/A	8 Clarkson Ave	Potsdam	NY	13699-9001	St. Lawrence	North Country	Clarkson University, a private research university offering interdisciplinary education, reported that the employment shortfall is due to a temporary hiring freeze. Staff is currently reviewing the employment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
45	Contract Pharmacal Corp.	1,090	1,414	1,196	85%	\$ 15,000,000	\$ 45,798,262	N/A	N/A	N/A	N/A	N/A	N/A	N/A	135 Adams Ave	Hauppauge	NY	11788	Suffolk	Long Island	Contract Pharmacal Corp. manufactures and packages pharmaceuticals. The company provided job counts from July 2024 through December 2024, indicating an increase in employment levels to 1,286 or 91%.	Staff recommends that the Trustees take no compliance action at this time.
46	Corning Incorporated	3,376	3,364	2,138	64%	\$ 148,500,000	\$ 97,623,893	66%	N/A	N/A	N/A	N/A	N/A	N/A	1 Riverfront Plz	Corning	NY	14831-0002	Steuben	Southern Tier	Corning Incorporated (Southside) has reported that the employment shortfall is due to restructuring efforts. The company has expressed an interest in a campus set up with New York Power Authority. Staff is currently reviewing the contractual modification process with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
47	Corning Incorporated	10,616	1,850	1,519	82%	\$ 139,000,000	\$ 75,369,000	54%	N/A	N/A	N/A	N/A	N/A	N/A	890 Addison Rd	Painted Post	NY	14870-9726	Steuben	Southern Tier	Corning Incorporated (SCC & IDM) has reported that the employment shortfall is due to production support adjusting to a decrease in market demand and the capital spending has been delayed due to fluctuating market conditions. The company has expressed an interest in a campus set up with New York Power Authority. Staff is currently reviewing the contractual modification process with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
48	Cox & Company, Inc.	466	226	200	89%	\$ 2,500,000	\$ 3,346,159	134%	N/A	N/A	N/A	N/A	N/A	N/A	1664 Old Country Rd	Plainview	NY	11803-5013	Nassau	Long Island	The allocation associated with the commitments under review for Cox & Company, Inc. expired effective March 2024. The company was approved for an allocation extension with new commitments at the December 12, 2023 Trustee meeting.	Staff recommends that the Trustees take no compliance action at this time.
49	Currier Plastics, Inc.	1,386	233	187	80%	\$ 6,000,000	\$ 11,390,896	N/A	N/A	N/A	N/A	N/A	N/A	N/A	101 Columbus St	Auburn	NY	13021-3101	Cayuga	Central New York	The allocation associated with the commitments under review for Currier Plastics, Inc. will expire effective November 2026. The company will be recommended for an allocation extension with new commitments at the July 29, 2025 Trustee meeting.	Staff recommends that the Trustees take no compliance action at this time.
50	D'Addario & Company, Inc.	826	815	702	86%	\$ 9,300,000	\$ 26,732,612	287%	N/A	N/A	N/A	N/A	N/A	N/A	595 Smith St	Farmingdale	NY	11735-1120	Suffolk	Long Island	D'Addario Company Inc. manufactures musical instrument strings and accessories. The company provided job counts for the period July 2024 through December 2024, indicating an increase in employment levels to 839 employees or 103%. Staff is currently reviewing the employment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
51	Dresser-Rand LLC	810	71	6	8%	\$ 8,500,000	\$ 14,916,444	175%	N/A	N/A	N/A	N/A	N/A	N/A	101 Chemung St	Painted Post	NY	14870	Steuben	Southern Tier	Dresser-Rand LLC, a manufacturer of compressors, had reported 6 jobs, or 8% in the compliance report. Staff is currently reviewing the employment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
52	Fedrigoni Special Papers North America, Inc.	3,536	312	247	79%	\$ 17,500,000	\$ 10,819,000	62%	N/A	N/A	N/A	N/A	N/A	N/A	0 Mohawk Ave	Waterford	NY	12188	Albany	Capital District	At the May 21, 2024 Trustee meeting, Fedrigoni Special Papers North America, Inc. was approved to transfer the hydropower supply contract from Mohawk Fine Papers, Inc. Due to the recent restructuring of the company, Staff will review compliance reporting in the next reporting period.	Staff recommends that the Trustees take no compliance action at this time.
53	Finch Paper, LLC	3,000	660	555	84%	\$ 48,500,000	\$ 44,542,956	92%	N/A	N/A	N/A	N/A	N/A	N/A	1 Glen St	Glens Falls	NY	12801-4499	Warren	Capital District	The allocation associated with the commitments under review for Finch Paper LLC expired effective August 2023. The company was approved for an allocation extension with new commitments at the March 22, 2023 Trustee meeting.	Staff recommends that the Trustees take no compliance action at this time.
54	Gary Plastic Packaging Corp.	926	525	451	86%	\$ 100,000	\$ 2,312,004	2312%	N/A	N/A	N/A	N/A	N/A	N/A	1340 Viele Ave	Bronx	NY	10474-7124	New York	New York City	Gary Plastic Packaging Corp., a manufacturer of plastic packing products, has closed its facility and terminated its ReCharge New York allocation effective August 1, 2024.	Staff recommends that the Trustees take no compliance action at this time.
55	GKN Aerospace Monitor, Inc.	1,360	206	155	75%	\$ 13,200,000	\$ 7,168,408	54%	N/A	N/A	N/A	N/A	N/A	N/A	1000 New Horizons Blvd	Amityville	NY	11701-1138	Suffolk	Long Island	GKN Aerospace Monitor, Inc. manufactures aerospace-related structural components. The company is moving operations out of state and opted out of the ReCharge New York program as of January 2025.	Staff recommends that the Trustees take no compliance action at this time.
56	International Wire Group, Inc.	1,080	115	92	80%	\$ 4,182,000	\$ 3,754,829	90%	N/A	N/A	N/A	N/A	N/A	N/A	Route 13	Williamstown	NY	13493	Oswego	Central New York	International Wire Group, Inc. (Williamstown) manufactures and distributes wire products. The company provided recent information on the status of its facility, which is not currently operational. Staff is currently reviewing the employment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.

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Line	Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Job Compliance %	Five-Year Capital Investment Commitment	Cumulative Capital Investment Reported	Capital Investment % Achieved	Revised Allocations/ Commitments			Reductions			Physical Address	City	State	Zip Code	County	Region	Background	Recommendation
									(kW)	Jobs	Capital Investment	(kW)	Jobs	Capital Investment								
57	Manitoba Corporation	246	40	30	74%	\$ 125,000	\$ 642,022	514%	N/A	N/A	N/A	N/A	N/A	N/A	122 Central Ave	Lancaster	NY	14086-1858	Erie	Western New York	The allocation associated with the commitments under review for Manitoba Corporation will expire effective May 2025. At an upcoming 2025 Trustee meeting, the company will be recommended for a power supply contract extension with a reduction in the allocation and contract demand, as well as new employment commitments.	Staff recommends that the Trustees take no compliance action at this time.
58	MPM Silicones, LLC	10,000	1,000	651	65%	\$ 55,000,000	\$ 95,510,074	174%	N/A	N/A	N/A	N/A	N/A	N/A	260 Hudson River Rd	Waterford	NY	12188-1910	Saratoga	Capital District	MPM Silicones LLC manufactures silicone intermediates. The company reported the shortfall is due to planned site restructuring. This is the company's second time reporting non-compliant in jobs. Staff is currently reviewing the contractual modification process with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
59	Northwell Health, Inc.	596	230	176	76%	\$ -	\$ -	N/A	N/A	N/A	N/A	N/A	N/A	N/A	5925 Little Neck Pkwy	Little Neck	NY	11362-2531	Queens	New York City	Northwell Health, Inc. (Little Neck Parkway), a medical research and testing laboratory, provided job counts for the period from July 2024 through December 2024 which reported 181 jobs or 79% for that period, indicating a growth. Staff is currently reviewing the employment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
60	Northwell Healthcare, Inc.	260	727	626	86%	\$ 115,000	\$ 2,498,226	N/A	N/A	N/A	N/A	N/A	N/A	N/A	972 Brush Hollow Rd	Westbury	NY	11590-1740	Nassau	Long Island	Northwell Health, Inc. (Westbury), a medical instrument sterilization facility, provided job counts from July 2024 through December 2024, indicating an increase in employment levels to 662 or 91%.	Staff recommends that the Trustees take no compliance action at this time.
61	Owens-Brockway Glass Container Inc.	3,500	257	208	81%	\$ 10,000,000	\$ 69,190,683	692%	N/A	N/A	N/A	N/A	N/A	N/A	7134 County House Rd	Auburn	NY	13021-5901	Cayuga	Central New York	Owens-Brockway Glass Container Inc. manufactures glass containers. The company recently provided job counts from July 2024 through December 2024, indicating an increase in employment levels to 232 or 90%.	Staff recommends that the Trustees take no compliance action at this time.
62	Ozone Acquisition, LLC	100	170	137	80%	\$ 1,500,000	\$ 2,454,193	164%	N/A	N/A	N/A	N/A	N/A	N/A	825 Old Country Rd	Plainview	NY	11803-4913	Nassau	Long Island	The allocation associated with the commitments under review for Ozone Acquisition, LLC expired effective March 2024. The company was approved for an allocation extension with new commitments at the July 30, 2024 Trustee meeting.	Staff recommends that the Trustees take no compliance action at this time.
63	Pall Corporation	1,770	564	406	72%	\$ 10,000,000	\$ 24,351,523	244%	N/A	N/A	N/A	N/A	N/A	N/A	3643 State Route 281	Cortland	NY	13045-3591	Cortland	Central New York	Pall Corporation specializes in filtration, separation, and purification technologies. The company reported that the employment shortfall is due to its pursuit of energy efficiency upgrades, which has reduced its job count. Staff is currently reviewing the employment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
64	Phoenix Endicott Industrial Investors LLC	10,000	1,456	721	49%	\$ 6,000,000	\$ 5,658,731	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1701 North St # D/610	Endicott	NY	13760-5587	Broome	Southern Tier	Phoenix Endicott Industrial Investors LLC offers real estate leasing & property management services. The company reported that the employment shortfall is due to the residual effects on staffing from the COVID-19 global pandemic. The base employment level was adjusted effective July 1, 2024 as a result of the 2022-2023 ReCharge NY Compliance period from 1,890 to 1,456. Staff is currently reviewing the contractual modification process with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
65	Ricoh USA, Inc.	3,000	85	73	86%	\$ -	\$ 100,000	N/A	N/A	N/A	N/A	N/A	N/A	N/A	500 Commack Rd	Commack	NY	11725-5020	Suffolk	Long Island	The allocation associated with the commitments under review for Ricoh USA, Inc. expired effective June 2024. The company was approved for an allocation extension with new commitments at the December 10, 2024 Trustee meeting.	Staff recommends that the Trustees take no compliance action at this time.
66	Samaritan Senior Village, Inc.	216	233	203	87%	\$ 1,000,000	\$ 922,309	92%	N/A	N/A	N/A	N/A	N/A	N/A	22691 Campus Dr	Watertown	NY	13601-3025	Jefferson	North Country	The allocation associated with the commitments under review for Samaritan Senior Village, Inc. will expire effective June 2025. At the time of compliance review, the company has not submitted an extension application to be consider for an new contract with updated commitments.	Staff recommends that the Trustees take no compliance action at this time.
67	SolEpoxy Inc.	780	70	60	86%	\$ 1,250,000	\$ 2,753,300	N/A	N/A	N/A	N/A	N/A	N/A	N/A	211 W Franklin St	Olean	NY	14760-1211	Cattaraugus	Western New York	SolEpoxy Inc is a manufacturer of thermoset epoxy compounds. This is the first time the company reported a shortfall in employment, however, no comment was provided for the decrease in jobs. Staff is currently reviewing the employment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
68	Sonoco Plastics, Inc.	660	100	84	84%	\$ 700,000	\$ 5,474,716	N/A	N/A	N/A	N/A	N/A	N/A	N/A	87 Center St	Chatham	NY	12037-1032	Columbia	Capital District	Sonoco Plastics, Inc. manufactures plastics. The company provided job counts from July 2024 through December 2024, indicating an increase in employment levels to 90 or 90%.	Staff recommends that the Trustees take no compliance action at this time.
69	Sunharbor Acquisition I, LLC	186	232	201	87%	\$ 250,000	\$ 1,840,578	736%	N/A	N/A	N/A	N/A	N/A	N/A	255 Warner Ave	Roslyn Heights	NY	11577-1065	Nassau	Long Island	The allocation associated with the commitments under review for Sunharbor Acquisition I, LLC expired effective February 2024. The company was approved for an allocation extension with new commitments at the December 10, 2024 Trustee meeting.	Staff recommends that the Trustees take no compliance action at this time.
70	Tompkins Metal Finishing, Inc.	300	72	60	83%	\$ 500,000	\$ 675,967	N/A	N/A	N/A	N/A	N/A	N/A	N/A	6 Apollo Dr	Batavia	NY	14020-3002	Genesee	Finger Lakes	Tompkins Metal Finishing, Inc., manufacturer of industrial metal products, reported that the shortfall in employment is attributed to difficulties in hiring and retaining staff. This is the first time the company reported a shortfall in employment. Staff is currently reviewing the employment levels with the company and will reassess compliance action during following reporting period.	Staff recommends that the Trustees take no compliance action at this time.

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Line	Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Job Compliance %	Five-Year Capital Investment Commitment	Cumulative Capital Investment Reported	Capital Investment % Achieved	Revised Allocations/ Commitments			Reductions			Physical Address	City	State	Zip Code	County	Region	Background	Recommendation
									(kW)	Jobs	Capital Investment	(kW)	Jobs	Capital Investment								
71	Upstate Niagara Cooperative, Inc.	670	171	150	88%	\$ 4,000,000	\$ 2,681,934	67%	N/A	N/A	N/A	N/A	N/A	N/A	45 Fulton Ave	Rochester	NY	14608-1032	Monroe	Finger Lakes	Upstate Niagara Cooperative, Inc. (Rochester) produces and distributes dairy products. The company stated that it is actively seeking opportunities to meet the commitments and provided job counts from July 2024 through December 2024, indicating an increase in employment levels to 161 or 94%.	Staff recommends that the Trustees take no compliance action at this time.
									Total Reductions Exhibit A (3)			N/A	N/A	N/A								

*The totals are adjusted to accommodate customers that are non-compliant in multiple areas.

Exhibit B: NONCOMPLIANCE WITH CAPITAL INVESTMENT COMMITMENTS; RECOMMENDED (1) REDUCTIONS IN ALLOCATIONS/CONTRACT DEMANDS, AND (2) ADJUSTMENTS TO COMMITMENTS; AND (3) RECOMMENDATIONS FOR NO COMPLIANCE ACTION AT THIS TIME

Line	Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Job Compliance %	Five-Year Capital Investment Commitment	Cumulative Capital Investment Reported	Capital Investment % Achieved	Revised Allocations/Commitments			Reductions			Physical Address	City	State	Zip Code	County	Region	Background	Recommendation
									(kW)	Jobs	Capital Investment	(kW)	Jobs	Capital Investment								
1	Empire Merchants, LLC	220	575	501	87%	\$ 250,000	\$ 63,031	25%	190	501	\$ 63,031	30	74	\$ 186,969	1950 48th St	Astoria	NY	11105-1232	Queens	New York City	Empire Merchants LLC, a wholesale alcohol distributor, reported that the shortfalls in the employment, power utilization, and capital investment commitments were caused by a combination of the residual effects of the COVID-19 global pandemic and the power utilization shortfall was affected by a reduction of employees working from the office. Based on current NYPA data, Empire Merchants, LLC remains below the compliance threshold for power utilization.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 190 kW, and authorize an adjustment of the job commitment to not less than 501 jobs. Staff also recommends that the Trustee authorize a reduction in the 5 year Capital Investment Commitment (CIC) to not less than \$63,031.
2	International Wire Group, Inc.	1,070	68	53	77%	\$ 4,094,000	\$ 2,984,130	73%	940	53	\$ 2,984,130	130	15	\$ 1,109,870	29 Harden Blvd	Camden	NY	13316-1315	Oneida	Mohawk Valley	International Wire Group, Inc. (Harden Blvd) manufactures and distributes a broad range of wire products. The company stated the employment shortfall was due to difficulty in retaining and hiring employees in Central New York. The base employment level was adjusted effective September 1, 2023 as a result of the 2021-2022 ReCharge NY Compliance period from 78 to 68.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 940 kW, and authorize an adjustment of the job commitment to not less than 53 jobs. Staff also recommends that the Trustee authorize a reduction in the 5 year Capital Investment Commitment (CIC) to not less than \$ 2,984,130.
3	Power Drives, Inc.	100	75	145	194%	\$ 5,875,000	\$ 3,801,899	65%	80	56	\$ 3,801,899	20	19	\$ 2,073,101	801 Exchange St	Buffalo	NY	14210-1434	Erie	Western New York	Power Drives, Inc. is a manufacturer of hose and tube assemblies. This is the second year the company reported a shortfall in capital spending. The company did not provide a reason for the capital investment commitment shortfall.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 80 kW, and authorize an adjustment of the job commitment to not less than 56 jobs. Staff also recommends that the Trustee authorize a reduction in the 5 year Capital Investment Commitment (CIC) to not less than \$3,801,899.
4	The Gunlocke Company L.L.C.	1,606	184	156	85%	\$ 6,000,000	\$ 3,461,007	58%	1,526	156	\$ 3,461,007	80	28	\$ 2,538,993	1 Gunlocke Dr	Wayland	NY	14572-9515	Steuben	Southern Tier	The Gunlocke Company LLC manufactures office furniture, including seating, desks, and storage solutions. The base employment level was adjusted effective September 1, 2023 as a result of the 2021-2022 ReCharge NY Compliance period from 601 to 184. The company provided job counts for the period from July 2024 through December 2024, which indicated no additional job growth.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 1,526 kW, and authorize an adjustment of the job commitment to not less than 156 jobs. Staff also recommends that the Trustee authorize a reduction in the 5 year Capital Investment Commitment (CIC) to not less than \$3,461,007.
5	Westrock - Southern Container, LLC	630	130	145	112%	\$ 10,000,000	\$ 5,252,540	53%	400	81	\$ 5,252,540	230	49	\$ 4,747,460	100 Southern Dr	Camillus	NY	13031-1578	Onondaga	Central New York	Westrock - Southern Container, LLC This is the second year the company reported a shortfall in capital spending. The company provided several reasons which included budget constraints, changing priorities, and project delays.	Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 400 kW, and authorize an adjustment of the job commitment to not less than 81 jobs. Staff also recommends that the Trustee authorize a reduction in the 5 year Capital Investment Commitment (CIC) to not less than \$5,252,540.
									*Total Reductions Exhibit B (1 & 2)			250	68	\$6,820,561								

Line	Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Job Compliance %	Five-Year Capital Investment Commitment	Cumulative Capital Investment Reported	Capital Investment % Achieved	(kW)	Jobs	Capital Investment	(kW)	Jobs	Capital Investment	Physical Address	City	State	Zip Code	County	Region	Background	Recommendation
6	Air Techniques, Inc.	330	195	237	122%	\$ 6,500,000	\$ 3,855,823	59%	N/A	N/A	N/A	N/A	N/A	N/A	1295 Walt Whitman Rd	Melville	NY	11747-3062	Suffolk	Long Island	Air Techniques manufactures dental and medical products. The company provided additional capital spending for the period of July 2024 through December 2024 in the amount of \$216,978 for a cumulative spend of \$4,072,801 increasing the reporting to 63%. Staff will continue to monitor the capital spending over the course of the next reporting period.	Staff recommends that the Trustees take no compliance action at this time.
7	Alder Creek Beverages, LLC	836	45	55	123%	\$ 2,000,000	\$ 1,463,285	73%	N/A	N/A	N/A	N/A	N/A	N/A	12044 State Route 12	Boonville	NY	13309-4917	Oneida	Central New York	Alder Creek Beverages, LLC manufactures bottled water. The company provided additional capital spending for the period of July 2024 through December 2024 in the amount of \$53,410 for a cumulative spend of \$1,516,695 or 76%. Staff will continue to monitor the capital spending over the course of the next reporting period.	Staff recommends that the Trustees take no compliance action at this time.
8	Arkwin Industries, Inc.	440	156	174	111%	\$ 6,055,804	\$ 4,235,030	70%	N/A	N/A	N/A	N/A	N/A	N/A	686 Main St	Westbury	NY	11590-5093	Nassau	Long Island	Arkwin Industries, Inc. manufactures aerospace components, did not provide a comment for its capital spending shortfall. Staff will continue to monitor the capital spending over the course of the next reporting period.	Staff recommends that the Trustees take no compliance action at this time.

Exhibit B: NONCOMPLIANCE WITH CAPITAL INVESTMENT COMMITMENTS; RECOMMENDED (1) REDUCTIONS IN ALLOCATIONS/CONTRACT DEMANDS, AND (2) ADJUSTMENTS TO COMMITMENTS; AND (3) RECOMMENDATIONS FOR NO COMPLIANCE ACTION AT THIS TIME

Line	Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Job Compliance %	Five-Year Capital Investment Commitment	Cumulative Capital Investment Reported	Capital Investment % Achieved	Revised Allocations/Commitments			Reductions			Physical Address	City	State	Zip Code	County	Region	Background	Recommendation
									(kW)	Jobs	Capital Investment	(kW)	Jobs	Capital Investment								
9	Bartell Machinery Systems, L.L.C.	186	101	102	101%	\$ 4,260,000	\$ 952,200	22%	N/A	N/A	N/A	N/A	N/A	N/A	6321 Elmer Hill Rd	Rome	NY	13440-9325	Oneida	Mohawk Valley	Bartell Machinery Systems, L.L.C. manufactures industrial equipment. Staff is currently reviewing the capital investment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
10	BorgWarner Ithaca LLC	3,500	1,100	1,081	98%	\$ 76,200,000	\$ 48,873,591	64%	N/A	N/A	N/A	N/A	N/A	N/A	800 Warren Rd	Ithaca	NY	14850-1266	Tompkins	Southern Tier	BorgWarner Ithaca LLC manufactures automotive industry components. The company did not provide a comment for its capital spending. Staff is currently reviewing the capital investment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
11	CBS Broadcasting Inc.	5,960	2,461	2,282	93%	\$200,000,000	\$ 173,533,138	87%	N/A	N/A	N/A	N/A	N/A	N/A	51 W 52nd St	New York	NY	10019-6119	New York	New York City	CBS Broadcasting Inc., a broadcasting and content provider, reported additional capital spending for the period of July 2024 through December 2024 in the amount of \$26,335,375 for a cumulative spend of \$199,868,513, or 100%.	Staff recommends that the Trustees take no compliance action at this time.
12	Corning Incorporated	866	170	187	110%	\$ 15,000,000	\$ 11,900,191	79%	N/A	N/A	N/A	N/A	N/A	N/A	275 River St	Oneonta	NY	13820-2299	Otsego	Mohawk Valley	Corning Incorporated (Costar Plant) reported that it is planning to meet the capital spending commitment and has expressed an interest in pursuing a contract modification. Staff will continue to monitor the capital spending over the course of the next reporting period.	Staff recommends that the Trustees take no compliance action at this time.
13	Corning Incorporated	7,090	1,898	1,971	104%	\$200,000,000	\$ 135,435,520	68%	N/A	N/A	N/A	N/A	N/A	N/A	Science Center Rd	Painted Post	NY	14870	Steuben	Southern Tier	Corning Incorporated (Sullivan Park) reported that it is planning to meet the capital spending commitment and has expressed an interest in pursuing a contract modification. Staff will continue to monitor the capital spending over the course of the next reporting period.	Staff recommends that the Trustees take no compliance action at this time.
14	Corning Incorporated	10,616	1,850	1,519	82%	\$139,000,000	\$ 75,369,000	54%	N/A	N/A	N/A	N/A	N/A	N/A	890 Addison Rd	Painted Post	NY	14870-9726	Steuben	Southern Tier	Corning Incorporated (SCC & IDM) reported that the employment shortfall is due to production support adjusting to a decrease in market demand, and the capital spending has been delayed due to fluctuating market conditions. The company has expressed an interest in a campus set up with New York Power Authority. Staff is currently reviewing the contractual modification process with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
15	Fedrigoni Special Papers North America, Inc.	3,536	312	247	79%	\$ 17,500,000	\$ 10,819,000	62%	N/A	N/A	N/A	N/A	N/A	N/A	0 Mohawk Ave	Waterford	NY	12188	Albany	Capital District	At the May 21, 2024 Trustee meeting, Fedrigoni Special Papers North America, Inc. was approved to transfer the hydropower supply contract from Mohawk Fine Papers, Inc. Due to the recent restructuring of the company, Staff will review compliance reporting in the next reporting period.	Staff recommends that the Trustees take no compliance action at this time.
16	Give And Go Prepared Foods (U.S.A.) Corp.	900	160	286	179%	\$ 5,000,000	\$ 3,689,151	74%	N/A	N/A	N/A	N/A	N/A	N/A	41 Natcon Dr	Shirley	NY	11967-4700	Suffolk	Long Island	Give & Go Prepared Foods (USA) Corp. reported additional capital spending for the period of July 2024 through December 2024 in the amount of \$1,516,757 for a cumulative spend of \$5,205,908, or 104%. Staff is currently reviewing the capital investment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
17	GKN Aerospace Monitor, Inc.	1,360	206	155	75%	\$ 13,200,000	\$ 7,168,408	54%	N/A	N/A	N/A	N/A	N/A	N/A	1000 New Horizons Blvd	Amityville	NY	11701-1138	Suffolk	Long Island	GKN Aerospace Monitor, Inc. manufactures aerospace-related structural components. The company is moving operations out of state and has opted out of the ReCharge New York program as of January 2025.	Staff recommends that the Trustees take no compliance action at this time.
18	Intrepid Museum Foundation	290	214	241	113%	\$ 4,500,000	\$ 3,245,284	72%	N/A	N/A	N/A	N/A	N/A	N/A	Pier 86, West 46th Street & 12 Avenue	New York	NY	10036	New York	New York City	Intrepid Museum Foundation reported that the capital investment shortfall is due to residual effects of the COVID-19 global pandemic. Staff is currently reviewing the capital investment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
19	Juniper Ring Acquisitions	130	63	64	102%	\$ 5,000,000	\$ 4,035,347	81%	N/A	N/A	N/A	N/A	N/A	N/A	2980 Turner Rd	Jamestown	NY	14701-9024	Chautauqua	Western New York	Juniper Ring Acquisitions manufactures precision components. The company provided additional capital spending for the period of July 2024 through December 2024 in the amount of \$535,677 for a cumulative spend of \$4,571,024 or 91%. Staff is currently reviewing the capital investment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
20	Lincoln Center for the Performing Arts, Inc.	930	204	283	139%	\$ 31,183,000	\$ 15,705,510	50%	N/A	N/A	N/A	N/A	N/A	N/A	70 Lincoln Center Plz	New York	NY	10023-6548	New York	New York City	Lincoln Center for the Performing Arts, Inc., provided additional capital spending for the period of July 2024 through December 2024 in the amount of \$6,932,802 for a cumulative spend of \$22,638,312 or 73%. Staff is currently reviewing the capital investment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.

Exhibit B: NONCOMPLIANCE WITH CAPITAL INVESTMENT COMMITMENTS; RECOMMENDED (1) REDUCTIONS IN ALLOCATIONS/CONTRACT DEMANDS, AND (2) ADJUSTMENTS TO COMMITMENTS; AND (3) RECOMMENDATIONS FOR NO COMPLIANCE ACTION AT THIS TIME

Line	Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Job Compliance %	Five-Year Capital Investment Commitment	Cumulative Capital Investment Reported	Capital Investment % Achieved	Revised Allocations/Commitments			Reductions			Physical Address	City	State	Zip Code	County	Region	Background	Recommendation
									(kW)	Jobs	Capital Investment	(kW)	Jobs	Capital Investment								
21	Samaritan-Keep Nursing Home, Inc.	210	227	229	101%	\$ 1,000,000	\$ 805,278	81%	N/A	N/A	N/A	N/A	N/A	N/A	133 Pratt St	Watertown	NY	13601-4300	Jefferson	North Country	Samaritan-Keep Nursing Home, Inc. reported that it has plans for future capital spending. Staff is currently reviewing the capital investment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
22	Southern Glazer's Wine and Spirits of Upstate New York, LLC	300	600	601	100%	\$ 6,000,000	\$ 4,302,838	72%	N/A	N/A	N/A	N/A	N/A	N/A	3063 Court St	Syracuse	NY	13208-3250	Onondaga	Central New York	Southern Glazer's Wine and Spirits of Upstate New York, LLC reported that its capital spending was set to \$6,000,000 in error and the correct value is \$3,000,000. Staff will present this contract modification at the July 2025 Trustee Meeting.	Staff recommends that the Trustees take no compliance action at this time.
23	Special Metals Corporation	4,900	267	342	128%	\$ 42,357,000	\$ 16,087,623	38%	N/A	N/A	N/A	N/A	N/A	N/A	4317 Middle Settlement Rd	New Hartford	NY	13413-5392	Oneida	Mohawk Valley	Special Metals Corporation produces nickel-based alloys and superalloys. Staff is currently reviewing the capital investment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
24	Upstate Niagara Cooperative, Inc.	800	183	194	106%	\$ 5,000,000	\$ 3,427,498	69%	N/A	N/A	N/A	N/A	N/A	N/A	1730 Dale Rd	Buffalo	NY	14225-4921	Erie	Western New York	Upstate Niagara Coop Inc. (Buffalo) produces dairy products. The company reported additional capital spending for the period of July 2024 through December 2024 in the amount of \$344,142 for a cumulative spend of \$3,771,640, or 75%. Staff is currently reviewing the capital investment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
25	Upstate Niagara Cooperative, Inc.	190	176	224	127%	\$ 15,000,000	\$ 7,572,034	50%	N/A	N/A	N/A	N/A	N/A	N/A	3300 N America Dr	West Seneca	NY	14224-5324	Erie	Western New York	Upstate Niagara Coop Inc. (West Seneca) produces dairy products. The company reported additional capital spending for the period of July 2024 through December 2024 in the amount of \$3,245,904 for a cumulative spend of \$10,817,938, or 72%. Staff is currently reviewing the capital investment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
26	Upstate Niagara Cooperative, Inc.	670	171	150	88%	\$ 4,000,000	\$ 2,681,934		N/A	N/A	N/A	N/A	N/A	N/A	45 Fulton Ave	Rochester	NY	14608-1032	Monroe	Finger Lakes	Upstate Niagara Cooperative, Inc. (Rochester) produces and distributes dairy products. The company stated that it is actively seeking opportunities to meet the commitments and provided job counts from July 2024 through December 2024, indicating an increase in employment levels to 161 or 94%.	Staff recommends that the Trustees take no compliance action at this time.
27	USTA National Tennis Center, Inc.	216	129	411	318%	\$100,000,000	\$ 77,661,675	78%	N/A	N/A	N/A	N/A	N/A	N/A	120-00 45th Ave	Flushing	NY	11368	Queens	New York City	USTA National Tennis Center, Inc. reported additional capital spending for the period of July 2024 through December 2024 in the amount of \$55,259,460 for a cumulative spend of \$132,921,135, or 133%. Staff is currently reviewing the capital investment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
28	Worthington Steel Rome, LLC	1,576	108	104	97%	\$ 15,000,000	\$ 8,832,256	59%	N/A	N/A	N/A	N/A	N/A	N/A	530 Henry St	Rome	NY	13440-5639	Oneida	Mohawk Valley	Worthington Steel Rome, LLC manufactures precision cold-rolled steel strip products. The company provided additional capital spending for the period of July 2024 through December 2024 in the amount of \$1,228,311 for a cumulative spend of \$10,060,567 or 67%. Staff is currently reviewing the capital investment levels with the company and will reassess compliance action during the following reporting period.	Staff recommends that the Trustees take no compliance action at this time.
29	Yeshiva University	1,216	500	1,493	299%	\$ 1,000,000	\$ 598,399	60%	N/A	N/A	N/A	N/A	N/A	N/A	55 5th Ave	New York	NY	10003-4301	New York	New York City	Yeshiva University did not provide a comment for its capital spending shortfall, however plans to provide additional spending to meet the commitment in the next reporting period. Staff will continue to monitor the capital spending over the course of the next reporting period.	Staff recommends that the Trustees take no compliance action at this time.
Total Reductions Exhibit B (3)												N/A	N/A	N/A								

*The totals are adjusted to accommodate customers that are non-compliant in multiple areas.



Date: May 20, 2025

To: NEW YORK POWER AUTHORITY BOARD OF TRUSTEES

From: PRESIDENT & CHIEF EXECUTIVE OFFICER

Subject: Annual Compliance Review – High Load Factor Power Program

SUMMARY

The New York Power Authority Board of Trustees ("Board of Trustees") is requested to approve Staff's recommendation regarding the annual compliance review for customers receiving power allocations under the High Load Factor ("HLF Power") Program for the reporting period of July 1, 2023 through June 30, 2024 ("Reporting Period").

The New York Power Authority ("Authority") staff has conducted its annual compliance review, which examined HLF Power customer contract compliance in two areas: (1) job creation and retention (collectively, "job retention"); and (2) power utilization.

The purpose of this memorandum is to inform the Board of Trustees of the results of the compliance review for the specified Reporting Period.

BACKGROUND

The Authority is authorized to allocate and sell HLF Power by the Power Authority Act, including Public Authorities Law ("PAL") § 1001 and 1005. The statute defines a high load factor manufacturer as "one which normally utilizes a minimum electric demand of five thousand kilowatts and which will utilizes energy at the rate of approximately five hundred forty kilowatt-hours per month for each kilowatt of demand, and of which the cost of electricity normally represents at least seven and one-half percent of its total product value." Since the closure of the Authority's James A. Fitzpatrick nuclear power plant in or around approximately 2005, the Authority has sourced HLF Power from market sources.

Successful applicants are awarded HLF Power allocations and offered a contract with the Authority for the purchase of the HLF Power. In addition to the basic requirement to pay for electrical service, the contract addresses the parties' obligations, including supplemental customer commitments relating to:

(1) job creation and retention, and (2) power utilization (the "Supplemental Commitments").

To facilitate compliance review and contract enforcement, the HLF Power contract requires customers to report on performance of the Supplemental Commitments. Customers are required to report pertinent information on the Supplemental Commitments in the Compliance Report no later than August 31 of each year for the prior 12-month reporting period from July through June.

DISCUSSION

Compliance Review and Findings

Staff has completed its annual compliance review and evaluation of all eligible in-service HLF Power allocation contracts for compliance with the Supplemental Commitments. Of the existing HLF Power customers, two were required to submit a compliance filing for the Reporting Period.

Compliance Approach

If a customer's (i) annual average monthly employment for the reporting period is below 90% of the customer's job retention commitment, (ii) its reported average monthly kW utilization is below 90% of the allocation amount for the highest six months, (iii) its minimum electric demand is below five thousand kW for at least six months of the calendar year, or (iv) its energy utilization is below a load factor of 74% for at least six months of the calendar year, the Authority may take compliance action against the customer. Compliance options include termination of the contract, suspension of electric service, and reduction of the customer's HLF Power allocation. The Authority may also take no action or may recommend that compliance be judged at a discounted performance level, as has been done in the past with other power programs.

Compliance Results

Staff reviewed the data reported by the HLF Power customers for the Reporting Period to assess compliance with their Supplemental Commitments. Staff determined that the two in-service HLF Power customers that are under review, (1) East Coast Nitrogen LLC, and (2) Lake Mariner Data LLC, each met the 90% compliance threshold for both of their respective Supplemental Commitments for job retention and kW utilization.

As both HLF Power customers are compliant with their respective Supplemental Commitments, there is no basis for any compliance action at this time.

FISCAL INFORMATION

The actions recommended will not have any impact on the Authority's finances.

RECOMMENDATION

The Senior Vice President, Customer Solutions requests that the Board of Trustees approve Staff's compliance review for the two HLF Power customers identified above, and accept Staff's finding that both companies are in compliance with their respective Supplemental Commitments for the Reporting Period.

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

Justin E. Driscoll
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the Board of Trustees hereby accept Staff's assessment regarding the annual compliance review for the High Load Factor ("HLF") Power Program for the compliance period of July 1, 2023 through June 30, 2024, and find that each company is deemed compliant for the reasons indicated in the Memorandum; and be it further

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

Date: May 20, 2025

To: NEW YORK POWER AUTHORITY BOARD OF TRUSTEES

From: PRESIDENT & CHIEF EXECUTIVE OFFICER

Subject: ReCharge New York Power Program Tariff Amendment – Notice of Adoption

SUMMARY

The New York Power Authority Board of Trustees ("Board of Trustees") is requested to approve a Notice of Adoption ("NOA") to amend the current ReCharge New York ("RNY") Power Program Service Tariff RNY-1 ("ST" or "Tariff") and to authorize NYPA staff to provide written notice and other outreach concerning these changes to RNY customers ("Customers"). In addition, the Board of Trustees is requested to direct the Corporate Secretary to file the NOA with the New York State Department of State for publication in the New York State Register ("State Register"), in accordance with the requirements of the State Administrative Procedure Act ("SAPA"). A Notice of Proposed Rulemaking ("NOPR") was published in the State Register on February 12, 2025, and commenced a 60-day public comment period that closed on April 14, 2025.

The 60-day public comment period provided the public an opportunity to submit comments on the proposed Tariff amendment. NYPA staff did not receive any comments or concerns from the public for further consideration in adopting the proposed Tariff amendment. As noted in the January 28, 2025, ReCharge New York Power Program Tariff Amendment – Notice of Proposed Rulemaking Board of Trustees item, NYPA staff returns to the Trustees at the May 20, 2025, meeting seeking final adoption approval of the ReCharge New York Power Program Tariff Amendment.

BACKGROUND

Under PAL §1005(13-a), the Authority ("NYPA") is authorized and directed to allocate, reallocate or extend, directly or by sale for resale, up to nine hundred ten (910) megawatts of ReCharge New York power to eligible applicants located within the State of New York.

The original RNY Tariff rate structure was created at the inception of the RNY Power program in 2012 and has remained unchanged since. Under the previous rate structure, Customers' invoices did not distinguish the various components of the Customer's bill, as the rate was bundled. The bundled rate included both the hydropower component supplied by NYPA and the wholesale electricity market components and other NYISO charges that were outside of NYPA's control and were passed through to the Customer.

Customers' rate structure had previously consisted of base demand and energy rates, as well as an Energy Charge Adjustment ("ECA"). The base rates included a hydropower component and New York Independent System Operator ("NYISO") market pass-through components, specifically charges for electric capacity, energy, transmission usage charges, and other applicable NYISO charges (hereafter "market charges"). The base rates were updated annually based on projections for the market pass-through components at the time of the rate development. The market components of the base rates were then reconciled monthly through the ECA mechanism.

Since the start of the RNY program, Customers have expressed concerns to NYPA regarding volatility in their total bills. This bill volatility, driven by the market pass-through components of Customers' bills, was not controlled by NYPA, nor by changes in the NYPA hydropower rate, which remained stable month to month. Customers were unable to appreciate the value of NYPA hydropower in terms of cost savings and cost stability due to the bundled nature of the RNY rates in the Tariff. In short, the benefits of participating in the RNY Power program were obscured under the previous rate structure.

To address this Customer concern, staff proposed a Tariff amendment to implement the RNY Power Bill Unbundling Initiative ("Unbundling Initiative") and to adjust the previous RNY rate structure. The major change to the outgoing rate structure is to unbundle the hydropower component from the bundled base rates and bill to Customers as a separate rate on their monthly invoice. All other market pass-through charges will also be unbundled from the hydropower component base rates and passed through to Customers as separate charges that they will see on their bills. Although the Customers' bills will display changes with this Unbundling Initiative, the new rate structure will have no net financial impact on NYPA or Customers.

As part of the new rate structure, the tariff change will eliminate the ECA because market and other non-NYPA components will be directly charged to Customers as they are incurred. The tariff includes a new Bill Stabilization Adjustment ("BSA") that caps the market portion of RNY customer bills when market charges exceed an established threshold, collects any uncollected charges from RNY customers in future months, and requires customers to pay their own arrearages from each rate year by the end of the following rate year.

The adopted Tariff amendments will enable NYPA to implement a revised rate structure change through the Unbundling Initiative. The purpose of the Unbundling Initiative is to highlight the value that RNY Hydropower provides to Customers, as well as provide additional transparency into charges reflected on Customers' bills. Further, this Unbundling Initiative will simplify the administration of Customer billing, which currently uses a forecasting and true-up process to generate rates and Customer bills.

Shortly after the RNY Power program was implemented, Customers expressed concerns to NYPA regarding the high ECA rates appearing on their bills. Under the original tariff rate structure, Customer invoices did not distinguish between the various components of the Customer's bill. The original tariff bundled NYPA's relatively stable charges for NYPA hydropower together with the other non-NYPA market charges that varied widely from month to month, resulting in a relatively volatile ECA. These high ECA rates are driven by the volatility in the market charges, which are outside of NYPA's control.

In response to these concerns, NYPA took measures to help reduce Customer bill volatility by deferring the market charges when market prices were high. These market charges were deferred, interest-free, amortized, and collected over succeeding billing periods through the monthly ECA. Although Customers appreciated NYPA's efforts to offer bill stability, Customers continued to question the benefits of the RNY Power program because the bundled rate structure did not sufficiently illustrate the relative stability of the RNY Power hydropower component.

Unbundling the various cost components will change how costs are displayed on Customers' monthly invoices so that Customers will see the cost components broken out separately on their invoices. Customers will be able to see the NYPA hydropower charge as an individual line item, which will highlight the competitive benefit and stability of the RNY hydropower component. Additionally, with the non-NYPA pass-through components listed separately on the bill, the new bill display and rate structure will clearly demonstrate that cost fluctuations and volatility are tied to market charges outside of NYPA's control.

Under this new rate structure, there is no need for a monthly ECA mechanism as market components are charged to Customers as incurred. NYPA will implement the new BSA to continue providing Customers with some bill stability and protection against volatility in market and other non-NYPA charges. The BSA will cap the market portion of the Customer bill when market prices are high, if these charges exceed an established threshold. Any charges not collected from customers due to the application of the BSA will be amortized, interest-free, in future billing periods. Customers will be required to pay their own arrearages from each rate year by the end of the next rate year to prevent accumulation of large arrearages. The BSA will reinforce that NYPA is committed to helping customers control costs by providing interest-free deferred charges resulting from the BSA's application.

As noted above, NYPA received no public comments in response to the notice in the State Register. On February 25, 2025, and February 27, 2025, NYPA staff held informational sessions for customers regarding the RNY Unbundling Initiative. The informational sessions were organized to provide RNY customers with supplemental notice and information on the proposed tariff and billing changes in advance of adopting the changes. Further, the presentations shared during the sessions included an overview of the RNY program, tariff change procedures, and benefits of RNY Unbundling Initiative. NYPA staff received no objections to the new rate structure from Customers.

FISCAL INFORMATION

The adopted Tariff amendment will enable NYPA to implement a rate structure change through the Unbundling Initiative. This rate structure change affects how the charges are displayed on the Customers' invoices. However, there will be no change to the types of costs that Customers are subject to paying for supply through the RNY Power Program. The BSA will replace the existing ECA to continue providing monthly bill stability while requiring Customers to pay their own arrearages in full over time. The new BSA will also simplify the administration of the program. Accordingly, this adopted Tariff amendment will have no net financial impact on NYPA or the Customers.

RECOMMENDATION

The Senior Vice President – Customer Solutions requests that the Board of Trustees authorize the Corporate Secretary to file a Notice of Adoption in the State Register for the Tariff amendment to effectuate the proposed rule.

The Senior Vice President – Customer Solutions further requests that the Trustees approve the Tariff amendment to take effect beginning in the July 2025 billing period following the date this resolution is adopted.

It is also recommended that the Senior Vice President – Customer Solutions, or their designee, be authorized to issue written notice of the approved 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.

Justin E. Driscoll
President and Chief Executive Officer

RESOLUTION

RESOLVED, that the Senior Vice President – Customer Solutions, or their designee, be, and hereby is, authorized to issue written notice to the affected Customers of this adopted action by the New York Power Authority Trustees for the amendment to the Recharge New York Power Program Tariff RNY-1 issued in 2012, as set forth in the foregoing memorandum 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 adopted amendment to the Recharge New York Power Program Tariff RNY-1 issued in 2012; and be it further

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



Date: May December 120, 20245

To: Board of Trustees

From: PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Recommendation for Award of Fund Benefits from the Western New York Economic Development Fund by the Western New York Power Proceeds Allocation Board

SUMMARY

The Trustees are requested to: (1) accept the recommendations of the Western New York Power Proceeds Allocation Board (the "Allocation Board" or "WNYPPAB") and make an awards of Fund Benefits from the Western New York Economic Development Fund to Industrial Support Services, Inc. ("ISI") ~~Seibel Modern Mfg. & Welding Corp. ("Siebel")~~, which isis more particularly described in Exhibits "A" and ~~and~~ "A-1" in the amounts indicated on the Exhibits and for the reasons discussed below and in the Exhibits; and (2) authorize the other actions described herein with respect to such applicant and the recommended award.

BACKGROUND

1. Western New York Power Proceeds Allocation Act

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

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

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

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

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

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

2. Western New York Power Proceeds Allocation Board

Under the Act, the Allocation Board is charged with soliciting applications for Fund Benefits, reviewing applications, making eligibility determinations, and evaluating the merits of applications for Fund Benefits. The Allocation Board uses the criteria applicable to EP, RP and PP, and for revitalization of industry as provided 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 Regional Economic Development Council having responsibility for the region in which an eligible project is proposed. A copy of these criteria (collectively, “Program Criteria”), adapted from the Allocation Board’s “Procedures for the Review of Applications for Fund Benefits,” is attached as Exhibit “B.”

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

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

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 202~~5~~⁴ on which the Allocation Board would meet to consider applications. At this time, applications are being accepted on a rolling basis. In addition, the application process was promoted through a media release and with assistance from state and local entities, including the Western New York and Finger Lakes Regional Economic Development Councils, the Empire State Development Corporation, and other local and regional economic development organizations within the State. A webpage was created that is hosted on WWW.NYPA.GOV/WNYPPAB 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 ~~April~~^{October} 1, 202~~5~~⁴ meeting, the Allocation Board considered an application from ISI~~the Siebel application~~.

~~“”, and would create 19 full time equivalent (“FTE”) jobs at the project location over three years at an average annual salary of \$63,750. As detailed in Exhibit “A-1”, Seibel Modern seeks funds to construct a 77,000 square foot facility in the Town of Lancaster that will be equipped with state-of-the-art machinery and technology. This new building will consolidate operations by replacing the company’s two existing locations in Lancaster and West Seneca. Seibel Modern would spend approximately \$14.4 million to complete its project.~~

As detailed in Exhibit “A-12”, ISI seeks funds to improve its metal fabrication segment by purchasing a Lone Star Lightning DS 612 Dual Shuttle Laser Cutting Machine. This new tool would enhance quality, precision, and production, maximize material efficiency, accommodate more complex designs and minimize outsourcing. ISI would spend approximately \$440,000K to complete its project, and would retain 23 and create four full time equivalent (“FTE”) jobs at the project location over seven years at an average annual salary of \$47,792.

As detailed in Exhibit “A-2”, ISI seeks funds to improve its metal fabrication segment by purchasing a Lone Star Lightning DS 612 Dual Shuttle Laser Cutting Machine to enhance quality and precision, increase production speed by reducing the need for post-processing, maximize material efficiency, and offer more complex designs and and minimize outsourcing. ISI would spend approximately \$440K to complete its project.

The Allocation Board staff analyzed the application and made an award recommendations to the Allocation Board based on eligibility requirements and Program Criteria. A copy~~Copies~~ of the recommendation memorandum was~~are~~ provided to the Allocation Board for the project iss~~are~~ attached as Exhibit “A-1”. The application has ss also been made available to the Trustees for review.

The Allocation Board has recommended that the applicant receives a ~~a~~ Fund Benefit award in the amount indicated on Exhibits “A” and ~~and~~ “A-1”. Given the nascent stage of the proposed projects, it was not practical to recommend the terms and conditions that would be

applicable to the award and memorialized in an Award Contract between the Authority and a successful applicant.

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

RECOMMENDATION

The Senior Vice President, Clean Energy Solutions recommends that:

- (1) the Trustees accept the recommendations of the Allocation Board and make an award of Fund Benefits to ~~ISI Seibel Modern Mfg. & Welding Corp.~~ in the amount identified in Exhibits "A" ~~and -and-~~ "A-1", conditioned upon an agreement to be negotiated with the applicant on the final terms and conditions that would be applicable to the award to be contained in an Award Contract approved by the President and Chief Executive Officer, or their designee, and approved by the Executive Vice President and General Counsel, or such official's designee, as to form;
- (2) the EVP Chief Operating Officer, or such official's designee, be authorized to negotiate with the applicants concerning such final terms and conditions that will be applicable to the award; and
- (3) the Senior Vice President for Customer Solutions, or such official's designee, be authorized to execute on behalf of the Authority an Award Contract for the awards listed on Exhibits "A" ~~and~~ "A-1" subject to the foregoing conditions.

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

Justin E. Driscoll
President and Chief Executive Officer

RESOLUTION

WHEREAS, The Western New York Power Proceeds Allocation Board ("Allocation Board") has recommended that the Authority make an award of Fund Benefits from the Western New York Economic Development Fund to ~~Industrial Support, Inc. ("ISI") Siebel Modern Mfg. & Welding Corp. ("Siebel Modern")~~, for the reasons set forth in the ~~which are~~ is more particularly ~~described in the~~ accompanying Memorandum of the President and Chief Executive Officer ("Memorandum") and the other information referred to therein;

NOW THEREFORE BE IT RESOLVED, That the Authority hereby accepts the recommendation of the Allocation Board and authorizes award of Fund Benefits to ISI Siebel Modern in the amount recommended in the attached Memorandum for reasons set forth in the attached Memorandum and other information referred to therein, conditioned upon an agreement between the Authority ~~and and ISI Siebel Modern~~ on the final terms and conditions that would be applicable to the awards s and set forth in a written award contract ("Award Contract") between the Authority and the applicant, approved by the President and Chief Executive Officer, or his designee, and approved by the Executive Vice President and General Counsel or such official's designee, as to form; and be it further

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

RESOLVED, That the Senior Vice President for Customer Solutions, or such official's designee, is authorized to execute on behalf of the Authority an Award Contract for this awards s, subject to the forgoing conditions; and be it further

RESOLVED, That the Chairman, the President and Chief Executive Officer, the Chief Operating Officer, ~~the~~ the Senior Vice President for Customer Solutions, 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.

Applications for Proceeds and Fund Recommendations

Line	Business	City	County	Economic Development Region	Project Description	Project Type	Recommended Award Amount	Total Project Cost	Jobs Retained	Jobs Created
1	Industrial Support, Inc.	Buffalo	Erie	Western NY	Business Expansion	Business Investment	\$88,005	\$440,025	23	4
Total:							\$88,005	\$440,025	23	4

Total Jobs Created & Retained: 27



Western NY Power Proceeds Allocation Board

KATHY HOCHUL
Governor

ANTHONY J. COLUCCI III
Chairman

Western New York Economic Development Fund Recommendation Memo Exhibit A-1

Applicant Name:	Industrial Support, Inc.	REDC Region:	Western New York
Project Type:	Business Investment	County:	Erie
Industry:	Manufacturing	Locality:	Buffalo
Amount Requested:	\$88,005	Start Date:	May 1, 2025
		Finish Date:	June 1, 2025
RECOMMENDED OFFER			
Recommended Total Award:		\$88,005	
Total Project Cost:		\$440,025	
% of Project Cost Recommended:		20%	
PROJECT BUDGET (Proposed by Applicant)			
Use of funds	Amount	Source of Funds	Amount
M&E	\$395,000	WNY EDF	\$88,005
Salaries and wages	\$14,725	Corporate Cash/Line of Credit	\$352,020
Supplies/Materials	\$9,500		
Soft Costs	\$7,500		
Hard Costs	\$7,300		
Infrastructure Costs	\$6,000		
Total:	\$440,025	Total:	\$440,025
REGIONAL IMPACT MEASUREMENTS			
Job Commitments:		Applicant will retain 23 and create 4 full time equivalents ("FTE") at the project location over seven years.	
Average Salary of Jobs:		\$47,792	
Indirect Jobs Created:		N/A	
Other Impact:		N/A	
PROJECT DESCRIPTION (Adapted from Application)			
Industrial Support, Inc. ("ISI") is a contract manufacturing company focused on metal fabrication & stamping, electronic & manufacturing assembly, and contract packaging.			
ISI seeks to improve its metal fabrication segment by purchasing a Lone Star Lightning DS 612 Dual Shuttle Laser Cutting Machine to enhance quality and precision, increase production speed, maximize material efficiency, and offer more complex designs.			



KATHY HOCHUL
Governor

Western NY Power Proceeds Allocation Board

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Chairman

The new machine is expected to increase cutting speeds, precision, and production versatility, supplementing existing technology. The project will help retain 23 jobs and create 4 new jobs, thereby sustaining and growing ISI's position and supporting regional employment.

OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED

N/A			

PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED

TYPE	AMOUNT	STATUS

BASIS FOR RECOMMENDATION

The Project:

- Is expected to retain 23 FTE existing jobs and create 4 FTE jobs which contribute to the stability and growth of the regional workforce.
- Is expected to enhance production capabilities for the company, leading to increased business opportunities, revenue, higher output, and potentially attracting more contracts, which will positively impact on the regional economy.
- Supports the growth of an East Buffalo manufacturing company, contributing to the region's economic development and industrial base.
- Aligns with the 2023 WNY REDC priorities that focus on growing the region's tradable sectors and traditional economic development goals of facilitating job creation and business investment in WNY.

ANTICIPATED DISBURSEMENT TERMS

Fund Benefits would be used to reimburse the Applicant for a portion of costs associated with the cost of Machinery and Equipment at ISI's facility. It is anticipated that: (1) funds would be disbursed in arrears upon completion of the project; and (2) reimbursement would be made upon presentation to NYPA of invoices and such other documentation acceptable to NYPA verifying that the Applicant has incurred eligible expenses of approximately \$440,000; and (3) other terms and conditions such as annual commitments that will be specified in the Fund Benefits Agreement.



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Governor

Western NY Power Proceeds Allocation Board

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Exhibit B

Criteria adapted from the Western NY Power Proceeds Allocation Board's "Procedures for the Review of Applications for Fund Benefits"

1. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council ("REDC") having responsibility for the region in which an Eligible Project is located.¹ The Western New York Regional Economic Development Council is responsible for Eligible Projects in Erie and Niagara Counties, and its Strategies & Priorities are to:
 - Promote "Smart Growth" by investing in areas where infrastructure already exists and achieves certain goals, such as: preserving historic buildings; reviving downtowns; reviving main streets; investing in existing neighborhoods; and investing in former industrial sites. A project consistent with Smart Growth will also focus on: enhancing walkability; enhancing multiple modes of transportation; connecting disadvantaged communities to employment clusters; spurring mixed-use private investment in existing communities and preserving/enhancing natural lands and or resources.
 - Promote workforce development by increasing diversity in the labor force, developing and cultivating workers with advancement potential, underemployed, unemployed and who belong to a special population; align education and skills training to the job market for current and future industry needs.
 - Foster entrepreneurship and new business formation and growth. Designing a plan that brings new technologies and/or products to the marketplace, increases new start ups in strategic industries and facilitates the commercialization of products that can lead to job growth in the region.
 - Increase the industry profile of agriculture in WNY by: creating better access to markets; creating new products, creating new more efficient processes, and creating strong regional brands; creating programs that promote careers in agriculture.
 - Utilize Western New York's proximity to Canadian and U.S. population centers to advance economic development in WNY. Bi-national projects will utilize cross-border

¹ As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, "revitalization" projects.



Western NY Power Proceeds Allocation Board

KATHY HOCHUL
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planning to create transportation and logistical infrastructure, improve operational relationships, and promote the attractiveness of WNY as a hub for global trade.

- Position the WNY region as a global energy hub through new sources of clean energy, energy efficiency and energy efficient transportation.
- Support growth of advanced manufacturing by making research more available to manufacturers to help them innovate.
- Spur growth in the health and life sciences industry through improved commercialization, recruiting high profile research talent and reducing the cost burden of healthcare while improving health outcomes.
- Expand the scope of higher education by increasing accessibility to Higher Education for communities that currently have limited access to educational opportunities; better aligning education with the industry needs and creating support structures for start-ups that will assist start-ups with commercialization, business planning, workforce preparation, and facilities, etc.
- Grow visitors and visitor spending by raising the profile of WNY as a national and international destination; connect multiple tourist destinations in WNY; improve the profile of the WNY Gateway to the United States.

For more information on the Western New York Regional Economic Development Council please go to <https://regionalcouncils.ny.gov/western-new-york>.

2. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council ("REDC") having responsibility for the region in which an Eligible Project is located.² The Finger Lakes Regional Economic Development Council which is responsible for Eligible Projects in Orleans and Genesee Counties Strategies & Priorities can be found at: <https://regionalcouncils.ny.gov/finger-lakes>.
3. The number of jobs that would be created as a result of an award of Fund Benefits.
4. The applicant's long term commitment to the region as evidenced the current and/or planned capital investment in applicant's facilities in the region.
5. The ratio of the number of jobs to be created to the amount of Fund Benefits requested.
6. The types of jobs that would be created, as measured by wage and benefit levels, security and stability of employment.
7. The amount of capital investment, including the type and cost of buildings, equipment and facilities, proposed to be constructed, enlarged or installed.

² As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects that are proposed by Applicants as, and determined by the Board to be, "revitalization" projects.



Western NY Power Proceeds Allocation Board

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8. The extent to which an award of Fund Benefits would affect the overall productivity or competitiveness of the applicant and its existing employment.
 9. The extent to which an award of Fund Benefits may result in a competitive disadvantage for other business in the State.
 10. The growth potential of the applicant's facilities and the contribution of economic strength to the area in which the applicant's facilities are or would be located.
 11. The extent of the applicant's willingness to satisfy affirmative action goals.
 12. The extent to which an award of Fund Benefits is consistent with state, regional and local economic development strategies and priorities and supported by local units of government in the area in which the business is located.
 13. The impact of an award of Fund Benefits on the operation of any other facilities of the applicant, and on other businesses within the region.
 14. That the business is likely to close, partially close or relocate resulting in the loss of a substantial number of jobs.
 15. That the applicant is an important employer in the community and efforts to revitalize the business are in long-term interests of both employers and the community.
 16. That a reasonable prospect exists that the proposed award of Fund Benefits will enable the applicant to remain competitive and become profitable and preserve jobs for a substantial period of time.
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Date: May 20, 2025

To: NEW YORK POWER AUTHORITY BOARD OF TRUSTEES

From: THE PRESIDENT AND CHIEF EXECUTIVE OFFICER

SUBJECT: Proposed Renewed Relicensing Contracts for the Sale of Hydroelectric Power and Energy and Notice of Public Hearing

SUMMARY

The Trustees are requested to:

1. Approve updated forms of contract for hydro power and energy that will apply to the sale of Niagara Power Project hydroelectric power and energy to: 1) the “Host Communities” which consist of City of Niagara Falls, City of Niagara Falls School District, Lewiston-Porter Central School District, Niagara County, Niagara-Wheatfield Central School District, Town of Lewiston and Town of Niagara (“HC Contracts”) beginning the first day of the month following full execution of the final HC Contracts at the applicable preference power rate as provided for in the HC Contracts and Authority Service Tariff No. HC-1 (“ST HC-1”), 2) Tuscarora Nation (“TN Contract”) beginning the first day of the month following full execution of the final TN Contract at the applicable preference power rate as provided for in the TN Contract and Authority Service Tariff No. TN-1 (“ST TN-1”), and 3) Niagara University (“NU Contract”) beginning the first day of the month following full execution of the final NU Contract at the applicable Western New York Power Program power rate as provided for in the NU Contract and Authority Service Tariff No. NP-1 (“ST NP-1”).
2. Authorize a public hearing, in accordance with Public Authorities Law (“PAL”) § 1009, on the HC Contracts, TN Contract, and NU Contract.

A copy of the HC Contracts and their service tariffs (ST HC-1) are attached as Exhibits “A” – “G”; a copy of the TN Contract and ST TN-1 is attached as Exhibit “H”; and a copy of the NU Contract and ST NP-1 is attached as Exhibit “I”.

BACKGROUND

The relicensing process for the Niagara Power Project was a multi-year endeavor to replace the first 50-year license, which expired on August 31, 2007, with a new 50-year license. The new 50-year Federal Energy Regulatory Commission (“FERC”) license was issued on March 15, 2007 to the Authority for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, and became effective September 1, 2007. Part of the relicensing process entailed obtaining the support of the entities surrounding the Niagara Power Project, in particular the Host Communities, Tuscarora Nation and Niagara University.

The Authority filed an Offer of Settlement with FERC in 2005 that in part included separate settlement agreements with the Host Communities, Tuscarora Nation and Niagara University, settling all issues raised by these entities during the relicensing process, which in



exchange for supporting the Authority's relicensing efforts received certain commitments and benefits from the Authority.

Each of the settlement agreements, namely, the Host Community Relicensing Settlement Agreement Addressing Non-License Terms and Conditions ("HCRSA"), dated June 27, 2005, the Relicensing Settlement Agreement between the Power Authority of the State of New York and Tuscarora Nation ("TNRSA"), dated August 1, 2005, and the Niagara University Relicensing Settlement Agreement ("NURSA"), dated May 23, 2006, included the right to a power allocation from the Niagara Power Project for the term of the new license along with contracts that implement those allocations. The HCRSA has a 25 MW allocation (that could conditionally increase to 28 MW) to be allotted to the constituent parties as follows: City of Niagara Falls – 5.5 MW, City of Niagara Falls School District – 3.5 MW, Lewiston-Porter Central School District – 1.5 MW, Town of Lewiston – 3.5 MW (that could conditionally increase to 6.5 MW) and town of Niagara – 500 kW. The condition was met that allowed the allocation increase to 28 MW (3 MW increase for the Town of Lewiston). The TNRSA has a 1 MW allocation and the NURSA has an up to 3 MW allocation.

All the power sales agreements associated with the allocations from the HCRSA, TNRSA, and NURSA expire on September 1, 2025. The Host Communities' power sales agreements contain a clause that allow for the terms and conditions of the agreement to remain in effect after the expiration date on a year-to-year basis or until a new or modified agreement takes effect. The Tuscarora Nation and Niagara University power sales agreements allow for the agreements to remain in effect after the expiration date, upon mutual agreement, on a month-to-month basis, pending execution of a successor agreement for each.

The Authority is not the Load Serving Entity for any of the Host Communities, Tuscarora Nation or Niagara University.

DISCUSSION

The HC Contracts will continue to allot the 28 MW allocation the same as the current contracts. The TN Contract will continue the 1 MW allocation it has now and the NU Contract will continue the up to 3 MW allocation it has now.

The Host Communities and Tuscarora Nation will continue to pay the same rate applicable to preference power customers plus any applicable New York Independent System Operator, Inc. ("NYISO") charges. Niagara University will continue to pay Western New York Power Program rates plus any NYISO charges.

The HC Contracts and TN Contract continue to provide the option to have a portion or all of their energy allocations sold into the NYISO-administered market. Any revenue, which may be in the form of an energy credit, from such sales into the NYISO-administered market may be used for energy-related expenses or costs. The NU Contract does not provide the option for a financial settlement of its allocation like the HC Contracts and Tuscarora Nation Contract. Provisions in the NU Contract allow the Authority to monitor the local utility meter(s) to determine if there has been any impermissible resale of excess hydropower, as well as the application of a true-up mechanism to assess what monies may be owed back to the Authority, if such a scenario occurs, along with the obligation to pay those monies back to the Authority. These provisions put the NU Contract in alignment with the contracts of all other Authority customers who receive Western New York Power Program rates.



The HC Contracts, TN Contract and NU Contract all continue to provide unforced capacity only applicable to the Authority's physical deliveries and all of the proposed contracts provide that the transmission and delivery of the power and energy are the responsibility of the Host Communities, Tuscarora Nation and Niagara University. Each proposed contract has a sixteen-year term extending to September 1, 2041. A third set of contracts is envisioned to implement the allocations from 2041 through the end of the term of the FERC license in 2057. None of the proposed contracts have ancillary services or green (renewable) attributes included in the allocations.

All of the proposed contracts have been updated to include hydropower curtailment and substitute energy provisions when adverse water conditions impact the Niagara Power Project's ability to meet its firm energy obligations, which are currently applicable to, though not enumerated in, the current contracts. These updates put the contracts in alignment with the contracts of all other Authority customers who receive hydropower. Updates to the HC Contracts and TN Contract were made to reflect NYPA's current preference rate methodology including credits for the sale of excess unforced capacity in the development of the rate, as well as provisions that contemplate revisions to the rate methodology done in accordance with State rulemaking processes. Finally, flexibility was added to the HC Contracts, TN Contract and NU Contract by allowing, once annually, a pause and/or recommencement of electric service related to the allocations, upon 90 days written notice. The service tariffs for the proposed contracts remain unchanged.

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 firm hydropower, 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 then report to the Trustees on the public hearing any recommended modifications to the contract. Upon approval of the final contract by the Authority, the Authority must "report" the proposed contract, along with its recommendations and the public hearing records, to the Governor and other elected officials. Upon approval by the Governor, the Authority is authorized to execute the final contract.

FISCAL INFORMATION

The Host Communities and Tuscarora Nation will continue to pay for hydroelectric power and energy at the same rates applicable to the Authority's preference power customers. The rates and charges are subject to change through the State's rulemaking process in the same manner applicable to the Authority's preference power customers.

Niagara University will continue to pay for hydroelectric power and energy at the same Western New York Power Program rates to which the Authority's Western New York Power Program business customers are subject. The rates and charges are subject to adjustment in the same manner and on the same schedule as the monthly rates and charges of the Authority's Western New York Power Program business customers.

RECOMMENDATION



The Senior Vice President – Customer Solutions recommends that the Trustees:

- (i) approve the proposed form of HC Contracts, TN Contract and NU Contract for the sale of Niagara Power Project hydroelectric power and energy beginning on the first day of the month following full-execution of 1) the final HC Contracts at the applicable preference power rate as provided in the HC Contracts and ST HC-1, 2) the final TN Contract at the applicable preference power rate as provided for in the TN Contract and ST TN-1, and 3) the final NU Contract at the applicable Western New York Power Program rate as provided in the NU Contract and ST NP-1; and
- (ii) authorize a public hearing, in accordance with PAL § 1009, on the HC Contracts, TN Contract and NU Contract.

For the reasons stated, I recommend the approval of the above-requested action by adoption of a resolution in the form of the attached resolution.

Justin E. Driscoll

President and Chief Executive Officer

Att.

*Host Communities Proposed Contracts
Tuscarora Nation Proposed Contract
Niagara University Proposed Contract*



RESOLUTION

RESOLVED, That each proposed agreement with the Host Communities, Tuscarora Nation and Niagara University for the sale of Niagara Power Project hydroelectric power and energy attached to the foregoing Memorandum (“Host Communities Contracts”, “Tuscarora Nation Contract” and “Niagara University Contract”), is hereby approved; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit copies of the proposed Host Communities Contracts, Tuscarora Nation Contract and Niagara University Contract to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee pursuant to 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 Host Communities Contracts, Tuscarora Nation Contract, and Niagara University Contract in accordance with the procedures set forth in PAL § 1009; and be it further

RESOLVED, That the Senior Vice President – Customer Solutions or her designee be, and hereby is, authorized, subject to approval of the final 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 Host Communities Contracts, Tuscarora Nation Contract and



Niagara University Contract, as set forth in the foregoing memorandum of the President and Chief Executive Officer; and be it further

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

POWER AUTHORITY
OF THE
STATE OF NEW YORK

30 South Pearl Street
Albany, New York

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT HYDROELECTRIC POWER AND ENERGY
TO THE NIAGARA PROJECT HOST COMMUNITIES
Service Tariff No. HC-1 - Firm Hydroelectric Power and Energy
(CITY OF NIAGARA FALLS)

Month 2025

POWER AUTHORITY OF THE STATE OF NEW YORK

**30 South Pearl Street
Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROELECTRIC POWER AND ENERGY TO
THE NIAGARA PROJECT HOST COMMUNITIES**

SERVICE TARIFF No. HC-1 – Firm Hydroelectric Power and Energy

(CITY OF NIAGARA FALLS, NEW YORK)

City of Niagara Falls, New York (“Customer”) hereby enters into this Agreement with the Power Authority of the State of New York for electric service as follows:

I. Definitions

- a. Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.
- b. Agreement** means this Agreement.
- c. Allocation** shall mean the amount of power and associated energy that the Authority has allocated to Customer hereunder.
- d. Ancillary Services** shall be as defined by the NYISO in its rules, tariffs, manuals and procedures.
- e. Authority** is the Power Authority of the State of New York.
- f. Authorized Recipient** is defined in Article II.
- g. Commencement Date** shall be as set forth in Article XVIII.
- h. Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.
- i. Customer** is the municipality (Host Community) identified above.

- j. **Customer-Arranged Energy** means energy the Customer itself procures from sources other than the Authority for the purpose of replacing Firm Hydroelectric Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.
- k. **Customer's Agent** is defined in Article X.
- l. **Electric Service** is Power and Energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.
- m. **Excess Power** is defined in Article VIII and Appendix A.
- n. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- o. **FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.
- p. **Firm Hydroelectric Power and Energy** are firm power and associated energy from the Authority's Niagara Power Project, intended to be available at all times except for limitations provided in this Agreement, the Rules, applicable Service Tariff or in other contract documents.
- q. **Green Attributes** are attributes associated with renewable energy power production as recorded in the New York Generation Attribute Tracking System administered by The New York State Energy Research and Development Authority.
- r. **Host Communities** are Niagara County, City of Niagara Falls, Town of Lewiston, Town of Niagara, City of Niagara Falls School District, Lewiston-Porter School District and Niagara-Wheatfield School District.
- s. **Load Reduction** has the meaning set forth in Article IX.f of this Agreement.
- t. **Load Serving Entity** is an entity authorized or required by law, regulatory authorization or requirement, agreement, or contractual obligation to supply Energy, Capacity and/or Ancillary Services to retail customers under the rules, tariffs, manuals and procedures of the NYISO.
- u. **NRA** means the federal Niagara Redevelopment Act (18 USC §§836, 836a).
- v. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.

- w. **Planned Hydropower Curtailment** means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.
- x. **Power Credits** are defined in Article VIII and Appendix A.
- y. **Project** means the Niagara Power Project, FERC Project No. 2216.
- z. **Project Power and Energy** means Firm Hydroelectric Power and Energy produced by the Project.
- aa. **Project Switchyard** is the Niagara Project switchyard.
- bb. **Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Host Community Relicensing Settlement Agreement Addressing Non-License Terms and Conditions allocation of Niagara Project Power and Energy to the Host Communities dated June 27, 2005.
- cc. **Rules** are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).
- dd. **Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.
- ee. **Substitute Energy** means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.
- ff. **Ultimate Users** are entities to whom Customer or Customer's Authorized Recipient will resell (or otherwise convey benefits associated with) Project Power and Energy purchased from the Authority as provided in Article VI of this Agreement and Appendix A hereto. Customer may designate itself as an Ultimate User.
- gg. **Unforced Capacity** is the capacity required to be provided by Load Serving Entities to serve load as defined by the NYISO in its rules, tariffs, manuals and procedures.
- hh. **Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

All other terms not otherwise defined herein shall have the meanings ascribed to them in the electric industry.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariff HC-1 for Power and/or Energy to enable the Customer or the Customer's Authorized Recipient, as defined below, to receive the Allocation from the Project in accordance with the provisions of the FERC License and Relicensing Settlement Agreement, in the amount set forth below:

Firm Hydroelectric Power and Energy Service pursuant to Service Tariff No. HC-1: 5,500 KiloWatts (Contract Demand)

Upon execution of this Agreement by a Host Community, other than Customer, that is legally capable of receiving an Allocation from the Project (Authorized Recipient) such Authorized Recipient shall be authorized to receive the Allocation of the Customer in accordance with the terms and conditions set forth in this Agreement, including Appendix A hereof. Such authorization may be revoked by Customer upon reasonable notice to the Authority and Customer's Authorized Recipient; provided, however, that Customer shall, as of the effective date of such revocation, have made arrangements (a) with another Authorized Recipient to receive the Customer's Allocation, or (b) to receive such Allocation itself, if legally capable of doing so.

The Authority shall provide Unforced Capacity in amounts necessary to meet Customer's NYISO Unforced Capacity obligations associated with the foregoing Allocation in accordance with the rules and tariffs of the NYISO. Neither Ancillary Services, nor Green Attributes are included in such allocation.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction. The Authority shall provide reasonable notice to Customer of any such proposed action that could result in modification of Contract Demands and nothing herein shall be construed as limiting customer's rights to challenge any proposed reduction in Contract Demands.

III. Rules, Regulations and Service Tariffs

The Rules and Service Tariff No. HC-1, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the

provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between Articles I through XVIII of this Agreement and the Service Tariffs, the provisions of Articles I through XVIII of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State if that period of minimum notice is greater than herein referenced. Except as expressly provided otherwise herein, nothing contained in this Agreement shall be construed as restricting Customer's rights to participate in processes involving changes to rates, Rules and Service Tariffs or other matters affecting the subject of this Agreement.

IV. Transmission and Delivery of Power and Energy

Authority shall make Project Power and Energy available to Customer, Customer's Authorized Recipient or Customer's Agent at the Project Switchyard. It is the Customer's responsibility to act as the Load Serving Entity ("LSE"), arrange for one or more other entities to do so on its behalf or make other arrangements for conveying the benefits associated with the allocation to Ultimate Users. Customer, or the entity acting as LSE, Customer's Authorized Recipient or Customer's Agent shall arrange for the transmission of the Project Power and Energy supplied hereunder from the Project Switchyard to Customer's points of delivery or the conversion of the Allocation into financial settlements and benefits by such other method of disposition consistent with Article VI of this Agreement and Appendix A hereto. Such delivery shall be consistent with the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO and Customer shall be responsible for all costs associated with the transmission and delivery of the allocation.

V. Rates

Project Power and Energy shall be sold to Customer or to Customer's Authorized Recipient hereunder at cost-based rates equivalent to rates charged to in-state preference customers receiving preference power under the NRA.

Customer waives any challenges to any of the following methodologies and principles¹ to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted by the Authority's Trustees in their meeting on April 29, 2003 and November 15, 2011:

¹ These methodologies and principles were employed in and explained by (1) the Authority's January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on April 29, 2003; (2) the Authority's Rate Stabilization Reserve Methodology attached hereto as Appendix B; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on November 15, 2011.

- (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 as supplemented by the explanatory statement attached hereto as Appendix B.
- (viii) Unforced Capacity (“UCAP”) sales credited to Cost of Service, based on the quantity of megawatts from the Project, determined solely in the Authority’s discretion, sold into the NYISO auctions.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer or the Customer’s Authorized Recipient 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. Notwithstanding the foregoing, nothing in this Article V shall limit: (1) the Authority and Customer from entering into good faith negotiations to change the above methodologies and principles, or (2) the Authority from adopting changes to these methodologies and principles in accordance with a rulemaking proceeding addressing cost-based rates for preference power done under the New York State Administrative Procedure Act.

VI. Use and Resale of Project Power and Energy

Customer or the Customer’s Authorized Recipient shall use the Allocation for its facilities or as otherwise allowed in accordance with the Relicensing Settlement Agreement, this Agreement and Appendix A hereof.

In reselling and/or distributing the Allocation, except as otherwise provided in Appendix A hereof, Customer or the Customer’s Authorized Recipient shall: 1) do

so pursuant to the appropriate laws of the State of New York, 2) distribute such Allocation only to the Ultimate Users designated pursuant to Appendix A, 3) not permit such Ultimate Users to sell any of such Allocation for resale and 4) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section 1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License.

Customer, Customer's Authorized Recipient or Customer's Agent shall keep its books, accounts and records pertaining to the purchase, delivery and sale of the Allocation according to procedures reasonably deemed necessary by Authority to ensure compliance with this Agreement and Appendix A hereof, applicable statutes, licenses, the Rules. Customer or Customer's Authorized Recipient shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require Customer's Ultimate Users as identified in Appendix A of the Agreement to agree to do likewise.

The distribution of the benefits of the Allocation to Ultimate Users shall, where feasible, be accompanied by a statement indicating the total savings in dollars realized by the individual Ultimate User for the particular billing period as a result of the purchase of hydroelectric power and energy by Customer or Customer's Authorized Recipient from the Authority. The form and content of such statement shall be coordinated between Customer or Customer's Authorized Recipient and Authority.

VII. Permanent Reallocation of Project Power and Energy

If Customer is, or becomes unable or chooses not to receive, or to have Customer's Authorized Recipient not receive, any or all of the Project Power and Energy allocated to it on a permanent basis, such Project Power and Energy shall be reallocated by the Authority pro-rata among the other Host Communities. Customer shall provide written notice to the Authority and the other Host Communities of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the other Host Communities shall become effective as soon as practicable, without need to amend this Agreement and the Contract Demand in this Agreement shall be revised to reflect such reallocation, notwithstanding Article XIV hereof.

VIII. Availability of Energy

Subject to any other limitations set forth in the Rules or the Service Tariff (including low-flow conditions), if Customer or Customer's Authorized Recipient directly or indirectly provides the Allocation to Ultimate Users for physical delivery to such Users' accounts as set forth in Appendix A, Authority will supply Customer's (or Ultimate Users', as the case may be) entire demand and energy usage up to the Contract Demand. If there is any portion of the energy associated with the Allocation made available to Customer or Customer's Authorized Recipient

(at a monthly load factor of seventy percent (70%) pursuant to the Authority's regular scheduling requirements) that is not required to serve such Ultimate Users' facilities, such energy may be utilized as Excess Power in the manner described in Appendix A.

As between Customer and the Authority, for any usage above the Contract Demand, it is Customer's responsibility to arrange for provision of such excess service by a third party supplier, and the apportionment of energy between suppliers shall be as set forth in Service Tariff No. HC-1, or any successor tariff.

Subject to any other limitations set forth in the Rules or Service Tariff (including low-flow conditions), if Customer or Customer's Authorized Recipient provides the benefits of the Allocation to Ultimate Users in the form of Power Credits as set forth in Appendix A, the Allocation will be delivered at a monthly load factor of seventy percent (70%) pursuant to the Authority's regular scheduling requirements.

IX. Hydro Curtailments and Substitute Energy

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

- d. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.
- e. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.
- f. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer's failure to provide such notice.
- g. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.
- h. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.
- i. Notwithstanding the Customer's election pursuant to Article IX.a, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments, provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration the Authority determines is reasonable considering the circumstances, including but not limited to the operating procedures of the Authority, third-party transmission or delivery utilities who deliver the Substitute Energy, and the NYISO.

- j. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for Firm Hydroelectric Energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. HC-1 relating to the rendition and payment of bills for Electric Service.
- k. The Customer shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. HC-1 and the Rules relating to the rendition and payment of bills for Electric Service. The Authority's failure to provide notice pursuant to Article IX.c or Article IX.h shall not affect the Customer's obligation to pay for Substitute Energy.
- l. The Authority will provide the Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- m. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.
- n. The Customer shall not be entitled to power and energy sourced from another Authority power facility, including another Authority hydropower project, as Substitute Energy.

X. Appointment of Customer's Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer may, on reasonable prior written notice to the Authority (consistent with the Authority's and the NYISO's scheduling and

business process requirements), designate a different party as Customer's Agent at any time during the term of this Agreement.

Customer's Agent may include, without limitation, a public utility, LSE, Municipal Distribution Agency, load aggregator or other entity authorized to purchase and sell electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

XI. Term and Termination of Service

Service under the Agreement shall begin on the Commencement Date and shall continue until the earliest of (a) termination by Customer with respect to all of its Allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) September 1, 2041, at which time a new or modified agreement will be entered between the Authority and the Customer to provide Customer or Customer's Authorized Recipient with Project Power and Energy for the remainder of the licensing period in the amount and for the rate then in effect which complies with the terms of the Relicensing Settlement Agreement. If such a new or modified agreement is not in place to take effect after September 1, 2041, service will be continued under the terms and conditions of this Agreement on a year to year basis or until a new or modified agreement takes effect between the parties.

Notwithstanding the termination provisions of this Article, Customer may pause the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice. Customer may recommence the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice.

The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) 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 (b) as otherwise provided herein or in the Rules. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority. The Authority shall provide reasonable notice to Customer of any matter or proceeding that could result in an order or decision as described in part (a) of this paragraph and nothing herein shall be construed as limiting Customer's right to challenge any such proposed action.

Nothing herein is intended to limit the rights of the Host Communities or Customer under the Relicensing Settlement Agreement and the Authority and Customer understand and agree that the Authority is obligated under such Relicensing Settlement Agreement to make a total of 5,500 KiloWatts of Project Power and Energy available to Customer or Customer's Authorized Recipient for

the term of the FERC License, whether through extension of this Agreement or by subsequent agreement.

XII. Notification

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

To: Authority

Manager – Power Contracts & Tariffs
New York Power Authority
123 Main Street
White Plains, NY 10601

To: Customer

Mayor
City of Niagara Falls, New York
City Hall
745 Main Street
PO Box 69
Niagara Falls, New York 14302

with a copy to:

Corporation Counsel
City of Niagara Falls, New York
City Hall
745 Main Street
PO Box 69
Niagara Falls, New York 14302

To: Customer's Authorized Recipient

XIII. Applicable Law and Venue

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. Any action or proceeding

arising out of or relating to this Agreement shall be brought in state courts located in Albany County, New York.

XIV. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained, which consent shall not be unreasonably withheld.

XV. Previous Agreements and Communications

This Agreement, together with the Relicensing Settlement Agreement, shall constitute the sole and complete agreement of the parties hereto with respect to the matters herein set forth, and such Agreements supersede all previous communications between the Parties hereto, either oral or written, with reference to the subject matter hereof; provided, however, that additional terms pursuant to which Customer's Authorized Recipient is authorized to receive Customer's Allocation may be set forth in a separate agreement between Customer and Authorized Recipient. Any such separate agreement shall not be inconsistent with the terms of this Agreement and shall be provided to the Authority for informational purposes.

No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

If there is a conflict between the language in Section 6 of the Relicensing Settlement Agreement entitled "Power Allocation" and language in this Agreement, including Appendix A, the language of this Agreement addressing this subject shall control.

XVI. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

XVII. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent

jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

In such an event and at the request of either Party, the Parties agree to engage in good faith negotiations on possible modification to this Agreement to remedy any portion of this Agreement that was declared invalid, unlawful or ineffective. Such good faith negotiations shall conform to the requirements comparable to those of section 10.1.3 of the Relicensing Settlement Agreement. To the extent that good faith negotiations do not result in an agreement as to whether or how this Agreement should be modified, the Parties agree to resolve their differences in accordance with the alternative dispute resolution mechanism set forth in section 12 of the Relicensing Settlement Agreement. The primary goal of any good faith negotiation or alternative dispute resolution mechanism shall be to preserve to the greatest extent as possible, the benefit of the Parties' intended bargain.

XVIII. Effectiveness of Agreement

This Agreement shall take effect on the date of this Agreement's execution under Article XVI above.

CUSTOMER: CITY OF NIAGARA FALLS, NEW YORK

BY: _____

Title: _____

Date: _____

(Seal)

Attest by: _____

AUTHORIZED RECIPIENT:

BY: _____

Title: _____

Date _____

(Seal)

Attest by: _____

Accepted:

POWER AUTHORITY OF THE STATE OF NEW YORK

BY: _____

Title: _____

Date: _____

(Seal)

Attest by: _____

Appendix A

Except as Customer determines otherwise, consistent with the terms of this Agreement, Customer or Customer's Authorized Recipient will initially distribute power and energy purchased from the New York Power Authority under the Agreement or the economic benefit of such power and energy to the following Ultimate Users_____

Customer may add to or delete from the above list of Ultimate Users on thirty (30) day's notice to the Authority. Customer in its sole determination may elect to use its full Allocation or any part thereof, for economic development. The economic development program description, allocation criteria and methodology shall be submitted to and approved by the Authority which approval shall not be unreasonably withheld.

The benefits of the Allocation shall be provided to such Ultimate Users either by direct sale or by allocation by the Customer (or by Customer's Authorized Recipient or Customer's Agent) of electricity or the provision of financial settlements and benefits, as set forth below, or through different methods approved by the Authority. Customer shall have the right to recover as Customer Costs its direct administrative and services costs, reasonable compensation for use of third party facilities and services furnished to Customer in the transmission and distribution of such power, all costs associated with negotiating the Agreement and the establishment of mechanisms to accept and distribute the Allocation, and any similar costs, incurred after the execution of the Host Community Relicensing Settlement Agreement dated June 27, 2005. Such Customer Costs shall be reimbursed to Customer or otherwise paid by the Ultimate User by procedures to be determined.

The listing or description of the foregoing Ultimate Users in no way mandates or requires for any reason that the Customer provide any portion of the Allocation (or Power Credits) to an Ultimate User and shall not preclude the Customer from denying any such Ultimate User the benefits associated with an allocation for any reason as determined by Customer.

A. Direct Sale / Allocation, Use of Excess Power

Customer, Customer's Authorized Recipient or Customer's Agent may make a portion of the Allocation available to an Ultimate User for delivery at such Ultimate User's electricity accounts under the tariffs, rules and regulations of the NYISO and the utility in whose service area such accounts are located. If there is any portion of the Allocation made available to Customer or Customer's Authorized Recipient that is not required to serve such Ultimate User's facilities, such Excess Power (up to the load factor specified in the Agreement) may be utilized as follows:

1. Customer, Customer's Authorized Recipient or Customer's Agent may schedule Excess Power into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), shall be applied by Customer to payment of Customer's (or an Ultimate User's, as the case may be) energy-related costs, including but not limited to, the purchase of energy commodities, the

delivery and transportation of electricity and all other energy commodities and/or for energy efficiency or clean energy technology programs or projects now in existence or that may exist during the term of the Agreement.

2. Customer or Customer's Authorized Recipient may use the Excess Power (or the benefits associated with such Excess Power derived from a financial settlement as set forth in the preceding Paragraph 1) for economic development by providing credits to a business to apply against the cost of power or energy and/or the cost of delivery of power or energy consumed by such business.

B. Power Credits

Customer, Customer's Authorized Recipient or Customer's Agent, may schedule all of its Allocation (up to the load factor specified in the Agreement) into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), may be provided to Ultimate Users in the form of Power Credits by Customer or Customer's Authorized Recipient as follows:

Power Credits may be applied towards the cost and/or delivery of electric power or energy consumed by the Ultimate User or for other energy-related costs, including but not limited to, purchase of energy commodities, the delivery and transportation of electricity and all other energy commodities and/or for energy efficiency or clean energy technology programs or projects now in existence or that may exist during the terms of the Agreement.

C. Service through Authorized Entity

Through assignment, transfer or otherwise, including through an agency arrangement, Customer shall have the right to make available its Allocation or any part thereof to any entity, including but not limited to Customer's Authorized Recipient, that is duly authorized to receive, purchase, transmit, distribute, and/or resell the power and energy included in the Allocation or otherwise to engage in such transactions as are necessary to effectuate the delivery of the Allocation and/or to provide the financial benefits thereof to the Customer, the Customer's Ultimate Users and the Customer's constituents, as determined in the exercise of the Customer's discretion and consistent with the provisions of the Host Community Relicensing Settlement Agreement dated June 27, 2005 and Article VI of the Agreement. Any such assignment, transfer, agency arrangement or similar transaction contemplated by this paragraph may, but shall not be required to, include elements of the other methods described in this Appendix A.

D. Continuity

In the event that any administrative agency or court of competent jurisdiction shall determine that any element of any of the foregoing methods of distributing the Allocations and/or financial benefits thereof is unauthorized or illegal, the Customer shall propose an alternative method of distribution, not necessarily limited to those described above, and the Authority shall promptly determine whether to accept such alternative method. Such acceptance shall not be unreasonably withheld.

E. Right to Alternate Between Methods

Customer shall have the right at its discretion and without restriction to alternate between the methods for the distribution of the benefits of the Allocation as set forth in Sections A through D above, upon giving sixty (60) days written notice to the Authority.

F. Market Administration

Notwithstanding anything to the contrary in the Agreement, if Customer and/or Customer's Authorized Recipient elects to convert the Allocation into financial settlements for use as payments or credits pursuant to Sections A or B above, the Authority may in its discretion schedule the Allocation into the NYISO administered market for financial settlement; such financial settlement, less the Authority's costs calculated using tariff rates as described in Article V of the Agreement, shall be provided to Customer, Customer's Authorized Recipient, or Customer's Agent, as the case may be, for disposition pursuant to the terms of a separate agreement between Authority, Customer and either Customer's Agent or Customer's Authorized Recipient, or both.

In the event that the Authority determines, in its discretion, not to use the foregoing method of scheduling the Allocation into the NYISO administered market for financial settlement, the Authority will provide reasonable notice to Customer of its intent to discontinue such method and assist Customer in making other arrangements to effect the delivery of the benefits of the Allocation to Customer or Ultimate Users.

This Section F is intended as an additional method of providing the benefits of the Allocation and is not intended to limit in any way the right to use other methods of providing such benefits, as set forth in the Agreement, including this Appendix A.

Appendix B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to Customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. The RSR is calculated consistent with Service Tariff No. HC – 1 provisions regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Customers’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include Ancillary Services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining energy assigned costs by the annual metered generation.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the megawatts sold from the Niagara/St. Lawrence projects, as determined solely in the Authority’s discretion, in the various ISO auction markets.

5. Calculate the difference between the cost-based energy rate and the billed preference energy rate.
6. Multiply the difference in the rates by the actual annual billed preference energy sales to determine the annual change in the RSR.
7. Add the annual change to the RSR balance from the prior year-end to get the current year-end RSR balance.
8. If the current year-end balance is in excess of +/- \$25 million, the excess would be subject to a credit or a surcharge in the subsequent rate year.



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

Electric Service Tariff for Host Communities
Firm Hydroelectric Power Service

Service Tariff No. HC-1

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Schedule of Rates for Firm Hydroelectric Power and Energy Service

I. Applicability

To sale of Niagara Hydroelectric Project firm power and energy to the Host Communities customers and/or their Authorized Recipients eligible for cost-based service under the Niagara Relicensing Settlement Agreement.

II. Abbreviations and Terms

A. The following abbreviations are used:

kW	kilowatt(s)
kWh	kilowatt-hour(s)
NYPA	New York Power Authority
NYISO	New York Independent System Operator

B. The term “Agreement” means contract for the Sale of Niagara Project Power and Energy between Authority and Customer.

C. The term “Authority” means New York Power Authority, an alternative name for the Power Authority of the State of New York.

D. The term “Customer” means a Host Community defined in the Agreement.

E. The term “Customer’s Agent” may include, without limitation, a public utility, Load Service Entity, Municipal Distribution Agency, load aggregator or other entity authorized to purchase, sell and/or deliver or cause to be delivered electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

F. The term “Power” or “Firm Hydroelectric Power” means capacity (kW) from Project, intended to be available at all times except for limitations provided in the Agreement(s), the Rules, this Service Tariff or in other contract documents. Firm Power shall not include peaking power.

G. The term “Energy” or “Firm Hydroelectric Energy” means energy (kWh) associated with Firm Hydroelectric Power.

- H. The term “Project” means the Authority’s Niagara Hydroelectric Project.
- I. The term “Rules” means Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, 21 NYCRR § 454) as now in effect and as may be later amended from time to time by Authority.
- J. The term “Service Tariff” means this Service Tariff No. HC-1.

III. Monthly Rates and Charges

A. Monthly Base Rates

The monthly demand and energy charges paid by Customer to Authority shall be based on the preference power rates charged by Authority, as shown below.

<u>Period</u>	<u>Demand Rate</u> \$/kW-month of contract demand	<u>Energy Rate</u> Mills/kWh
5/1/2013 through 4/30/2014	3.91	4.92
5/1/2014 through 4/30/2019	4.07	4.92
5/1/2019 through 4/30/2020	4.07	4.92

The demand and energy rates set forth above shall apply at the Project switchyard.

B. Minimum Monthly Charge

The product of the demand rate set forth above and the contract demand.

C. Billing Energy

Energy provided by Authority under this Service Tariff.

D. Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month.

E. Contract Demand

The amounts set forth in the applicable Agreement(s) between Authority and Customer.

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

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority, if any, for services provided by the NYISO or any successor organization pursuant to its Open Access Transmission Tariff ("OATT") or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) which are associated with

Customer's purchase of hydro power and energy under its contract for the sale of hydro power and energy with Authority:

1. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
2. Marginal losses;
3. The New York Power Authority Transmission Adjustment Charge ("NTAC");
4. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
5. Any and all other charges, assessments or other amounts associated with deliveries to Customer that are assessed on the Authority by the NYISO or any successor organization under the provisions of its OATT or under other applicable tariffs; and
6. Any charges assessed on the Authority with respect to 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 NYPA with respect to service to Customers), applicable tariffs or required to be paid by the Authority in accordance with law, whether charged by the NYISO or some other third party.

The NYISO Charges in this section are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

G. Taxes and Other Charges

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

IV. General Provisions

General Provisions for service supplementing or modifying the Rules and Regulations for Power Service and this Service Tariff with regard to deliveries to Customer are as follows:

A. Character of Service

Alternating current, 60 hertz, three-phase.

B. Availability of Energy

Unless otherwise agreed upon by the parties, Authority shall normally provide in any billing period Firm Hydroelectric Energy to Customer and/or Customer's Authorized Recipient in an amount equal to the product of (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement. The Authority will have the right to reduce on a pro rata basis the amount of Firm Hydroelectric Energy provided to Customer and/or Customer's Authorized Recipient if such reductions are necessary due to low flow (i.e., hydrologic) conditions at the Authority's Niagara and St. Lawrence-FDR hydroelectric generating stations. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Customer and/or Customer's Authorized Recipient in later billing periods. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer and/or Customer's Authorized Recipient. The Authority shall provide reasonable notice, to the extent possible, to Customer and Customer's Authorized Recipient 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.

Unless otherwise specified in the Agreement, where Customer is taking service solely from Authority, the billing energy shall be the total number of kilowatt-hours recorded on Customer's and/or Customer's Authorized Recipient's meter (or the meters of entities served by Customer and/or Customer's Authorized Recipient as indicated in the Agreement) during the billing period, adjusted for losses.

Unless otherwise specified in the Agreement, where Customer and/or Customer's Authorized Recipient takes service from other sources in addition to service supplied hereunder, the billing energy shall be determined by multiplying (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement.

C. Adjustment of Rates

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

D. Adjustment of Charges

Power Factor

Not less than 95% lagging or leading, except as otherwise specified in the Agreement.

E. Delivery

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be delivered by Authority at the Project switchyard to the transmission facilities under the control of the NYISO for delivery to Customer and/or Customer's Authorized Recipient.

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be deemed to be offered when Authority is able to supply Firm Hydroelectric Power and Energy and NYISO transmits it to Customer and/or Customer's Authorized Recipient or its designated points of interconnection with Customer's Agent at the Project switchyard. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer and/or Customer's Authorized Recipient. If, despite such offer, there is a failure of delivery by Customer, Customer's Authorized Recipient, or Customer's Agent, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

F. Scheduling Procedures

1. Authority will advise Customer, and Customer's Authorized Recipient, or Customer's Agent by the tenth (10th) Business Day of the preceding month of the estimated quantity of Firm Hydroelectric Energy expected to be made available from the Project.
2. Authority may require that such Firm Hydroelectric Energy from the Project be scheduled in general accordance with the individual system load shapes of Customer, Customer's Authorized Recipient, or Customer's Agent or as otherwise agreed upon by the Customer and Authority.

3. Customer, Customer's Authorized Recipient, or Customer's Agent shall file with Authority pursuant to procedures established by Authority, a daily schedule setting forth the Customer's and/or Customer's Authorized Recipient's requested amounts from the Project on a clock hour basis.
4. Subsequent to Authority approval of schedules for any day, Authority and Customer, Customer's Authorized Recipient, or Customer's Agent may agree on changes in such schedules subject to NYISO scheduling requirements and procedures Authority shall establish such that an efficient dispatch of Authority facilities will be accomplished.

G. Payment by Customer and/or Customer's Authorized Recipient for Firm Hydroelectric Power and Energy

1. Customer and/or Customer's Authorized Recipient shall pay for Firm Hydroelectric Power and Energy during any billing period the sum of a) and b) below:
 - a. The demand rate per kW for Firm Hydroelectric Power specified in this Service Tariff or any modification thereof applied to Customer's contract demand for the billing period; and
 - b. The energy rate specified in this Service Tariff or any modification thereof applied to the amount of Firm Hydroelectric billing energy delivered by Authority to Customer and/or Customer's Authorized Recipient during such billing period.
2. 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 Authority. In the event that there is a dispute on any items of a bill rendered by Authority, Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

H. Supplementary Provision

Sections 454.2 (c) and 454.5 of the Rules are inapplicable to this Service Tariff.

I. Alternate Arrangements

Notwithstanding general provisions E, F and G above, Authority, Customer, Customer's Authorized Recipient and/or Customer's Agent may make alternate arrangements regarding Delivery, Scheduling Procedures and Payment by Customer for Firm Hydroelectric Power and Energy consistent with the terms of the Agreement or other contract documents.

J. Conflicts

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

V. Flow Adjustment Computation ("FAC")

The energy charges under this Service Tariff, and the applicable service tariffs associated with both the Project and the St. Lawrence-FDR Hydroelectric Project, in the aggregate, are subject to a credit or surcharge pursuant to a FAC in any rate year following a calendar year for which the Hydroelectric Project Rate Stabilization Reserve ("RSR") is greater than \$+25 million, or less than \$-25 million, respectively. The RSR will be used to ensure rate stability and cost recovery and its level will be determined and any credit or surcharge for the succeeding rate year will be calculated after the prior calendar year's costs and generation levels are known. Any credit or surcharge will be applied on a uniform basis to the monthly billing statements rendered pursuant to this Service Tariff during the succeeding rate year.

The FAC is inapplicable in any rate year succeeding a calendar year at the end of which the RSR is within the \$+25 million to \$-25 million range. If at the end of any calendar year, the RSR is determined to exceed \$+25 million, such excess amount will be credited pro-rata to Customers during the succeeding rate year pursuant to the FAC. If the RSR at the end of any calendar year is determined to be less than \$-25 million, the difference below \$-25 million will be surcharged pro-rata to Customers during the succeeding rate year pursuant to the FAC.

To the extent that there is a balance in the RSR (positive or negative) on the effective date of service under the applicable Agreement(s), arising out of service under a prior agreement for the sale of Project power and energy, that RSR balance shall be carried forward and maintained as the balance as of the effective date of service under such applicable Agreement(s).

POWER AUTHORITY
OF THE
STATE OF NEW YORK

30 South Pearl Street
Albany, New York

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT HYDROELECTRIC POWER AND ENERGY
TO THE NIAGARA PROJECT HOST COMMUNITIES

Service Tariff No. HC-1 - Firm Hydroelectric Power and Energy
(SCHOOL DISTRICT OF THE CITY OF NIAGARA FALLS, NEW YORK)

Month 2025

POWER AUTHORITY OF THE STATE OF NEW YORK

**30 South Pearl Street
Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROELECTRIC POWER AND ENERGY TO
THE NIAGARA PROJECT HOST COMMUNITIES**

SERVICE TARIFF No. HC-1 – Firm Hydroelectric Power and Energy

(SCHOOL DISTRICT OF THE CITY OF NIAGARA FALLS, NEW YORK)

The School District of The City of Niagara Falls, New York (“Customer”) hereby enters into this Agreement with the Power Authority of the State of New York for electric service as follows:

I. Definitions

- a. Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.
- b. Agreement** means this Agreement.
- c. Allocation** shall mean the amount of power and associated energy that the Authority has allocated to Customer hereunder.
- d. Ancillary Services** shall be as defined by the NYISO in its rules, tariffs, manuals and procedures.
- e. Authority** is the Power Authority of the State of New York.
- f. Authorized Recipient** is defined in Article II.
- g. Commencement Date** shall be as set forth in Article XVIII.
- h. Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.
- i. Customer** is the municipality (Host Community) identified above.

- j. **Customer-Arranged Energy** means energy the Customer itself procures from sources other than the Authority for the purpose of replacing Firm Hydroelectric Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.
- k. **Customer's Agent** is defined in Article X.
- l. **Electric Service** is Power and Energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.
- m. **Excess Power** is defined in Article VIII and Appendix A.
- n. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- o. **FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.
- p. **Firm Hydroelectric Power and Energy** are firm power and associated energy from the Authority's Niagara Power Project, intended to be available at all times except for limitations provided in this Agreement, the Rules, applicable Service Tariff or in other contract documents.
- q. **Green Attributes** are attributes associated with renewable energy power production as recorded in the New York Generation Attribute Tracking System administered by the New York State Energy Research and Development Authority.
- r. **Host Communities** are Niagara County, City of Niagara Falls, Town of Lewiston, Town of Niagara, City of Niagara Falls School District, Lewiston-Porter School District and Niagara-Wheatfield School District.
- s. **Load Reduction** has the meaning set forth in Article IX.f of this Agreement.
- t. **Load Serving Entity** is an entity authorized or required by law, regulatory authorization or requirement, agreement, or contractual obligation to supply Energy, Capacity and/or Ancillary Services to retail customers under the rules, tariffs, manuals and procedures of the NYISO.
- u. **NRA** means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).
- v. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.

- w. **Planned Hydropower Curtailment** means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.
- x. **Power Credits** are defined in Article VIII and Appendix A.
- y. **Project** means the Niagara Power Project, FERC Project No. 2216.
- z. **Project Power and Energy** means Firm Hydroelectric Power and Energy produced by the Project.
- aa. **Project Switchyard** is the Niagara Project switchyard.
- bb. **Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Host Community Relicensing Settlement Agreement Addressing Non-License Terms and Conditions allocation of Niagara Project Power and Energy to the Host Communities dated June 27, 2005.
- cc. **Rules** are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).
- dd. **Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.
- ee. **Substitute Energy** means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.
- ff. **Ultimate Users** are entities to whom Customer or Customer's Authorized Recipient will resell (or otherwise convey benefits associated with) Project Power and Energy purchased from the Authority as provided in Article VI of this Agreement and Appendix A hereto. Customer may designate itself as an Ultimate User.
- gg. **Unforced Capacity** is the capacity required to be provided by Load Serving Entities to serve load as defined by the NYISO in its rules, tariffs, manuals and procedures.
- hh. **Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

All other terms not otherwise defined herein shall have the meanings ascribed to them in the electric industry.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariff HC-1 for Power and/or Energy to enable the Customer or the Customer's Authorized Recipient, as defined below, to receive the Allocation from the Project in accordance with the provisions of the FERC License and Relicensing Settlement Agreement, in the amount set forth below:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. HC-1: 3,500 KiloWatts (Contract Demand)

Upon execution of this Agreement by a Host Community, other than Customer, that is legally capable of receiving an Allocation from the Project (Authorized Recipient) such Authorized Recipient shall be authorized to receive the Allocation of the Customer in accordance with the terms and conditions set forth in this Agreement, including Appendix A hereof. Such authorization may be revoked by Customer upon reasonable notice to the Authority and Customer's Authorized Recipient; provided, however, that Customer shall, as of the effective date of such revocation, have made arrangements (a) with another Authorized Recipient to receive the Customer's Allocation, or (b) to receive such Allocation itself, if legally capable of doing so.

The Authority shall provide Unforced Capacity in amounts necessary to meet Customer's NYISO Unforced Capacity obligations associated with the foregoing Allocation in accordance with the rules and tariffs of the NYISO. Neither Ancillary Services, nor Green Attributes are included in such allocation.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction. The Authority shall provide reasonable notice to Customer of any such proposed action that could result in modification of Contract Demands and nothing herein shall be construed as limiting customer's rights to challenge any proposed reduction in Contract Demands.

III. Rules, Regulations and Service Tariffs

The Rules and Service Tariff No. HC-1, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any

inconsistencies, conflicts or differences between Articles I through XVIII of this Agreement and the Service Tariffs, the provisions of Articles I through XVIII of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State if that period of minimum notice is greater than herein referenced. Except as expressly provided otherwise herein, nothing contained in this Agreement shall be construed as restricting Customer's rights to participate in processes involving changes to rates, Rules and Service Tariffs or other matters affecting the subject of this Agreement.

IV. Transmission and Delivery of Power and Energy

Authority shall make Project Power and Energy available to Customer, Customer's Authorized Recipient or Customer's Agent at the Project Switchyard. It is the Customer's responsibility to act as the Load Serving Entity ("LSE"), arrange for one or more other entities to do so on its behalf or make other arrangements for conveying the benefits associated with the allocation to Ultimate Users. Customer, or the entity acting as LSE, Customer's Authorized Recipient, or Customer's Agent shall arrange for the transmission of the Project Power and Energy supplied hereunder from the Project Switchyard to Customer's points of delivery or the conversion of the Allocation into financial settlements and benefits by such other method of disposition consistent with Article VI of this Agreement and Appendix A hereto. Such delivery shall be consistent with the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO and Customer shall be responsible for all costs associated with the transmission and delivery of the allocation.

V. Rates

Project Power and Energy shall be sold to Customer or to Customer's Authorized Recipient hereunder at cost-based rates equivalent to rates charged to in-state preference customers receiving preference power under the NRA.

Customer waives any challenges to any of the following methodologies and principles¹ to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted by the Authority's Trustees in their meeting on April 29, 2003 and November 15, 2011:

¹ These methodologies and principles were employed in and explained by (1) the Authority's January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on April 29, 2003; (2) the Authority's Rate Stabilization Reserve Methodology attached hereto as Appendix B; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on November 15, 2011.

- (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 as supplemented by the explanatory statement attached hereto as Appendix B.
- (viii) Unforced Capacity (“UCAP”) sales credited to Cost of Service, based on the quantity of megawatts from the Project, determined solely in the Authority’s discretion, sold into the NYISO auctions.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer or the Customer’s Authorized Recipient 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. Notwithstanding the foregoing, nothing in this Article V shall limit: (1) the Authority and Customer from entering into good faith negotiations to change the above methodologies and principles, or (2) the Authority from adopting changes to these methodologies and principles in accordance with a rulemaking proceeding addressing cost-based rates for preference power done under the New York State Administrative Procedure Act.

VI. Use and Resale of Project Power and Energy

Customer or the Customer’s Authorized Recipient shall use the Allocation for Customer’s facilities or as otherwise allowed in accordance with the Relicensing Settlement Agreement, this Agreement and Appendix A hereof.

In reselling and/or distributing the Allocation, except as otherwise provided in Appendix A hereof, Customer or the Customer’s Authorized Recipient shall: 1) do so pursuant to the appropriate laws of the State of New York, 2) distribute such

Allocation only to the Ultimate Users designated pursuant to Appendix A, 3) not permit such Ultimate Users to sell any of such Allocation for resale and 4) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section 1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License.

Customer, Customer's Authorized Recipient or Customer's Agent shall keep its books, accounts and records pertaining to the purchase, delivery and sale of the Allocation according to procedures reasonably deemed necessary by Authority to ensure compliance with this Agreement and Appendix A hereof, applicable statutes, licenses, the Rules. Customer or Customer's Authorized Recipient shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require Customer's Ultimate Users as identified in Appendix A of the Agreement to agree to do likewise.

The distribution of the benefits of the Allocation to Ultimate Users shall, where feasible, be accompanied by a statement indicating the total savings in dollars realized by the individual Ultimate User for the particular billing period as a result of the purchase of hydroelectric power and energy by Customer or Customer's Authorized Recipient from the Authority. The form and content of such statement shall be coordinated between Customer or Customer's Authorized Recipient and Authority.

VII. Permanent Reallocation of Project Power and Energy

If Customer is, or becomes unable or chooses not to receive, or to have Customer's Authorized Recipient not receive, any or all of the Project Power and Energy allocated to it on a permanent basis, such Project Power and Energy shall be reallocated by the Authority pro-rata among the other Host Communities. Customer shall provide written notice to the Authority and the other Host Communities of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the other Host Communities shall become effective as soon as practicable, without need to amend this Agreement and the Contract Demand in this Agreement shall be revised to reflect such reallocation, notwithstanding Article XIV hereof.

VIII. Availability of Energy

Subject to any other limitations set forth in the Rules or the Service Tariff (including low-flow conditions), if Customer or Customer's Authorized Recipient directly or indirectly provides the Allocation to Ultimate Users for physical delivery to such Users' accounts as set forth in Appendix A, Authority will supply Customer's (or Ultimate Users', as the case may be) entire demand and energy usage up to the Contract Demand. If there is any portion of the energy associated with the Allocation made available to Customer or Customer's Authorized Recipient (at a monthly load factor of seventy percent (70%) pursuant to the

Authority's regular scheduling requirements) that is not required to serve such Ultimate Users' facilities, such energy may be utilized as Excess Power in the manner described in Appendix A.

As between Customer and the Authority, for any usage above the Contract Demand, it is Customer's responsibility to arrange for provision of such excess service by a third party supplier, and the apportionment of energy between suppliers shall be as set forth in Service Tariff No. HC-1, or any successor tariff.

Subject to any other limitations set forth in the Rules or Service Tariff (including low-flow conditions), if Customer or Customer's Authorized Recipient provides the benefits of the Allocation to Ultimate Users in the form of Power Credits as set forth in Appendix A, the Allocation will be delivered at a monthly load factor of seventy percent (70%) pursuant to the Authority's regular scheduling requirements.

IX. Hydro Curtailments and Substitute Energy

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

Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.

- e. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.
- f. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer's failure to provide such notice.
- g. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.
- h. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.
- i. Notwithstanding the Customer's election pursuant to Article IX.a, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments, provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration the Authority determines is reasonable considering the circumstances, including but not limited to the operating procedures of the Authority, third-party transmission or delivery utilities who deliver the Substitute Energy, and the NYISO.
- j. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for Firm Hydroelectric Energy as provided for in

this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. HC-1 relating to the rendition and payment of bills for Electric Service.

- k. The Customer shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. HC-1 and the Rules relating to the rendition and payment of bills for Electric Service. The Authority's failure to provide notice pursuant to Article IX.c or Article IX.h shall not affect the Customer's obligation to pay for Substitute Energy.
- l. The Authority will provide the Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- m. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.
- n. The Customer shall not be entitled to power and energy sourced from another Authority power facility, including another Authority hydropower project, as Substitute Energy.

X. Appointment of Customer's Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer may, on reasonable prior written notice to the Authority (consistent with the Authority's and the NYISO's scheduling and business process requirements), designate a different party as Customer's Agent at any time during the term of this Agreement.

Customer's Agent may include, without limitation, a public utility, LSE, Municipal Distribution Agency, load aggregator or other entity authorized to purchase and

sell electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

XI. Term and Termination of Service

Service under the Agreement shall begin on the Commencement Date and shall continue until the earliest of (a) termination by Customer with respect to all of its Allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) September 1, 2041, at which time a new or modified agreement will be entered between the Authority and the Customer to provide Customer or Customer's Authorized Recipient with Project Power and Energy for the remainder of the licensing period in the amount and for the rate then in effect which complies with the terms of the Relicensing Settlement Agreement. If such a new or modified agreement is not in place to take effect after September 1, 2041, service will be continued under the terms and conditions of this Agreement on a year to year basis or until a new or modified agreement takes effect between the parties.

Notwithstanding the termination provisions of this Article, Customer may pause the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice. Customer may recommence the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice.

The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) 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 (b) as otherwise provided herein or in the Rules. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority. The Authority shall provide reasonable notice to Customer of any matter or proceeding that could result in an order or decision as described in part (a) of this paragraph and nothing herein shall be construed as limiting Customer's right to challenge any such proposed action.

Nothing herein is intended to limit the rights of the Host Communities or Customer under the Relicensing Settlement Agreement and the Authority and Customer understand and agree that the Authority is obligated under such Relicensing Settlement Agreement to make a total of 3,500 KiloWatts of Project Power and Energy available to Customer or Customer's Authorized Recipient for the term of the FERC License, whether through extension of this Agreement or by subsequent agreement.

XII. Notification

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

To: Authority

Manager – Power Contracts & Tariffs
New York Power Authority
123 Main Street
White Plains, NY 10601

To: Customer

District Clerk
School District of The City of Niagara Falls, New York
607 Walnut Avenue
Niagara Falls, New York 14301

with a copy to:

Superintendent of Schools
School District of The City of Niagara Falls, New York
607 Walnut Avenue
Niagara Falls, New York 14301

To: Customer's Authorized Recipient

City Clerk
City of Niagara Falls, New York
747 Walnut Avenue
Niagara Falls, New York 14302

with a copy to:

Mayor
City of Niagara Falls, New York
747 Walnut Avenue
Niagara Falls, New York 14301

XIII. Applicable Law and Venue

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. Any action or proceeding

arising out of or relating to this Agreement shall be brought in state courts located in Albany County, New York.

XIV. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of the parties hereto; provided, however, that no assignment by a party or any successor or assignee of such party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other parties in each case obtained, which consent shall not be unreasonably withheld.

XV. Previous Agreements and Communications

This Agreement, together with the Relicensing Settlement Agreement, shall constitute the sole and complete agreement of the parties hereto with respect to the matters herein set forth, and such Agreements supersede all previous communications between the Parties hereto, either oral or written, with reference to the subject matter hereof; provided, however, that additional terms pursuant to which Customer's Authorized Recipient is authorized to receive Customer's Allocation may be set forth in a separate agreement between Customer and Authorized Recipient. Any such separate agreement shall not be inconsistent with the terms of this Agreement and shall be provided to the Authority for informational purposes.

No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

If there is a conflict between the language in Section 6 of the Relicensing Settlement Agreement entitled "Power Allocation" and language in this Agreement, including Appendix A, the language of this Agreement addressing this subject shall control.

XVI. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the parties for Electric Service hereunder.

XVII. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

In such an event and at the request of any of the parties, the parties agree to engage in good faith negotiations on possible modification to this Agreement to remedy any portion of this Agreement that was declared invalid, unlawful or ineffective. Such good faith negotiations shall conform to the requirements comparable to those of section 10.1.3 of the Relicensing Settlement Agreement. To the extent that good faith negotiations do not result in an agreement as to whether or how this Agreement should be modified, the parties agree to resolve their differences in accordance with the alternative dispute resolution mechanism set forth in section 12 of the Relicensing Settlement Agreement. The primary goal of any good faith negotiation or alternative dispute resolution mechanism shall be to preserve to the greatest extent as possible, the benefit of the parties' intended bargain.

XVIII. Effectiveness of Agreement

This Agreement shall take effect on the date of this Agreement's execution under Article XVI above.

CUSTOMER: SCHOOL DISTRICT OF THE CITY OF NIAGARA FALLS, NEW YORK

BY: _____

Name: _____

Title: President of the Board

Date: _____

AUTHORIZED RECIPIENT: CITY OF NIAGARA FALLS, NEW YORK

BY: _____

Name: _____

Title: Mayor

Date: _____

POWER AUTHORITY OF THE STATE OF NEW YORK

BY: _____

Name: _____

Title: _____

Date: _____

Appendix A

Except as Customer determines otherwise, consistent with the terms of this Agreement, Customer or Customer's Authorized Recipient will initially distribute power and energy purchased from the New York Power Authority under the Agreement or the economic benefit of such power and energy to the following Ultimate Users _____.

Customer may add to or delete from the above list of Ultimate Users on thirty (30) day's notice to the Authority. Customer in its sole determination may elect to use its full Allocation or any part thereof, for economic development. The economic development program description, allocation criteria and methodology shall be submitted to and approved by the Authority which approval shall not be unreasonably withheld.

The benefits of the Allocation shall be provided to such Ultimate Users either by direct sale or by allocation by the Customer (or by Customer's Authorized Recipient or Customer's Agent) of electricity or the provision of financial settlements and benefits, as set forth below, or through different methods approved by the Authority. Customer shall have the right to recover as Customer Costs its direct administrative and services costs, reasonable compensation for use of third party facilities and services furnished to Customer in the transmission and distribution of such power, all costs associated with negotiating the Agreement and the establishment of mechanisms to accept and distribute the Allocation, and any similar costs, incurred after the execution of the Host Community Relicensing Settlement Agreement dated June 27, 2005. Such Customer Costs shall be reimbursed to Customer or otherwise paid by the Ultimate User by procedures to be determined.

The listing or description of the foregoing Ultimate Users in no way mandates or requires for any reason that the Customer provide any portion of the Allocation (or Power Credits) to an Ultimate User and shall not preclude the Customer from denying any such Ultimate User the benefits associated with an allocation for any reason as determined by Customer.

A Direct Sale / Allocation, Use of Excess Power

Customer, Customer's Authorized Recipient or Customer's Agent may make a portion of the Allocation available to an Ultimate User for delivery at such Ultimate User's electricity accounts under the tariffs, rules and regulations of the NYISO and the utility in whose service area such accounts are located. If there is any portion of the Allocation made available to Customer or Customer's Authorized Recipient that is not required to serve such Ultimate User's facilities, such Excess Power (up to the load factor specified in the Agreement) may be utilized as follows:

1. Customer, Customer's Authorized Recipient or Customer's Agent may schedule Excess Power into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), shall be applied by Customer to payment of Customer's (or an Ultimate User's, as the case may be) energy-related costs, including but not limited to, the purchase of energy commodities, the delivery and transportation of electricity and all other energy commodities

and/or for energy efficiency or clean energy technology programs or projects now in existence or that may exist during the term of the Agreement.

2. Customer or Customer's Authorized Recipient may use the Excess Power (or the benefits associated with such Excess Power derived from a financial settlement as set forth in the preceding Paragraph 1) for economic development by providing credits to a business to apply against the cost of power or energy and/or the cost of delivery of power or energy consumed by such business.

B Power Credits

Customer, Customer's Authorized Recipient or Customer's Agent, may schedule all of Customer's Allocation (up to the load factor specified in the Agreement) into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), may be provided to Ultimate Users in the form of Power Credits by Customer or Customer's Authorized Recipient as follows:

Power Credits may be applied towards the cost and/or delivery of electric power or energy consumed by the Ultimate User or for other energy-related costs, including but not limited to, purchase of energy commodities, the delivery and transportation of electricity and all other energy commodities and/or for energy efficiency or clean energy technology programs or projects now in existence or that may exist during the terms of the Agreement.

C Service through Authorized Entity

Through assignment, transfer or otherwise, including through an agency arrangement, Customer shall have the right to make available its Allocation or any part thereof to any entity, including but not limited to Customer's Authorized Recipient, that is duly authorized to receive, purchase, transmit, distribute, and/or resell the power and energy included in the Allocation or otherwise to engage in such transactions as are necessary to effectuate the delivery of the Allocation and/or to provide the financial benefits thereof to the Customer, the Customer's Ultimate Users and the Customer's constituents, as determined in the exercise of the Customer's discretion and consistent with the provisions of the Host Community Relicensing Settlement Agreement dated June 27, 2005 and Article VI of the Agreement. Any such assignment, transfer, agency arrangement or similar transaction contemplated by this paragraph may, but shall not be required to, include elements of the other methods described in this Appendix A.

D Continuity

In the event that any administrative agency or court of competent jurisdiction shall determine that any element of any of the foregoing methods of distributing the Allocations and/or financial benefits thereof is unauthorized or illegal, the Customer shall propose an alternative method of distribution, not necessarily limited to those described above, and

the Authority shall promptly determine whether to accept such alternative method. Such acceptance shall not be unreasonably withheld.

E Right to Alternate Between Methods

Customer shall have the right at its discretion and without restriction to alternate between the methods for the distribution of the benefits of the Allocation as set forth in Sections A through D above, upon giving sixty (60) days written notice to the Authority.

F. Market Administration

Notwithstanding anything to the contrary in the Agreement, if Customer and/or Customer's Authorized Recipient elects to convert the Allocation into financial settlements for use as payments or credits pursuant to Sections A or B above, the Authority may in its discretion schedule the Allocation into the NYISO administered market for financial settlement; such financial settlement, less the Authority's costs calculated using tariff rates as described in Article V of the Agreement, shall be provided to Customer, Customer's Authorized Recipient, or Customer's Agent, as the case may be, for disposition pursuant to the terms of a separate agreement between Authority, Customer and either Customer's Agent or Customer's Authorized Recipient, or both.

In the event that the Authority determines, in its discretion, not to use the foregoing method of scheduling the Allocation into the NYISO administered market for financial settlement, the Authority will provide reasonable notice to Customer of its intent to discontinue such method and assist Customer in making other arrangements to effect the delivery of the benefits of the Allocation to Customer or Ultimate Users.

This Section F is intended as an additional method of providing the benefits of the Allocation and is not intended to limit in any way the right to use other methods of providing such benefits, as set forth in the Agreement, including this Appendix A.

Appendix B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to Customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. The RSR is calculated consistent with Service Tariff No. HC – 1 provisions regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Customers’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include Ancillary Services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining energy assigned costs by the annual metered generation.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the megawatts sold from the Niagara/St. Lawrence projects, as determined solely in the Authority’s discretion, in the various ISO auction markets.

5. Calculate the difference between the cost-based energy rate and the billed preference energy rate.
6. Multiply the difference in the rates by the actual annual billed preference energy sales to determine the annual change in the RSR.
7. Add the annual change to the RSR balance from the prior year-end to get the current year-end RSR balance.
8. If the current year-end balance is in excess of +/- \$25 million, the excess would be subject to a credit or a surcharge in the subsequent rate year.



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

Electric Service Tariff for Host Communities
Firm Hydroelectric Power Service

Service Tariff No. HC-1

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Schedule of Rates for Firm Hydroelectric Power and Energy Service

I. Applicability

To sale of Niagara Hydroelectric Project firm power and energy to the Host Communities customers and/or their Authorized Recipients eligible for cost-based service under the Niagara Relicensing Settlement Agreement.

II. Abbreviations and Terms

A. The following abbreviations are used:

kW	kilowatt(s)
kWh	kilowatt-hour(s)
NYPA	New York Power Authority
NYISO	New York Independent System Operator

B. The term “Agreement” means contract for the Sale of Niagara Project Power and Energy between Authority and Customer.

C. The term “Authority” means New York Power Authority, an alternative name for the Power Authority of the State of New York.

D. The term “Customer” means a Host Community defined in the Agreement.

E. The term “Customer’s Agent” may include, without limitation, a public utility, Load Service Entity, Municipal Distribution Agency, load aggregator or other entity authorized to purchase, sell and/or deliver or cause to be delivered electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

F. The term “Power” or “Firm Hydroelectric Power” means capacity (kW) from Project, intended to be available at all times except for limitations provided in the Agreement(s), the Rules, this Service Tariff or in other contract documents. Firm Power shall not include peaking power.

G. The term “Energy” or “Firm Hydroelectric Energy” means energy (kWh) associated with Firm Hydroelectric Power.

- H. The term “Project” means the Authority’s Niagara Hydroelectric Project.
- I. The term “Rules” means Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, 21 NYCRR § 454) as now in effect and as may be later amended from time to time by Authority.
- J. The term “Service Tariff” means this Service Tariff No. HC-1.

III. Monthly Rates and Charges

A. Monthly Base Rates

The monthly demand and energy charges paid by Customer to Authority shall be based on the preference power rates charged by Authority, as shown below.

<u>Period</u>	<u>Demand Rate</u> \$/kW-month of contract demand	<u>Energy Rate</u> Mills/kWh
5/1/2013 through 4/30/2014	3.91	4.92
5/1/2014 through 4/30/2019	4.07	4.92
5/1/2019 through 4/30/2020	4.07	4.92

The demand and energy rates set forth above shall apply at the Project switchyard.

B. Minimum Monthly Charge

The product of the demand rate set forth above and the contract demand.

C. Billing Energy

Energy provided by Authority under this Service Tariff.

D. Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month.

E. Contract Demand

The amounts set forth in the applicable Agreement(s) between Authority and Customer.

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

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority, if any, for services provided by the NYISO or any successor organization pursuant to its Open Access Transmission Tariff ("OATT") or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) which are associated with

Customer's purchase of hydro power and energy under its contract for the sale of hydro power and energy with Authority:

1. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
2. Marginal losses;
3. The New York Power Authority Transmission Adjustment Charge ("NTAC");
4. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
5. Any and all other charges, assessments or other amounts associated with deliveries to Customer that are assessed on the Authority by the NYISO or any successor organization under the provisions of its OATT or under other applicable tariffs; and
6. Any charges assessed on the Authority with respect to 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 NYPA with respect to service to Customers), applicable tariffs or required to be paid by the Authority in accordance with law, whether charged by the NYISO or some other third party.

The NYISO Charges in this section are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

G. Taxes and Other Charges

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

IV. General Provisions

General Provisions for service supplementing or modifying the Rules and Regulations for Power Service and this Service Tariff with regard to deliveries to Customer are as follows:

A. Character of Service

Alternating current, 60 hertz, three-phase.

B. Availability of Energy

Unless otherwise agreed upon by the parties, Authority shall normally provide in any billing period Firm Hydroelectric Energy to Customer and/or Customer's Authorized Recipient in an amount equal to the product of (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement. The Authority will have the right to reduce on a pro rata basis the amount of Firm Hydroelectric Energy provided to Customer and/or Customer's Authorized Recipient if such reductions are necessary due to low flow (i.e., hydrologic) conditions at the Authority's Niagara and St. Lawrence-FDR hydroelectric generating stations. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Customer and/or Customer's Authorized Recipient in later billing periods. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer and/or Customer's Authorized Recipient. The Authority shall provide reasonable notice, to the extent possible, to Customer and Customer's Authorized Recipient 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.

Unless otherwise specified in the Agreement, where Customer is taking service solely from Authority, the billing energy shall be the total number of kilowatt-hours recorded on Customer's and/or Customer's Authorized Recipient's meter (or the meters of entities served by Customer and/or Customer's Authorized Recipient as indicated in the Agreement) during the billing period, adjusted for losses.

Unless otherwise specified in the Agreement, where Customer and/or Customer's Authorized Recipient takes service from other sources in addition to service supplied hereunder, the billing energy shall be determined by multiplying (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement.

C. Adjustment of Rates

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

D. Adjustment of Charges

Power Factor

Not less than 95% lagging or leading, except as otherwise specified in the Agreement.

E. Delivery

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be delivered by Authority at the Project switchyard to the transmission facilities under the control of the NYISO for delivery to Customer and/or Customer's Authorized Recipient.

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be deemed to be offered when Authority is able to supply Firm Hydroelectric Power and Energy and NYISO transmits it to Customer and/or Customer's Authorized Recipient or its designated points of interconnection with Customer's Agent at the Project switchyard. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer and/or Customer's Authorized Recipient. If, despite such offer, there is a failure of delivery by Customer, Customer's Authorized Recipient, or Customer's Agent, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

F. Scheduling Procedures

1. Authority will advise Customer, and Customer's Authorized Recipient, or Customer's Agent by the tenth (10th) Business Day of the preceding month of the estimated quantity of Firm Hydroelectric Energy expected to be made available from the Project.
2. Authority may require that such Firm Hydroelectric Energy from the Project be scheduled in general accordance with the individual system load shapes of Customer, Customer's Authorized Recipient, or Customer's Agent or as otherwise agreed upon by the Customer and Authority.

3. Customer, Customer's Authorized Recipient, or Customer's Agent shall file with Authority pursuant to procedures established by Authority, a daily schedule setting forth the Customer's and/or Customer's Authorized Recipient's requested amounts from the Project on a clock hour basis.
4. Subsequent to Authority approval of schedules for any day, Authority and Customer, Customer's Authorized Recipient, or Customer's Agent may agree on changes in such schedules subject to NYISO scheduling requirements and procedures Authority shall establish such that an efficient dispatch of Authority facilities will be accomplished.

G. Payment by Customer and/or Customer's Authorized Recipient for Firm Hydroelectric Power and Energy

1. Customer and/or Customer's Authorized Recipient shall pay for Firm Hydroelectric Power and Energy during any billing period the sum of a) and b) below:
 - a. The demand rate per kW for Firm Hydroelectric Power specified in this Service Tariff or any modification thereof applied to Customer's contract demand for the billing period; and
 - b. The energy rate specified in this Service Tariff or any modification thereof applied to the amount of Firm Hydroelectric billing energy delivered by Authority to Customer and/or Customer's Authorized Recipient during such billing period.
2. 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 Authority. In the event that there is a dispute on any items of a bill rendered by Authority, Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

H. Supplementary Provision

Sections 454.2 (c) and 454.5 of the Rules are inapplicable to this Service Tariff.

I. Alternate Arrangements

Notwithstanding general provisions E, F and G above, Authority, Customer, Customer's Authorized Recipient and/or Customer's Agent may make alternate arrangements regarding Delivery, Scheduling Procedures and Payment by Customer for Firm Hydroelectric Power and Energy consistent with the terms of the Agreement or other contract documents.

J. Conflicts

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

V. Flow Adjustment Computation ("FAC")

The energy charges under this Service Tariff, and the applicable service tariffs associated with both the Project and the St. Lawrence-FDR Hydroelectric Project, in the aggregate, are subject to a credit or surcharge pursuant to a FAC in any rate year following a calendar year for which the Hydroelectric Project Rate Stabilization Reserve ("RSR") is greater than \$+25 million, or less than \$-25 million, respectively. The RSR will be used to ensure rate stability and cost recovery and its level will be determined and any credit or surcharge for the succeeding rate year will be calculated after the prior calendar year's costs and generation levels are known. Any credit or surcharge will be applied on a uniform basis to the monthly billing statements rendered pursuant to this Service Tariff during the succeeding rate year.

The FAC is inapplicable in any rate year succeeding a calendar year at the end of which the RSR is within the \$+25 million to \$-25 million range. If at the end of any calendar year, the RSR is determined to exceed \$+25 million, such excess amount will be credited pro-rata to Customers during the succeeding rate year pursuant to the FAC. If the RSR at the end of any calendar year is determined to be less than \$-25 million, the difference below \$-25 million will be surcharged pro-rata to Customers during the succeeding rate year pursuant to the FAC.

To the extent that there is a balance in the RSR (positive or negative) on the effective date of service under the applicable Agreement(s), arising out of service under a prior agreement for the sale of Project power and energy, that RSR balance shall be carried forward and maintained as the balance as of the effective date of service under such applicable Agreement(s).

POWER AUTHORITY
OF THE
STATE OF NEW YORK

30 South Pearl Street
Albany, New York

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT HYDROELECTRIC POWER AND ENERGY
TO THE NIAGARA PROJECT HOST COMMUNITIES

Service Tariff No. HC-1 - Firm Hydroelectric Power and Energy
(LEWISTON-PORTER CENTRAL SCHOOL DISTRICT)

Month 2025

POWER AUTHORITY OF THE STATE OF NEW YORK

**30 South Pearl Street
Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROELECTRIC POWER AND ENERGY TO
THE NIAGARA PROJECT HOST COMMUNITIES**

**SERVICE TARIFF No. HC-1 – Firm Hydroelectric Power and Energy
(LEWISTON-PORTER CENTRAL SCHOOL DISTRICT)**

Lewiston-Porter Central School District (“Customer”) hereby enters into this Agreement with the Power Authority of the State of New York for electric service as follows:

I. Definitions

- a. Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.
- b. Agreement** means this Agreement.
- c. Allocation** shall mean the amount of power and associated energy that the Authority has allocated to Customer hereunder.
- d. Ancillary Services** shall be as defined by the NYISO in its rules, tariffs, manuals and procedures.
- e. Authority** is the Power Authority of the State of New York.
- f. Authorized Recipient** is defined in Article II.
- g. Commencement Date** shall be as set forth in Article XVIII.
- h. Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.
- i. Customer** is the municipality (Host Community) identified above.

- j. **Customer-Arranged Energy** means energy the Customer itself procures from sources other than the Authority for the purpose of replacing Firm Hydroelectric Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.
- k. **Customer's Agent** is defined in Article X.
- l. **Electric Service** is Power and Energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.
- m. **Excess Power** is defined in Article VIII and Appendix A.
- n. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- o. **FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.
- p. **Firm Hydroelectric Power and Energy** are firm power and associated energy from the Authority's Niagara Power Project, intended to be available at all times except for limitations provided in this Agreement, the Rules, applicable Service Tariff or in other contract documents.
- q. **Green Attributes** are attributes associated with renewable energy power production as recorded in the New York Generation Attribute Tracking System administered by The New York State Energy Research and Development Authority.
- r. **Host Communities** are Niagara County, City of Niagara Falls, Town of Lewiston, Town of Niagara, City of Niagara Falls School District, Lewiston-Porter School District and Niagara-Wheatfield School District.
- s. **Load Reduction** has the meaning set forth in Article IX.f of this Agreement.
- t. **Load Serving Entity** is an entity authorized or required by law, regulatory authorization or requirement, agreement, or contractual obligation to supply Energy, Capacity and/or Ancillary Services to retail customers under the rules, tariffs, manuals and procedures of the NYISO.
- u. **NRA** means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).
- v. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.

- w. **Planned Hydropower Curtailment** means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.
- x. **Power Credits** are defined in Article VIII and Appendix A.
- y. **Project** means the Niagara Power Project, FERC Project No. 2216.
- z. **Project Power and Energy** means Firm Hydroelectric Power and Energy produced by the Project.
- aa. **Project Switchyard** is the Niagara Project switchyard.
- bb. **Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Host Community Relicensing Settlement Agreement Addressing Non-License Terms and Conditions allocation of Niagara Project Power and Energy to the Host Communities dated June 27, 2005.
- cc. **Rules** are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).
- dd. **Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.
- ee. **Substitute Energy** means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment
- ff. **Ultimate Users** are entities to whom Customer or Customer's Authorized Recipient will resell (or otherwise convey benefits associated with) Project Power and Energy purchased from the Authority as provided in Article VI of this Agreement and Appendix A hereto. Customer may designate itself as an Ultimate User.
- gg. **Unforced Capacity** is the capacity required to be provided by Load Serving Entities to serve load as defined by the NYISO in its rules, tariffs, manuals and procedures.
- hh. **Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

All other terms not otherwise defined herein shall have the meanings ascribed to them in the electric industry.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariff HC-1 for Power and/or Energy to enable the Customer or the Customer's Authorized Recipient, as defined below, to receive the Allocation from the Project in accordance with the provisions of the FERC License and Relicensing Settlement Agreement, in the amount set forth below:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. HC-1: 1,500 KiloWatts (Contract Demand)

Upon execution of this Agreement by a Host Community, other than Customer, that is legally capable of receiving an Allocation from the Project (Authorized Recipient) such Authorized Recipient shall be authorized to receive the Allocation of the Customer in accordance with the terms and conditions set forth in this Agreement, including Appendix A hereof. Such authorization may be revoked by Customer upon reasonable notice to the Authority and Customer's Authorized Recipient; provided, however, that Customer shall, as of the effective date of such revocation, have made arrangements (a) with another Authorized Recipient to receive the Customer's Allocation, or (b) to receive such Allocation itself, if legally capable of doing so.

The Authority shall provide Unforced Capacity in amounts necessary to meet Customer's NYISO Unforced Capacity obligations associated with the foregoing Allocation in accordance with the rules and tariffs of the NYISO. Neither Ancillary Services, nor Green Attributes are included in such allocation.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction. The Authority shall provide reasonable notice to Customer of any such proposed action that could result in modification of Contract Demands and nothing herein shall be construed as limiting customer's rights to challenge any proposed reduction in Contract Demands.

III. Rules, Regulations and Service Tariffs

The Rules and Service Tariff No. HC-1, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any

inconsistencies, conflicts or differences between Articles I through XVIII of this Agreement and the Service Tariffs, the provisions of Articles I through XVIII of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State if that period of minimum notice is greater than herein referenced. Except as expressly provided otherwise herein, nothing contained in this Agreement shall be construed as restricting Customer's rights to participate in processes involving changes to rates, Rules and Service Tariffs or other matters affecting the subject of this Agreement.

IV. Transmission and Delivery of Power and Energy

Authority shall make Project Power and Energy available to Customer, Customer's Authorized Recipient or Customer's Agent at the Project Switchyard. It is the Customer's responsibility to act as the Load Serving Entity ("LSE"), arrange for one or more other entities to do so on its behalf or make other arrangements for conveying the benefits associated with the allocation to Ultimate Users. Customer, or the entity acting as LSE, Customer's Authorized Recipient, or Customer's Agent shall arrange for the transmission of the Project Power and Energy supplied hereunder from the Project Switchyard to Customer's points of delivery or the conversion of the Allocation into financial settlements and benefits by such other method of disposition consistent with Article VI of this Agreement and Appendix A hereto. Such delivery shall be consistent with the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO and Customer shall be responsible for all costs associated with the transmission and delivery of the allocation.

V. Rates

Project Power and Energy shall be sold to Customer or to Customer's Authorized Recipient hereunder at cost-based rates equivalent to rates charged to in-state preference customers receiving preference power under the NRA.

Customer waives any challenges to any of the following methodologies and principles¹ to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted by the Authority's Trustees in their meeting on April 29, 2003 and November 15, 2011:

¹ These methodologies and principles were employed in and explained by (1) the Authority's January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on April 29, 2003; (2) the Authority's Rate Stabilization Reserve Methodology attached hereto as Appendix B; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on November 15, 2011.

- (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 as supplemented by the explanatory statement attached hereto as Appendix B.
- (viii) Unforced Capacity (“UCAP”) sales credited to Cost of Service, based on the quantity of megawatts from the Project, determined solely in the Authority’s discretion, sold into the NYISO auctions.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer or the Customer’s Authorized Recipient 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. Notwithstanding the foregoing, nothing in this Article V shall limit: (1) the Authority and Customer from entering into good faith negotiations to change the above methodologies and principles, or (2) the Authority from adopting changes to these methodologies and principles in accordance with a rulemaking proceeding addressing cost-based rates for preference power done under the New York State Administrative Procedure Act.

VI. Use and Resale of Project Power and Energy

Customer or the Customer’s Authorized Recipient shall use the Allocation for Customer’s facilities or as otherwise allowed in accordance with the Relicensing Settlement Agreement, this Agreement and Appendix A hereof.

In reselling and/or distributing the Allocation, except as otherwise provided in Appendix A hereof, Customer or the Customer’s Authorized Recipient shall: 1) do so pursuant to the appropriate laws of the State of New York, 2) distribute such

Allocation only to the Ultimate Users designated pursuant to Appendix A, 3) not permit such Ultimate Users to sell any of such Allocation for resale and 4) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section 1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License.

Customer, Customer's Authorized Recipient or Customer's Agent shall keep its books, accounts and records pertaining to the purchase, delivery and sale of the Allocation according to procedures reasonably deemed necessary by Authority to ensure compliance with this Agreement and Appendix A hereof, applicable statutes, licenses, the Rules. Customer or Customer's Authorized Recipient shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require Customer's Ultimate Users as identified in Appendix A of the Agreement to agree to do likewise.

The distribution of the benefits of the Allocation to Ultimate Users shall, where feasible, be accompanied by a statement indicating the total savings in dollars realized by the individual Ultimate User for the particular billing period as a result of the purchase of hydroelectric power and energy by Customer or Customer's Authorized Recipient from the Authority. The form and content of such statement shall be coordinated between Customer or Customer's Authorized Recipient and Authority.

VII. Permanent Reallocation of Project Power and Energy

If Customer is, or becomes unable or chooses not to receive, or to have Customer's Authorized Recipient not receive, any or all of the Project Power and Energy allocated to it on a permanent basis, such Project Power and Energy shall be reallocated by the Authority pro-rata among the other Host Communities. Customer shall provide written notice to the Authority and the other Host Communities of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the other Host Communities shall become effective as soon as practicable, without need to amend this Agreement and the Contract Demand in this Agreement shall be revised to reflect such reallocation, notwithstanding Article XIV hereof.

VIII. Availability of Energy

Subject to any other limitations set forth in the Rules or the Service Tariff (including low-flow conditions), if Customer or Customer's Authorized Recipient directly or indirectly provides the Allocation to Ultimate Users for physical delivery to such Users' accounts as set forth in Appendix A, Authority will supply Customer's (or Ultimate Users', as the case may be) entire demand and energy usage up to the Contract Demand. If there is any portion of the energy associated with the Allocation made available to Customer or Customer's Authorized Recipient (at a monthly load factor of seventy percent (70%) pursuant to the

Authority's regular scheduling requirements) that is not required to serve such Ultimate Users' facilities, such energy may be utilized as Excess Power in the manner described in Appendix A.

As between Customer and the Authority, for any usage above the Contract Demand, it is Customer's responsibility to arrange for provision of such excess service by a third party supplier, and the apportionment of energy between suppliers shall be as set forth in Service Tariff No. HC-1, or any successor tariff.

Subject to any other limitations set forth in the Rules or Service Tariff (including low-flow conditions), if Customer or Customer's Authorized Recipient provides the benefits of the Allocation to Ultimate Users in the form of Power Credits as set forth in Appendix A, the Allocation will be delivered at a monthly load factor of seventy percent (70%) pursuant to the Authority's regular scheduling requirements.

IX. Hydro Curtailments and Substitute Energy

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

Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.

- e. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.
- f. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer's failure to provide such notice.
- g. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.
- h. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.
- i. Notwithstanding the Customer's election pursuant to Article IX.a, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments, provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration the Authority determines is reasonable considering the circumstances, including but not limited to the operating procedures of the Authority, third-party transmission or delivery utilities who deliver the Substitute Energy, and the NYISO.
- j. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for Firm Hydroelectric Energy as provided for in

this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. HC-1 relating to the rendition and payment of bills for Electric Service.

- k. The Customer shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. HC-1 and the Rules relating to the rendition and payment of bills for Electric Service. The Authority's failure to provide notice pursuant to Article IX.c or Article IX.h shall not affect the Customer's obligation to pay for Substitute Energy.
- l. The Authority will provide the Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- m. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.
- n. The Customer shall not be entitled to power and energy sourced from another Authority power facility, including another Authority hydropower project, as Substitute Energy.

X. Appointment of Customer's Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer may, on reasonable prior written notice to the Authority (consistent with the Authority's and the NYISO's scheduling and business process requirements), designate a different party as Customer's Agent at any time during the term of this Agreement.

Customer's Agent may include, without limitation, a public utility, LSE, Municipal Distribution Agency, load aggregator or other entity authorized to purchase and

sell electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

XI. Term and Termination of Service

Service under the Agreement shall begin on the Commencement Date and shall continue until the earliest of (a) termination by Customer with respect to all of its Allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) September 1, 2041, at which time a new or modified agreement will be entered between the Authority and the Customer to provide Customer or Customer's Authorized Recipient with Project Power and Energy for the remainder of the licensing period in the amount and for the rate then in effect which complies with the terms of the Relicensing Settlement Agreement. If such a new or modified agreement is not in place to take effect after September 1, 2041, service will be continued under the terms and conditions of this Agreement on a year to year basis or until a new or modified agreement takes effect between the parties.

Notwithstanding the termination provisions of this Article, Customer may pause the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice. Customer may recommence the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice.

The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) 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 (b) as otherwise provided herein or in the Rules. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority. The Authority shall provide reasonable notice to Customer of any matter or proceeding that could result in an order or decision as described in part (a) of this paragraph and nothing herein shall be construed as limiting Customer's right to challenge any such proposed action.

Nothing herein is intended to limit the rights of the Host Communities or Customer under the Relicensing Settlement Agreement and the Authority and Customer understand and agree that the Authority is obligated under such Relicensing Settlement Agreement to make a total of 1,500 KiloWatts of Project Power and Energy available to Customer or Customer's Authorized Recipient for the term of the FERC License, whether through extension of this Agreement or by subsequent agreement.

XII. Notification

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

To: Authority

Manager – Power Contracts & Tariffs
New York Power Authority
123 Main Street
White Plains, NY 10601

To: Customer

Lewiston-Porter Central School District
4061 Creek Road
Youngstown, NY 14174

Attention: President, Board of Education

With a copy to:

To: Customer's Authorized Recipient

XIII. Applicable Law and Venue

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. Any action or proceeding arising out of or relating to this Agreement shall be brought in state courts located in Albany County, New York.

XIV. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of the parties hereto; provided, however, that no assignment by a party or any successor or assignee of such party of its rights and obligations hereunder shall be made or become effective

without the prior written consent of the other parties in each case obtained, which consent shall not be unreasonably withheld.

XV. Previous Agreements and Communications

This Agreement, together with the Relicensing Settlement Agreement, shall constitute the sole and complete agreement of the parties hereto with respect to the matters herein set forth, and such Agreements supersede all previous communications between the Parties hereto, either oral or written, with reference to the subject matter hereof; provided, however, that additional terms pursuant to which Customer's Authorized Recipient is authorized to receive Customer's Allocation may be set forth in a separate agreement between Customer and Authorized Recipient. Any such separate agreement shall not be inconsistent with the terms of this Agreement and shall be provided to the Authority for informational purposes.

No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

If there is a conflict between the language in Section 6 of the Relicensing Settlement Agreement entitled "Power Allocation" and language in this Agreement, including Appendix A, the language of this Agreement addressing this subject shall control.

XVI. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the parties for Electric Service hereunder.

XVII. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

In such an event and at the request of any of the parties, the parties agree to engage in good faith negotiations on possible modification to this Agreement to remedy any portion of this Agreement that was declared invalid, unlawful or ineffective. Such good faith negotiations shall conform to the requirements comparable to those of section 10.1.3 of the Relicensing Settlement Agreement. To the extent that good faith negotiations do not result in an agreement as to whether or how this Agreement should be modified, the parties agree to resolve their differences in accordance with the alternative dispute resolution mechanism

set forth in section 12 of the Relicensing Settlement Agreement. The primary goal of any good faith negotiation or alternative dispute resolution mechanism shall be to preserve to the greatest extent as possible, the benefit of the parties' intended bargain.

XVIII. Effectiveness of Agreement

This Agreement shall take effect on the date of this Agreement's execution under Article XVI above.

CUSTOMER: LEWISTON-PORTER CENTRAL SCHOOL DISTRICT

BY: _____

Title: _____

Date: _____

(Seal)

Attest by: _____

AUTHORIZED RECIPIENT: NIAGARA COUNTY, NEW YORK

BY: _____

Title: _____

Date: _____

(Seal)

Attest by: _____

Accepted:

POWER AUTHORITY OF THE STATE OF NEW YORK

BY: _____

Title: _____

Date: _____

(Seal)

Attest by: _____

Appendix A

Except as Customer determines otherwise, consistent with the terms of this Agreement, Customer or Customer's Authorized Recipient will initially distribute power and energy purchased from the New York Power Authority under the Agreement or the economic benefit of such power and energy to the following Ultimate Users_____

Customer may add to or delete from the above list of Ultimate Users on thirty (30) day's notice to the Authority. Customer in its sole determination may elect to use its full Allocation or any part thereof, for economic development. The economic development program description, allocation criteria and methodology shall be submitted to and approved by the Authority which approval shall not be unreasonably withheld.

The benefits of the Allocation shall be provided to such Ultimate Users either by direct sale or by allocation by the Customer (or by Customer's Authorized Recipient or Customer's Agent) of electricity or the provision of financial settlements and benefits, as set forth below, or through different methods approved by the Authority. Customer shall have the right to recover as Customer Costs its direct administrative and services costs, reasonable compensation for use of third party facilities and services furnished to Customer in the transmission and distribution of such power, all costs associated with negotiating the Agreement and the establishment of mechanisms to accept and distribute the Allocation, and any similar costs, incurred after the execution of the Host Community Relicensing Settlement Agreement dated June 27, 2005. Such Customer Costs shall be reimbursed to Customer or otherwise paid by the Ultimate User by procedures to be determined.

The listing or description of the foregoing Ultimate Users in no way mandates or requires for any reason that the Customer provide any portion of the Allocation (or Power Credits) to an Ultimate User and shall not preclude the Customer from denying any such Ultimate User the benefits associated with an allocation for any reason as determined by Customer.

A Direct Sale / Allocation, Use of Excess Power

Customer, Customer's Authorized Recipient or Customer's Agent may make a portion of the Allocation available to an Ultimate User for delivery at such Ultimate User's electricity accounts under the tariffs, rules and regulations of the NYISO and the utility in whose service area such accounts are located. If there is any portion of the Allocation made available to Customer or Customer's Authorized Recipient that is not required to serve such Ultimate User's facilities, such Excess Power (up to the load factor specified in the Agreement) may be utilized as follows:

1. Customer, Customer's Authorized Recipient or Customer's Agent may schedule Excess Power into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), shall be applied by Customer to payment of Customer's (or an Ultimate User's, as the case may be) energy-related costs, including but not limited to, the purchase of energy commodities, the delivery and transportation of electricity and all other energy commodities

and/or for energy efficiency or clean energy technology programs or projects now in existence or that may exist during the term of the Agreement.

2. Customer or Customer's Authorized Recipient may use the Excess Power (or the benefits associated with such Excess Power derived from a financial settlement as set forth in the preceding Paragraph 1) for economic development by providing credits to a business to apply against the cost of power or energy and/or the cost of delivery of power or energy consumed by such business.

B Power Credits

Customer, Customer's Authorized Recipient or Customer's Agent, may schedule all of Customer's Allocation (up to the load factor specified in the Agreement) into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), may be provided to Ultimate Users in the form of Power Credits by Customer or Customer's Authorized Recipient as follows:

Power Credits may be applied towards the cost and/or delivery of electric power or energy consumed by the Ultimate User or for other energy-related costs, including but not limited to, purchase of energy commodities, the delivery and transportation of electricity and all other energy commodities and/or for energy efficiency or clean energy technology programs or projects now in existence or that may exist during the terms of the Agreement.

C Service through Authorized Entity

Through assignment, transfer or otherwise, including through an agency arrangement, Customer shall have the right to make available its Allocation or any part thereof to any entity, including but not limited to Customer's Authorized Recipient, that is duly authorized to receive, purchase, transmit, distribute, and/or resell the power and energy included in the Allocation or otherwise to engage in such transactions as are necessary to effectuate the delivery of the Allocation and/or to provide the financial benefits thereof to the Customer, the Customer's Ultimate Users and the Customer's constituents, as determined in the exercise of the Customer's discretion and consistent with the provisions of the Host Community Relicensing Settlement Agreement dated June 27, 2005 and Article VI of the Agreement. Any such assignment, transfer, agency arrangement or similar transaction contemplated by this paragraph may, but shall not be required to, include elements of the other methods described in this Appendix A.

D Continuity

In the event that any administrative agency or court of competent jurisdiction shall determine that any element of any of the foregoing methods of distributing the Allocations and/or financial benefits thereof is unauthorized or illegal, the Customer shall propose an alternative method of distribution, not necessarily limited to those described above, and

the Authority shall promptly determine whether to accept such alternative method. Such acceptance shall not be unreasonably withheld.

E Right to Alternate Between Methods

Customer shall have the right at its discretion and without restriction to alternate between the methods for the distribution of the benefits of the Allocation as set forth in Sections A through D above, upon giving sixty (60) days written notice to the Authority.

F. Market Administration

Notwithstanding anything to the contrary in the Agreement, if Customer and/or Customer's Authorized Recipient elects to convert the Allocation into financial settlements for use as payments or credits pursuant to Sections A or B above, the Authority may in its discretion schedule the Allocation into the NYISO administered market for financial settlement; such financial settlement, less the Authority's costs calculated using tariff rates as described in Article V of the Agreement, shall be provided to Customer, Customer's Authorized Recipient, or Customer's Agent, as the case may be, for disposition pursuant to the terms of a separate agreement between Authority, Customer and either Customer's Agent or Customer's Authorized Recipient, or both.

In the event that the Authority determines, in its discretion, not to use the foregoing method of scheduling the Allocation into the NYISO administered market for financial settlement, the Authority will provide reasonable notice to Customer of its intent to discontinue such method and assist Customer in making other arrangements to effect the delivery of the benefits of the Allocation to Customer or Ultimate Users.

This Section F is intended as an additional method of providing the benefits of the Allocation and is not intended to limit in any way the right to use other methods of providing such benefits, as set forth in the Agreement, including this Appendix A.

Appendix B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to Customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. RSR is calculated consistent with Service Tariff HC-1 provisions regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Customers’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include Ancillary Services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining energy assigned costs by the annual metered generation.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the megawatts sold from the Niagara/St. Lawrence projects, as determined solely in the Authority’s discretion, in the various ISO auction markets.

5. Calculate the difference between the cost-based energy rate and the billed preference energy rate.
6. Multiply the difference in the rates by the actual annual billed preference energy sales to determine the annual change in the RSR.
7. Add the annual change to the RSR balance from the prior year-end to get the current year-end RSR balance.
8. If the current year-end balance is in excess of +/- \$25 million, the excess would be subject to a credit or a surcharge in the subsequent rate year.



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

Electric Service Tariff for Host Communities
Firm Hydroelectric Power Service

Service Tariff No. HC-1

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Schedule of Rates for Firm Hydroelectric Power and Energy Service

I. Applicability

To sale of Niagara Hydroelectric Project firm power and energy to the Host Communities customers and/or their Authorized Recipients eligible for cost-based service under the Niagara Relicensing Settlement Agreement.

II. Abbreviations and Terms

A. The following abbreviations are used:

kW	kilowatt(s)
kWh	kilowatt-hour(s)
NYPA	New York Power Authority
NYISO	New York Independent System Operator

B. The term “Agreement” means contract for the Sale of Niagara Project Power and Energy between Authority and Customer.

C. The term “Authority” means New York Power Authority, an alternative name for the Power Authority of the State of New York.

D. The term “Customer” means a Host Community defined in the Agreement.

E. The term “Customer’s Agent” may include, without limitation, a public utility, Load Service Entity, Municipal Distribution Agency, load aggregator or other entity authorized to purchase, sell and/or deliver or cause to be delivered electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

F. The term “Power” or “Firm Hydroelectric Power” means capacity (kW) from Project, intended to be available at all times except for limitations provided in the Agreement(s), the Rules, this Service Tariff or in other contract documents. Firm Power shall not include peaking power.

G. The term “Energy” or “Firm Hydroelectric Energy” means energy (kWh) associated with Firm Hydroelectric Power.

- H. The term “Project” means the Authority’s Niagara Hydroelectric Project.
- I. The term “Rules” means Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, 21 NYCRR § 454) as now in effect and as may be later amended from time to time by Authority.
- J. The term “Service Tariff” means this Service Tariff No. HC-1.

III. Monthly Rates and Charges

A. Monthly Base Rates

The monthly demand and energy charges paid by Customer to Authority shall be based on the preference power rates charged by Authority, as shown below.

<u>Period</u>	<u>Demand Rate</u> \$/kW-month of contract demand	<u>Energy Rate</u> Mills/kWh
5/1/2013 through 4/30/2014	3.91	4.92
5/1/2014 through 4/30/2019	4.07	4.92
5/1/2019 through 4/30/2020	4.07	4.92

The demand and energy rates set forth above shall apply at the Project switchyard.

B. Minimum Monthly Charge

The product of the demand rate set forth above and the contract demand.

C. Billing Energy

Energy provided by Authority under this Service Tariff.

D. Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month.

E. Contract Demand

The amounts set forth in the applicable Agreement(s) between Authority and Customer.

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

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority, if any, for services provided by the NYISO or any successor organization pursuant to its Open Access Transmission Tariff ("OATT") or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) which are associated with

Customer's purchase of hydro power and energy under its contract for the sale of hydro power and energy with Authority:

1. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
2. Marginal losses;
3. The New York Power Authority Transmission Adjustment Charge ("NTAC");
4. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
5. Any and all other charges, assessments or other amounts associated with deliveries to Customer that are assessed on the Authority by the NYISO or any successor organization under the provisions of its OATT or under other applicable tariffs; and
6. Any charges assessed on the Authority with respect to 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 NYPA with respect to service to Customers), applicable tariffs or required to be paid by the Authority in accordance with law, whether charged by the NYISO or some other third party.

The NYISO Charges in this section are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

G. Taxes and Other Charges

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

IV. General Provisions

General Provisions for service supplementing or modifying the Rules and Regulations for Power Service and this Service Tariff with regard to deliveries to Customer are as follows:

A. Character of Service

Alternating current, 60 hertz, three-phase.

B. Availability of Energy

Unless otherwise agreed upon by the parties, Authority shall normally provide in any billing period Firm Hydroelectric Energy to Customer and/or Customer's Authorized Recipient in an amount equal to the product of (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement. The Authority will have the right to reduce on a pro rata basis the amount of Firm Hydroelectric Energy provided to Customer and/or Customer's Authorized Recipient if such reductions are necessary due to low flow (i.e., hydrologic) conditions at the Authority's Niagara and St. Lawrence-FDR hydroelectric generating stations. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Customer and/or Customer's Authorized Recipient in later billing periods. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer and/or Customer's Authorized Recipient. The Authority shall provide reasonable notice, to the extent possible, to Customer and Customer's Authorized Recipient 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.

Unless otherwise specified in the Agreement, where Customer is taking service solely from Authority, the billing energy shall be the total number of kilowatt-hours recorded on Customer's and/or Customer's Authorized Recipient's meter (or the meters of entities served by Customer and/or Customer's Authorized Recipient as indicated in the Agreement) during the billing period, adjusted for losses.

Unless otherwise specified in the Agreement, where Customer and/or Customer's Authorized Recipient takes service from other sources in addition to service supplied hereunder, the billing energy shall be determined by multiplying (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement.

C. Adjustment of Rates

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

D. Adjustment of Charges

Power Factor

Not less than 95% lagging or leading, except as otherwise specified in the Agreement.

E. Delivery

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be delivered by Authority at the Project switchyard to the transmission facilities under the control of the NYISO for delivery to Customer and/or Customer's Authorized Recipient.

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be deemed to be offered when Authority is able to supply Firm Hydroelectric Power and Energy and NYISO transmits it to Customer and/or Customer's Authorized Recipient or its designated points of interconnection with Customer's Agent at the Project switchyard. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer and/or Customer's Authorized Recipient. If, despite such offer, there is a failure of delivery by Customer, Customer's Authorized Recipient, or Customer's Agent, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

F. Scheduling Procedures

1. Authority will advise Customer, and Customer's Authorized Recipient, or Customer's Agent by the tenth (10th) Business Day of the preceding month of the estimated quantity of Firm Hydroelectric Energy expected to be made available from the Project.
2. Authority may require that such Firm Hydroelectric Energy from the Project be scheduled in general accordance with the individual system load shapes of Customer, Customer's Authorized Recipient, or Customer's Agent or as otherwise agreed upon by the Customer and Authority.

3. Customer, Customer's Authorized Recipient, or Customer's Agent shall file with Authority pursuant to procedures established by Authority, a daily schedule setting forth the Customer's and/or Customer's Authorized Recipient's requested amounts from the Project on a clock hour basis.
4. Subsequent to Authority approval of schedules for any day, Authority and Customer, Customer's Authorized Recipient, or Customer's Agent may agree on changes in such schedules subject to NYISO scheduling requirements and procedures Authority shall establish such that an efficient dispatch of Authority facilities will be accomplished.

G. Payment by Customer and/or Customer's Authorized Recipient for Firm Hydroelectric Power and Energy

1. Customer and/or Customer's Authorized Recipient shall pay for Firm Hydroelectric Power and Energy during any billing period the sum of a) and b) below:
 - a. The demand rate per kW for Firm Hydroelectric Power specified in this Service Tariff or any modification thereof applied to Customer's contract demand for the billing period; and
 - b. The energy rate specified in this Service Tariff or any modification thereof applied to the amount of Firm Hydroelectric billing energy delivered by Authority to Customer and/or Customer's Authorized Recipient during such billing period.
2. 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 Authority. In the event that there is a dispute on any items of a bill rendered by Authority, Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

H. Supplementary Provision

Sections 454.2 (c) and 454.5 of the Rules are inapplicable to this Service Tariff.

I. Alternate Arrangements

Notwithstanding general provisions E, F and G above, Authority, Customer, Customer's Authorized Recipient and/or Customer's Agent may make alternate arrangements regarding Delivery, Scheduling Procedures and Payment by Customer for Firm Hydroelectric Power and Energy consistent with the terms of the Agreement or other contract documents.

J. Conflicts

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

V. Flow Adjustment Computation ("FAC")

The energy charges under this Service Tariff, and the applicable service tariffs associated with both the Project and the St. Lawrence-FDR Hydroelectric Project, in the aggregate, are subject to a credit or surcharge pursuant to a FAC in any rate year following a calendar year for which the Hydroelectric Project Rate Stabilization Reserve ("RSR") is greater than \$+25 million, or less than \$-25 million, respectively. The RSR will be used to ensure rate stability and cost recovery and its level will be determined and any credit or surcharge for the succeeding rate year will be calculated after the prior calendar year's costs and generation levels are known. Any credit or surcharge will be applied on a uniform basis to the monthly billing statements rendered pursuant to this Service Tariff during the succeeding rate year.

The FAC is inapplicable in any rate year succeeding a calendar year at the end of which the RSR is within the \$+25 million to \$-25 million range. If at the end of any calendar year, the RSR is determined to exceed \$+25 million, such excess amount will be credited pro-rata to Customers during the succeeding rate year pursuant to the FAC. If the RSR at the end of any calendar year is determined to be less than \$-25 million, the difference below \$-25 million will be surcharged pro-rata to Customers during the succeeding rate year pursuant to the FAC.

To the extent that there is a balance in the RSR (positive or negative) on the effective date of service under the applicable Agreement(s), arising out of service under a prior agreement for the sale of Project power and energy, that RSR balance shall be carried forward and maintained as the balance as of the effective date of service under such applicable Agreement(s).

POWER AUTHORITY
OF THE
STATE OF NEW YORK

30 South Pearl Street
Albany, New York

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT POWER AND ENERGY
TO THE NIAGARA PROJECT HOST COMMUNITIES

Service Tariff No. HC-1 - Firm Hydroelectric Power and Energy
(NIAGARA COUNTY)

Month 2025

POWER AUTHORITY OF THE STATE OF NEW YORK

**30 South Pearl Street
Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY TO
THE NIAGARA PROJECT HOST COMMUNITIES**

**SERVICE TARIFF No. HC-1 – Firm Hydroelectric Power and Energy
(NIAGARA COUNTY)**

Niagara County (“Customer”) hereby enters into this Agreement with the Power Authority of the State of New York for electric service as follows:

I. Definitions

- a. Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.
- b. Agreement** means this Agreement.
- c. Allocation** shall mean the amount of power and associated energy that the Authority has allocated to Customer hereunder.
- d. Ancillary Services** shall be as defined by the NYISO in its rules, tariffs, manuals and procedures.
- e. Authority** is the Power Authority of the State of New York.
- f. Commencement Date** shall be as set forth in Article XVIII.
- g. Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.
- h. Customer** is the municipality (Host Community) identified above.
- i. Customer-Arranged Energy** means energy the Customer itself procures from sources other than the Authority for the purpose of replacing Firm Hydroelectric

Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.

- j. **Customer's Agent** is defined in Article X.
- k. **Electric Service** is Power and Energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.
- l. **Excess Power** is defined in Article VIII and Appendix A.
- m. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- n. **FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.
- o. **Firm Hydroelectric Power and Energy** are firm power and associated energy from the Authority's Niagara Power Project, intended to be available at all times except for limitations provided in this Agreement, the Rules, applicable Service Tariff or in other contract documents.
- p. **Green Attributes** are attributes associated with renewable energy power production as recorded in the New York Generation Attribute Tracking System administered by The New York State Energy Research and Development Authority.
- q. **Host Communities** are Niagara County, City of Niagara Falls, Town of Lewiston, Town of Niagara, City of Niagara Falls School District, Lewiston-Porter School District and Niagara-Wheatfield School District.
- r. **Load Reduction** has the meaning set forth in Article IX.f of this Agreement.
- s. **Load Serving Entity** is an entity authorized or required by law, regulatory authorization or requirement, agreement, or contractual obligation to supply Energy, Capacity and/or Ancillary Services to retail customers under the rules, tariffs, manuals and procedures of the NYISO.
- t. **NRA** means the federal Niagara Redevelopment Act (18 USC §§836, 836a)
- u. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- v. **Planned Hydropower Curtailment** means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.

- w. Power Credits** are defined in Article VIII and Appendix A.
- x. Project** means the Niagara Power Project, FERC Project No. 2216.
- y. Project Power and Energy** means Firm Hydroelectric Power and Energy produced by the Project.
- z. Project Switchyard** is the Niagara Project switchyard.
- aa. Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Host Community Relicensing Settlement Agreement Addressing Non-License Terms and Conditions allocation of Niagara Project Power and Energy to the Host Communities dated June 27, 2005.
- bb. Rules** are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).
- cc. Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.
- dd. Substitute Energy** means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.
- ee. Ultimate Users** are entities to whom Customer will resell (or otherwise convey benefits associated with) Project Power and Energy purchased from the Authority as provided in Article VI of this Agreement and Appendix A hereto. Customer may designate itself as an Ultimate User.
- ff. Unforced Capacity** is the capacity required to be provided by Load Serving Entities to serve load as defined by the NYISO in its rules, tariffs, manuals and procedures.
- gg. Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

All other terms not otherwise defined herein shall have the meanings ascribed to them in the electric industry.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariff HC-1 for Power and/or Energy to enable the Customer to receive the Allocation from the Project in accordance with the provisions of the FERC License and Relicensing Settlement Agreement, in the amount set forth below:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. HC-1: 9,000 KiloWatts (Contract Demand)

The Authority shall provide Unforced Capacity in amounts necessary to meet Customer's NYISO Unforced Capacity obligations associated with the foregoing Allocation in accordance with the rules and tariffs of the NYISO. Neither Ancillary Services, nor Green Attributes are included in such allocation.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction. The Authority shall provide reasonable notice to Customer of any such proposed action that could result in modification of Contract Demands and nothing herein shall be construed as limiting customer's rights to challenge any proposed reduction in Contract Demands.

III. Rules, Regulations and Service Tariffs

The Rules and Service Tariff No. HC-1, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between Articles I through XVIII of this Agreement and the Service Tariffs, the provisions of Articles I through XVIII of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State if that period of minimum notice is greater than herein referenced. Except as expressly provided otherwise herein, nothing contained in this Agreement shall be construed as restricting Customer's rights to participate in processes involving changes to rates, Rules and Service Tariffs or other matters affecting the subject of this Agreement.

IV. Transmission and Delivery of Power and Energy

Authority shall make Project Power and Energy available to Customer or Customer's Agent at the Project Switchyard. It is the Customer's responsibility to act as the

Load Serving Entity ("LSE"), arrange for one or more other entities to do so on its behalf or make other arrangements for conveying the benefits associated with the allocation to Ultimate Users. Customer, or the entity acting as LSE or Customer's Agent shall arrange for the transmission of the Project Power and Energy supplied hereunder from the Project Switchyard to Customer's points of delivery or the conversion of the Allocation into financial settlements and benefits by such other method of disposition consistent with Article VI of this Agreement and Appendix A hereto. Such delivery shall be consistent with the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO and Customer shall be responsible for all costs associated with the transmission and delivery of the allocation.

V. Rates

Project Power and Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers receiving preference power under the NRA.

Customer waives any challenges to any of the following methodologies and principles¹ to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted by the Authority's Trustees in their meeting on April 29, 2003 and November 15, 2011:

- (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.

¹ These methodologies and principles were employed in and explained by (1) the Authority's January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on April 29, 2003; (2) the Authority's Rate Stabilization Reserve Methodology attached hereto as Appendix B; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on November 15, 2011.

- (vi) Post-employment benefits other than pensions (*i.e.*, retiree health benefits).
- (vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix B.
- (viii) Unforced Capacity ("UCAP") sales credited to Cost of Service, based on the quantity of megawatts from the Project, determined solely in the Authority's discretion, sold into the NYISO auctions.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer 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. Notwithstanding the foregoing, nothing in this Article V shall limit: (1) the Authority and Customer from entering into good faith negotiations to change the above methodologies and principles, or (2) the Authority from adopting changes to these methodologies and principles in accordance with a rulemaking proceeding addressing cost-based rates for preference power done under the New York State Administrative Procedure Act.

VI. Use and Resale of Project Power and Energy

Customer shall use the Allocation for its facilities or as otherwise allowed in accordance with the Relicensing Settlement Agreement, this Agreement and Appendix A hereof.

In reselling and/or distributing the Allocation, except as otherwise provided in Appendix A hereof, Customer shall: 1) do so pursuant to the appropriate laws of the State of New York, 2) distribute such Allocation only to the Ultimate Users designated pursuant to Appendix A , 3) not permit such Ultimate Users to sell any of such Allocation for resale and 4) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section 1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License.

Customer or Customer's Agent shall keep its books, accounts and records pertaining to the purchase, delivery and sale of the Allocation according to procedures reasonably deemed necessary by Authority to ensure compliance with this Agreement and Appendix A hereof, applicable statutes, licenses, the Rules. Customer shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require Customer's Ultimate Users as identified in Appendix A of the Agreement to agree to do likewise.

The distribution of the benefits of the Allocation to Ultimate Users shall, where feasible, be accompanied by a statement indicating the total savings in dollars realized by the individual Ultimate User for the particular billing period as a result of the purchase of hydroelectric power and energy by Customer from the Authority.

The form and content of such statement shall be coordinated between Customer and Authority.

VII. Permanent Reallocation of Project Power and Energy

If Customer is, or becomes unable or chooses not to receive any or all of the Project Power and Energy allocated to it on a permanent basis, such Project Power and Energy shall be reallocated by the Authority pro-rata among the other Host Communities. Customer shall provide written notice to the Authority and the other Host Communities of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the other Host Communities shall become effective as soon as practicable, without need to amend this Agreement and the Contract Demand in this Agreement shall be revised to reflect such reallocation, notwithstanding Article XIV hereof.

VIII. Availability of Energy.

Subject to any other limitations set forth in the Rules or the Service Tariff (including low-flow conditions), if Customer directly or indirectly provides the Allocation to Ultimate Users for physical delivery to such Users' accounts as set forth in Appendix A, Authority will supply Customer's (or Ultimate Users', as the case may be) entire demand and energy usage up to the Contract Demand. If there is any portion of the energy associated with the Allocation made available to Customer (at a monthly load factor of seventy percent (70%) pursuant to the Authority's regular scheduling requirements) that is not required to serve such Ultimate Users' facilities, such energy may be utilized as Excess Power in the manner described in Appendix A.

As between Customer and the Authority, for any usage above the Contract Demand, it is Customer's responsibility to arrange for provision of such excess service by a third party supplier, and the apportionment of energy between suppliers shall be as set forth in Service Tariff No. HC-1, or any successor tariff.

Subject to any other limitations set forth in the Rules or Service Tariff (including low-flow conditions), if Customer provides the benefits of the Allocation to Ultimate Users in the form of Power Credits as set forth in Appendix A, the Allocation will be delivered at a monthly load factor of seventy percent (70%) pursuant to the Authority's regular scheduling requirements.

IX. Hydro Curtailments and Substitute Energy

- a. The Customer shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Customer-Arranged Energy, for the purpose of replacing Firm Hydroelectric Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment. The Customer shall make its election in accordance with the time period and other

requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.

- b. The Customer may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Customer intends such change to become effective. Such change shall be effective on the first day of January following the Authority's receipt the Customer's notice and shall remain in effect unless it is changed in accordance with the provisions of Article IX.a.
- c. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Customer with advance notice of Planned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer no later than the tenth business day of the month prior to the month in which the Planned Hydropower Curtailment is expected to occur unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.
- d. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.
- e. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.
- f. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer's failure to provide such notice.

- g. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.
- h. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.
- i. Notwithstanding the Customer's election pursuant to Article IX.a, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments, provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration the Authority determines is reasonable considering the circumstances, including but not limited to the operating procedures of the Authority, third-party transmission or delivery utilities who deliver the Substitute Energy, and the NYISO.
- j. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for Firm Hydroelectric Energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. HC-1 relating to the rendition and payment of bills for Electric Service.
- k. The Customer shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. HC-1 and the Rules relating to the rendition and payment of bills for Electric Service. The Authority's failure to provide notice pursuant to Article IX.c or Article IX.h shall not affect the Customer's obligation to pay for Substitute Energy.
- l. The Authority will provide the Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.

- m. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.
- n. The Customer shall not be entitled to power and energy sourced from another Authority power facility, including another Authority hydropower project, as Substitute Energy.

X. Appointment of Customer's Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer may, on reasonable prior written notice to the Authority (consistent with the Authority's and the NYISO's scheduling and business process requirements), designate a different party as Customer's Agent at any time during the term of this Agreement.

Customer's Agent may include, without limitation, a public utility, LSE, Municipal Distribution Agency, load aggregator or other entity authorized to purchase and sell electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

XI. Term and Termination of Service

Service under the Agreement shall begin on the Commencement Date and shall continue until the earliest of (a) termination by Customer with respect to all of its Allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) September 1, 2041, at which time a new or modified agreement will be entered between the Authority and the Customer to provide Customer with Project Power and Energy for the remainder of the licensing period in the amount and for the rate then in effect which complies with the terms of the Relicensing Settlement Agreement. If such a new or modified agreement is not in place to take effect after September 1, 2041, service will be continued under the terms and conditions of this Agreement on a year to year basis or until a new or modified agreement takes effect between the parties.

Notwithstanding the termination provisions of this Article, Customer may pause the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice. Customer may recommence the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice.

The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) 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 (b) as otherwise provided herein or in the Rules. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority. The Authority shall provide reasonable notice to Customer of any matter or proceeding that could result in an order or decision as described in part (a) of this paragraph and nothing herein shall be construed as limiting Customer's right to challenge any such proposed action.

Nothing herein is intended to limit the rights of the Host Communities or Customer under the Relicensing Settlement Agreement and the Authority and Customer understand and agree that the Authority is obligated under such Relicensing Settlement Agreement to make a total of 9 MW of Project Power and Energy available to Customer for the term of the FERC License, whether through extension of this Agreement or by subsequent agreement.

XII. Notification

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

To: Authority

Manager – Power Contracts & Tariffs
New York Power Authority
123 Main Street
White Plains, NY 10601

To: Customer

XIII. Applicable Law and Venue

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. Any action or proceeding arising out of or relating to this Agreement shall be brought in state courts located in Albany County, New York.

XIV. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained, which consent shall not be unreasonably withheld.

XV. Previous Agreements and Communications

This Agreement, together with the Relicensing Settlement Agreement, shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such Agreements supersede all previous communications between the Parties hereto, either oral or written, with reference to the subject matter hereof.

No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

If there is a conflict between the language in Section 6 of the Relicensing Settlement Agreement entitled “Power Allocation” and language in this Agreement, including Appendix A, the language of this Agreement addressing this subject shall control.

XVI. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

XVII. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

In such an event and at the request of either Party, the Parties agree to engage in good faith negotiations on possible modification to this Agreement to remedy any portion of this Agreement that was declared invalid, unlawful or ineffective. Such good faith negotiations shall conform to the requirements comparable to those of section 10.1.3 of the Relicensing Settlement Agreement. To the extent that good faith negotiations do not result in an agreement as to whether or how this Agreement should be modified, the Parties agree to resolve their differences in accordance with the alternative dispute resolution mechanism set forth in section 12 of the Relicensing Settlement Agreement. The primary goal of any good faith negotiation or alternative dispute resolution mechanism shall be to preserve to the greatest extent as possible, the benefit of the Parties’ intended bargain.

XVIII. Effectiveness of Agreement

This Agreement shall take effect on the date of this Agreement’s execution under Article XVI above.

CUSTOMER:

BY: _____

Title: _____

Date: _____

(Seal)

Attest by: _____

Accepted:

POWER AUTHORITY OF THE STATE OF NEW YORK

BY: _____

Title: _____

Date: _____

(Seal)

Attest by: _____

Appendix A

Except as Customer determines otherwise, consistent with the terms of this Agreement, Customer will initially distribute power and energy purchased from the New York Power Authority under the Agreement or the economic benefit of such power and energy to the following Ultimate Users_____

Customer may add to or delete from the above list of Ultimate Users on thirty (30) day's notice to the Authority. Customer in its sole determination may elect to use its full Allocation or any part thereof, for economic development. The economic development program description, allocation criteria and methodology shall be submitted to and approved by the Authority which approval shall not be unreasonably withheld.

The benefits of the Allocation shall be provided to such Ultimate Users either by direct sale or by allocation by the Customer (or by Customer's Agent) of electricity or the provision of financial settlements and benefits, as set forth below, or through different methods approved by the Authority. Customer shall have the right to recover as Customer Costs its direct administrative and services costs, reasonable compensation for use of third party facilities and services furnished to Customer in the transmission and distribution of such power, all costs associated with negotiating the Agreement and the establishment of mechanisms to accept and distribute the Allocation, and any similar costs, incurred after the execution of the Host Community Relicensing Settlement Agreement dated June 27, 2005. Such Customer Costs shall be reimbursed to Customer or otherwise paid by the Ultimate User by procedures to be determined.

The listing or description of the foregoing Ultimate Users in no way mandates or requires for any reason that the Customer provide any portion of the Allocation (or Power Credits) to an Ultimate User and shall not preclude the Customer from denying any such Ultimate User the benefits associated with an allocation for any reason as determined by Customer.

A. Direct Sale / Allocation, Use of Excess Power

Customer or Customer's Agent may make a portion of the Allocation available to an Ultimate User for delivery at such Ultimate User's electricity accounts under the tariffs, rules and regulations of the NYISO and the utility in whose service area such accounts are located. If there is any portion of the Allocation made available to Customer that is not required to serve such Ultimate User's facilities, such Excess Power (up to the load factor specified in the Agreement) may be utilized as follows:

1. Customer or its agent may schedule Excess Power into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), shall be applied by Customer to payment of Customer's (or an Ultimate User's, as the case may be) energy-related costs, including but not limited to, the purchase of energy commodities, the delivery and transportation of electricity and all other energy commodities and/or for energy

efficiency or clean energy technology programs or projects now in existence or that may exist during the term of the Agreement.

2. Customer may use the Excess Power (or the benefits associated with such Excess Power derived from a financial settlement as set forth in the preceding Paragraph 1) for economic development by providing credits to a business to apply against the cost of power or energy and/or the cost of delivery of power or energy consumed by such business.

B. Power Credits

Customer, or Customer's Agent, may schedule all of its Allocation (up to the load factor specified in the Agreement) into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), may be provided to Ultimate Users in the form of Power Credits by Customer as follows:

Power Credits may be applied towards the cost and/or delivery of electric power or energy consumed by the Ultimate User or for other energy-related costs, including but not limited to, purchase of energy commodities, the delivery and transportation of electricity and all other energy commodities and/or for energy efficiency or clean energy technology programs or projects now in existence or that may exist during the terms of the Agreement.

C. Service through Authorized Entity

Through assignment, transfer or otherwise, including through an agency arrangement, Customer shall have the right to make available its Allocation or any part thereof to any entity that is duly authorized to receive, purchase, transmit, distribute, and/or resell the power and energy included in the Allocation or otherwise to engage in such transactions as are necessary to effectuate the delivery of the Allocation and/or to provide the financial benefits thereof to the Customer, the Customer's Ultimate Users and the Customer's constituents, as determined in the exercise of the Customer's discretion and consistent with the provisions of the Host Community Relicensing Settlement Agreement dated June 27, 2005 and Article VI of the Agreement. Any such assignment, transfer, agency arrangement or similar transaction contemplated by this paragraph may, but shall not be required to, include elements of the other methods described in this Appendix A.

D. Continuity

In the event that any administrative agency or court of competent jurisdiction shall determine that any element of any of the foregoing methods of distributing the Allocations and/or financial benefits thereof is unauthorized or illegal, the Customer shall propose an alternative method of distribution, not necessarily limited to those described above, and the Authority shall promptly determine whether to accept such alternative method. Such acceptance shall not be unreasonably withheld.

E. Right to Alternate Between Methods

Customer shall have the right at its discretion and without restriction to alternate between the methods for the distribution of the benefits of the Allocation as set forth in Sections A through D above, upon giving sixty (60) days written notice to the Authority.

F. Market Administration

Notwithstanding anything to the contrary in the Agreement, if Customer elects to convert the Allocation into financial settlements for use as payments or credits pursuant to Sections A or B above, the Authority may in its discretion schedule the Allocation into the NYISO administered market for financial settlement; such financial settlement, less the Authority's costs calculated using tariff rates as described in Article V of the Agreement, shall be provided to Customer or Customer's Agent, as the case may be, for disposition pursuant to the terms of a separate agreement between Authority, Customer and Customer's Agent.

In the event that the Authority determines, in its discretion, not to use the foregoing method of scheduling the Allocation into the NYISO administered market for financial settlement, the Authority will provide reasonable notice to Customer of its intent to discontinue such method and assist Customer in making other arrangements to effect the delivery of the benefits of the Allocation to Customer or Ultimate Users.

This Section F is intended as an additional method of providing the benefits of the Allocation and is not intended to limit in any way the right to use other methods of providing such benefits, as set forth in the Agreement, including this Appendix A.

Appendix B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to Customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. The RSR is calculated consistent with Service Tariff No. HC – 1 provisions regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Customers’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include Ancillary Services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining energy assigned costs by the annual metered generation.
5. Calculate the difference between the cost-based energy rate and the billed preference energy rate.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the megawatts sold from the Niagara/St. Lawrence projects, as determined solely in the Authority’s discretion, in the various ISO auction markets.

6. Multiply the difference in the rates by the actual annual billed preference energy sales to determine the annual change in the RSR.
7. Add the annual change to the RSR balance from the prior year-end to get the current year-end RSR balance.
8. If the current year-end balance is in excess of +/- \$25 million, the excess would be subject to a credit or a surcharge in the subsequent rate year.



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

Electric Service Tariff for Host Communities
Firm Hydroelectric Power Service

Service Tariff No. HC-1

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Schedule of Rates for Firm Hydroelectric Power and Energy Service

I. Applicability

To sale of Niagara Hydroelectric Project firm power and energy to the Host Communities customers and/or their Authorized Recipients eligible for cost-based service under the Niagara Relicensing Settlement Agreement.

II. Abbreviations and Terms

A. The following abbreviations are used:

kW	kilowatt(s)
kWh	kilowatt-hour(s)
NYPA	New York Power Authority
NYISO	New York Independent System Operator

B. The term “Agreement” means contract for the Sale of Niagara Project Power and Energy between Authority and Customer.

C. The term “Authority” means New York Power Authority, an alternative name for the Power Authority of the State of New York.

D. The term “Customer” means a Host Community defined in the Agreement.

E. The term “Customer’s Agent” may include, without limitation, a public utility, Load Service Entity, Municipal Distribution Agency, load aggregator or other entity authorized to purchase, sell and/or deliver or cause to be delivered electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

F. The term “Power” or “Firm Hydroelectric Power” means capacity (kW) from Project, intended to be available at all times except for limitations provided in the Agreement(s), the Rules, this Service Tariff or in other contract documents. Firm Power shall not include peaking power.

G. The term “Energy” or “Firm Hydroelectric Energy” means energy (kWh) associated with Firm Hydroelectric Power.

- H. The term “Project” means the Authority’s Niagara Hydroelectric Project.
- I. The term “Rules” means Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, 21 NYCRR § 454) as now in effect and as may be later amended from time to time by Authority.
- J. The term “Service Tariff” means this Service Tariff No. HC-1.

III. Monthly Rates and Charges

A. Monthly Base Rates

The monthly demand and energy charges paid by Customer to Authority shall be based on the preference power rates charged by Authority, as shown below.

<u>Period</u>	<u>Demand Rate</u> \$/kW-month of contract demand	<u>Energy Rate</u> Mills/kWh
5/1/2013 through 4/30/2014	3.91	4.92
5/1/2014 through 4/30/2019	4.07	4.92
5/1/2019 through 4/30/2020	4.07	4.92

The demand and energy rates set forth above shall apply at the Project switchyard.

B. Minimum Monthly Charge

The product of the demand rate set forth above and the contract demand.

C. Billing Energy

Energy provided by Authority under this Service Tariff.

D. Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month.

E. Contract Demand

The amounts set forth in the applicable Agreement(s) between Authority and Customer.

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

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority, if any, for services provided by the NYISO or any successor organization pursuant to its Open Access Transmission Tariff ("OATT") or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) which are associated with

Customer's purchase of hydro power and energy under its contract for the sale of hydro power and energy with Authority:

1. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
2. Marginal losses;
3. The New York Power Authority Transmission Adjustment Charge ("NTAC");
4. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
5. Any and all other charges, assessments or other amounts associated with deliveries to Customer that are assessed on the Authority by the NYISO or any successor organization under the provisions of its OATT or under other applicable tariffs; and
6. Any charges assessed on the Authority with respect to 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 NYPA with respect to service to Customers), applicable tariffs or required to be paid by the Authority in accordance with law, whether charged by the NYISO or some other third party.

The NYISO Charges in this section are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

G. Taxes and Other Charges

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

IV. General Provisions

General Provisions for service supplementing or modifying the Rules and Regulations for Power Service and this Service Tariff with regard to deliveries to Customer are as follows:

A. Character of Service

Alternating current, 60 hertz, three-phase.

B. Availability of Energy

Unless otherwise agreed upon by the parties, Authority shall normally provide in any billing period Firm Hydroelectric Energy to Customer and/or Customer's Authorized Recipient in an amount equal to the product of (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement. The Authority will have the right to reduce on a pro rata basis the amount of Firm Hydroelectric Energy provided to Customer and/or Customer's Authorized Recipient if such reductions are necessary due to low flow (i.e., hydrologic) conditions at the Authority's Niagara and St. Lawrence-FDR hydroelectric generating stations. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Customer and/or Customer's Authorized Recipient in later billing periods. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer and/or Customer's Authorized Recipient. The Authority shall provide reasonable notice, to the extent possible, to Customer and Customer's Authorized Recipient 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.

Unless otherwise specified in the Agreement, where Customer is taking service solely from Authority, the billing energy shall be the total number of kilowatt-hours recorded on Customer's and/or Customer's Authorized Recipient's meter (or the meters of entities served by Customer and/or Customer's Authorized Recipient as indicated in the Agreement) during the billing period, adjusted for losses.

Unless otherwise specified in the Agreement, where Customer and/or Customer's Authorized Recipient takes service from other sources in addition to service supplied hereunder, the billing energy shall be determined by multiplying (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement.

C. Adjustment of Rates

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

D. Adjustment of Charges

Power Factor

Not less than 95% lagging or leading, except as otherwise specified in the Agreement.

E. Delivery

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be delivered by Authority at the Project switchyard to the transmission facilities under the control of the NYISO for delivery to Customer and/or Customer's Authorized Recipient.

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be deemed to be offered when Authority is able to supply Firm Hydroelectric Power and Energy and NYISO transmits it to Customer and/or Customer's Authorized Recipient or its designated points of interconnection with Customer's Agent at the Project switchyard. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer and/or Customer's Authorized Recipient. If, despite such offer, there is a failure of delivery by Customer, Customer's Authorized Recipient, or Customer's Agent, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

F. Scheduling Procedures

1. Authority will advise Customer, and Customer's Authorized Recipient, or Customer's Agent by the tenth (10th) Business Day of the preceding month of the estimated quantity of Firm Hydroelectric Energy expected to be made available from the Project.
2. Authority may require that such Firm Hydroelectric Energy from the Project be scheduled in general accordance with the individual system load shapes of Customer, Customer's Authorized Recipient, or Customer's Agent or as otherwise agreed upon by the Customer and Authority.

3. Customer, Customer's Authorized Recipient, or Customer's Agent shall file with Authority pursuant to procedures established by Authority, a daily schedule setting forth the Customer's and/or Customer's Authorized Recipient's requested amounts from the Project on a clock hour basis.
4. Subsequent to Authority approval of schedules for any day, Authority and Customer, Customer's Authorized Recipient, or Customer's Agent may agree on changes in such schedules subject to NYISO scheduling requirements and procedures Authority shall establish such that an efficient dispatch of Authority facilities will be accomplished.

G. Payment by Customer and/or Customer's Authorized Recipient for Firm Hydroelectric Power and Energy

1. Customer and/or Customer's Authorized Recipient shall pay for Firm Hydroelectric Power and Energy during any billing period the sum of a) and b) below:
 - a. The demand rate per kW for Firm Hydroelectric Power specified in this Service Tariff or any modification thereof applied to Customer's contract demand for the billing period; and
 - b. The energy rate specified in this Service Tariff or any modification thereof applied to the amount of Firm Hydroelectric billing energy delivered by Authority to Customer and/or Customer's Authorized Recipient during such billing period.
2. 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 Authority. In the event that there is a dispute on any items of a bill rendered by Authority, Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

H. Supplementary Provision

Sections 454.2 (c) and 454.5 of the Rules are inapplicable to this Service Tariff.

I. Alternate Arrangements

Notwithstanding general provisions E, F and G above, Authority, Customer, Customer's Authorized Recipient and/or Customer's Agent may make alternate arrangements regarding Delivery, Scheduling Procedures and Payment by Customer for Firm Hydroelectric Power and Energy consistent with the terms of the Agreement or other contract documents.

J. Conflicts

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

V. Flow Adjustment Computation ("FAC")

The energy charges under this Service Tariff, and the applicable service tariffs associated with both the Project and the St. Lawrence-FDR Hydroelectric Project, in the aggregate, are subject to a credit or surcharge pursuant to a FAC in any rate year following a calendar year for which the Hydroelectric Project Rate Stabilization Reserve ("RSR") is greater than \$+25 million, or less than \$-25 million, respectively. The RSR will be used to ensure rate stability and cost recovery and its level will be determined and any credit or surcharge for the succeeding rate year will be calculated after the prior calendar year's costs and generation levels are known. Any credit or surcharge will be applied on a uniform basis to the monthly billing statements rendered pursuant to this Service Tariff during the succeeding rate year.

The FAC is inapplicable in any rate year succeeding a calendar year at the end of which the RSR is within the \$+25 million to \$-25 million range. If at the end of any calendar year, the RSR is determined to exceed \$+25 million, such excess amount will be credited pro-rata to Customers during the succeeding rate year pursuant to the FAC. If the RSR at the end of any calendar year is determined to be less than \$-25 million, the difference below \$-25 million will be surcharged pro-rata to Customers during the succeeding rate year pursuant to the FAC.

To the extent that there is a balance in the RSR (positive or negative) on the effective date of service under the applicable Agreement(s), arising out of service under a prior agreement for the sale of Project power and energy, that RSR balance shall be carried forward and maintained as the balance as of the effective date of service under such applicable Agreement(s).

POWER AUTHORITY
OF THE
STATE OF NEW YORK

30 South Pearl Street
Albany, New York

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT HYDROELECTRIC POWER AND ENERGY
TO THE NIAGARA PROJECT HOST COMMUNITIES

Service Tariff No. HC-1 - Firm Hydroelectric Power and Energy
(NIAGARA WHEATFIELD CENTRAL SCHOOL DISTRICT)

Month 2025

POWER AUTHORITY OF THE STATE OF NEW YORK

**30 South Pearl Street
Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROELECTRIC POWER AND ENERGY TO
THE NIAGARA PROJECT HOST COMMUNITIES**

**SERVICE TARIFF No. HC-1 – Firm Hydroelectric Power and Energy
(NIAGARA WHEATFIELD CENTRAL SCHOOL DISTRICT)**

Niagara Wheatfield Central School District (“Customer”) hereby enters into this Agreement with the Power Authority of the State of New York for electric service as follows:

I. Definitions

- a. Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.
- b. Agreement** means this Agreement.
- c. Allocation** shall mean the amount of power and associated energy that the Authority has allocated to Customer hereunder.
- d. Ancillary Services** shall be as defined by the NYISO in its rules, tariffs, manuals and procedures.
- e. Authority** is the Power Authority of the State of New York.
- f. Authorized Recipient** is defined in Article II.
- g. Commencement Date** shall be as set forth in Article XVIII.
- h. Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.
- i. Customer** is the municipality (Host Community) identified above.

- j. **Customer-Arranged Energy** means energy the Customer itself procures from sources other than the Authority for the purpose of replacing Firm Hydroelectric Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.
- k. **Customer's Agent** is defined in Article X.
- l. **Electric Service** is Power and Energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.
- m. **Excess Power** is defined in Article VIII and Appendix A.
- n. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- o. **FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.
- p. **Firm Hydroelectric Power and Energy** are firm power and associated energy from the Authority's Niagara Power Project, intended to be available at all times except for limitations provided in this Agreement, the Rules, applicable Service Tariff or in other contract documents.
- q. **Green Attributes** are attributes associated with renewable energy power production as recorded in the New York Generation Attribute Tracking System administered by The New York State Energy Research and Development Authority.
- r. **Host Communities** are Niagara County, City of Niagara Falls, Town of Lewiston, Town of Niagara, City of Niagara Falls School District, Lewiston-Porter School District and Niagara-Wheatfield School District.
- s. **Load Reduction** has the meaning set forth in Article IX.f of this Agreement.
- t. **Load Serving Entity** is an entity authorized or required by law, regulatory authorization or requirement, agreement, or contractual obligation to supply Energy, Capacity and/or Ancillary Services to retail customers under the rules, tariffs, manuals and procedures of the NYISO.
- u. **NRA** means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).
- v. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.

- w. **Planned Hydropower Curtailment** means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.
- x. **Power Credits** are defined in Article VIII and Appendix A.
- y. **Project** means the Niagara Power Project, FERC Project No. 2216.
- z. **Project Power and Energy** means Firm Hydroelectric Power and Energy produced by the Project.
- aa. **Project Switchyard** is the Niagara Project switchyard.
- bb. **Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Host Community Relicensing Settlement Agreement Addressing Non-License Terms and Conditions allocation of Niagara Project Power and Energy to the Host Communities dated June 27, 2005.
- cc. **Rules** are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).
- dd. **Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.
- ee. **Substitute Energy** means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.
- ff. **Ultimate Users** are entities to whom Customer or Customer's Authorized Recipient will resell (or otherwise convey benefits associated with) Project Power and Energy purchased from the Authority as provided in Article VI of this Agreement and Appendix A hereto. Customer may designate itself as an Ultimate User.
- gg. **Unforced Capacity** is the capacity required to be provided by Load Serving Entities to serve load as defined by the NYISO in its rules, tariffs, manuals and procedures.
- hh. **Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

All other terms not otherwise defined herein shall have the meanings ascribed to them in the electric industry.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariff HC-1 for Power and/or Energy to enable the Customer or the Customer's Authorized Recipient, as defined below, to receive the Allocation from the Project in accordance with the provisions of the FERC License and Relicensing Settlement Agreement, in the amount set forth below:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. HC-1: 1,500 KiloWatts (Contract Demand)

Upon execution of this Agreement by a Host Community, other than Customer, that is legally capable of receiving an Allocation from the Project (Authorized Recipient) such Authorized Recipient shall be authorized to receive the Allocation of the Customer in accordance with the terms and conditions set forth in this Agreement, including Appendix A hereof. Such authorization may be revoked by Customer upon reasonable notice to the Authority and Customer's Authorized Recipient; provided, however, that Customer shall, as of the effective date of such revocation, have made arrangements (a) with another Authorized Recipient to receive the Customer's Allocation, or (b) to receive such Allocation itself, if legally capable of doing so.

The Authority shall provide Unforced Capacity in amounts necessary to meet Customer's NYISO Unforced Capacity obligations associated with the foregoing Allocation in accordance with the rules and tariffs of the NYISO. Neither Ancillary Services, nor Green Attributes are included in such allocation.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction. The Authority shall provide reasonable notice to Customer of any such proposed action that could result in modification of Contract Demands and nothing herein shall be construed as limiting customer's rights to challenge any proposed reduction in Contract Demands.

III. Rules, Regulations and Service Tariffs

The Rules and Service Tariff No. HC-1, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any

inconsistencies, conflicts or differences between Articles I through XVIII of this Agreement and the Service Tariffs, the provisions of Articles I through XVIII of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State if that period of minimum notice is greater than herein referenced. Except as expressly provided otherwise herein, nothing contained in this Agreement shall be construed as restricting Customer's rights to participate in processes involving changes to rates, Rules and Service Tariffs or other matters affecting the subject of this Agreement.

IV. Transmission and Delivery of Power and Energy

Authority shall make Project Power and Energy available to Customer, Customer's Authorized Recipient or Customer's Agent at the Project Switchyard. It is the Customer's responsibility to act as the Load Serving Entity ("LSE"), arrange for one or more other entities to do so on its behalf or make other arrangements for conveying the benefits associated with the allocation to Ultimate Users. Customer, or the entity acting as LSE, Customer's Authorized Recipient, or Customer's Agent shall arrange for the transmission of the Project Power and Energy supplied hereunder from the Project Switchyard to Customer's points of delivery or the conversion of the Allocation into financial settlements and benefits by such other method of disposition consistent with Article VI of this Agreement and Appendix A hereto. Such delivery shall be consistent with the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO and Customer shall be responsible for all costs associated with the transmission and delivery of the allocation.

V. Rates

Project Power and Energy shall be sold to Customer or to Customer's Authorized Recipient hereunder at cost-based rates equivalent to rates charged to in-state preference customers receiving preference power under the NRA.

Customer waives any challenges to any of the following methodologies and principles¹ to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted by the Authority's Trustees in their meeting on April 29, 2003 and November 15, 2011:

¹ These methodologies and principles were employed in and explained by (1) the Authority's January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on April 29, 2003; (2) the Authority's Rate Stabilization Reserve Methodology attached hereto as Appendix B; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on November 15, 2011.

- (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 as supplemented by the explanatory statement attached hereto as Appendix B.
- (viii) Unforced Capacity (“UCAP”) sales credited to Cost of Service, based on the quantity of megawatts from the Project, determined solely in the Authority’s discretion, sold into the NYISO auctions.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer or the Customer’s Authorized Recipient 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. Notwithstanding the foregoing, nothing in this Article V shall limit: (1) the Authority and Customer from entering into good faith negotiations to change the above methodologies and principles, or (2) the Authority from adopting changes to these methodologies and principles in accordance with a rulemaking proceeding addressing cost-based rates for preference power done under the New York State Administrative Procedure Act.

VI. Use and Resale of Project Power and Energy

Customer or the Customer’s Authorized Recipient shall use the Allocation for Customer’s facilities or as otherwise allowed in accordance with the Relicensing Settlement Agreement, this Agreement and Appendix A hereof.

In reselling and/or distributing the Allocation, except as otherwise provided in Appendix A hereof, Customer or the Customer’s Authorized Recipient shall: 1) do so pursuant to the appropriate laws of the State of New York, 2) distribute such

Allocation only to the Ultimate Users designated pursuant to Appendix A, 3) not permit such Ultimate Users to sell any of such Allocation for resale and 4) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section 1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License.

Customer, Customer's Authorized Recipient or Customer's Agent shall keep its books, accounts and records pertaining to the purchase, delivery and sale of the Allocation according to procedures reasonably deemed necessary by Authority to ensure compliance with this Agreement and Appendix A hereof, applicable statutes, licenses, the Rules. Customer or Customer's Authorized Recipient shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require Customer's Ultimate Users as identified in Appendix A of the Agreement to agree to do likewise.

The distribution of the benefits of the Allocation to Ultimate Users shall, where feasible, be accompanied by a statement indicating the total savings in dollars realized by the individual Ultimate User for the particular billing period as a result of the purchase of hydroelectric power and energy by Customer or Customer's Authorized Recipient from the Authority. The form and content of such statement shall be coordinated between Customer or Customer's Authorized Recipient and Authority.

VII. Permanent Reallocation of Project Power and Energy

If Customer is, or becomes unable or chooses not to receive, or to have Customer's Authorized Recipient not receive, any or all of the Project Power and Energy allocated to it on a permanent basis, such Project Power and Energy shall be reallocated by the Authority pro-rata among the other Host Communities. Customer shall provide written notice to the Authority and the other Host Communities of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the other Host Communities shall become effective as soon as practicable, without need to amend this Agreement and the Contract Demand in this Agreement shall be revised to reflect such reallocation, notwithstanding Article XIV hereof.

VIII. Availability of Energy

Subject to any other limitations set forth in the Rules or the Service Tariff (including low-flow conditions), if Customer or Customer's Authorized Recipient directly or indirectly provides the Allocation to Ultimate Users for physical delivery to such Users' accounts as set forth in Appendix A, Authority will supply Customer's (or Ultimate Users', as the case may be) entire demand and energy usage up to the Contract Demand. If there is any portion of the energy associated with the Allocation made available to Customer or Customer's Authorized Recipient (at a monthly load factor of seventy percent (70%) pursuant to the

Authority's regular scheduling requirements) that is not required to serve such Ultimate Users' facilities, such energy may be utilized as Excess Power in the manner described in Appendix A.

As between Customer and the Authority, for any usage above the Contract Demand, it is Customer's responsibility to arrange for provision of such excess service by a third party supplier, and the apportionment of energy between suppliers shall be as set forth in Service Tariff No. HC-1, or any successor tariff.

Subject to any other limitations set forth in the Rules or Service Tariff (including low-flow conditions), if Customer or Customer's Authorized Recipient provides the benefits of the Allocation to Ultimate Users in the form of Power Credits as set forth in Appendix A, the Allocation will be delivered at a monthly load factor of seventy percent (70%) pursuant to the Authority's regular scheduling requirements.

IX. Hydro Curtailments and Substitute Energy

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

Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.

- e. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.
- f. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer's failure to provide such notice.
- g. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.
- h. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.
- i. Notwithstanding the Customer's election pursuant to Article IX.a, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments, provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration the Authority determines is reasonable considering the circumstances, including but not limited to the operating procedures of the Authority, third-party transmission or delivery utilities who deliver the Substitute Energy, and the NYISO.
- j. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for Firm Hydroelectric Energy as provided for in

this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. HC-1 relating to the rendition and payment of bills for Electric Service.

- k. The Customer shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. HC-1 and the Rules relating to the rendition and payment of bills for Electric Service. The Authority's failure to provide notice pursuant to Article IX.c or Article IX.h shall not affect the Customer's obligation to pay for Substitute Energy.
- l. The Authority will provide the Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- m. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.
- n. The Customer shall not be entitled to power and energy sourced from another Authority power facility, including another Authority hydropower project, as Substitute Energy.

X. Appointment of Customer's Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer may, on reasonable prior written notice to the Authority (consistent with the Authority's and the NYISO's scheduling and business process requirements), designate a different party as Customer's Agent at any time during the term of this Agreement.

Customer's Agent may include, without limitation, a public utility, LSE, Municipal Distribution Agency, load aggregator or other entity authorized to purchase and

sell electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

XI. Term and Termination of Service

Service under the Agreement shall begin on the Commencement Date and shall continue until the earliest of (a) termination by Customer with respect to all of its Allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) September 1, 2041, at which time a new or modified agreement will be entered between the Authority and the Customer to provide Customer or Customer's Authorized Recipient with Project Power and Energy for the remainder of the licensing period in the amount and for the rate then in effect which complies with the terms of the Relicensing Settlement Agreement. If such a new or modified agreement is not in place to take effect after September 1, 2041, service will be continued under the terms and conditions of this Agreement on a year to year basis or until a new or modified agreement takes effect between the parties.

Notwithstanding the termination provisions of this Article, Customer may pause the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice. Customer may recommence the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice.

The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) 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 (b) as otherwise provided herein or in the Rules. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority. The Authority shall provide reasonable notice to Customer of any matter or proceeding that could result in an order or decision as described in part (a) of this paragraph and nothing herein shall be construed as limiting Customer's right to challenge any such proposed action.

Nothing herein is intended to limit the rights of the Host Communities or Customer under the Relicensing Settlement Agreement and the Authority and Customer understand and agree that the Authority is obligated under such Relicensing Settlement Agreement to make a total of 1,500 KiloWatts of Project Power and Energy available to Customer or Customer's Authorized Recipient for the term of the FERC License, whether through extension of this Agreement or by subsequent agreement.

XII. Notification

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

To: Authority

Manager – Power Contracts & Tariffs
New York Power Authority
123 Main Street
White Plains, NY 10601

To: Customer

Business Manager
Niagara Wheatfield Central School District
6700 Schultz Street
Niagara Falls, NY 14304

with a copy to:

Superintendent of Schools
Niagara Wheatfield Central School District
6700 Schultz Street
Niagara Falls, NY 14304

To: Customer's Authorized Recipient

XIII. Applicable Law and Venue

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. Any action or proceeding arising out of or relating to this Agreement shall be brought in state courts located in Albany County, New York.

XIV. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of the parties hereto; provided, however, that no assignment by a party or any successor or assignee of such

party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other parties in each case obtained, which consent shall not be unreasonably withheld.

XV. Previous Agreements and Communications

This Agreement, together with the Relicensing Settlement Agreement, shall constitute the sole and complete agreement of the parties hereto with respect to the matters herein set forth, and such Agreements supersede all previous communications between the Parties hereto, either oral or written, with reference to the subject matter hereof; provided, however, that additional terms pursuant to which Customer's Authorized Recipient is authorized to receive Customer's Allocation may be set forth in a separate agreement between Customer and Authorized Recipient. Any such separate agreement shall not be inconsistent with the terms of this Agreement and shall be provided to the Authority for informational purposes.

No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

If there is a conflict between the language in Section 6 of the Relicensing Settlement Agreement entitled "Power Allocation" and language in this Agreement, including Appendix A, the language of this Agreement addressing this subject shall control.

XVI. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the parties for Electric Service hereunder.

XVII. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

In such an event and at the request of any of the parties, the parties agree to engage in good faith negotiations on possible modification to this Agreement to remedy any portion of this Agreement that was declared invalid, unlawful or ineffective. Such good faith negotiations shall conform to the requirements comparable to those of section 10.1.3 of the Relicensing Settlement Agreement. To the extent that good faith negotiations do not result in an agreement as to whether or how this Agreement should be modified, the parties agree to resolve

their differences in accordance with the alternative dispute resolution mechanism set forth in section 12 of the Relicensing Settlement Agreement. The primary goal of any good faith negotiation or alternative dispute resolution mechanism shall be to preserve to the greatest extent as possible, the benefit of the parties' intended bargain.

XVIII. Effectiveness of Agreement

This Agreement shall take effect on the date of this Agreement's execution under Article XVI above.

CUSTOMER: NIAGARA WHEATFIELD CENTRAL SCHOOL DISTRICT

BY _____

Title _____

Date _____

(Seal)

Attest by: _____

AUTHORIZED RECIPIENT: NIAGARA COUNTY, NEW YORK

BY _____

Title _____

Date _____

(Seal)

Attest by: _____

Accepted:

POWER AUTHORITY OF THE STATE OF NEW YORK

BY _____

Title _____

Date _____

(Seal)

Attest by: _____

Appendix A

Except as Customer determines otherwise, consistent with the terms of this Agreement, Customer or Customer's Authorized Recipient will initially distribute power and energy purchased from the New York Power Authority under the Agreement or the economic benefit of such power and energy to the following Ultimate Users_____

Customer may add to or delete from the above list of Ultimate Users on thirty (30) day's notice to the Authority. Customer in its sole determination may elect to use its full Allocation or any part thereof, for economic development. The economic development program description, allocation criteria and methodology shall be submitted to and approved by the Authority which approval shall not be unreasonably withheld.

The benefits of the Allocation shall be provided to such Ultimate Users either by direct sale or by allocation by the Customer (or by Customer's Authorized Recipient or Customer's Agent) of electricity or the provision of financial settlements and benefits, as set forth below, or through different methods approved by the Authority. Customer shall have the right to recover as Customer Costs its direct administrative and services costs, reasonable compensation for use of third party facilities and services furnished to Customer in the transmission and distribution of such power, all costs associated with negotiating the Agreement and the establishment of mechanisms to accept and distribute the Allocation, and any similar costs, incurred after the execution of the Host Community Relicensing Settlement Agreement dated June 27, 2005. Such Customer Costs shall be reimbursed to Customer or otherwise paid by the Ultimate User by procedures to be determined.

The listing or description of the foregoing Ultimate Users in no way mandates or requires for any reason that the Customer provide any portion of the Allocation (or Power Credits) to an Ultimate User and shall not preclude the Customer from denying any such Ultimate User the benefits associated with an allocation for any reason as determined by Customer.

A Direct Sale / Allocation, Use of Excess Power

Customer, Customer's Authorized Recipient or Customer's Agent may make a portion of the Allocation available to an Ultimate User for delivery at such Ultimate User's electricity accounts under the tariffs, rules and regulations of the NYISO and the utility in whose service area such accounts are located. If there is any portion of the Allocation made available to Customer or Customer's Authorized Recipient that is not required to serve such Ultimate User's facilities, such Excess Power (up to the load factor specified in the Agreement) may be utilized as follows:

1. Customer, Customer's Authorized Recipient or Customer's Agent may schedule Excess Power into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), shall be applied by Customer to payment of Customer's (or an Ultimate User's, as the case may be) energy-related costs, including but not limited to, the purchase of energy commodities, the delivery and transportation of electricity and all other energy commodities

and/or for energy efficiency or clean energy technology programs or projects now in existence or that may exist during the term of the Agreement.

2. Customer or Customer's Authorized Recipient may use the Excess Power (or the benefits associated with such Excess Power derived from a financial settlement as set forth in the preceding Paragraph 1) for economic development by providing credits to a business to apply against the cost of power or energy and/or the cost of delivery of power or energy consumed by such business.

B Power Credits

Customer, Customer's Authorized Recipient or Customer's Agent, may schedule all of Customer's Allocation (up to the load factor specified in the Agreement) into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), may be provided to Ultimate Users in the form of Power Credits by Customer or Customer's Authorized Recipient as follows:

Power Credits may be applied towards the cost and/or delivery of electric power or energy consumed by the Ultimate User or for other energy-related costs, including but not limited to, purchase of energy commodities, the delivery and transportation of electricity and all other energy commodities and/or for energy efficiency or clean energy technology programs or projects now in existence or that may exist during the terms of the Agreement.

C Service through Authorized Entity

Through assignment, transfer or otherwise, including through an agency arrangement, Customer shall have the right to make available its Allocation or any part thereof to any entity, including but not limited to Customer's Authorized Recipient, that is duly authorized to receive, purchase, transmit, distribute, and/or resell the power and energy included in the Allocation or otherwise to engage in such transactions as are necessary to effectuate the delivery of the Allocation and/or to provide the financial benefits thereof to the Customer, the Customer's Ultimate Users and the Customer's constituents, as determined in the exercise of the Customer's discretion and consistent with the provisions of the Host Community Relicensing Settlement Agreement dated June 27, 2005 and Article VI of the Agreement. Any such assignment, transfer, agency arrangement or similar transaction contemplated by this paragraph may, but shall not be required to, include elements of the other methods described in this Appendix A.

D Continuity

In the event that any administrative agency or court of competent jurisdiction shall determine that any element of any of the foregoing methods of distributing the Allocations and/or financial benefits thereof is unauthorized or illegal, the Customer shall propose an alternative method of distribution, not necessarily limited to those described above, and

the Authority shall promptly determine whether to accept such alternative method. Such acceptance shall not be unreasonably withheld.

E Right to Alternate Between Methods

Customer shall have the right at its discretion and without restriction to alternate between the methods for the distribution of the benefits of the Allocation as set forth in Sections A through D above, upon giving sixty (60) days written notice to the Authority.

F. Market Administration

Notwithstanding anything to the contrary in the Agreement, if Customer and/or Customer's Authorized Recipient elects to convert the Allocation into financial settlements for use as payments or credits pursuant to Sections A or B above, the Authority may in its discretion schedule the Allocation into the NYISO administered market for financial settlement; such financial settlement, less the Authority's costs calculated using tariff rates as described in Article V of the Agreement, shall be provided to Customer, Customer's Authorized Recipient, or Customer's Agent, as the case may be, for disposition pursuant to the terms of a separate agreement between Authority, Customer and either Customer's Agent or Customer's Authorized Recipient, or both.

In the event that the Authority determines, in its discretion, not to use the foregoing method of scheduling the Allocation into the NYISO administered market for financial settlement, the Authority will provide reasonable notice to Customer of its intent to discontinue such method and assist Customer in making other arrangements to effect the delivery of the benefits of the Allocation to Customer or Ultimate Users.

This Section F is intended as an additional method of providing the benefits of the Allocation and is not intended to limit in any way the right to use other methods of providing such benefits, as set forth in the Agreement, including this Appendix A.

Appendix B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to Customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. RSR is calculated consistent with Service Tariff HC -1 provisions regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Customers’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include Ancillary Services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining energy assigned costs by the annual metered generation.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the megawatts sold from the Niagara/St. Lawrence projects, as determined solely in the Authority’s discretion, in the various ISO auction markets.

5. Calculate the difference between the cost-based energy rate and the billed preference energy rate.
6. Multiply the difference in the rates by the actual annual billed preference energy sales to determine the annual change in the RSR.
7. Add the annual change to the RSR balance from the prior year-end to get the current year-end RSR balance.
8. If the current year-end balance is in excess of +/- \$25 million, the excess would be subject to a credit or a surcharge in the subsequent rate year.



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

Electric Service Tariff for Host Communities
Firm Hydroelectric Power Service

Service Tariff No. HC-1

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Schedule of Rates for Firm Hydroelectric Power and Energy Service

I. Applicability

To sale of Niagara Hydroelectric Project firm power and energy to the Host Communities customers and/or their Authorized Recipients eligible for cost-based service under the Niagara Relicensing Settlement Agreement.

II. Abbreviations and Terms

A. The following abbreviations are used:

kW	kilowatt(s)
kWh	kilowatt-hour(s)
NYPA	New York Power Authority
NYISO	New York Independent System Operator

B. The term “Agreement” means contract for the Sale of Niagara Project Power and Energy between Authority and Customer.

C. The term “Authority” means New York Power Authority, an alternative name for the Power Authority of the State of New York.

D. The term “Customer” means a Host Community defined in the Agreement.

E. The term “Customer’s Agent” may include, without limitation, a public utility, Load Service Entity, Municipal Distribution Agency, load aggregator or other entity authorized to purchase, sell and/or deliver or cause to be delivered electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

F. The term “Power” or “Firm Hydroelectric Power” means capacity (kW) from Project, intended to be available at all times except for limitations provided in the Agreement(s), the Rules, this Service Tariff or in other contract documents. Firm Power shall not include peaking power.

G. The term “Energy” or “Firm Hydroelectric Energy” means energy (kWh) associated with Firm Hydroelectric Power.

- H. The term “Project” means the Authority’s Niagara Hydroelectric Project.
- I. The term “Rules” means Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, 21 NYCRR § 454) as now in effect and as may be later amended from time to time by Authority.
- J. The term “Service Tariff” means this Service Tariff No. HC-1.

III. Monthly Rates and Charges

A. Monthly Base Rates

The monthly demand and energy charges paid by Customer to Authority shall be based on the preference power rates charged by Authority, as shown below.

<u>Period</u>	<u>Demand Rate</u> \$/kW-month of contract demand	<u>Energy Rate</u> Mills/kWh
5/1/2013 through 4/30/2014	3.91	4.92
5/1/2014 through 4/30/2019	4.07	4.92
5/1/2019 through 4/30/2020	4.07	4.92

The demand and energy rates set forth above shall apply at the Project switchyard.

B. Minimum Monthly Charge

The product of the demand rate set forth above and the contract demand.

C. Billing Energy

Energy provided by Authority under this Service Tariff.

D. Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month.

E. Contract Demand

The amounts set forth in the applicable Agreement(s) between Authority and Customer.

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

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority, if any, for services provided by the NYISO or any successor organization pursuant to its Open Access Transmission Tariff ("OATT") or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) which are associated with

Customer's purchase of hydro power and energy under its contract for the sale of hydro power and energy with Authority:

1. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
2. Marginal losses;
3. The New York Power Authority Transmission Adjustment Charge ("NTAC");
4. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
5. Any and all other charges, assessments or other amounts associated with deliveries to Customer that are assessed on the Authority by the NYISO or any successor organization under the provisions of its OATT or under other applicable tariffs; and
6. Any charges assessed on the Authority with respect to 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 NYPA with respect to service to Customers), applicable tariffs or required to be paid by the Authority in accordance with law, whether charged by the NYISO or some other third party.

The NYISO Charges in this section are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

G. Taxes and Other Charges

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

IV. General Provisions

General Provisions for service supplementing or modifying the Rules and Regulations for Power Service and this Service Tariff with regard to deliveries to Customer are as follows:

A. Character of Service

Alternating current, 60 hertz, three-phase.

B. Availability of Energy

Unless otherwise agreed upon by the parties, Authority shall normally provide in any billing period Firm Hydroelectric Energy to Customer and/or Customer's Authorized Recipient in an amount equal to the product of (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement. The Authority will have the right to reduce on a pro rata basis the amount of Firm Hydroelectric Energy provided to Customer and/or Customer's Authorized Recipient if such reductions are necessary due to low flow (i.e., hydrologic) conditions at the Authority's Niagara and St. Lawrence-FDR hydroelectric generating stations. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Customer and/or Customer's Authorized Recipient in later billing periods. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer and/or Customer's Authorized Recipient. The Authority shall provide reasonable notice, to the extent possible, to Customer and Customer's Authorized Recipient 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.

Unless otherwise specified in the Agreement, where Customer is taking service solely from Authority, the billing energy shall be the total number of kilowatt-hours recorded on Customer's and/or Customer's Authorized Recipient's meter (or the meters of entities served by Customer and/or Customer's Authorized Recipient as indicated in the Agreement) during the billing period, adjusted for losses.

Unless otherwise specified in the Agreement, where Customer and/or Customer's Authorized Recipient takes service from other sources in addition to service supplied hereunder, the billing energy shall be determined by multiplying (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement.

C. Adjustment of Rates

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

D. Adjustment of Charges

Power Factor

Not less than 95% lagging or leading, except as otherwise specified in the Agreement.

E. Delivery

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be delivered by Authority at the Project switchyard to the transmission facilities under the control of the NYISO for delivery to Customer and/or Customer's Authorized Recipient.

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be deemed to be offered when Authority is able to supply Firm Hydroelectric Power and Energy and NYISO transmits it to Customer and/or Customer's Authorized Recipient or its designated points of interconnection with Customer's Agent at the Project switchyard. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer and/or Customer's Authorized Recipient. If, despite such offer, there is a failure of delivery by Customer, Customer's Authorized Recipient, or Customer's Agent, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

F. Scheduling Procedures

1. Authority will advise Customer, and Customer's Authorized Recipient, or Customer's Agent by the tenth (10th) Business Day of the preceding month of the estimated quantity of Firm Hydroelectric Energy expected to be made available from the Project.
2. Authority may require that such Firm Hydroelectric Energy from the Project be scheduled in general accordance with the individual system load shapes of Customer, Customer's Authorized Recipient, or Customer's Agent or as otherwise agreed upon by the Customer and Authority.

3. Customer, Customer's Authorized Recipient, or Customer's Agent shall file with Authority pursuant to procedures established by Authority, a daily schedule setting forth the Customer's and/or Customer's Authorized Recipient's requested amounts from the Project on a clock hour basis.
4. Subsequent to Authority approval of schedules for any day, Authority and Customer, Customer's Authorized Recipient, or Customer's Agent may agree on changes in such schedules subject to NYISO scheduling requirements and procedures Authority shall establish such that an efficient dispatch of Authority facilities will be accomplished.

G. Payment by Customer and/or Customer's Authorized Recipient for Firm Hydroelectric Power and Energy

1. Customer and/or Customer's Authorized Recipient shall pay for Firm Hydroelectric Power and Energy during any billing period the sum of a) and b) below:
 - a. The demand rate per kW for Firm Hydroelectric Power specified in this Service Tariff or any modification thereof applied to Customer's contract demand for the billing period; and
 - b. The energy rate specified in this Service Tariff or any modification thereof applied to the amount of Firm Hydroelectric billing energy delivered by Authority to Customer and/or Customer's Authorized Recipient during such billing period.
2. 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 Authority. In the event that there is a dispute on any items of a bill rendered by Authority, Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

H. Supplementary Provision

Sections 454.2 (c) and 454.5 of the Rules are inapplicable to this Service Tariff.

I. Alternate Arrangements

Notwithstanding general provisions E, F and G above, Authority, Customer, Customer's Authorized Recipient and/or Customer's Agent may make alternate arrangements regarding Delivery, Scheduling Procedures and Payment by Customer for Firm Hydroelectric Power and Energy consistent with the terms of the Agreement or other contract documents.

J. Conflicts

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

V. Flow Adjustment Computation ("FAC")

The energy charges under this Service Tariff, and the applicable service tariffs associated with both the Project and the St. Lawrence-FDR Hydroelectric Project, in the aggregate, are subject to a credit or surcharge pursuant to a FAC in any rate year following a calendar year for which the Hydroelectric Project Rate Stabilization Reserve ("RSR") is greater than \$+25 million, or less than \$-25 million, respectively. The RSR will be used to ensure rate stability and cost recovery and its level will be determined and any credit or surcharge for the succeeding rate year will be calculated after the prior calendar year's costs and generation levels are known. Any credit or surcharge will be applied on a uniform basis to the monthly billing statements rendered pursuant to this Service Tariff during the succeeding rate year.

The FAC is inapplicable in any rate year succeeding a calendar year at the end of which the RSR is within the \$+25 million to \$-25 million range. If at the end of any calendar year, the RSR is determined to exceed \$+25 million, such excess amount will be credited pro-rata to Customers during the succeeding rate year pursuant to the FAC. If the RSR at the end of any calendar year is determined to be less than \$-25 million, the difference below \$-25 million will be surcharged pro-rata to Customers during the succeeding rate year pursuant to the FAC.

To the extent that there is a balance in the RSR (positive or negative) on the effective date of service under the applicable Agreement(s), arising out of service under a prior agreement for the sale of Project power and energy, that RSR balance shall be carried forward and maintained as the balance as of the effective date of service under such applicable Agreement(s).

POWER AUTHORITY
OF THE
STATE OF NEW YORK
30 South Pearl Street
Albany, New York

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT POWER AND ENERGY
TO THE NIAGARA PROJECT HOST COMMUNITIES

Service Tariff No. HC-1 - Firm Hydroelectric Power and Energy
(TOWN OF LEWISTON)

Month, 2025

POWER AUTHORITY OF THE STATE OF NEW YORK

**30 South Pearl Street
Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY
THE NIAGARA PROJECT HOST COMMUNITIES**

**SERVICE TARIFF No. HC-1 – Firm Hydroelectric Power and Energy
(TOWN OF LEWISTON)**

The Town of Lewiston (“Customer”) hereby enters into this Agreement with the Power Authority of the State of New York for electric service as follows:

I. Definitions

- a. Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.
- b. Agreement** means this Agreement.
- c. Allocation** shall mean the amount of power and associated energy that the Authority has allocated to Customer hereunder.
- d. Ancillary Services** shall be as defined by the NYISO in its rules, tariffs, manuals and procedures.
- e. Authority** is the Power Authority of the State of New York.
- f. Commencement Date** shall be as set forth in Article XVIII.
- g. Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.
- h. Customer** is the municipality (Host Community) identified above.
- i. Customer-Arranged Energy** means energy the Customer itself procures from sources other than the Authority for the purpose of replacing Firm Hydroelectric

Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.

- j. **Customer's Agent** is defined in Article X.
- k. **Electric Service** is Power and Energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.
- l. **Excess Power** is defined in Article VIII and Appendix A.
- m. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- n. **FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.
- o. **Firm Hydroelectric Power and Energy** are firm power and associated energy from the Authority's Niagara Power Project, intended to be available at all times except for limitations provided in this Agreement, the Rules, applicable Service Tariff or in other contract documents.
- p. **Green Attributes** are attributes associated with renewable energy power production as recorded in the New York Generation Attribute Tracking System administered by The New York State Energy Research and Development Authority.
- q. **Host Communities** are Niagara County, City of Niagara Falls, Town of Lewiston, Town of Niagara, City of Niagara Falls School District, Lewiston-Porter School District and Niagara-Wheatfield School District.
- r. **Load Reduction** has the meaning set forth in Article IX.f of this Agreement.
- s. **Load Serving Entity** Is an entity authorized or required by law, regulatory authorization or requirement, agreement, or contractual obligation to supply Energy, Capacity and/or Ancillary Services to retail customers under the rules, tariffs, manuals and procedures of the NYISO.
- t. **NRA** means the federal Niagara Redevelopment Act (18 USC §§836, 836a)
- u. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- v. **Planned Hydropower Curtailment** means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.

- w. Power Credits** is defined in Article VIII and Appendix A.
- x. Project** means the Niagara Power Project, FERC Project No. 2216.
- y. Project Power and Energy** means Firm Hydroelectric Power and Energy produced by the Project.
- z. Project Switchyard** is the Niagara Project switchyard.
- aa. Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Host Community Relicensing Settlement Agreement Addressing Non-License Terms and Conditions allocation of Niagara Project Power and Energy to the Host Communities dated June 27, 2005.
- bb. Rules** are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).
- cc. Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.
- dd. Substitute Energy** means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.
- ee. Ultimate Users** are entities to whom Customer will resell or otherwise convey benefits associated with Project Power and Energy purchased from the Authority as provided in Article VI and Appendix A. Customer may designate itself as an Ultimate User.
- ff. Unforced Capacity** is the capacity required to be provided by Load Serving Entities to serve load as defined by the NYISO in its rules, tariffs, manuals and procedures.
- gg. Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

All terms not otherwise defined shall have the meaning ascribed to them in the electric industry.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariff HC-1 for Power and/or Energy to enable the Customer to receive the Allocation from the Project in accordance with the provisions of the FERC License and Relicensing Settlement Agreement, in the amount set forth below:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. HC-1: 3,500 KiloWatts (Contract Demand) subject to
such increase as may be determined by the Authority pursuant to Appendix
C to the Relicensing Settlement Agreement which determination shall be
made prior to the Commencement Date

The Authority shall provide Unforced Capacity in amounts necessary to meet Customer's NYISO Unforced Capacity obligations associated with the foregoing Allocation in accordance with the rules and tariffs of the NYISO. Neither Ancillary Services, nor Green Attributes are included in such allocation.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction. The Authority shall provide reasonable notice to Customer of any such proposed action that could result in modification of Contract Demands and nothing herein shall be construed as limiting Customer's right to challenge any proposed reduction in Contract Demands.

III. Rules, Regulations and Service Tariffs

The Rules and Service Tariff No. HC-1, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between Articles I through XVIII of this Agreement and the Service Tariffs, the provisions of Articles I through XVIII of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State if that period of minimum notice is greater than herein referenced. Except as expressly provided otherwise herein, nothing contained in this Agreement shall be construed as restricting Customer's rights to participate in processes involving changes to rates, Rules and Service Tariffs or other matters affecting the subject of this Agreement.

IV. Transmission and Delivery of Power and Energy

Authority shall make Project Power and Energy available to Customer or Customer's Agent at the Project Switchyard. It is the Customer's responsibility to act as the Load Serving Entity ("LSE"), arrange for one or more other entities to do so on its behalf or make other arrangements for conveying the benefits associated with the allocation to Ultimate Users. Customer, or the entity acting as LSE or Customer's Agent, shall arrange for the transmission of the Project Power and Energy supplied hereunder from the Project Switchyard to Customer's points of delivery or the conversion of the Allocation into Power Credits by such other method of disposition consistent with Article VI of this Agreement and Appendix A hereto. Such delivery shall be consistent with the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO and Customer shall be responsible for all costs associated with the transmission and delivery of the allocation.

V. Rates

Project Power and Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers receiving preference power under the NRA.

Customer waives any challenges to any of the following methodologies and principles¹ to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted by the Authority's Trustees in their meeting on April 29, 2003 and November 15, 2011:

- (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.

¹ These methodologies and principles were employed in and explained by (1) the Authority's January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on April 29, 2003; (2) the Authority's Rate Stabilization Reserve Methodology attached hereto as Appendix B; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on November 15, 2011.

- (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 as supplemented by the explanatory statement attached hereto as Appendix B.
- (viii) Unforced Capacity ("UCAP") sales credited to Cost of Service, based on the quantity of megawatts from the Project, determined solely in the Authority's discretion, sold into the NYISO auctions.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer 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. Notwithstanding the foregoing, nothing in this Article V shall limit: (1) the Authority and Customer from entering into good faith negotiations to change the above methodologies and principles, or (2) the Authority from adopting changes to these methodologies and principles in accordance with a rulemaking proceeding addressing cost-based rates for preference power done under the New York State Administrative Procedure Act.

VI. Use and Resale of Project Power and Energy

Customer shall use the Allocation for its facilities or as otherwise allowed in accordance with the Relicensing Settlement Agreement, this Agreement and Appendix A hereof.

In reselling and/or distributing the Allocation, except as otherwise provided in Appendix A hereof, Customer shall: 1) do so pursuant to the appropriate laws of the State of New York, 2) distribute such Allocation only to the Ultimate Users designated pursuant to Appendix A, 3) not permit such Ultimate Users to sell any of such Allocation for resale and 4) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section 1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License.

Customer or Customer's Agent shall keep its books, accounts and records pertaining to the purchase, delivery and sale of the Allocation according to procedures reasonably deemed necessary by Authority to ensure compliance with this Agreement and Appendix A hereof, applicable statutes, licenses, the Rules. Customer shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Ultimate Users as identified in Appendix A of the Agreement and, for those Ultimate Users who receive benefits only in the form of Power Credits, Customer's Agent to do likewise.

The distribution of the benefits of the Allocation to Ultimate Users shall be accompanied by a statement indicating the total savings in dollars realized by the individual Ultimate User for the particular billing period as a result of the purchase of hydroelectric power and energy by Customer from the Authority. The form and content of such statement shall be coordinated between Customer and Authority.

VII. Permanent Reallocation of Project Power and Energy

If Customer is, or becomes unable or chooses not to receive any or all of the Project Power and Energy allocated to it on a permanent basis, such Project Power and Energy shall be reallocated by the Authority pro-rata among the other Host Communities. Customer shall provide written notice to the Authority and the other Host Communities of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the other Host Communities shall become effective as soon as practicable, without need to amend this Agreement and the Contract Demand in this Agreement shall be revised to reflect such reallocation notwithstanding Article XIV hereof.

VIII. Availability of Energy

Subject to any other limitations set forth in the Rules or the Service Tariff (including low-flow conditions), if Customer provides the Allocation to Ultimate Users for physical delivery to such Users' accounts as set forth in Appendix A, Authority will supply Customer's (or Ultimate Users', as the case may be) entire demand and energy usage up to the Contract Demand. If there is any portion of the energy associated with the Allocation made available to Customer (at a monthly load factor of seventy percent (70%) pursuant to the Authority's regular scheduling requirements) that is not required to serve such Ultimate User's facilities, such energy may be utilized as Excess Power in the manner described in Appendix A.

For any usage above the Contract Demand, it is Customer's responsibility to arrange for provision of such excess service by a third party supplier, and the apportionment of energy between suppliers shall be as set forth in Service Tariff No. HC-1, or any successor tariff.

Subject to any other limitations set forth in the Rules or Service Tariff (including low-flow conditions), if Customer provides the benefits of the Allocation to Ultimate Users in the form of Power Credits as set forth in Appendix A, the Allocation will be delivered at a monthly load factor of seventy percent (70%) pursuant to the Authority's regular scheduling requirements.

IX. Hydro Curtailments and Substitute Energy

- a. The Customer shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Customer-Arranged

Energy, for the purpose of replacing Firm Hydroelectric Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment. The Customer shall make its election in accordance with the time period and other requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.

- b. The Customer may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Customer intends such change to become effective. Such change shall be effective on the first day of January following the Authority's receipt the Customer's notice and shall remain in effect unless it is changed in accordance with the provisions of Article IX.a.
- c. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Customer with advance notice of Planned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer no later than the tenth business day of the month prior to the month in which the Planned Hydropower Curtailment is expected to occur unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.
- d. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.
- e. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.
- f. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been

accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer's failure to provide such notice.

- g. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.
- h. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.
- i. Notwithstanding the Customer's election pursuant to Article IX.a, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments, provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration the Authority determines is reasonable considering the circumstances, including but not limited to the operating procedures of the Authority, third-party transmission or delivery utilities who deliver the Substitute Energy, and the NYISO.
- j. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for Firm Hydroelectric Energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. HC-1 relating to the rendition and payment of bills for Electric Service.
- k. The Customer shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. HC-1 and the Rules relating to the rendition and payment of bills for Electric Service. The Authority's failure to provide notice pursuant to Article IX.c or Article IX.h shall not affect the Customer's obligation to pay for Substitute Energy.

- l. The Authority will provide the Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- m. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.
- n. The Customer shall not be entitled to power and energy sourced from another Authority power facility, including another Authority hydropower project, as Substitute Energy.

X. Appointment of Customer's Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer may, on reasonable prior written notice to the Authority (consistent with the Authority's and the NYISO's scheduling and business process requirements), designate a different party as Customer's Agent at any time during the term of this Agreement.

Customer's Agent may include, without limitation, a public utility, LSE, Municipal Distribution Agency, load aggregator or other entity authorized to purchase and sell electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

XI. Term and Termination of Service

Service under the Agreement shall begin on the Commencement Date and shall continue until the earliest of (a) termination by Customer with respect to all of its Allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) September 1, 2041, at which time a new or modified agreement will be entered between the Authority and the Customer to provide Customer with Project Power and Energy for the remainder of the licensing period in the amount and for the rate then in effect which complies with the terms of the Relicensing Settlement Agreement. If such a new or modified agreement is not in place to take effect after September 1, 2041, service will be

continued under the terms and conditions of this Agreement on a year to year basis or until a new or modified agreement takes effect between the parties.

Notwithstanding the termination provisions of this Article, Customer may pause the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice. Customer may recommence the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice.

The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) 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 (b) as otherwise provided herein or in the Rules. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority. The Authority shall provide reasonable notice to Customer of any matter or proceeding that could result in an order or decision as described in part (a) of this paragraph and nothing herein shall be construed as limiting Customer's right to challenge any such proposed action.

Nothing herein is intended to limit the rights of the Host Communities or Customer under the Relicensing Settlement Agreement and the Authority and Customer understand and agree that the Authority is obligated under such Relicensing Settlement Agreement to make a total of 3.5 MW or such increased amount as provided for in paragraph II(a) hereof of Project Power and Energy available to Customer for the term of the FERC License, whether through extension of this Agreement or by subsequent agreement.

XII. Notification

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

To: Authority

Manager – Power Contracts & Tariffs
New York Power Authority
123 Main Street
White Plains, NY 10601

To: Customer

Supervisor
Town of Lewiston
Town Hall

Town of Lewiston

1375 Ridge Road
P.O. Box 330
Lewiston, New York 14092

XIII. Applicable Law and Venue

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. Any action or proceeding arising out of or relating to this Agreement shall be brought in state courts located in Albany County, New York.

XIV. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained, which consent shall not be unreasonably withheld.

XV. Previous Agreements and Communications

This Agreement, together with the Relicensing Settlement Agreement, shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such Agreements supersede all previous communications between the Parties hereto, either oral or written, with reference to the subject matter hereof.

No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

If there is a conflict between the language in Section 6 of the Relicensing Settlement Agreement entitled "Power Allocation" and language in this Agreement, including Appendix A, the language of this Agreement addressing this subject shall control.

XVI. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

XVII. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

In such an event and at the request of either Party, the Parties agree to engage in good faith negotiations on possible modification to this Agreement to remedy any portion of this Agreement that was declared invalid, unlawful or ineffective. Such good faith negotiations shall conform to the requirements comparable to those of section 10.1.3 of the Relicensing Settlement Agreement. To the extent that good faith negotiations do not result in an agreement as to whether or how this Agreement should be modified, the Parties agree to resolve their differences in accordance with the alternative dispute resolution mechanism set forth in section 12 of the Relicensing Settlement Agreement. The primary goal of any good faith negotiation or alternative dispute resolution mechanism shall be to preserve to the greatest extent as possible, the benefit of the Parties' intended bargain.

XVIII. Effectiveness of Agreement

This Agreement shall take effect on the date of this Agreement's execution under Article XVI above.

CUSTOMER

BY _____

Title _____

Date _____

(Seal)

Attest by: _____

Accepted:

POWER AUTHORITY OF THE STATE OF NEW YORK

BY _____

Title _____

Date _____

(Seal)

Attest by: _____

Appendix A

Customer will initially distribute power and energy purchased from the New York Power Authority under the Agreement or the economic benefit of such power and energy to the following Ultimate Users: All electricity users located within the Town of Lewiston who are served by Niagara Mohawk Power Corporation under Service Classification 1 of its PSC electricity tariff.

Customer may add to or delete from the above list of Ultimate Users on thirty (30) day's notice to the Authority. Customer in its sole determination may elect to use its full Allocation or any part thereof, for economic development. The economic development program description, allocation criteria and methodology shall be submitted to and approved by the Authority which approval shall not be unreasonably withheld.

The benefits of the Allocation shall be provided to such Ultimate Users either by direct sale or by allocation by the Customer (or by Customer's Agent) of electricity or the provision of Power Credits, as set forth below, or through different methods approved by the Authority. Customer shall have the right to recover as Customer Costs its direct administrative and services costs, reasonable compensation for use of third party facilities and services furnished to Customer in the transmission and distribution of such power and all costs associated with negotiating the Agreement and the establishment of mechanisms to accept and distribute the Allocation, and any similar costs, incurred after the execution of the Host Community Relicensing Settlement Agreement dated June 27, 2005. Such Customer Costs shall be reimbursed to Customer or otherwise paid by the Ultimate User by procedures to be determined.

The foregoing identification of Ultimate Users in no way mandates or requires for any reason that the Customer provide any portion of the Allocation (or Power Credits) to an Ultimate User and shall not preclude the Customer from denying any such Ultimate User the benefits associated with an allocation for any reason as determined by Customer.

A. Direct Sale / Allocation, Use of Excess Power

Customer or Customer's Agent may make a portion of the Allocation available to an Ultimate User for delivery at such Ultimate User's electricity accounts under the tariffs, rules and regulations of the NYISO and the utility in whose service area such accounts are located. If there is any portion of the Allocation made available to Customer that is not required to serve such Ultimate User's facilities, such Excess Power (up to the load factor specified in the Agreement) may be utilized as follows:

1. Customer or Customer's agent may schedule Excess Power into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), shall be applied by Customer to payment of Customer's (or an Ultimate User's, as the case may be) energy-related costs, including but not limited to, the purchase of energy commodities, the delivery

and transportation of electricity and all other energy commodities and/or for energy efficiency or clean energy technology programs or projects.

2. Customer may use the Excess Power (or the benefits associated with such Excess Power derived from a financial settlement as set forth in the preceding Paragraph 1) for economic development by providing credits to a business to apply against the cost of power or energy and/or the cost of delivering power or energy consumed by such business.

B. Power Credits

Customer, or Customer's Agent, may schedule all of its Allocation (up to the load factor specified in the Agreement) into the NYISO administered market for financial settlement, and such financial settlement so received by Customer or a forecasted amount of such financial settlement (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), may be provided to Ultimate Users in the form of Power Credits by Customer as follows:

Power Credits may be applied towards the cost and/or delivery of electric power or energy consumed by the Ultimate User or, to the extent Power Credits remain after payment of all electric power and energy (including delivery) costs, for energy-related costs, including but not limited to, purchase of other energy commodities now in existence or that may exist during the terms of the Agreement.

C. Right to Alternate Between Methods

Customer shall have the right at its discretion and without restriction to alternate between the methods for the distribution of the benefits of the Allocation as set forth in Sections A and B above, upon giving sixty (60) days written notice to the Authority.

D. Market Administration

Notwithstanding anything to the contrary in the Agreement, if Customer elects to convert the Allocation into financial settlements for use as payments or credits pursuant to Sections A or B above, the Authority may in its discretion schedule the Allocation into the NYISO administered market for financial settlement; such financial settlement, less the Authority's costs calculated using tariff rates as described in Article V of the Agreement, shall be provided to Customer, or Customer's Agent, as the case may be, for disposition pursuant to the terms of a separate agreement between Authority, Customer and Customer's Agent.

In the event that the Authority determines, in its discretion, not to use the foregoing method of scheduling the Allocation into the NYISO administered market for financial settlement, the Authority will provide reasonable notice to Customer of its intent to discontinue such

method and assist Customer in making other arrangements to effect the delivery of the benefits of the Allocation to Customer or Ultimate Users.

This Section D is intended as an additional method of providing the benefits of the Allocation and is not intended to limit in any way the right to use other methods of providing such benefits, as set forth in the Agreement, including this Appendix A.

Appendix B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to Customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. The RSR is calculated consistent with Service Tariff HC-1 provisions regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Customers’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include Ancillary Services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining energy assigned costs by the annual metered generation.
5. Calculate the difference between the cost-based energy rate and the billed preference energy rate.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the megawatts sold from the Niagara/St. Lawrence projects, as determined solely in the Authority’s discretion, in the various ISO auction markets.

6. Multiply the difference in the rates by the actual annual billed preference energy sales to determine the annual change in the RSR.
7. Add the annual change to the RSR balance from the prior year-end to get the current year-end RSR balance.
8. If the current year-end balance is in excess of +/- \$25 million, the excess would be subject to a credit or a surcharge in the subsequent rate year.



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

Electric Service Tariff for Host Communities
Firm Hydroelectric Power Service

Service Tariff No. HC-1

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Schedule of Rates for Firm Hydroelectric Power and Energy Service

I. Applicability

To sale of Niagara Hydroelectric Project firm power and energy to the Host Communities customers and/or their Authorized Recipients eligible for cost-based service under the Niagara Relicensing Settlement Agreement.

II. Abbreviations and Terms

A. The following abbreviations are used:

kW	kilowatt(s)
kWh	kilowatt-hour(s)
NYPA	New York Power Authority
NYISO	New York Independent System Operator

B. The term “Agreement” means contract for the Sale of Niagara Project Power and Energy between Authority and Customer.

C. The term “Authority” means New York Power Authority, an alternative name for the Power Authority of the State of New York.

D. The term “Customer” means a Host Community defined in the Agreement.

E. The term “Customer’s Agent” may include, without limitation, a public utility, Load Service Entity, Municipal Distribution Agency, load aggregator or other entity authorized to purchase, sell and/or deliver or cause to be delivered electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

F. The term “Power” or “Firm Hydroelectric Power” means capacity (kW) from Project, intended to be available at all times except for limitations provided in the Agreement(s), the Rules, this Service Tariff or in other contract documents. Firm Power shall not include peaking power.

G. The term “Energy” or “Firm Hydroelectric Energy” means energy (kWh) associated with Firm Hydroelectric Power.

- H. The term “Project” means the Authority’s Niagara Hydroelectric Project.
- I. The term “Rules” means Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, 21 NYCRR § 454) as now in effect and as may be later amended from time to time by Authority.
- J. The term “Service Tariff” means this Service Tariff No. HC-1.

III. Monthly Rates and Charges

A. Monthly Base Rates

The monthly demand and energy charges paid by Customer to Authority shall be based on the preference power rates charged by Authority, as shown below.

<u>Period</u>	<u>Demand Rate</u> \$/kW-month of contract demand	<u>Energy Rate</u> Mills/kWh
5/1/2013 through 4/30/2014	3.91	4.92
5/1/2014 through 4/30/2019	4.07	4.92
5/1/2019 through 4/30/2020	4.07	4.92

The demand and energy rates set forth above shall apply at the Project switchyard.

B. Minimum Monthly Charge

The product of the demand rate set forth above and the contract demand.

C. Billing Energy

Energy provided by Authority under this Service Tariff.

D. Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month.

E. Contract Demand

The amounts set forth in the applicable Agreement(s) between Authority and Customer.

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

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority, if any, for services provided by the NYISO or any successor organization pursuant to its Open Access Transmission Tariff ("OATT") or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) which are associated with

Customer's purchase of hydro power and energy under its contract for the sale of hydro power and energy with Authority:

1. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
2. Marginal losses;
3. The New York Power Authority Transmission Adjustment Charge ("NTAC");
4. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
5. Any and all other charges, assessments or other amounts associated with deliveries to Customer that are assessed on the Authority by the NYISO or any successor organization under the provisions of its OATT or under other applicable tariffs; and
6. Any charges assessed on the Authority with respect to 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 NYPA with respect to service to Customers), applicable tariffs or required to be paid by the Authority in accordance with law, whether charged by the NYISO or some other third party.

The NYISO Charges in this section are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

G. Taxes and Other Charges

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

IV. General Provisions

General Provisions for service supplementing or modifying the Rules and Regulations for Power Service and this Service Tariff with regard to deliveries to Customer are as follows:

A. Character of Service

Alternating current, 60 hertz, three-phase.

B. Availability of Energy

Unless otherwise agreed upon by the parties, Authority shall normally provide in any billing period Firm Hydroelectric Energy to Customer and/or Customer's Authorized Recipient in an amount equal to the product of (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement. The Authority will have the right to reduce on a pro rata basis the amount of Firm Hydroelectric Energy provided to Customer and/or Customer's Authorized Recipient if such reductions are necessary due to low flow (i.e., hydrologic) conditions at the Authority's Niagara and St. Lawrence-FDR hydroelectric generating stations. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Customer and/or Customer's Authorized Recipient in later billing periods. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer and/or Customer's Authorized Recipient. The Authority shall provide reasonable notice, to the extent possible, to Customer and Customer's Authorized Recipient 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.

Unless otherwise specified in the Agreement, where Customer is taking service solely from Authority, the billing energy shall be the total number of kilowatt-hours recorded on Customer's and/or Customer's Authorized Recipient's meter (or the meters of entities served by Customer and/or Customer's Authorized Recipient as indicated in the Agreement) during the billing period, adjusted for losses.

Unless otherwise specified in the Agreement, where Customer and/or Customer's Authorized Recipient takes service from other sources in addition to service supplied hereunder, the billing energy shall be determined by multiplying (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement.

C. Adjustment of Rates

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

D. Adjustment of Charges

Power Factor

Not less than 95% lagging or leading, except as otherwise specified in the Agreement.

E. Delivery

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be delivered by Authority at the Project switchyard to the transmission facilities under the control of the NYISO for delivery to Customer and/or Customer's Authorized Recipient.

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be deemed to be offered when Authority is able to supply Firm Hydroelectric Power and Energy and NYISO transmits it to Customer and/or Customer's Authorized Recipient or its designated points of interconnection with Customer's Agent at the Project switchyard. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer and/or Customer's Authorized Recipient. If, despite such offer, there is a failure of delivery by Customer, Customer's Authorized Recipient, or Customer's Agent, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

F. Scheduling Procedures

1. Authority will advise Customer, and Customer's Authorized Recipient, or Customer's Agent by the tenth (10th) Business Day of the preceding month of the estimated quantity of Firm Hydroelectric Energy expected to be made available from the Project.
2. Authority may require that such Firm Hydroelectric Energy from the Project be scheduled in general accordance with the individual system load shapes of Customer, Customer's Authorized Recipient, or Customer's Agent or as otherwise agreed upon by the Customer and Authority.

3. Customer, Customer's Authorized Recipient, or Customer's Agent shall file with Authority pursuant to procedures established by Authority, a daily schedule setting forth the Customer's and/or Customer's Authorized Recipient's requested amounts from the Project on a clock hour basis.
4. Subsequent to Authority approval of schedules for any day, Authority and Customer, Customer's Authorized Recipient, or Customer's Agent may agree on changes in such schedules subject to NYISO scheduling requirements and procedures Authority shall establish such that an efficient dispatch of Authority facilities will be accomplished.

G. Payment by Customer and/or Customer's Authorized Recipient for Firm Hydroelectric Power and Energy

1. Customer and/or Customer's Authorized Recipient shall pay for Firm Hydroelectric Power and Energy during any billing period the sum of a) and b) below:
 - a. The demand rate per kW for Firm Hydroelectric Power specified in this Service Tariff or any modification thereof applied to Customer's contract demand for the billing period; and
 - b. The energy rate specified in this Service Tariff or any modification thereof applied to the amount of Firm Hydroelectric billing energy delivered by Authority to Customer and/or Customer's Authorized Recipient during such billing period.
2. 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 Authority. In the event that there is a dispute on any items of a bill rendered by Authority, Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

H. Supplementary Provision

Sections 454.2 (c) and 454.5 of the Rules are inapplicable to this Service Tariff.

I. Alternate Arrangements

Notwithstanding general provisions E, F and G above, Authority, Customer, Customer's Authorized Recipient and/or Customer's Agent may make alternate arrangements regarding Delivery, Scheduling Procedures and Payment by Customer for Firm Hydroelectric Power and Energy consistent with the terms of the Agreement or other contract documents.

J. Conflicts

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

V. Flow Adjustment Computation ("FAC")

The energy charges under this Service Tariff, and the applicable service tariffs associated with both the Project and the St. Lawrence-FDR Hydroelectric Project, in the aggregate, are subject to a credit or surcharge pursuant to a FAC in any rate year following a calendar year for which the Hydroelectric Project Rate Stabilization Reserve ("RSR") is greater than \$+25 million, or less than \$-25 million, respectively. The RSR will be used to ensure rate stability and cost recovery and its level will be determined and any credit or surcharge for the succeeding rate year will be calculated after the prior calendar year's costs and generation levels are known. Any credit or surcharge will be applied on a uniform basis to the monthly billing statements rendered pursuant to this Service Tariff during the succeeding rate year.

The FAC is inapplicable in any rate year succeeding a calendar year at the end of which the RSR is within the \$+25 million to \$-25 million range. If at the end of any calendar year, the RSR is determined to exceed \$+25 million, such excess amount will be credited pro-rata to Customers during the succeeding rate year pursuant to the FAC. If the RSR at the end of any calendar year is determined to be less than \$-25 million, the difference below \$-25 million will be surcharged pro-rata to Customers during the succeeding rate year pursuant to the FAC.

To the extent that there is a balance in the RSR (positive or negative) on the effective date of service under the applicable Agreement(s), arising out of service under a prior agreement for the sale of Project power and energy, that RSR balance shall be carried forward and maintained as the balance as of the effective date of service under such applicable Agreement(s).

POWER AUTHORITY
OF THE
STATE OF NEW YORK
30 South Pearl Street
Albany, New York
AGREEMENT FOR THE SALE
OF NIAGARA PROJECT HYDROELECTRIC POWER AND ENERGY
TO THE NIAGARA PROJECT HOST COMMUNITIES
Service Tariff No. HC-1 - Firm Hydroelectric Power and Energy
(TOWN OF NIAGARA)

Month 2025

POWER AUTHORITY OF THE STATE OF NEW YORK

**30 South Pearl Street
Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROELECTRIC POWER AND ENERGY TO
THE NIAGARA PROJECT HOST COMMUNITIES**

**SERVICE TARIFF No. HC-1 – Firm Hydroelectric Power and Energy
(TOWN OF NIAGARA)**

Town of Niagara (“Customer”) hereby enters into this Agreement with the Power Authority of the State of New York for electric service as follows:

I. Definitions

- a. Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.
- b. Agreement** means this Agreement.
- c. Allocation** shall mean the amount of power and associated energy that the Authority has allocated to Customer hereunder.
- d. Ancillary Services** shall be as defined by the NYISO in its rules, tariffs, manuals and procedures.
- e. Authority** is the Power Authority of the State of New York.
- f. Authorized Recipient** is defined in Article II.
- g. Commencement Date** shall be as set forth in Article XVIII.
- h. Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.
- i. Customer** is the municipality (Host Community) identified above.

- j. **Customer-Arranged Energy** means energy the Customer itself procures from sources other than the Authority for the purpose of replacing Firm Hydroelectric Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.
- k. **Customer's Agent** is defined in Article X.
- l. **Electric Service** is Power and Energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.
- m. **Excess Power** is defined in Article VIII and Appendix A.
- n. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- o. **FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.
- p. **Firm Hydroelectric Power and Energy** are firm power and associated energy from the Authority's Niagara Power Project, intended to be available at all times except for limitations provided in this Agreement, the Rules, applicable Service Tariff or in other contract documents.
- q. **Green Attributes** are attributes associated with renewable energy power production as recorded in the New York Generation Attribute Tracking System administered by The New York State Energy Research and Development Authority.
- r. **Host Communities** are Niagara County, City of Niagara Falls, Town of Lewiston, Town of Niagara, City of Niagara Falls School District, Lewiston-Porter School District and Niagara-Wheatfield School District.
- s. **Load Reduction** has the meaning set forth in Article IX.f of this Agreement.
- t. **Load Serving Entity** is an entity authorized or required by law, regulatory authorization or requirement, agreement, or contractual obligation to supply Energy, Capacity and/or Ancillary Services to retail customers under the rules, tariffs, manuals and procedures of the NYISO.
- u. **NRA** means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

- v. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- w. **Planned Hydropower Curtailment** means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.
- x. **Power Credits** are defined in Article VIII and Appendix A.
- y. **Project** means the Niagara Power Project, FERC Project No. 2216.
- z. **Project Power and Energy** means Firm Hydroelectric Power and Energy produced by the Project.
- aa. **Project Switchyard** is the Niagara Project switchyard.
- bb. **Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Host Community Relicensing Settlement Agreement Addressing Non-License Terms and Conditions allocation of Niagara Project Power and Energy to the Host Communities dated June 27, 2005.
- cc. **Rules** are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).
- dd. **Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.
- ee. **Substitute Energy** means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.
- ff. **Ultimate Users** are entities to whom Customer or Customer's Authorized Recipient will resell (or otherwise convey benefits associated with) Project Power and Energy purchased from the Authority as provided in Article VI of this Agreement and Appendix A hereto. Customer may designate itself as an Ultimate User.
- gg. **Unforced Capacity** is the capacity required to be provided by Load Serving Entities to serve load as defined by the NYISO in its rules, tariffs, manuals and procedures.

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

All other terms not otherwise defined herein shall have the meanings ascribed to them in the electric industry.

II. Electric Service to be Provided

- a.** The Authority shall provide Electric Service pursuant to Service Tariff HC-1 for Power and/or Energy to enable the Customer or the Customer's Authorized Recipient, as defined below, to receive the Allocation from the Project in accordance with the provisions of the FERC License and Relicensing Settlement Agreement, in the amount set forth below:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. HC-1: 500 KiloWatts (Contract Demand)

Upon execution of this Agreement by a Host Community, other than Customer, that is legally capable of receiving an Allocation from the Project (Authorized Recipient) such Authorized Recipient shall be authorized to receive the Allocation of the Customer in accordance with the terms and conditions set forth in this Agreement, including Appendix A hereof. Such authorization may be revoked by Customer upon reasonable notice to the Authority and Customer's Authorized Recipient; provided, however, that Customer shall, as of the effective date of such revocation, have made arrangements (a) with another Authorized Recipient to receive the Customer's Allocation, or (b) to receive such Allocation itself, if legally capable of doing so.

The Authority shall provide Unforced Capacity in amounts necessary to meet Customer's NYISO Unforced Capacity obligations associated with the foregoing Allocation in accordance with the rules and tariffs of the NYISO. Neither Ancillary Services, nor Green Attributes are included in such allocation.

- b.** The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction. The Authority shall provide reasonable notice to Customer of any such proposed action that could result in modification of Contract Demands and nothing herein shall be construed as limiting customer's rights to challenge any proposed reduction in Contract Demands.

III. Rules, Regulations and Service Tariffs

The Rules and Service Tariff No. HC-1, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between Articles I through XVII of this Agreement and the Service Tariffs, the provisions of Articles I through XVII of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State if that period of minimum notice is greater than herein referenced. Except as expressly provided otherwise herein, nothing contained in this Agreement shall be construed as restricting Customer's rights to participate in processes involving changes to rates, Rules and Service Tariffs or other matters affecting the subject of this Agreement.

IV. Transmission and Delivery of Power and Energy

Authority shall make Project Power and Energy available to Customer, Customer's Authorized Recipient or Customer's Agent at the Project Switchyard. It is the Customer's responsibility to act as the Load Serving Entity ("LSE"), arrange for one or more other entities to do so on its behalf or make other arrangements for conveying the benefits associated with the allocation to Ultimate Users. Customer, or the entity acting as LSE, Customer's Authorized Recipient, or Customer's Agent shall arrange for the transmission of the Project Power and Energy supplied hereunder from the Project Switchyard to Customer's points of delivery or the conversion of the Allocation into financial settlements and benefits by such other method of disposition consistent with Article VI of this Agreement and Appendix A hereto. Such delivery shall be consistent with the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO and Customer shall be responsible for all costs associated with the transmission and delivery of the allocation.

V. Rates

Project Power and Energy shall be sold to Customer or to Customer's Authorized Recipient hereunder at cost-based rates equivalent to rates charged to in-state preference customers receiving preference power under the NRA.

Customer waives any challenges to any of the following methodologies and principles¹ to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted by the Authority's Trustees in their meeting on April 29, 2003 and November 15, 2011:

- (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 as supplemented by the explanatory statement attached hereto as Appendix B.
- (viii) Unforced Capacity ("UCAP") sales credited to Cost of Service, based on the quantity of megawatts from the Project, determined solely in the Authority's discretion, sold into the NYISO auctions.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer or the Customer's Authorized Recipient 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. Notwithstanding the foregoing, nothing in this Article V shall limit: (1) the Authority and Customer from entering into good faith negotiations to change the above methodologies and principles, or (2) the Authority from adopting

¹ These methodologies and principles were employed in and explained by (1) the Authority's January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on April 29, 2003; (2) the Authority's Rate Stabilization Reserve Methodology attached hereto as Appendix B; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on November 15, 2011.

changes to these methodologies and principles in accordance with a rulemaking proceeding addressing cost-based rates for preference power done under the New York State Administrative Procedure Act.

VI. Use and Resale of Project Power and Energy

Customer or the Customer's Authorized Recipient shall use the Allocation for Customer's facilities or as otherwise allowed in accordance with the Relicensing Settlement Agreement, this Agreement and Appendix A hereof.

In reselling and/or distributing the Allocation, except as otherwise provided in Appendix A hereof, Customer or the Customer's Authorized Recipient shall: 1) do so pursuant to the appropriate laws of the State of New York, 2) distribute such Allocation only to the Ultimate Users designated pursuant to Appendix A, 3) not permit such Ultimate Users to sell any of such Allocation for resale and 4) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section 1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License.

Customer, Customer's Authorized Recipient or Customer's Agent shall keep its books, accounts and records pertaining to the purchase, delivery and sale of the Allocation according to procedures reasonably deemed necessary by Authority to ensure compliance with this Agreement and Appendix A hereof, applicable statutes, licenses, the Rules. Customer or Customer's Authorized Recipient shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require Customer's Ultimate Users as identified in Appendix A of the Agreement to agree to do likewise.

The distribution of the benefits of the Allocation to Ultimate Users shall, where feasible, be accompanied by a statement indicating the total savings in dollars realized by the individual Ultimate User for the particular billing period as a result of the purchase of hydroelectric power and energy by Customer or Customer's Authorized Recipient from the Authority. The form and content of such statement shall be coordinated between Customer or Customer's Authorized Recipient and Authority.

VII. Permanent Reallocation of Project Power and Energy

If Customer is, or becomes unable or chooses not to receive, or to have Customer's Authorized Recipient not receive, any or all of the Project Power and Energy allocated to it on a permanent basis, such Project Power and Energy shall be reallocated by the Authority pro-rata among the other Host Communities. Customer shall provide written notice to the Authority and the other Host Communities of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the

other Host Communities shall become effective as soon as practicable, without need to amend this Agreement and the Contract Demand in this Agreement shall be revised to reflect such reallocation, notwithstanding Article XIV hereof.

VIII. Availability of Energy

Subject to any other limitations set forth in the Rules or the Service Tariff (including low-flow conditions), if Customer or Customer's Authorized Recipient directly or indirectly provides the Allocation to Ultimate Users for physical delivery to such Users' accounts as set forth in Appendix A, Authority will supply Customer's (or Ultimate Users', as the case may be) entire demand and energy usage up to the Contract Demand. If there is any portion of the energy associated with the Allocation made available to Customer or Customer's Authorized Recipient (at a monthly load factor of seventy percent (70%) pursuant to the Authority's regular scheduling requirements) that is not required to serve such Ultimate Users' facilities, such energy may be utilized as Excess Power in the manner described in Appendix A.

As between Customer and the Authority, for any usage above the Contract Demand, it is Customer's responsibility to arrange for provision of such excess service by a third party supplier, and the apportionment of energy between suppliers shall be as set forth in Service Tariff No. HC-1, or any successor tariff.

Subject to any other limitations set forth in the Rules or Service Tariff (including low-flow conditions), if Customer or Customer's Authorized Recipient provides the benefits of the Allocation to Ultimate Users in the form of Power Credits as set forth in Appendix A, the Allocation will be delivered at a monthly load factor of seventy percent (70%) pursuant to the Authority's regular scheduling requirements.

IX. Hydro Curtailments and Substitute Energy

- a. The Customer shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Customer-Arranged Energy, for the purpose of replacing Firm Hydroelectric Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment. The Customer shall make its election in accordance with the time period and other requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.
- b. The Customer may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Customer intends such change to become effective. Such change shall be effective on the first day of January following the Authority's receipt the Customer's notice and shall remain in effect unless it is changed in accordance with the provisions of Article IX.a.

- c. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Customer with advance notice of Planned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer no later than the tenth business day of the month prior to the month in which the Planned Hydropower Curtailment is expected to occur unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.
- d. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.
- e. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.
- f. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer's failure to provide such notice.
- g. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.
- h. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the

Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.

- i. Notwithstanding the Customer's election pursuant to Article IX.a, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments, provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration the Authority determines is reasonable considering the circumstances, including but not limited to the operating procedures of the Authority, third-party transmission or delivery utilities who deliver the Substitute Energy, and the NYISO.
- j. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for Firm Hydroelectric Energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. HC-1 relating to the rendition and payment of bills for Electric Service.
- k. The Customer shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. HC-1 and the Rules relating to the rendition and payment of bills for Electric Service. The Authority's failure to provide notice pursuant to Article IX.c or Article IX.h shall not affect the Customer's obligation to pay for Substitute Energy.
- l. The Authority will provide the Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- m. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.
- n. The Customer shall not be entitled to power and energy sourced from another Authority power facility, including another Authority hydropower project, as Substitute Energy.

X. Appointment of Customer's Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer may, on reasonable prior written notice to the Authority (consistent with the Authority's and the NYISO's scheduling and business process requirements), designate a different party as Customer's Agent at any time during the term of this Agreement.

Customer's Agent may include, without limitation, a public utility, LSE, Municipal Distribution Agency, load aggregator or other entity authorized to purchase and sell electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

XI. Term and Termination of Service

Service under the Agreement shall begin on the Commencement Date and shall continue until the earliest of (a) termination by Customer with respect to all of its Allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) September 1, 2041, at which time a new or modified agreement will be entered between the Authority and the Customer to provide Customer or Customer's Authorized Recipient with Project Power and Energy for the remainder of the licensing period in the amount and for the rate then in effect which complies with the terms of the Relicensing Settlement Agreement. If such a new or modified agreement is not in place to take effect after September 1, 2041, service will be continued under the terms and conditions of this Agreement on a year to year basis or until a new or modified agreement takes effect between the parties.

Notwithstanding the termination provisions of this Article, Customer may pause the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice. Customer may recommence the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice.

The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) 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 (b) as otherwise provided herein or in the Rules. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority. The Authority shall provide reasonable notice to Customer of any matter or proceeding that could result in an order or decision as described in part (a) of this paragraph and nothing herein shall be construed as limiting Customer's right to challenge any such proposed action.

Nothing herein is intended to limit the rights of the Host Communities or Customer under the Relicensing Settlement Agreement and the Authority and Customer understand and agree that the Authority is obligated under such Relicensing Settlement Agreement to make a total of 500 KiloWatts of Project Power and Energy available to Customer or Customer's Authorized Recipient for the term of the FERC License, whether through extension of this Agreement or by subsequent agreement.

XII. Notification

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

To: Authority

Manager – Power Contracts & Tariffs
New York Power Authority
123 Main Street
White Plains, NY 10601

To: Customer

Town Supervisor
Town of Niagara
7105 Lockport Road
Niagara Falls, NY 14305

with a copy to:

Deputy Town Supervisor
Town of Niagara
7105 Lockport Road
Niagara Falls, NY 14305

To: Customer's Authorized Recipient

XIII. Applicable Law and Venue

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. Any action or proceeding arising out of or relating to this Agreement shall be brought in state courts located in Albany County, New York.

XIV. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of the parties hereto; provided, however, that no assignment by a party or any successor or assignee of such party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other parties in each case obtained, which consent shall not be unreasonably withheld.

XV. Previous Agreements and Communications

This Agreement, together with the Relicensing Settlement Agreement, shall constitute the sole and complete agreement of the parties hereto with respect to the matters herein set forth, and such Agreements supersede all previous communications between the Parties hereto, either oral or written, with reference to the subject matter hereof; provided, however, that additional terms pursuant to which Customer's Authorized Recipient is authorized to receive Customer's Allocation may be set forth in a separate agreement between Customer and Authorized Recipient. Any such separate agreement shall not be inconsistent

with the terms of this Agreement and shall be provided to the Authority for informational purposes.

No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

If there is a conflict between the language in Section 6 of the Relicensing Settlement Agreement entitled "Power Allocation" and language in this Agreement, including Appendix A, the language of this Agreement addressing this subject shall control.

XVI. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the parties for Electric Service hereunder.

XVII. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

In such an event and at the request of any of the parties, the parties agree to engage in good faith negotiations on possible modification to this Agreement to remedy any portion of this Agreement that was declared invalid, unlawful or ineffective. Such good faith negotiations shall conform to the requirements comparable to those of section 10.1.3 of the Relicensing Settlement Agreement. To the extent that good faith negotiations do not result in an agreement as to whether or how this Agreement should be modified, the parties agree to resolve their differences in accordance with the alternative dispute resolution mechanism set forth in section 12 of the Relicensing Settlement Agreement. The primary goal of any good faith negotiation or alternative dispute resolution mechanism shall be to preserve to the greatest extent as possible, the benefit of the parties' intended bargain.

XVIII. Effectiveness of Agreement

This Agreement shall take effect on the date of this Agreement's execution under Article XVI above.

CUSTOMER: TOWN OF NIAGARA, NEW YORK

BY _____

Title _____

Date _____

(Seal)

Attest by: _____

AUTHORIZED RECIPIENT: NIAGARA COUNTY, NEW YORK

BY _____

Title _____

Date _____

(Seal)

Attest by: _____

Accepted:

POWER AUTHORITY OF THE STATE OF NEW YORK

BY _____

Title _____

Date _____

(Seal)

Attest by: _____

Appendix A

Except as Customer determines otherwise, consistent with the terms of this Agreement, Customer or Customer's Authorized Recipient will initially distribute power and energy purchased from the New York Power Authority under the Agreement or the economic benefit of such power and energy to the following Ultimate Users_____

Customer may add to or delete from the above list of Ultimate Users on thirty (30) day's notice to the Authority. Customer in its sole determination may elect to use its full Allocation or any part thereof, for economic development. The economic development program description, allocation criteria and methodology shall be submitted to and approved by the Authority which approval shall not be unreasonably withheld.

The benefits of the Allocation shall be provided to such Ultimate Users either by direct sale or by allocation by the Customer (or by Customer's Authorized Recipient or Authorized Agent) of electricity or the provision of financial settlements and benefits, as set forth below, or through different methods approved by the Authority. Customer shall have the right to recover as Customer Costs its direct administrative and services costs, reasonable compensation for use of third party facilities and services furnished to Customer in the transmission and distribution of such power, all costs associated with negotiating the Agreement and the establishment of mechanisms to accept and distribute the Allocation, and any similar costs, incurred after the execution of the Host Community Relicensing Settlement Agreement dated June 27, 2005. Such Customer Costs shall be reimbursed to Customer or otherwise paid by the Ultimate User by procedures to be determined.

The listing or description of the foregoing Ultimate Users in no way mandates or requires for any reason that the Customer provide any portion of the Allocation (or Power Credits) to an Ultimate User and shall not preclude the Customer from denying any such Ultimate User the benefits associated with an allocation for any reason as determined by Customer.

A Direct Sale / Allocation, Use of Excess Power

Customer, Customer's Authorized Recipient or Customer's Agent may make a portion of the Allocation available to an Ultimate User for delivery at such Ultimate User's electricity accounts under the tariffs, rules and regulations of the NYISO and the utility in whose service area such accounts are located. If there is any portion of the Allocation made available to Customer or Customer's Authorized Recipient that is not required to serve such Ultimate User's facilities, such Excess Power (up to the load factor specified in the Agreement) may be utilized as follows:

1. Customer, Customer's Authorized Recipient or Customer's Agent may schedule Excess Power into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), shall be applied by Customer to payment of Customer's (or an Ultimate User's, as the case may be) energy-related costs, including but not limited to, the purchase of energy commodities, the delivery and transportation of electricity and all other energy commodities

and/or for energy efficiency or clean energy technology programs or projects now in existence or that may exist during the term of the Agreement.

2. Customer or Customer's Authorized Recipient may use the Excess Power (or the benefits associated with such Excess Power derived from a financial settlement as set forth in the preceding Paragraph 1) for economic development by providing credits to a business to apply against the cost of power or energy and/or the cost of delivery of power or energy consumed by such business.

B Power Credits

Customer, Customer's Authorized Recipient or Customer's Agent, may schedule all of Customer's Allocation (up to the load factor specified in the Agreement) into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), may be provided to Ultimate Users in the form of Power Credits by Customer or Customer's Authorized Recipient as follows:

Power Credits may be applied towards the cost and/or delivery of electric power or energy consumed by the Ultimate User or for other energy-related costs, including but not limited to, purchase of energy commodities, the delivery and transportation of electricity and all other energy commodities and/or for energy efficiency or clean energy technology programs or projects now in existence or that may exist during the terms of the Agreement.

C Service through Authorized Entity

Through assignment, transfer or otherwise, including through an agency arrangement, Customer shall have the right to make available its Allocation or any part thereof to any entity, including but not limited to Customer's Authorized Recipient, that is duly authorized to receive, purchase, transmit, distribute, and/or resell the power and energy included in the Allocation or otherwise to engage in such transactions as are necessary to effectuate the delivery of the Allocation and/or to provide the financial benefits thereof to the Customer, the Customer's Ultimate Users and the Customer's constituents, as determined in the exercise of the Customer's discretion and consistent with the provisions of the Host Community Relicensing Settlement Agreement dated June 27, 2005 and Article VI of the Agreement. Any such assignment, transfer, agency arrangement or similar transaction contemplated by this paragraph may, but shall not be required to, include elements of the other methods described in this Appendix A.

D Continuity

In the event that any administrative agency or court of competent jurisdiction shall determine that any element of any of the foregoing methods of distributing the Allocations and/or financial benefits thereof is unauthorized or illegal, the Customer shall propose an alternative method of distribution, not necessarily limited to those described above, and

the Authority shall promptly determine whether to accept such alternative method. Such acceptance shall not be unreasonably withheld.

E Right to Alternate Between Methods

Customer shall have the right at its discretion and without restriction to alternate between the methods for the distribution of the benefits of the Allocation as set forth in Sections A through D above, upon giving sixty (60) days written notice to the Authority.

F. Market Administration

Notwithstanding anything to the contrary in the Agreement, if Customer and/or Customer's Authorized Recipient elects to convert the Allocation into financial settlements for use as payments or credits pursuant to Sections A or B above, the Authority may in its discretion schedule the Allocation into the NYISO administered market for financial settlement; such financial settlement, less the Authority's costs calculated using tariff rates as described in Article V of the Agreement, shall be provided to Customer, Customer's Authorized Recipient, or Customer's Agent, as the case may be, for disposition pursuant to the terms of a separate agreement between Authority, Customer and either Customer's Agent or Customer's Authorized Recipient, or both.

In the event that the Authority determines, in its discretion, not to use the foregoing method of scheduling the Allocation into the NYISO administered market for financial settlement, the Authority will provide reasonable notice to Customer of its intent to discontinue such method and assist Customer in making other arrangements to effect the delivery of the benefits of the Allocation to Customer or Ultimate Users.

This Section F is intended as an additional method of providing the benefits of the Allocation and is not intended to limit in any way the right to use other methods of providing such benefits, as set forth in the Agreement, including this Appendix A.

Appendix B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to Customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. The RSR is calculated consistent with Service Tariff HC-1 provisions regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Customers’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include Ancillary Services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining energy assigned costs by the annual metered generation.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the megawatts sold from the Niagara/St. Lawrence projects, as determined solely in the Authority’s discretion, in the various ISO auction markets.

5. Calculate the difference between the cost-based energy rate and the billed preference energy rate.
6. Multiply the difference in the rates by the actual annual billed preference energy sales to determine the annual change in the RSR.
7. Add the annual change to the RSR balance from the prior year-end to get the current year-end RSR balance.
8. If the current year-end balance is in excess of +/- \$25 million, the excess would be subject to a credit or a surcharge in the subsequent rate year.



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

Electric Service Tariff for Host Communities
Firm Hydroelectric Power Service

Service Tariff No. HC-1

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Schedule of Rates for Firm Hydroelectric Power and Energy Service

I. Applicability

To sale of Niagara Hydroelectric Project firm power and energy to the Host Communities customers and/or their Authorized Recipients eligible for cost-based service under the Niagara Relicensing Settlement Agreement.

II. Abbreviations and Terms

A. The following abbreviations are used:

kW	kilowatt(s)
kWh	kilowatt-hour(s)
NYPA	New York Power Authority
NYISO	New York Independent System Operator

B. The term “Agreement” means contract for the Sale of Niagara Project Power and Energy between Authority and Customer.

C. The term “Authority” means New York Power Authority, an alternative name for the Power Authority of the State of New York.

D. The term “Customer” means a Host Community defined in the Agreement.

E. The term “Customer’s Agent” may include, without limitation, a public utility, Load Service Entity, Municipal Distribution Agency, load aggregator or other entity authorized to purchase, sell and/or deliver or cause to be delivered electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

F. The term “Power” or “Firm Hydroelectric Power” means capacity (kW) from Project, intended to be available at all times except for limitations provided in the Agreement(s), the Rules, this Service Tariff or in other contract documents. Firm Power shall not include peaking power.

G. The term “Energy” or “Firm Hydroelectric Energy” means energy (kWh) associated with Firm Hydroelectric Power.

- H. The term “Project” means the Authority’s Niagara Hydroelectric Project.
- I. The term “Rules” means Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, 21 NYCRR § 454) as now in effect and as may be later amended from time to time by Authority.
- J. The term “Service Tariff” means this Service Tariff No. HC-1.

III. Monthly Rates and Charges

A. Monthly Base Rates

The monthly demand and energy charges paid by Customer to Authority shall be based on the preference power rates charged by Authority, as shown below.

<u>Period</u>	<u>Demand Rate</u> \$/kW-month of contract demand	<u>Energy Rate</u> Mills/kWh
5/1/2013 through 4/30/2014	3.91	4.92
5/1/2014 through 4/30/2019	4.07	4.92
5/1/2019 through 4/30/2020	4.07	4.92

The demand and energy rates set forth above shall apply at the Project switchyard.

B. Minimum Monthly Charge

The product of the demand rate set forth above and the contract demand.

C. Billing Energy

Energy provided by Authority under this Service Tariff.

D. Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month.

E. Contract Demand

The amounts set forth in the applicable Agreement(s) between Authority and Customer.

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

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority, if any, for services provided by the NYISO or any successor organization pursuant to its Open Access Transmission Tariff ("OATT") or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) which are associated with

Customer's purchase of hydro power and energy under its contract for the sale of hydro power and energy with Authority:

1. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
2. Marginal losses;
3. The New York Power Authority Transmission Adjustment Charge ("NTAC");
4. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
5. Any and all other charges, assessments or other amounts associated with deliveries to Customer that are assessed on the Authority by the NYISO or any successor organization under the provisions of its OATT or under other applicable tariffs; and
6. Any charges assessed on the Authority with respect to 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 NYPA with respect to service to Customers), applicable tariffs or required to be paid by the Authority in accordance with law, whether charged by the NYISO or some other third party.

The NYISO Charges in this section are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

G. Taxes and Other Charges

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

IV. General Provisions

General Provisions for service supplementing or modifying the Rules and Regulations for Power Service and this Service Tariff with regard to deliveries to Customer are as follows:

A. Character of Service

Alternating current, 60 hertz, three-phase.

B. Availability of Energy

Unless otherwise agreed upon by the parties, Authority shall normally provide in any billing period Firm Hydroelectric Energy to Customer and/or Customer's Authorized Recipient in an amount equal to the product of (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement. The Authority will have the right to reduce on a pro rata basis the amount of Firm Hydroelectric Energy provided to Customer and/or Customer's Authorized Recipient if such reductions are necessary due to low flow (i.e., hydrologic) conditions at the Authority's Niagara and St. Lawrence-FDR hydroelectric generating stations. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Customer and/or Customer's Authorized Recipient in later billing periods. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer and/or Customer's Authorized Recipient. The Authority shall provide reasonable notice, to the extent possible, to Customer and Customer's Authorized Recipient 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.

Unless otherwise specified in the Agreement, where Customer is taking service solely from Authority, the billing energy shall be the total number of kilowatt-hours recorded on Customer's and/or Customer's Authorized Recipient's meter (or the meters of entities served by Customer and/or Customer's Authorized Recipient as indicated in the Agreement) during the billing period, adjusted for losses.

Unless otherwise specified in the Agreement, where Customer and/or Customer's Authorized Recipient takes service from other sources in addition to service supplied hereunder, the billing energy shall be determined by multiplying (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement.

C. Adjustment of Rates

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

D. Adjustment of Charges

Power Factor

Not less than 95% lagging or leading, except as otherwise specified in the Agreement.

E. Delivery

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be delivered by Authority at the Project switchyard to the transmission facilities under the control of the NYISO for delivery to Customer and/or Customer's Authorized Recipient.

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be deemed to be offered when Authority is able to supply Firm Hydroelectric Power and Energy and NYISO transmits it to Customer and/or Customer's Authorized Recipient or its designated points of interconnection with Customer's Agent at the Project switchyard. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer and/or Customer's Authorized Recipient. If, despite such offer, there is a failure of delivery by Customer, Customer's Authorized Recipient, or Customer's Agent, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

F. Scheduling Procedures

1. Authority will advise Customer, and Customer's Authorized Recipient, or Customer's Agent by the tenth (10th) Business Day of the preceding month of the estimated quantity of Firm Hydroelectric Energy expected to be made available from the Project.
2. Authority may require that such Firm Hydroelectric Energy from the Project be scheduled in general accordance with the individual system load shapes of Customer, Customer's Authorized Recipient, or Customer's Agent or as otherwise agreed upon by the Customer and Authority.

3. Customer, Customer's Authorized Recipient, or Customer's Agent shall file with Authority pursuant to procedures established by Authority, a daily schedule setting forth the Customer's and/or Customer's Authorized Recipient's requested amounts from the Project on a clock hour basis.
4. Subsequent to Authority approval of schedules for any day, Authority and Customer, Customer's Authorized Recipient, or Customer's Agent may agree on changes in such schedules subject to NYISO scheduling requirements and procedures Authority shall establish such that an efficient dispatch of Authority facilities will be accomplished.

G. Payment by Customer and/or Customer's Authorized Recipient for Firm Hydroelectric Power and Energy

1. Customer and/or Customer's Authorized Recipient shall pay for Firm Hydroelectric Power and Energy during any billing period the sum of a) and b) below:
 - a. The demand rate per kW for Firm Hydroelectric Power specified in this Service Tariff or any modification thereof applied to Customer's contract demand for the billing period; and
 - b. The energy rate specified in this Service Tariff or any modification thereof applied to the amount of Firm Hydroelectric billing energy delivered by Authority to Customer and/or Customer's Authorized Recipient during such billing period.
2. 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 Authority. In the event that there is a dispute on any items of a bill rendered by Authority, Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

H. Supplementary Provision

Sections 454.2 (c) and 454.5 of the Rules are inapplicable to this Service Tariff.

I. Alternate Arrangements

Notwithstanding general provisions E, F and G above, Authority, Customer, Customer's Authorized Recipient and/or Customer's Agent may make alternate arrangements regarding Delivery, Scheduling Procedures and Payment by Customer for Firm Hydroelectric Power and Energy consistent with the terms of the Agreement or other contract documents.

J. Conflicts

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

V. Flow Adjustment Computation ("FAC")

The energy charges under this Service Tariff, and the applicable service tariffs associated with both the Project and the St. Lawrence-FDR Hydroelectric Project, in the aggregate, are subject to a credit or surcharge pursuant to a FAC in any rate year following a calendar year for which the Hydroelectric Project Rate Stabilization Reserve ("RSR") is greater than \$+25 million, or less than \$-25 million, respectively. The RSR will be used to ensure rate stability and cost recovery and its level will be determined and any credit or surcharge for the succeeding rate year will be calculated after the prior calendar year's costs and generation levels are known. Any credit or surcharge will be applied on a uniform basis to the monthly billing statements rendered pursuant to this Service Tariff during the succeeding rate year.

The FAC is inapplicable in any rate year succeeding a calendar year at the end of which the RSR is within the \$+25 million to \$-25 million range. If at the end of any calendar year, the RSR is determined to exceed \$+25 million, such excess amount will be credited pro-rata to Customers during the succeeding rate year pursuant to the FAC. If the RSR at the end of any calendar year is determined to be less than \$-25 million, the difference below \$-25 million will be surcharged pro-rata to Customers during the succeeding rate year pursuant to the FAC.

To the extent that there is a balance in the RSR (positive or negative) on the effective date of service under the applicable Agreement(s), arising out of service under a prior agreement for the sale of Project power and energy, that RSR balance shall be carried forward and maintained as the balance as of the effective date of service under such applicable Agreement(s).

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT POWER AND ENERGY

Between the
POWER AUTHORITY
OF THE
STATE OF NEW YORK
and the
TUSCARORA NATION

30 South Pearl Street
Albany, New York

Service Tariff No. TN-1 - Firm Hydroelectric Power and Energy

Month 2025

POWER AUTHORITY OF THE STATE OF NEW YORK

**30 South Pearl Street
Albany, New York 12207**

and the

TUSCARORA NATION

AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY

SERVICE TARIFF No. TN-1 – Firm Hydroelectric Power and Energy

(TUSCARORA NATION)

Tuscarora Nation (“Nation”) hereby enters into this Agreement with the Power Authority of the State of New York for electric service as follows:

I. Definitions

- a. Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.
- b. Agreement** means this Agreement.
- c. Allocation** shall mean the amount of power and associated energy that the Authority has allocated to The Nation hereunder.
- d. Ancillary Services** shall be as defined by the NYISO in its rules, tariffs, manuals and procedures.
- e. Authority** is the Power Authority of the State of New York.
- f. Commencement Date** shall be as set forth in Article XVII.
- g. Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

- h. **Electric Service** is Power and Energy available to The Nation in accordance with applicable Service Tariffs, Rules and other contract documents.
- i. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- j. **FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.
- k. **Firm Hydroelectric Power and Energy** are firm power and associated energy from the Authority's Niagara Power Project, intended to be available at all times except for limitations provided in this Agreement, the Rules, applicable Service Tariff or in other contract documents.
- l. **Green Attributes** are attributes associated with renewable energy power production facilities as recorded in the New York Generation Attribute Tracking System administered by The New York State Energy Research and Development Authority.
- m. **"Load Reduction"** has the meaning set forth in Article VIII.f of this Agreement.
- n. **Load Serving Entity** Is an entity authorized or required by law, regulatory authorization or requirement, agreement, or contractual obligation to supply Energy, Capacity and/or Ancillary Services to the Nation under the rules, tariffs, manuals and procedures of the NYISO.
- o. **Nation** is the Tuscarora Nation, a federally recognized sovereign Indian nation.
- p. **Nation-Arranged Energy** means energy the Nation itself procures from sources other than the Authority for the purpose of replacing Firm Hydroelectric Energy that is not supplied to the Nation due to a Planned Hydropower Curtailment.
- q. **Nation's Agent** is defined in Article IX.
- r. **NRA** means the federal Niagara Redevelopment Act (18 USC §§836, 836a)
- s. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- t. **Planned Hydropower Curtailment** means a temporary reduction in Firm Energy to which the Nation is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.
- u. **Project** means the Niagara Power Project, FERC Project No. 2216.

- v. **Project Power and Energy** means Firm Hydroelectric Power and Energy produced by the Project.
- w. **Project Switchyard** is the Niagara Project switchyard.
- x. **Relicensing Settlement Agreement** means the Relicensing Settlement Agreement Between the Power Authority of the State of New York and the Tuscarora Nation executed August 1, 2005.
- y. **Rules** are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).
- z. **Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to the Nation.
- aa. **Substitute Energy** means energy that is provided to the Nation by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Nation due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.
- bb. **Ultimate Users** are entities to whom the Nation will convey benefits associated with Project Power and Energy purchased from the Authority as provided in Article VI of this Agreement and Appendix A hereto. The Nation may designate itself as an Ultimate User.
- cc. **Unforced Capacity** is the capacity required to be provided by Load Serving Entities to serve load as defined by the NYISO in its rules, tariffs, manuals and procedures.
- dd. **Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy to which the Nation is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to a Service Tariff for Power and/or Energy to enable the Nation to receive the Allocation from the Project in accordance with the provisions of the FERC License and Relicensing Settlement Agreement, in the amount set forth below:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. TN-1: 1,000 KiloWatts (Contract Demand)

The Authority shall provide Unforced Capacity in amounts necessary to meet the NYISO Unforced Capacity requirements associated with the foregoing Allocation in

accordance with the rules and tariffs of the NYISO. Neither Ancillary Services, nor Green Attributes are included in such allocation.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction.

III. Rules, Regulations and Service Tariffs

The Rules and Service Tariff No. TN-1, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between Articles I through XVII of this Agreement and either the Rules or the Service Tariffs, the provisions of Articles I through XVII of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to the Nation of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State if that period of minimum notice is greater than herein referenced.

IV. Transmission and Delivery of Power and Energy

Authority shall make Project Power and Energy available to the Nation at the Project Switchyard. It is the Nation's responsibility to act as the Load Serving Entity ("LSE"), arrange for another entity to do so on its behalf or make other arrangements for conveying the benefits associated with the allocation to Ultimate Users. The Nation shall be responsible for all costs associated with the transmission and delivery of the Allocation.

V. Rates

Project Power and Energy shall be sold to the Nation hereunder at cost-based rates equivalent to rates charged to in-state preference customers receiving preference power under the NRA.

The Nation does not object to the Authority's use of any of the following methodologies and principles¹ to set rates different from those adopted by the Authority's Trustees in their meeting on April 29, 2003 and November 15, 2011:

¹ These methodologies and principles were employed in and explained by (1) the Authority's January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on April 29, 2003; (2) *the RSR explanatory*

- (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 as supplemented by the explanatory statement attached hereto as Appendix B
- (viii) Unforced Capacity (“UCAP”) sales credited to Cost of Service, based on the quantity of megawatts from the Project, determined solely in the Authority’s discretion, sold into the NYISO auctions.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Nation may take any position whatsoever with respect to such methodology or principle, but will not object to any of the remaining methodologies and principles that continue to be employed by the Authority. Notwithstanding the foregoing, nothing in this Article V shall limit: (1) the Authority and the Nation from entering into good faith negotiations to change the above methodologies and principles, or (2) the Authority from adopting changes to these methodologies and principles in accordance with a rulemaking proceeding addressing cost-based rates for preference power done under the New York State Administrative Procedure Act.

statement attached hereto as Appendix B; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

VI. Use and Resale of Project Power and Energy, Recovery of Costs

The Nation shall use the Allocation for its facilities, for Ultimate Users or as otherwise allowed in accordance with this Agreement and Appendix A hereof.

Except as otherwise provided in Appendix A hereof, The Nation shall distribute the Allocation to the Ultimate Users identified in Appendix A, consistent with Section 5.2 (d) of the Relicensing Settlement Agreement. The Nation shall have the right to recover from the Ultimate Users as Nation Costs its direct administrative and services costs, reasonable compensation for use of third party facilities and services furnished to the Nation in the transmission and distribution of such power and all costs associated with negotiating the Agreement and the establishment of mechanisms to accept and distribute the Allocation incurred after the execution of the Relicensing Settlement Agreement executed August 1, 2005. Such Costs shall be reimbursed to The Nation or otherwise paid by the Ultimate Users by procedures to be determined by the Nation.

The Nation shall require its Agent to make available to the Authority upon request such records as may be reasonably necessary for the Authority to determine that the Allocation has been distributed in compliance with Appendix A.

The Nation may authorize a statement to accompany the distribution of the benefits of the Allocation to Ultimate Users indicating the total savings in dollars realized by the individual Ultimate User for the particular billing period as a result of the purchase of hydroelectric power and energy by the Nation from the Authority.

VII. Availability of Energy.

Subject to any other limitations set forth in the Rules or the Service Tariff (including low-flow conditions), if the Nation provides the Allocation to Ultimate Users for physical delivery to such Users' accounts as set forth in Appendix A, Authority will supply the Nation's (or Ultimate Users', as the case may be) entire demand and energy usage up to the Contract Demand. If there is any portion of the energy associated with the Allocation made available to the Nation at a monthly load factor of seventy percent (70%) (pursuant to the Authority's regular scheduling requirements) that is not required to serve such Ultimate User's facilities, such energy may be utilized as Excess Power in the manner described in Appendix A.

For any usage above the Contract Demand, it is The Nation's responsibility to arrange for provision of such excess service by a third party supplier, and the apportionment of energy between suppliers shall be as set forth in Service Tariff No. TN-1, or any successor tariff.

Subject to any other limitations set forth in the Rules or Service Tariff (including low-flow conditions), if the Nation provides the benefits of the Allocation to Ultimate Users in the form of Power Credits as set forth in Appendix A, the Allocation will be delivered at a monthly load factor of seventy percent (70%) pursuant to the Authority's regular scheduling requirements.

VIII. Hydro Curtailments and Substitute Energy

- a. The Nation shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Nation-Arranged Energy, for the purpose of replacing Firm Hydroelectric Energy that is not supplied to the Nation due to a Planned Hydropower Curtailment. The Nation shall make its election in accordance with the time period and other requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.
- b. The Nation may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Nation intends such change to become effective. Such change shall be effective on the first day of January following the Authority's receipt of the Nation's notice and shall remain in effect unless it is changed in accordance with the provisions of Article VIII.a.
- c. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Nation with advance notice of Planned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Nation no later than the tenth business day of the month prior to the month in which the Planned Hydropower Curtailment is expected to occur unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.
- d. If the Nation elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Nation during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Nation to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Nation.
- e. If the Nation elected to rely on Nation-Arranged Energy, the Authority shall have no responsibility to provide the Nation with Substitute Energy during any Planned Hydropower Curtailment, and the Nation shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Nation-Arranged Energy.
- f. The Nation shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Nation shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction

will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Nation shall reimburse the Authority for all costs that the Authority incurs as a result of the Nation's failure to provide such notice.

- g. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.
- h. The Authority will provide the Nation with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Nation within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Nation with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.
- i. Notwithstanding the Nation's election pursuant to Article VIII.a, the Authority shall provide the Nation with Substitute Energy during Unplanned Hydropower Curtailments, provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration the Authority determines is reasonable considering the circumstances, including but not limited to the operating procedures of the Authority, third-party transmission or delivery utilities who deliver the Substitute Energy, and the NYISO.
- j. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Nation shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for Firm Hydroelectric Energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. TN-1 relating to the rendition and payment of bills for Electric Service.
- k. The Nation shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. TN-1 and the Rules relating to the rendition and payment of bills for Electric Service. The Authority's failure to

provide notice pursuant to Article VIII.c or Article VIII.h shall not affect the Nation's obligation to pay for Substitute Energy.

- l. The Authority will provide the Nation with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to the Nation for Substitute Energy.
- m. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Nation in later billing periods.
- n. The Nation shall not be entitled to power and energy sourced from another Authority power facility, including another Authority hydropower project, as Substitute Energy.

IX. Appointment of Nation's Agent

Upon reasonable prior written notice to the Authority, the Nation shall have the right to delegate to an agent any or all duties under this Agreement (the "Nation's Agent") and the Authority acknowledges that such duties may be performed by the Nation's Agent. Duties delegated to the Nation's Agent may include the keeping of all records pertaining to the distribution of the Allocation, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by the Nation; provided that the Nation may choose to assume and perform any or all of the duties previously delegated to the Nation's Agent and provided further that nothing herein, including the Nation's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of the Nation's duties and obligations under its Agreement with the Authority. The Nation may, on reasonable prior written notice to the Authority, designate a different party as the Nation's Agent at any time during the term of this Agreement.

X. Term and Termination of Service

Service under the Agreement shall begin on the Commencement Date and shall continue until the earliest of (a) termination by the Nation with respect to all or part of its Allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) September 1, 2041, at which time a new agreement will be entered between the Authority and the Nation to provide the Nation with Project Power and Energy for the remainder of the licensing period in the amount and for the rate then in effect which complies with the terms of the Relicensing Settlement Agreement. If such a new agreement is not in place to take effect after September 1, 2041, service will be continued under the terms and conditions of this Agreement on a year to year basis or until a new agreement takes effect between the parties.

The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to the Nation only (a) 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 (b) as otherwise provided herein or in the Rules. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Nation and Authority.

Notwithstanding the termination provisions of this Article, the Nation may pause the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice. The Nation may recommence the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice.

Nothing herein is intended to limit the rights of the Nation under the Relicensing Settlement Agreement, and the Authority and the Nation understand and agree that the Authority is obligated under such Relicensing Settlement Agreement to make a total of **1.0** MW of Project Power and Energy available to The Nation for the term of the FERC License, whether through extension of this Agreement or by subsequent agreement.

XI. Notification

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

o: Authority

Manager – Power Contracts & Tariffs
New York Power Authority
123 Main Street
White Plains, NY 10601

To: The Nation

Chief Leo R. Henry
Tuscarora Nation
2006 Mt. Hope Rd.
via Lewiston, NY 14092

XII. Applicable Law, Sovereign Immunity and Venue

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. Any action or proceeding arising out of or relating to this Agreement shall be brought in a court of competent jurisdiction located in Albany County, New York. Nothing in this Agreement shall be construed as, or is intended to constitute, waiver of sovereign immunity or of any other aspect of the sovereignty of the Tuscarora Nation or the State of New York.

Nor shall anything in this agreement be construed as a waiver by the Authority of its right under the Rules to discontinue furnishing electric service to the Nation for the nonpayment of bills.

XIII. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained, which consent shall not be unreasonably withheld.

XIV. Previous Agreements and Communications

This Agreement, together with the Relicensing Settlement Agreement, shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such Agreements supersede all previous communications between the Parties hereto, either oral or written, with reference to the subject matter hereof.

No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XV. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act and of the Nation's Chiefs in Council by written resolution or other procedure consistent with the laws of the Nation, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with applicable Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

XVI. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement 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 void and unenforceable.

XVII. Effectiveness of Agreement

This Agreement shall take effect on the date of this Agreement's execution under Article XV above.

THE NATION

BY: _____

Name: _____

Title: _____

Date: _____

POWER AUTHORITY OF THE STATE OF NEW YORK

BY: _____

Name: _____

Title: _____

Date: _____

Appendix A

The Nation will initially distribute power and energy purchased from the New York Power Authority under the Agreement or the economic benefit of such power and energy to the following Ultimate Users:

1. The Nation.
2. Individual consumers within the Nation as designated by the Nation.

The Nation may change the Ultimate Users or class of Ultimate Users on thirty (30) day's notice to the Authority.

The benefits of the Allocation shall be provided to such Ultimate Users either by direct sale or by allocation by the Nation (or by the Nation's Agent) of electricity or the provision of bill credits, as set forth below, or through different methods approved by the Authority.

The listing of the foregoing Ultimate Users in no way mandates or requires for any reason that the Nation provide any portion of the Allocation (or Power Credits) to an Ultimate User and shall not preclude the Nation from denying any such Ultimate User the benefits associated with an allocation for any reason as determined by the Nation.

A. Direct Sale / Allocation, Use of Excess Power

The Nation may make a portion of the Allocation available to an Ultimate User for delivery at such Ultimate User's electricity accounts under applicable law. If there is any portion of the Allocation made available to The Nation that is not required to serve such Ultimate User's facilities, such Excess Power (up to the load factor specified in the Agreement) may be utilized as follows:

1. The Nation or the Nation's Agent may schedule Excess Power into the NYISO administered market for financial settlement, and such financial settlement so received by the Nation (less the Nation's Costs as set forth in Article VI of the Agreement and the cost of the power and energy purchased from the Authority), shall be applied by the Nation to payment of the Nation's (or an Ultimate User's, as the case may be) energy-related costs, included but not limited to, the purchase of energy commodities, the delivery and transportation of electricity and all other energy commodities and/or for energy efficiency or clean energy technology programs or projects.
2. The Nation may use the Excess Power (or the benefits associated with such Excess Power derived from a financial settlement as set forth in the preceding Paragraph 1) for economic development by providing credits to a business to apply against the cost and/or delivery of power or energy consumed by such business.

B. Power Credits

The Nation, or the Nation's Agent, may schedule all of its Allocation (up to the load factor specified in the Agreement) into the NYISO administered market for financial settlement, and such financial settlement so received by the Nation (less the Nation's Costs as set forth above and the cost of the power and energy purchased from the Authority), may be provided to Ultimate Users in the form of Power Credits by the Nation as follows:

Power Credits may be applied towards the cost and/or delivery of electric power or energy consumed by the Ultimate User or for energy-related costs, including but not limited to, the purchase of energy commodities, for the delivery and transportation of electricity and all other energy commodities, for energy efficiency or clean energy technology programs or projects and/or for economic development by providing credits to a business to apply against the cost and/or delivery of power or energy consumed by such business.

C. Right to Alternate Between Methods

The Nation shall have the right at its discretion and without restriction to alternate between the methods for the distribution of the benefits of the Allocation as set forth in Sections A and B above, upon giving sixty (60) days written notice to the Authority.

D. Market Administration

Notwithstanding anything to the contrary in the Agreement, if the Nation elects to convert the Allocation into bill credits pursuant to Sections A or B above, the Authority may in its discretion schedule the Allocation into the NYISO administered market for financial settlement; such financial settlement, less the Authority's costs calculated using tariff rates as described in Article V of the Agreement, shall be provided to the Nation or the Nation's Agent, as the case may be, for disposition pursuant to the terms of a separate agreement with the Authority and the Nation (and the Nation's Agent, if appropriate).

In the event that the Authority determines, in its discretion, not to use the foregoing method of scheduling the Allocation into the NYISO administered market for financial settlement, the Authority will provide reasonable notice to the Nation of its intent to discontinue such method and assist the Nation in making other arrangements to effect the delivery of the benefits of the Allocation to the Nation or Ultimate Users.

Appendix B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. The RSR is calculated consistent with Service Tariff TN-1 provisions regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Nations’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include Ancillary Services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining energy assigned costs by the annual metered generation.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the megawatts sold from the Niagara/St. Lawrence projects, as determined solely in the Authority’s discretion, in the various ISO auction markets.

5. Calculate the difference between the cost-based energy rate and the billed preference energy rate.
6. Multiply the difference in the rates by the actual annual billed preference energy sales to determine the annual change in the RSR.
7. Add the annual change to the RSR balance from the prior year-end to get the current year-end RSR balance.
8. If the current year-end balance is in excess of +/- \$25 million, the excess would be subject to a credit or a surcharge in the subsequent rate year.



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

Electric Service Tariff for Tuscarora Nation
Firm Hydroelectric Power Service

Service Tariff No. TN-1

Date of Issue: May 1, 2017

Date Effective: May 2017 Bill Period

Issued by Keith T. Hayes, Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

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Schedule of Rates for Firm Hydroelectric Power and Energy Service

I. Applicability

To sale of Niagara Hydroelectric Project firm power and energy to the Tuscarora Nation pursuant to the Relicensing Settlement Agreement between Authority and the Tuscarora Nation executed on August 1, 2005.

II. Abbreviations and Terms

A. The following abbreviations are used:

kW	kilowatt(s)
kWh	kilowatt-hour(s)
NYPA	New York Power Authority
NYISO	New York Independent System Operator

B. The term “Agreement” means contract for the Sale of Niagara Project Power and Energy between Authority and Nation.

C. The term “Authority” means New York Power Authority, an alternative name for the Power Authority of the State of New York.

D. The term “Customer” or “Nation” means the Tuscarora Nation, a federally recognized sovereign Indian nation.

E. The term “Nation’s Agent” may include, without limitation, a public utility, Load Service Entity, Municipal Distribution Agency, load aggregator or other entity authorized to purchase, sell and/or deliver or cause to be delivered electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

F. The term “Power” or “Firm Hydroelectric Power” means capacity (kW) from Project, intended to be available at all times except for limitations provided in the Agreement(s), the Rules, this Service Tariff or in other contract documents. Firm Power shall not include peaking power.

G. The term “Energy” or “Firm Hydroelectric Energy” means energy (kWh) associated with Firm Hydroelectric Power.

H. The term “Project” means the Authority’s Niagara Hydroelectric Project.

- I. The term “Rules” means Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, 21 NYCRR § 454) as now in effect and as may be later amended from time to time by Authority.
- J. The term “Service Tariff” means this Service Tariff No. TN-1.

Date of Issue: May 1, 2017

Date Effective: May 2017 Bill Period

Issued by Keith T. Hayes, Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

III. Monthly Rates and Charges

A. Monthly Base Rates

The monthly demand and energy charges paid by Nation to Authority shall be based on the preference power rates charged by Authority, as shown below.

<u>Period</u>	<u>Demand Rate</u> \$/kW-month of contract demand	<u>Energy Rate</u> Mills/kWh
5/1/2013 through 4/30/2014	3.91	4.92
5/1/2014 through 4/30/2019	4.07	4.92
5/1/2019 through 4/30/2020	4.07	4.92

The demand and energy rates set forth above shall apply at the Project switchyard.

B. Minimum Monthly Charge

The product of the demand rate set forth above and the contract demand.

C. Billing Energy

Energy provided by Authority under this Service Tariff.

D. Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month.

E. Contract Demand

The amounts set forth in the applicable Agreement(s) between Authority and Nation.

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

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority, if any, for services provided by the NYISO or any successor organization pursuant to its Open Access Transmission Tariff ("OATT") or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) which are associated with

Customer's purchase of hydro power and energy under its contract for the sale of hydro power and energy with Authority:

1. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
2. Marginal losses;
3. The New York Power Authority Transmission Adjustment Charge ("NTAC");
4. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
5. Any and all other charges, assessments or other amounts associated with deliveries to Customers that are assessed on the Authority by the NYISO or any successor organization under the provisions of its OATT or under other applicable tariffs; and
6. Any charges assessed on the Authority with respect to 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 NYPA with respect to service to Customers), applicable tariffs or required to be paid by the Authority in accordance with law, whether charged by the NYISO or some other third party.

The NYISO Charges in this section are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

G. Taxes and Other Charges

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

IV. General Provisions

General Provisions for service supplementing or modifying the Rules and Regulations for Power Service and this Service Tariff with regard to deliveries to Nation are as follows:

A. Character of Service

Alternating current, 60 hertz, three-phase.

B. Availability of Energy

Unless otherwise agreed upon by the parties, Authority shall normally provide in any billing period Firm Hydroelectric Energy to Nation in an amount equal to the product of (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement. The Authority will have the right to reduce on a pro rata basis the amount of Firm Hydroelectric Energy provided to Nation if such reductions are necessary due to low flow (i.e., hydrologic) conditions at the Authority's Niagara and St. Lawrence-FDR hydroelectric generating stations. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Nation in later billing periods. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer. The Authority shall provide reasonable notice, to the extent possible, to Nation 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.

Unless otherwise specified in the Agreement, where Nation is taking service solely from Authority, the billing energy shall be the total number of kilowatt-hours recorded on Nation's meter (or the meters of entities served by Nation as indicated in the Agreement) during the billing period, adjusted for losses.

Unless otherwise specified in the Agreement, where Nation takes service from other sources in addition to service supplied hereunder, the billing energy shall be determined by multiplying (a) the number of hours in such billing period, (b) the contract demand applicable in such billing period and (c) the load factor specified in the Agreement.

C. Adjustment of Rates

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

D. Adjustment of Charges

Power Factor

Not less than 95% lagging or leading, except as otherwise specified in the Agreement.

E. Delivery

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be delivered by Authority at the Project switchyard to the transmission facilities under the control of the NYISO for delivery to Nation.

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be deemed to be offered when Authority is able to supply Firm Hydroelectric Power and Energy and NYISO transmits it to Nation or its designated points of interconnection with the Nation's Agent at the Project switchyard. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Nation. If, despite such offer, there is a failure of delivery by Nation or the Nation's Agent, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

F. Scheduling Procedures

1. Authority will advise Nation or Nation's Agent by the tenth (10th) Business Day of the preceding month of the estimated quantity of Firm Hydroelectric Energy expected to be made available from the Project.
2. Authority may require that such Firm Hydroelectric Energy from the Project be scheduled in general accordance with the individual system load shape of Nation or the Nation's Agent or as otherwise agreed upon by Nation and Authority.
3. Nation or the Nation's Agent shall file with Authority pursuant to procedures established by Authority, a daily schedule setting forth the Nation's requested amounts from the Project on a clock hour basis.

4. Subsequent to Authority approval of schedules for any day, Authority and Nation or the Nation's Agent may agree on changes in such schedules subject to NYISO scheduling requirements and procedures Authority shall establish such that an efficient dispatch of Authority facilities will be accomplished.

G. Payment by Nation for Firm Hydroelectric Power and Energy

1. Nation shall pay for Firm Hydroelectric Power and Energy during any billing period the sum of a) and b) below:
 - a. The demand rate per kW for Firm Hydroelectric Power specified in this Service Tariff or any modification thereof applied to Nation's contract demand for the billing period; and
 - b. The energy rate specified in this Service Tariff or any modification thereof applied to the amount of Firm Hydroelectric billing energy delivered by Authority to Nation during such billing period.
2. 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 Authority. In the event that there is a dispute on any items of a bill rendered by Authority, Nation shall pay such bill in full. If necessary, any adjustments will be made thereafter.

H. Supplementary Provision

Sections 454.2 (c) and 454.5 of the Rules are inapplicable to this Service Tariff.

I. Alternate Arrangements

Notwithstanding general provisions E, F and G above, Authority and Customer (and the Nation's Agent, if appropriate) may make alternate arrangements regarding Delivery, Scheduling Procedures and Payment by Customer for Firm Hydroelectric Power and Energy consistent with the terms of the Agreement or other contract documents.

J. Conflicts

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

V. Flow Adjustment Computation ("FAC")

The energy charges under this Service Tariff, and the applicable service tariffs associated with both the Project and the St. Lawrence-FDR Hydroelectric Project, in the aggregate, are subject to a credit or surcharge pursuant to a FAC in any rate year following a calendar year for which the Hydroelectric Project Rate Stabilization Reserve ("RSR") is greater than \$+25 million, or less than \$-25 million, respectively. The RSR will be used to ensure rate stability and cost recovery and its level will be determined and any credit or surcharge for the succeeding rate year will be calculated after the prior calendar year's costs and generation levels are known. Any credit or surcharge will be applied on a uniform basis to the monthly billing statements rendered pursuant to this Service Tariff during the succeeding rate year.

The FAC is inapplicable in any rate year succeeding a calendar year at the end of which the RSR is within the \$+25 million to \$-25 million range. If at the end of any calendar year, the RSR is determined to exceed \$+25 million, such excess amount will be credited pro-rata to Customers during the succeeding rate year pursuant to the FAC. If the RSR at the end of any calendar year is determined to be less than \$-25 million, the difference below \$-25 million will be surcharged pro-rata to Customers during the succeeding rate year pursuant to the FAC.

To the extent that there is a balance in the RSR (positive or negative) on the effective date of service under the applicable Agreement(s), arising out of service under a prior agreement for the sale of Project power and energy, that RSR balance shall be carried forward and maintained as the balance as of the effective date of service under such applicable Agreement(s).

POWER AUTHORITY
OF THE
STATE OF NEW YORK

30 South Pearl Street
Albany, New York

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT POWER AND ENERGY
TO NIAGARA UNIVERSITY

Service Tariff No. NP-1- Firm Non-Preference
Hydroelectric Power and Energy

Month 2025

POWER AUTHORITY OF THE STATE OF NEW YORK

**30 South Pearl Street
Albany, New York**

AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY

**SERVICE TARIFF No. NP-1 – Firm Hydroelectric Power and Energy
(NIAGARA UNIVERSITY)**

Niagara University hereby enters into this Agreement with the Power Authority of the State of New York for electric service as follows:

I. Definitions

- a. Adverse Water Condition** means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.
- b. Agreement** means this Agreement.
- c. Authority** is the Power Authority of the State of New York.
- d. Contract Demand** will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.
- e. Customer** is Niagara University.
- f. Customer-Arranged Energy** means energy the Customer itself procures from sources other than the Authority for the purpose of replacing Firm Hydroelectric Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.
- g. Electric Service** is Power and Energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.
- h. FERC** means the Federal Energy Regulatory Commission (or any successor organization).

- i. **FERC License** means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.
- j. **Firm Hydroelectric Power and Energy** are firm power and associated energy from the Authority's Niagara Power Project, intended to be available at all times except for limitations provided in this Agreement, the Rules, applicable Service Tariff or in other contract documents.
- k. **Load Reduction** has the meaning set forth in Article VI.f of this Agreement.
- l. **NRA** means the federal Niagara Redevelopment Act (18 USC §§836, 836a)
- m. **NYISO** means the New York Independent System Operator or any successor organization.
- n. **Planned Hydropower Curtailment** means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.
- o. **Project** means the Niagara Power Project, FERC Project No. 2216.
- p. **Project Power and Energy** means Firm Hydroelectric Power and Energy produced by the Project.
- q. **Relicensing Settlement Agreement** means the Niagara University Relicensing Settlement Agreement dated May 23, 2006 between Niagara University and the Authority.
- r. **Rules** are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).
- s. **Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.
- t. **Substitute Energy** means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.
- u. **Unplanned Hydropower Curtailment** means a temporary reduction in the amount of Firm Hydroelectric Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License and Relicensing Settlement Agreement, in the amounts set forth below:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NP-1 - 3,000 KiloWatts (Contract Demand)

The Authority shall provide Unforced Capacity in amounts necessary to meet Customer's NYISO Unforced Capacity obligations associated with the foregoing allocation of Firm Non-preference Hydroelectric Power and Energy Service in accordance with the rules and tariffs of the NYISO. Neither Ancillary Services (as defined in the rules and tariffs of the NYISO), nor renewable or "green" attributes are included in such allocation.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction.
- c. To prevent unintentional impermissible resale of the hydro allocation there shall be an energy reconciliation/true-up. Customer shall not object to Authority's access to the local utility's hourly interval meter(s) data for the Customer.
- d. The Authority will recover from the Customer the value of any over-scheduled portion(s) of the hydro allocation (kWh), at the Customer's load factor, that was not consumed by the Customer. The value shall be the difference between the rates in ST NP-1 and the rates in the NYISO's Real-Time LBMP for those hours.

III. Rules, Regulations and Service Tariffs

The Rules and Service Tariff No. NP-1 (NP-1), as now in effect and/or such superseding tariff(s) or other tariff(s) as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

IV. Transmission and Delivery of Power and Energy

Authority shall make Project Power and Energy available to Customer at the Project Switchyard. It is the Customer's responsibility to act as the Load Serving Entity ("LSE") or arrange for another entity to do so on its behalf. Customer, or the entity acting as LSE on its behalf, shall arrange for the transmission of the Project Power and Energy supplied hereunder from the Project Switchyard to Customer's points of delivery consistent with the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO and Customer shall be responsible for all costs associated with the transmission and delivery of the allocation.

V. Rates

Project Power and Energy shall be sold to Customer hereunder at rates equivalent to the lowest production rate charged by the Power Authority (directly or indirectly) to an entire class of Western New York hydropower business customers (including for example, Replacement or Expansion Power customers) plus any charges assessed or imposed in connection with such supply by the New York Independent System Operator. Such rates are currently as set forth in the attached Service Tariff NP-1, which tariff may be amended from time to time consistent with the foregoing.

VI. Hydro Curtailments and Substitute Energy

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

that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.

- d. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.
- e. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.
- f. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer's failure to provide such notice.
- g. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.
- h. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond.
- i. Notwithstanding the Customer's election pursuant to Article VI.a, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments, provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration the Authority determines is reasonable considering the circumstances, including but not limited

to the operating procedures of the Authority, third-party transmission or delivery utilities who deliver the Substitute Energy, and the NYISO.

- j. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for Firm Hydroelectric Energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. NP-1 relating to the rendition and payment of bills for Electric Service.
- k. The Customer shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. NP-1 and the Rules relating to the rendition and payment of bills for Electric Service. The Authority's failure to provide notice pursuant to Article VI.c or Article VI.h shall not affect the Customer's obligation to pay for Substitute Energy.
- l. The Authority will provide the Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- m. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.
- n. The Customer shall not be entitled to power and energy sourced from another Authority power facility, including another Authority hydropower project, as Substitute Energy.

VII. Appointment of Customer Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority.

Customer may, on reasonable prior written notice to the Authority, designate a different party as Customer's Agent at any time during the term of this Agreement.

VIII. Term and Termination of Service

Once initiated, service under the Agreement shall continue until the earliest of (a) termination by Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) September 1, 2041, at which time a new agreement will be entered between the Authority and the Customer to provide Customer with Project Power and Energy for the remainder of the licensing period in the amount and for the rate then in effect which complies with the terms of the Niagara University Relicensing Settlement Agreement. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) 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 (b) as otherwise provided herein or in the Rules. The parties recognize that the provision of Power and Energy, as set forth in Section 3.4.1, constitutes substantial consideration to Niagara University for its assent to the Relicensing Settlement Agreement. Notwithstanding the foregoing, upon mutual agreement this Agreement shall be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority.

Notwithstanding the termination provisions of this Article, Customer may pause the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice. Customer may recommence the electric service related to all of its Allocation once annually upon ninety (90) days prior written notice.

Nothing herein is intended to limit the rights of the Customer under the Relicensing Settlement Agreement and the Authority and Customer understand and agree that the Authority is obligated under such Relicensing Settlement Agreement to make a total of 3 MW of Project Power and Energy available to Customer for the term of the FERC License, whether through extension of this Agreement or by subsequent agreement.

IX. Notification

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

To the Authority;	Manager – Power Contracts & Tariffs New York Power Authority 123 Main Street White Plains, NY 10601

To the Customer:	President – Niagara University

Niagara University, NY 14109

cc: General Counsel – Niagara University

X. Applicable Law and Venue

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. Any action or proceeding arising out of or relating to this Agreement shall be brought in state courts located in Albany County, New York.

XI. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained, which consent shall not be unreasonably withheld.

XII. Previous Agreements and Communications

This Agreement, together with the Relicensing Settlement Agreement, shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such Agreements supersede all previous communications between the Parties hereto, either oral or written, with reference to the subject matter hereof. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XIII. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

XIV. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement 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 void and unenforceable.

XV. Effectiveness of Agreement

This Agreement shall take effect on the date of this Agreement's execution under Article XIII above.

Niagara University

BY: _____

Name: _____

Title: _____

Date: _____

Accepted:

POWER AUTHORITY OF THE STATE OF NEW YORK

BY: _____

Name: _____

Title: _____

Date: _____



POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY 12207

Electric Service Tariff for Certain Customers
under the Niagara Relicensing
Firm Hydroelectric Power Service

Service Tariff No. NP-1

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Schedule of Rates for Firm Hydroelectric Power and Energy Service

I. Applicability

To sale of Niagara Hydroelectric Project firm power and energy to certain customers eligible for service under the Niagara Relicensing Settlement Agreement.

II. Abbreviations and Terms

A. The following abbreviations are used:

kW	kilowatt(s)
kWh	kilowatt-hour(s)
NYPA	New York Power Authority
NYISO	New York Independent System Operator

B. The term “Agreement” means contract for the Sale of Niagara Project Power and Energy between Authority and Customer.

C. The term “Authority” means New York Power Authority, an alternative name for the Power Authority of the State of New York.

D. The term “Customer” means a customer eligible for service under Project’s relicensing agreement.

E. The term “Customer’s Agent” may include, without limitation, a public utility, Load Service Entity, Municipal Distribution Agency, load aggregator or other entity authorized to purchase, sell and/or deliver or cause to be delivered electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

F. The term “Power” or “Firm Hydroelectric Power” means capacity (kW) from Project, intended to be available at all times except for limitations provided in the Agreement(s), the Rules, this Service Tariff or in other contract documents. Firm Power shall not include peaking power.

G. The term “Energy” “Firm Hydroelectric Energy” means energy (kWh) associated with Firm Hydroelectric Power.

H. The term “Project” means the Authority’s Niagara Hydroelectric Project.

- I. The term “Rules” means Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, 21 NYCRR § 454) as now in effect and as may be later amended from time to time by Authority.
- J. The term “Service Tariff” means this Service Tariff No. NP-1.

III. Monthly Rates and Charges

A. Monthly Rates

The monthly demand and energy charges paid by Customer to Authority shall be the rates shown below.

<u>Effective Date</u>	<u>Demand Rate</u> \$/kW-month of billing demand	<u>Energy Rate</u> Mills/kWh
7/1/2017	7.92	13.54

The demand and energy rates set forth above shall apply at the Project switchyard. Future rates shall be as determined by the Authority consistent with the provisions of the Agreement.

B. Minimum Monthly Charge

The product of the demand rate set forth above and the billing demand.

C. Billing Demand

The billing demand shall be the lesser of a) Customer's contract demand or b) the maximum 30 minute integrated demand measured during the billing period adjusted for losses.

D. Billing Energy

Energy provided by Authority under this service tariff.

E. Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month.

F. Contract Demand

The amounts set forth in the applicable Agreement(s) between Authority and Customer.

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

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority, if any, for services provided by the NYISO or any successor organization pursuant to its Open Access Transmission Tariff ("OATT") or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) which are associated with Customer's purchase of hydro power and energy under its contract for the sale of hydro power and energy with Authority:

1. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
2. Marginal losses;
3. The New York Power Authority Transmission Adjustment Charge ("NTAC");
4. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
5. Any and all other charges, assessments or other amounts associated with deliveries to Customer that are assessed on the Authority by the NYISO or any successor organization under the provisions of its OATT or under other applicable tariffs; and
6. Any charges assessed on the Authority with respect to 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 NYPA with respect to service to Customers), applicable tariffs or required to be paid by the Authority in accordance with law, whether charged by the NYISO or some other third party.

The NYISO Charges in this section are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

H. Taxes and Other Charges

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

IV. General Provisions

General Provisions for service supplementing or modifying the Rules and Regulations for Power Service and this Service Tariff with regard to deliveries to Customer are as follows:

A. Character of Service

Alternating current, 60 hertz, three-phase.

B. Availability of Energy

Unless otherwise specified in the Agreement, where Customer is taking service solely from Authority, the billing energy shall be the total number of kilowatt-hours recorded on Customer's meter during the billing period, adjusted for losses.

Unless otherwise specified in the Agreement, where Customer takes service from other sources in addition to service supplied hereunder, the billing energy shall be determined by multiplying the total number of kilowatt-hours recorded on Customer's meter during the billing period, adjusted for losses, times the ratio of the contract demand to the maximum 30 minute integrated demand measured during the billing period adjusted for losses. Such ratio shall not be greater than unity (1.0).

The Authority will have the right to reduce on a pro rata basis the amount of Firm Hydroelectric Energy provided to Customer if such reductions are necessary due to low flow (i.e., hydrologic) conditions at the Authority's Niagara and St. Lawrence-FDR hydroelectric generating stations. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Customer in later billing periods. The Authority shall provide reasonable notice, to the extent possible, to Customer 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.

C. Adjustment of Rates

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

D. Adjustment of Charges

Power Factor

Not less than 95% lagging or leading, except as otherwise specified in the Customer's accepted Agreement.

E. Delivery

For the purpose of this Service Tariff, Firm Hydroelectric Power and Energy shall be deemed to be offered when Authority is able to supply Firm Hydroelectric Power and Energy to Customer or its agent at the Project switchyard. The offer of Firm Hydroelectric Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Firm Hydroelectric Energy is taken by Customer. If, despite such offer, there is a failure of delivery by Customer or its Delivery Agent, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

F. Payment by Customer for Firm Hydroelectric Power and Energy

1. Customer shall pay for Firm Hydroelectric Power and Energy during any billing period the sum of a) and b) below:
 - a. The demand rate per kW for Firm Hydroelectric Power specified in this Service Tariff or any modification thereof applied to Customer's contract demand for the billing period; and
 - b. The energy rate specified in this Service Tariff or any modification thereof applied to the amount of Firm Hydroelectric billing energy delivered by Authority to Customer during such billing period.
2. 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 Authority. In the event that there is a dispute on any items of a bill rendered by Authority, Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Supplementary Provision

Sections 454.2 (c) and 454.5 of the Rules are inapplicable to this Service Tariff.

H. Conflicts

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



**NEW YORK POWER AUTHORITY
HYDROELECTRIC PROJECTS
Economic Development RATES
Effective July 1, 2024**

Step 1. Determine the Index Value for the Measuring Year and Measuring Year - 1 for Each Index

Index 1.

PRODUCER PRICE INDEX - INDUSTRIAL POWER PPI 0543		
	Measuring Year	Measuring Year -1
	<u>2023</u>	<u>2022</u>
January	305.0	263.3
February	296.0	269.2
March	290.6	264.9
April	282.1	263.0
May	289.8	267.8
June	312.1	284.5
July	315.6	297.1
August	317.4	300.9
September	318.3	304.3
October	299.4	285.2
November	294.7	273.9
December	295.4	280.1
Average	301.4	279.5
Ratio of MY/MY-1	1.08	

Index 2.

EIA INDUSTRIAL RATE			
STATE	Revenues	Sales	Avg. Rate
	(\$000)	MWh	(cents/kwh)
<u>Measuring Year (2022)</u>			
CT	418,994	2,780,106	15.07
MA	1,063,201	6,233,832	17.06
ME	292,946	2,655,435	11.03
NH	291,573	1,925,183	15.15
NJ	818,454	6,753,844	12.12
NY	1,221,472	16,177,769	7.55
OH	3,729,572	50,062,730	7.45
PA	4,178,366	50,882,779	8.21
RI	114,833	639,343	17.96
VT	162,496	1,367,429	11.88
TOTAL	12,291,907	139,478,450	8.81
<u>Measuring Year - 1 (2021)</u>			
CT	269,676	2,799,194	
MA	963,191	6,345,834	
ME	245,671	2,573,512	
NH	266,332	1,928,665	
NJ	705,553	6,593,424	
NY	1,071,636	16,891,152	
OH	3,246,519	49,529,406	
PA	3,268,118	49,999,765	
RI	103,366	643,779	
VT	155,980	1,371,096	
TOTAL	10,296,040	138,675,827	7.42
Ratio of MY/MY-1	1.19		

Index 3.

PRODUCER PRICE INDEX - INDUSTRIAL COMMODITIES LESS FUEL		
	Measuring Year	Measuring Year -1
	<u>2023</u>	<u>2022</u>
January	257.0	249.8
February	257.8	251.3
March	258.1	254.6
April	258.6	257.4
May	258.6	260.1
June	257.7	260.4
July	256.7	259.5
August	256.4	258.7
September	256.5	257.1
October	256.5	255.9
November	256.2	255.7
December	256.5	255.2
Average	257.2	256.3
Ratio of MY/MY-1	1.00	

**NEW YORK POWER AUTHORITY
HYDROELECTRIC PROJECTS
Economic Development RATES
Effective July 1, 2024**

Step 2. Determine Annual Adjustment Factor 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	1.078	0.35	0.377
EIA Industrial Rate	1.187	0.40	0.475
PPI Industrial Commodities less fuel	1.003	0.25	<u>0.251</u>
Annual Adjustment Factor			1.1030

Step 3. Apply Annual Adjustment Factor to Calculate Adjusted Base Rate

10.30%

	<u>Demand \$/kw</u>	<u>Energy \$/mwh</u>
Niagara University Base Rate (effective 8/2023)	7.67	13.13
New NIA UNI Rate Year Base Rate (w/5% AAF Cap - not implemented)	8.05	13.79
New NIA UNI Rate Year Base Rate (4% - effective 07/2024)	7.98	13.66



Date: May 20, 2025

To: NEW YORK POWER AUTHORITY TRUSTEES

From: PRESIDENT & CHIEF EXECUTIVE OFFICER

Subject: Industrial Incentive Awards and Economic Development Plan for Buffalo Niagara Partnership and Crescent Duck Farm, Inc.

SUMMARY

The Board of Trustees (“Trustees”) is requested to approve amendments to the Economic Development Plan recommended by the Economic Development Power Allocation Board (“EDPAB”) to include two Industrial Incentive Awards (“IIA”) for economic development purposes to Buffalo Niagara Partnership (“BNP”) and for economic revitalization purposes for Crescent Duck Farm, Inc. (“Crescent”). The BNP IIA would be in the amount of \$15,150,000 for purposes of economic development to establish the Western New York Community Sponsored Air Service Incentive Fund that would be held by NYPA and that BNP may draw upon, if necessary, upon installation of an international air carrier at the Buffalo Niagara International Airport to provide such carrier a minimum revenue guarantee on a quarterly basis for a period of three years following the establishment of international air service at the airport, and upon BNP providing supporting documentation requesting a withdrawal from the Fund and meeting the conditions of a fund program agreement between NYPA and BNP. The Crescent IIA would be in the amount of \$700,000 for purposes of economic revitalization of a duck farm on Long Island that has been decimated by avian flu, and would be released upon the completion of conditions memorialized in an agreement between Crescent and NYPA. At its meeting held on May 20, 2025, the Economic Development Power Allocation Board (“EDPAB”) authorized use of the Economic Development Plan (“Plan”) covering the use of net revenues produced by the sale of Expansion Power (“EP”) to provide financial assistance in the form of grants in the amounts listed in Exhibit “B” and herein.

BACKGROUND

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

IIAs are to be made in conformance with an Economic Development Plan (“Plan”) covering all such “net revenues.” The Authority submits the Plan to the EDPAB¹ pursuant to Economic Development Law (“EDL”) § 188, which also provides for EDPAB’s approval of the Plan upon its determination that such Plan is consistent with, among other things, the economic development criteria provided for in EDL §§ 184 and 185 that evaluate applications for certain power. Copies of PAL § 1005 (eighth unnumbered paragraph), EDL § 188, and EDL §§ 184 and 185 are attached as Exhibit “A.”

¹ The EDPAB is established in Section 182 of the Economic Development Law.

DISCUSSION

It is recommended that the Authority's Trustees approve the recommendation of the Economic Development Power Allocation Board to amend the Plan to include the award of IIAs to BNP and Crescent. This recommendation comes after careful consideration of each company's business case. The awards will be granted in accordance with the Plan with disbursement upon reaching milestones or performance metrics, mutually agreed to by the Authority and each respective organization in Exhibit "B." These award disbursements are predicated on the availability of EP net revenue funding for such IIAs and are issued at the Authority's sole discretion.

Buffalo Niagara Partnership

BNP is a regional chamber of commerce and economic development organization serving the Buffalo Niagara region in Western New York, and is a New York not-for-profit corporation and an IRS § 501(c)(3) tax-exempt not-for-profit organization. BNP requests an IIA to create the Western New York Community Sponsored Air Service Incentive Fund ("Fund") to support for transatlantic service at the Buffalo Niagara International Airport. BNP would administer the IIA in cooperation with the Niagara Frontier Transportation Authority ("NFTA"). NFTA is a New York State public authority that provides intermodal transportation services in the Buffalo Niagara region. The NFTA seeks to bring a new international air service gate and carrier to the airport on terms consistent with all other similarly situated airport users. By letter application dated May 9, 2025, BNP submitted a business plan detailing the request to establish the Fund to incentivize an airline carrier to establish direct transatlantic service to and from Western New York by way of a Minimum Revenue Guarantee ("MRG") for an airline carrier.

The Fund would be used to make the selected carrier whole for up to \$5 million per year based upon quarterly revenue targets agreed upon by BNP with the airline carrier for each year of the program, for a period of three years for a total of up to \$15 million. The MRG would mitigate the airline carrier's risk in assigning an aircraft valued at approximately \$130 million to a route that is untested in the Buffalo region.

BNP states that MRGs such as the one they are proposing in their IIA application to establish the Fund are in use at competing airports in other similarly sized U.S. cities, including Cleveland, Indianapolis, Nashville, Hartford and Pittsburgh, to attract and retain new international airline carriers. BNP states that it expects to engage prospective carriers in discussions in summer/fall 2025, obtain a formal commitment from an airline carrier in late 2025 or early 2026, service would begin in either spring 2026 or spring 2027, and that the Fund would be utilized for the three year period following the carrier commencing international airline service.

BNP and the Niagara Frontier Transportation Authority ("NFTA") estimate that there is an annual \$36.6 million loss to the Buffalo Niagara regional economy resulting from Western New York travelers using Toronto Pearson to reach European destinations. The establishment of transatlantic service at the Buffalo Niagara International Airport would help reverse this revenue outflow and make it easier for European visitors to come to Western New York, which in turn bolsters the region's ability to attract Great Lakes cruises, strengthen cultural institutions like the Darwin Martin House and the Buffalo AKG Art Gallery, grow the tourism economy of Niagara Falls, and grow airport, tourism and hospitality employment in the Buffalo Niagara region.

BNP states that the award would also stimulate \$32.8 million in new annual tourism spending, including supporting tourism destinations like Niagara Falls, the Buffalo AKG Art Gallery, the Michigan Street African American Heritage Corridor, and the Darwin Martin House, and providing \$1.25 million in direct tax revenue for the State of New York. BNP estimates that the project would support 288 jobs in Western New York through airport positions, tourism, and hospitality, with total annual wages of approximately \$14 million.

BNP states that the Fund would align with the Western New York regional economic development council's focus on tourism to attract international visitors to cultural attractions, thus increasing local tourism spending. BNP represents that creation of the Fund is consistent with Air Cooperative Research Program's "Building and Maintaining Air Service Through Incentive Programs." On December 12, 2024, the NFTA Board of Commissioners adopted a new Airport System Strategic Plan that identified international air service as a "significant air service opportunity" and recommended an establishment of an "incentive fund for air service opportunities" comprised of non-NFTA public and private entities.

BNP states that establishing the Fund would not result in a competitive disadvantage for other businesses in the state. It explains that the provision of the award would not injure other airports in New York State. The Buffalo Niagara International Airport is the only airport of comparable size in the state with significant leakage of transatlantic passengers to a foreign airport (in this case, Toronto Pearson). It is the view of BNP's aviation consultants that none of the other upstate airports currently have markets of sufficient size to support transatlantic service.

BNP states that it will use its own staff to administer the Fund and has determined that it will need to retain professional legal, accounting and airline consultancy services for their work to contract with NYPA and to establish and administer the Fund program with the selected carrier and NYPA, and has estimated that such costs may total up to \$50,000 per year for three years, for a total of \$150,000.

The respective obligations of BNP and NYPA would be memorialized in a Western New York Air Service Development Fund Agreement between BNP and NYPA which would provide that:

- BNP will establish a Fund program agreement between BNP and the selected international airline carrier that provides a MRG for three years to be funded by up to \$5 million per year for a total of up to \$15 million. The agreement would establish quarterly revenue targets for the selected airline carrier set in consultation with the Federal Aviation Administration, and payment would be made only for those quarters in which the airline presents documentation of actual revenues that fall below a quarterly revenue target, for up to \$5 million per year in each year of the program. Each year will be funded separately up to \$5 million without carrying over funds from prior years.
- NYPA will hold \$15 million in the Fund and make it available for payment to BNP in arrears for up to \$5 million per year for three years. NYPA will make payments to BNP quarterly upon BNP certifying to NYPA the amount of the revenue shortfall of the airline carrier, if any, to be drawn from the Fund for each quarter. Each year will be considered separately without overlapping funds from prior years.
- Upon receipt of a quarterly revenue shortfall payment from NYPA, BNP will transmit that payment to the airline carrier.
- BNP will provide annual reports to NYPA on payments made to the airline carrier.
- BNP may utilize up to \$50,000 of the Fund per year for three years up to a total of \$150,000 for actual incremental expenses related to professional legal, accounting and airline consultancy services directly attributable to establishing and administering the Fund agreement and program with NYPA and the airline carrier. NYPA will make reimbursements to BNP in arrears upon presentation of invoices for expenses. BNP shall report on its total expenses to NYPA each year for the three years of the program.
- The term of the agreement will be approximately six years to provide sufficient runway to establish the international airline service in 2026-27, provide Fund payments for the MRG on a quarterly basis for three years, and to complete final payments and reporting in the last year of the agreement.
- The availability of EP net revenue funding for IIAs is within NYPA's sole discretion.
- Appropriate determination(s) by the Trustees that the funding of IIAs in any fiscal year will not have a significant impact on the Authority's finances.

Based upon the representations in the application and the recommendation of NYPA staff, the Trustees are requested to approve the recommendation of the EDPAB to amend the Plan to include an IIA to establish the Western New York Community Sponsored Air Service Incentive Fund in the amount of up to \$15,150,000, to be disbursed in arrears upon the completion of the agreed upon milestones and metrics as defined in a contract between NYPA and BNP, once executed.

Crescent Duck Farm

Crescent is a New York business corporation and a family-owned business that specializes in breeding, raising, and processing ducks. Crescent is the last commercial duck farm on Long Island and one of the last few in New York State. Due to an outbreak of the avian flu, it had to cull its entire flock of 100,000 ducks and lay off nearly its entire workforce. After the sterilization of the farm, they are working to rebuild their duck population, but the company is in a precarious state of determining whether to continue the business or not. They will have no income until a new flock can be developed.

Crescent has been an Authority customer for over 25 years starting in the Power for Jobs program and transitioning to the ReCharge NY (“RNY”) program in 2012. The company receives a 606 kW RNY allocation in return for a commitment to retain 79 jobs at the facility and a five-year capital investment commitment of \$2,750,000. The company was deemed compliant with all contractual commitments in the latest reporting period prior to the devastation of the duck flock.

By letter application dated May 7, 2025, Crescent Duck provided a detailed business revitalization plan to recuperate the business back to a stable operation allowing them to rehire the lost employment. The total expected capital investment amount is \$5,255,800 as shown in the revitalization plan, which covers normal restocking activities and operating costs for an 18-month period. The costs covered would be labor costs, duck feed costs, waste treatment, and new training requirements in enhanced biosecurity measures to prevent future disease outbreaks on the farm. An IIA will also enable Crescent to invest in real property improvements, electric load usage, and energy efficient lighting projects on site, securing the company’s commitment to the state with investment in brick-and-mortar upgrades.

An IIA to Crescent would support the company’s ability to stabilize and sustain its operations. The IIA will enable Crescent to reestablish its duck flock and thereby reinstate employment for 79 jobs associated with their RNY allocation employment commitment. Crescent is a multi-generational duck farm and one of the last in New York State. They have been working with the U.S. Department of Agriculture to obtain a grant to assist in the efforts to build the flock back to normal levels. The farm is well supported by the community, local government officials, and NYS assembly representatives.

Upon approval by the Trustees, NYPA will enter into a program agreement with Crescent based upon appropriate terms and conditions, including:

- Crescent’s commitment to utilize the award to execute their business revitalization plan, meet their RNY allocation employment targets, and to make the real property, energy usage and lighting improvements,
- Prior to NYPA making disbursement, Crescent will be required to provide documentation showing that it has expended capital pursuant to the revitalization plan, and
- The availability of EP net revenue funding for IIAs, which is in NYPA’s sole discretion.

Accordingly, the Trustees are requested to approve the recommendation of the EDPAB to amend the Plan to include a one-time IIA of \$700,000 to Crescent to be drawn upon by Crescent prior to December 31, 2026.

FISCAL INFORMATION

IIA awards may only be paid out if sufficient net revenues are produced by the sale of EP. Given that such net revenues and associated awards are anticipated in each year's budget, authorization of the Plan from June 1, 2025 through June 30, 2031 to accommodate additional years of IIA benefits will not have a significant impact on the Authority's finances.

RECOMMENDATION

The Senior Vice President of Customer Solutions requests that the Trustees approve the recommendation of the EDPAB to amend the Plan to use net revenues from the sale of EP to provide an IIA to BNP to fund the creation of the Western New York Community Sponsored Air Service Incentive Fund in the amount up to \$15,150,000 through June 30, 2031, to be held by NYPA and disbursed to BNP in arrears as requested per the terms and conditions set forth in a contract between BNP and NYPA, once executed.

The Senior Vice President of Customer Solutions also requests that the Trustees approve the recommendation of the EDPAB to amend the Plan to use net revenues from the sale of EP to provide a one-time IIA of \$700,000 to Crescent to be disbursed to Crescent in arrears per the terms and conditions set forth in a contract between Crescent and NYPA once executed.

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

Justin E. Driscoll
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the Authority hereby approves the recommendation of the Economic Development Power Allocation Board (“EDPAB”) to amend the Economic Development Plan (“Plan”) and hereby amends the Plan to use net revenues from the sale of Expansion Power (“EP”) to provide an Industrial Incentive Award to the Buffalo Niagara Partnership to fund the creation of the Western New York Community Sponsored Air Service Incentive Fund in the amount up to \$15,150,000 through June 30, 2031, to be held by NYPA and disbursed to BNP in arrears as requested per the terms and conditions set forth in a contract between BNP and NYPA once executed, according to the terms set forth in the foregoing report of the President and Chief Executive Officer and consistent with EDPAB’s approval of the Plan and requested awards; and be it further

RESOLVED, That the Authority hereby approves the recommendation of the EDPAB to amend the Plan and hereby amends the Plan to use net revenues from the sale of EP to provide a one-time Industrial Incentive Award of \$700,000 to Crescent to be disbursed to Crescent in arrears per the terms and conditions set forth in a contract between Crescent and NYPA once executed according to the terms set forth in the foregoing report of the President and Chief Executive Officer and consistent with EDPAB’s approval of the Plan and requested awards; and be it further

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

Public Authorities Law § 1005 – Eighth Undesignated Paragraph

Periodically, but no less often than annually, the authority is authorized and directed to identify the net revenues produced by the sale of expansion power and further to identify an amount of the net revenues from the sale of expansion power which amount shall be used solely for industrial incentive awards. Notwithstanding other lawful purposes for which such revenues may be used, it shall be the preferred purpose of the authority to make available all such net revenues for industrial incentive awards. Provided, however, that industrial incentive awards shall be made only in conformance with an economic development plan covering all such net revenues which is submitted no less often than annually by the authority and approved pursuant to section one hundred eighty-eight of the commerce law. For purposes of this paragraph, the term net revenues shall mean any excess of revenues properly allocated to the sales of expansion power over costs and expenses properly allocated to such sales.

Industrial Incentive Awards

Economic Development Law § 188

The power authority of the state of New York shall submit to the board its economic development plan for the use of industrial incentive awards for economic development purposes. The board shall review the proposed plan and shall approve such plan, in whole or in part, upon its determination that such plan and its implementation is consistent with the criteria and requirements provided for in sections one hundred eighty-four and one hundred eighty-five of this article and such other criteria as the board may, by rule and regulation, provide with respect to the plan and industrial incentive awards.

Criteria for Industrial Incentive Awards

Economic Development Law §§ 184 AND 185

§ 184. Criteria for eligibility for economic development power. Each application for an allocation of economic development power shall be evaluated under criteria adopted by the board. Such criteria shall address, but need not be limited to:

- (a) the number of new jobs created as a result of an economic development power allocation;
- (b) the applicant's long-term commitment to New York state, as evidenced by the applicant's current and/or planned capital investment in business facilities in New York state;
- (c) the ratio of the number of jobs to be created to the amount of economic development power requested by the applicant;

(d) the types of jobs created, as measured by wage and benefit levels, security and stability of employment;

(e) the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed;

(f) the extent to which economic development power will affect the overall productivity or competitiveness of the applicant's business and its existing employment within the state;

(g) the extent to which an allocation of economic development power may result in a competitive disadvantage for other businesses in the state;

(h) the general economic conditions and economic distress in the area in which the applicant's business facility would be located and the extent to which economic development power could contribute to the alleviation of such distress;

(i) the growth potential of the business facility and the contribution of economic strength to the area in which the business facility is or would be located;

(j) the extent of the applicant's willingness to make jobs available to persons defined as eligible for services under the federal job training partnership act of nineteen hundred eighty-two and the extent of the applicant's willingness to satisfy affirmative action goals;

(k) the extent to which an allocation of economic development power is consistent with state, regional and local economic development strategies and priorities and supported by local units of government in the area in which the business is located; and

(l) the impact of the allocation on the operation of any other facilities of the applicant, on other businesses within the state, and upon other electric ratepayers.

§ 185. Revitalization programs. In addition to the criteria described in section one hundred eighty-four of this article and such other criteria as the board may by rule or regulation define, an economic development power allocation may be made to a business in serious, long-term distress that is not primarily caused by normal, short-term changes in the business cycle, when the applicant demonstrates to the satisfaction of the board:

(a) that the applicant has formulated and will implement a comprehensive business revitalization plan which is described in its application, and which:

(1) contains a detailed strategy for actions to be taken by the applicant to continue as a successful business, including, but not limited to, productivity and efficiency improvements, changes in operations, financing or management, measures to enhance labor and management cooperation and to improve the skills and performance of the work force at all levels, capital investment in new equipment and plant modernization, development of new markets and products, and such other actions as will enable the business to stabilize and sustain its operations;

(2) has been endorsed by the board of directors; and

(3) establishes a verifiable schedule for completion of proposed actions;

(b) that an allocation of economic development power will significantly contribute to the revitalization plan;

(c) that the business is likely to close, partially close or relocate out of state resulting in the loss of substantial numbers of jobs;

(d) that the business is an important employer in the community and efforts to revitalize the business are in the long-term interests of both employees and the community;

(e) that a reasonable prospect exists that the proposed revitalization plan will enable the business to remain competitive and become profitable and preserve jobs for a substantial period of time;

(f) that the applicant demonstrates cooperation with the local electricity distributor and other available sources of assistance to reduce energy costs to the maximum extent practicable, through conservation and load management; and

(g) that the allocation will not unduly affect the cost of electric service to customers of the local electricity distributor.

New York Power Authority
Industrial Incentive Awards

Exhibit "B"
May 20, 2025

Line	Awardee	City	County	Economic Development Region	Description	Recommended IIA Amount	End Date
1	Buffalo Niagara Partnership	Buffalo	Erie	Western NY	corporation and IRC § 501(c)(3) tax-exempt organization; Chamber of commerce and economic development	\$15,150,000	6/30/2031
2	Crescent Duck Farm, Inc.	Aquebogue	Suffolk	Long Island	New York business corporation; commercial duck farm	\$700,000	12/31/2026
	Sub-totals:					\$15,850,000	



Date: May 20, 2025

To: NEW YORK POWER AUTHORITY BOARD OF TRUSTEES AND NEW YORK STATE
CANAL CORPORATION BOARD OF DIRECTORS

From: PRESIDENT & CHIEF EXECUTIVE OFFICER

Subject: Procurement (Services) and Other Contracts –
Business Units and Facilities –
Awards, Extensions and/or Additional Funding

SUMMARY

The New York Power Authority Trustees ("Trustees") and New York State Canal Corporation Board of Directors ("Board of Directors") are requested to approve, as applicable, the award and funding of the multiyear procurement (services) contracts in support of projects and programs for the Authority's and Canal Corporation's Business Units/Departments and Facilities. Detailed explanations of the recommended awards and extensions, including the nature of such services, the basis for the new awards if other than to the lowest-priced, lowest total cost of ownership or "best valued" bidders and the intended duration of such contracts, or the reasons for the extension and the projected expiration dates, are set forth in the discussion below.

BACKGROUND

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

The Authority's and Canal Corporation's Expenditure Authorization Procedures ("EAPs") require Trustee and Board approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts more than \$10 million, as well as personal services contracts more than \$10 million if low bidder or best value, or \$1 million if sole-source, single-source, or other non-competitive awards.

The Authority's and Canal Corporation's EAPs also require Trustee and Board approval when the cumulative change order value of a personal services contract exceeds \$500,000, or when the cumulative change order value of a non-personal services, construction, equipment purchase, or non-procurement contract exceeds the greater of \$6 million or 25% of the originally approved contract amount.

DISCUSSION

Awards

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

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

Extensions

Although the firms identified 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. Trustee and Board approval is required, as applicable, 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 and Canal Corporation to terminate the services at the Authority's and Canal Corporation convenience, without liability other than paying for acceptable services rendered to the effective date of termination. These contract extensions do not obligate the Authority and Canal Corporation to a specific level of personnel resources or expenditures.

Extension of the contracts identified 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 and Canal Corporation 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 and Canal Corporation needs to continue until a permanent system is put in place.

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

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

Legal Affairs – Real Estate

The proposed non-procurement contract with the below vendor would provide White Plains Office Building – Option B Disposition. The Authority sought to engage the development community (“Supplier” “Developer” or “Offeror”) through a Request for Proposal (“RFP”) seeking to solicit two solutions, with the Developer deciding whether to propose an individual solution or both, as follows: Option A – Propose an acquisition solution for a new purpose-built office building within the White Plains central business district market. Option B - Propose an offer to purchase the Authority's current property at 123 Main Street, White Plains, New York, 10601. The Offerors were able to submit a proposal for Option A or Option B individually, or both Option A and B jointly where applicable. Should Offerors choose to submit a combined submission for the new acquisition of a new office facility and disposal of 123 Main Street, the Authority requested the submittal provide an understanding of the costs, financial benefits, risks to all parties, and schedule requirements as per the RFP. Upon receipt of an acceptable build-to-suit solution for a new building, the existing property at 123 Main Street may become available for potential reutilization/redevelopment. The Offeror is seeking to solely or jointly, with the Authority, acquire or redevelop the property and existing structure(s) on this site. As per the RFP, Offerors were to consider the greater vision for a redefined downtown White Plains and adjacent development(s) in progress, so a cohesive, sustainable, and unified approach is proposed. For Option B, the Authority was seeking a development partner to purchase, ground lease, or propose a mutually beneficial ownership structure with the Authority for all or a portion of the 123 Main Street property and Offerors were requested to incorporate the following ownership structures into their proposals:

- Fee simple sale within 3-6 months of selection with a 5-year favorable leaseback to NYPA.

- Option agreement for a fee simple sale with an upfront payment and extension terms and closing prior to NYPA vacating the structure (upon completion of Option A); or
- A Development Agreement and Ground Lease with an upfront payment to NYPA, fixed base rent, participation rent, and capital event participation for a sustainability-forward project.

Currently, the Authority plans to begin negotiation on Option B and will request Trustee approval upon sale and terms being fully negotiated. Staff recommends approval to begin negotiations with the below vendor.

Vendor Name	Status
HG 123 Main Developer LLC	

Legal Affairs – Real Estate

The proposed personal services contracts with the below vendors would provide Real Estate Professional Services. This award is a five-year term for an aggregate amount of \$500,000. The Authority has commenced a program to build renewable generation under the expanded authority from New York State and major transmission upgrade programs under Vision 2030 Renewed. The Authority requires property services to support the acquisition of properties across New York State for these projects. Historically, the Authority's Real Estate Department has used property acquisition services on an "as-needed" basis when required by a project. However, the sheer volume of transactions expected as a result of these new projects, which represents a dramatic increase over the average annual number of transactions handled in recent years, renders such an ad hoc approach unfeasible. Property acquisition services are required to provide timely support for project development and project management in support of the Authority's expanded legislative authority and Vision 2030. The Request for Proposals Q24-7570EE was advertised in the New York State procurement newsletter and on the Authority's website. Ten entities were invited to, or expressed interest in, the Ariba event. Ten proposals were received via Ariba and were evaluated. Staff recommends the award of five contracts to the below vendors which are technically and commercially qualified.

Vendor Name	Status
Aaron Valuation Inc.	WBE
Contract Land Staff, LLC	
Frontier Abstract & Research Services, Inc.	
Goodman-Marks Associates, Inc.	
Jones Lang LaSalle Americas, Inc.	

Operations – Power Generation & Waterways

The proposed single-source non-personal services contract with the below vendor would provide Exhibit Warranty and Support. This award is a three-year term for an amount of \$45,525.25. MediaMation is the designer and manufacturer of the custom-made 4-D simulated "Power Up!" ride at the Niagara Power Vista. A service contract is needed to support exhibit issues, scheduled maintenance, and servicing of the ride. MediaMation is the original equipment manufacturer and the only qualified supplier to service the equipment or provide parts needed to keep the ride in optimum condition. Staff recommends the award of a contract to the below vendor which is technically and commercially qualified.

Vendor Name	Status
MediaMation Entertainment, LLC	

Operations – Central Support Services

The proposed personal services contract with the below vendor would provide 8th FERC Part 12 Inspections Crescent and Vischer Ferry. This award is a five-year, six-month term for an amount of \$942,729. The Authority received a letter in November 2024 from Federal Energy Regulatory Commission (FERC) that the 8th Part 12D Independent Consultant's Safety Inspection (also known as periodic inspections) Report for Crescent Project, FERC No. 4678 and Vischer Ferry Project, FERC No. 4679, are due to be submitted to FERC by January 1, 2027. The FERC Part 12D regulations mandate periodic inspections of hydroelectric projects to ensure their safe and efficient operation. These inspections are critical for identifying potential hazards, maintaining structural integrity, and complying with federal safety standards. As such, selecting a qualified Independent Consultant (IC) to perform these inspections is a crucial decision that impacts the safety, reliability, and regulatory compliance of hydroelectric facilities. The scope of work requires that the IC will perform the Part 12D Dam Safety Inspection, review previous reports, instrumentation data, documents and reports including the Supporting Technical Information Document, Owners Dam Safety Program, and Emergency Action Plan. They will also be required to review the previous Potential Failure Modes and develop recommendations addressing their findings. The Request for Proposals Q25-7633CC was advertised in the New York State procurement newsletter and on the Authority's website. Eighteen entities were invited to, or expressed interest in, the Ariba event. Five proposals were received via Ariba and were evaluated. Staff recommends the award of a contract to the below vendor which is technically and commercially qualified.

Vendor Name	Status
Colliers Engineering & Design, Architecture, Landscape Architecture, Surveying, CT P.C.	

Operations - Central Support Services

The proposed personal services contract with the below vendor would provide 10th FERC Part 12 Inspections Blenheim-Gilboa. This award is a five-year, six-month term for an amount of \$984,942. The Authority received a letter in November 2024 from Federal Energy Regulatory Commission (FERC) that the 10th Part 12D Independent Consultant's Safety Inspection (also known as periodic inspections) Report for Blenheim-Gilboa Project, FERC No. 2685 is due to be submitted to FERC by December 1, 2026. The FERC Part 12D regulations mandate periodic inspections of hydroelectric projects to ensure their safe and efficient operation. These inspections are critical for identifying potential hazards, maintaining structural integrity, and complying with federal safety standards. As such, selecting a qualified Independent Consultant (IC) to perform these inspections is a crucial decision that impacts the safety, reliability, and regulatory compliance of hydroelectric facilities. The scope of work requires that the IC will perform the Part 12D Dam Safety Inspection, review previous reports, instrumentation data, documents and reports including the Supporting Technical Information Document, Owners Dam Safety Program, and Emergency Action Plan. They will also be required to review the previous Potential Failure Modes and develop recommendations addressing their findings. The Request for Proposals Q25-7635CC was advertised in the New York State procurement newsletter and on the Authority's website. Nineteen entities were invited to, or expressed interest in, the Ariba event. Three proposals were received via Ariba and were evaluated. Staff recommends the award of a contract to the below vendor which is technically and commercially qualified.

Vendor Name	Status
Hatch Associates Consultants, Inc.	

Operations - Project Delivery

The proposed personal services contracts with the below vendors would provide Engineering and Bridge Inspection Services. This award is a five-year term for an aggregate amount of \$2,000,000. The Authority requires firms to provide bridge inspection services on an on-call basis for the Authority's

hydroelectric and pumped storage projects. These firms will provide timely, qualified bridge inspection engineering services performed under the supervision of a licensed professional engineer currently registered in the State of New York. Tasks to be performed by the consultants include bridge investigation/inspection, design and/or remediation/repair recommendations of the existing bridge structures at the power generation facilities of Niagara and St. Lawrence. The Request for Proposals Q24-7612CC was advertised in the New York State procurement newsletter and on the Authority's website. Twenty-one entities were invited to, or expressed interest in, the Ariba event. Two proposals were received via Ariba and were evaluated. Staff recommends the award of two contracts to the below vendors which are technically and commercially qualified and meet the bid requirements.

Vendor Name	Status
Greenman-Pedersen, Inc.	
Thornton Tomasetti, Inc	

Operations - Power Generation & Waterways

The proposed non-personal services contract with the below vendor would provide SPDES Sampling and Analysis Services. This award is a four-year term for an amount of \$350,000. The Niagara Power Project requires a laboratory/consulting firm to provide field scientists, lab analysis and consulting support. These services will support the site's State Pollutant Discharge Elimination System (SPDES) Permit as well as other environmental sampling on an as-needed basis. The Authority's Niagara Power Project's permit for SPDES with New York State Department of Environmental Conservation (NYSDEC) requires regular water monitoring, water discharge sampling, laboratory analysis and monthly reporting to EPA/NYSDEC. The sampling for these permit limits must be done accurately, timely and with ability to recognize abnormalities in the field. During the term of this contract, the vendor will be on site at least twice per month performing the sampling in various areas of the campus (including all 13 generators at Robert Moses Powerhouse). The Request for Proposals N25-20212732LI was advertised in the New York State procurement newsletter and on the Authority's website. Twenty-five entities were invited to, or expressed interest in, the Ariba event. Four proposals were received via Ariba and was evaluated. Staff recommends the award of a contract to the below vendor which is technically and commercially qualified.

Vendor Name	Status
Fisher Associates P.E., L.S., L.A., D.P.C.	

Operations - Power Generation & Waterways

Due to the need to meet and maintain the Authority's project schedule, the proposed single-source non-personal services contract with the below vendor for the Niagara Laser Metrology became effective April 14, 2025, with an interim award amount of \$50,000. This interim award is subject to Trustee ratification, which is hereby requested, in accordance with the Authority's Guidelines for Procurement Contracts and EAP's. This award is a five-year term for an amount of \$500,000. The Niagara Power Project requires laser metrology services to support the disassembly and reassembly of the units at the Robert Moses Niagara Power Plant (RMNPP) as part of the Next Generation Niagara (NGN) program. A contract term of 5 years is being requested due to the expected duration of the NGN program. The vendor specializes in hydro-turbines and has been utilized for field measurements, analysis of laser data, on-site assistance for alignments and machining of parts for the units related to their measurements. This vendor has acquired data of the embedded parts of the units and rotors and has created special fixtures and methods for measuring various components of the unit. The measurement data is proprietary, and their knowledge and expertise of this critical data makes them a highly qualified source capable of meeting this project's requirements. Staff recommends the award of a contract to the below vendor which is technically and commercially qualified.

Vendor Name	Status
Buffalo Metrology Inc.	

Operations - Power Generation & Waterways

The proposed non-personal services contract with the below vendor would provide Gas Compressor Inspection, Maintenance and Repairs. This award is a five-year term for an amount of \$5,000,000. The Authority's Southeast New York (SENY) Region utilizes gas compressors at each of their generating sites located throughout the boroughs of New York City and Suffolk County Long Island. The gas compressors support critical processes within power generation including the ability to increase the pressure of natural gas supplied to the gas turbine and maintain stable and consistent fuel flow. Additionally, gas compressor operations can reduce energy losses, improve system performance, and reduce mechanical strain on the gas turbines and balance of plant equipment which extends their useful life and lowers maintenance costs. As part of the Authority's Preventative Maintenance Program within the SENY Region, annual inspections and maintenance are conducted on the gas compressors to ensure their safe and reliable operation in support of power generation. The Request for Proposals A25-20208502GJ was advertised in the New York State procurement newsletter and on the Authority's website. Fourteen entities were invited to, or expressed interest in, the Ariba event. Two proposals were received via Ariba and were evaluated. Staff recommends the award of a contract to the below vendor which is technically and commercially qualified.

Vendor Name	Status
UPS Midstream Services, LLC	

Operations - Power Generation & Waterways

The proposed sole-source non-personal services contract with the below vendor would provide Eel Ladder Flow Monitoring System Operating and Maintenance Services. This award is a five-year term for an amount of \$235,000. On October 23, 2003, the Authority was issued a new 50-year license by the Federal Energy Regulatory Commission to operate the St. Lawrence – FDR Power Project. Pursuant to license Articles 404 and 405 and a Settlement Agreement with the U.S. Fish and Wildlife Service, the Authority is required to construct, operate, and maintain an eel ladder (herein referred to as eel-passage facility) for upstream passage of American eel (*Anguilla rostrata*) at the Robert Moses Power Dam. The eel passage facility has five flow meters. These flow meters monitor water flow down the ladder, through the passage pipe and at the receiving tank. These flow meters interface with the eel passage facility computer system where the data is logged. Additionally, in the event that flow is lost or reduced, the flow meters provide a critical alarming function. These parameters are critical to monitoring the effectiveness of the facility, which is required in the Effectiveness Monitoring Plan and the Passage Criteria that have been approved by FERC. The vendor engineered, designed, constructed, and programmed the flow monitoring system of the eel ladder. This is a proprietary piece of equipment with sensitive hardware/software installed and owned by the vendor and no other vendor can supply nor operate this equipment. Staff recommends the award of a contract to the below vendor which is technically and commercially qualified.

Vendor Name	Status
Deadline Solutions, Inc.	

Operations - Power Generation & Waterways

The proposed sole-source non-personal services contract with the below vendor would provide Eel Ladder PIT Antenna Operating and Maintenance Services. This award is a five-year term for an amount of \$250,000. On October 23, 2003, the Authority was issued a new 50-year license by the Federal Energy Regulatory Commission to operate the St. Lawrence – FDR Power Project. Pursuant to license Articles 404

and 405 and a Settlement Agreement with the U.S. Fish and Wildlife Service, the Authority is required to construct, operate, and maintain an eel ladder (herein referred to as eel-passage facility) for upstream passage of American eel (*Anguilla rostrata*) at the Robert Moses Power Dam. The eel passage facility has five PIT (Passive Integrated Transponder) antennae that monitor movements of eels that contain PIT tags through the entire passage facility. The PIT antennae interface with the eel passage facility computer system where the data from the antennae is logged. Analyzing the logged data is important to monitoring the effectiveness of the facility in addition to eel behavior in the St. Lawrence River. The vendor engineered, designed, constructed, and programmed the PIT antenna monitoring system of the eel ladder. This is a proprietary piece of equipment with sensitive hardware/software installed and owned by the vendor, and no other vendor can supply nor operate this equipment. Staff recommends the award of a contract to the below vendor which is technically and commercially qualified.

Vendor Name	Status
Biomark, LLC	

Operations – Site Administration SENY

Due to the need to meet and maintain the Authority's project schedule, the proposed non-personal services contract with the below vendor for the HVAC Maintenance Service became effective April 1, 2025, with an interim amount of \$100,000. This interim award is subject to Trustee ratification, which is hereby requested, in accordance with the Authority's Guidelines for Procurement Contracts and EAP's. This award is a five-year term for an amount of \$3,000,000. The Southeast New York (SENY) region requires a vendor to maintain the Heating, Ventilation and Air Conditioning (HVAC) systems at the various sites across the SENY region. The vendor will perform regular maintenance and repairs and will supply specific parts and skilled labor to keep the system in good operating condition. The Request for Proposals A25-20208286PH was advertised in the New York State procurement newsletter and on the Authority's website. Eleven entities were invited to, or expressed interest in, the Ariba event. Two proposals were received via Ariba and were evaluated. Staff recommends the award of a contract to the below vendor which is technically and commercially qualified.

Vendor Name	Status
Westrock Mechanical Corporation	

Operations – Site Administration SENY

The proposed non-personal services contract with the below vendor would provide Scaffolding Rental and Services. This award is a five-year term for an amount of \$5,000,000. The Southeastern New York (SENY) region has an on-going need for various scaffold services to support the Eugene Zeltmann Plant, Richard M. Flynn Power Plant, and the Small Clean Power Plants. These services will primarily be performed on-site under supervision of the Authority. This contract will provide adequate coverage for any major outage and or ad-hoc scaffolding needs that may arise during regular plant operations. The Request for Proposals A24-20202523JV was advertised in the New York State procurement newsletter and on the Authority's website. Seven entities were invited to, or expressed interest in, the Ariba event. One proposal was received via Ariba and was evaluated. Staff recommends the award of a contract to the below vendor which is technically and commercially qualified.

Vendor Name	Status
Vertical Access Solutions LLC	

Operations – Site Administration SENY

The proposed non-personal services contract with the below vendor would provide SCPP Catalyst Parts and Service. This award is a five-year term for an amount of \$5,000,000. The Authority's Small Clean Power Plants (SCPP) operate eleven General Electric LM6000 Combustion Turbines operating in simple cycle mode. Each of the eleven turbines require one CO and one NOX Catalyst which are critical components to the operation of the plants and support the emissions reduction requirements outlined in the Title V Air Permits. As part of the Authority's Preventative Maintenance (PM) Program, maintenance and engineering evaluations are conducted and can indicate when maintenance intervention is required such as forced air cleaning, washing, and replacement due to end of useful life. The Request for Proposals A24-20207834JV was advertised in the New York State procurement newsletter and on the Authority's website. Eight entities were invited to, or expressed interest in, the Ariba event. One proposal was received via Ariba and was evaluated. Staff recommends the award of a contract to the below vendor which is technically and commercially qualified.

Vendor Name	Status
Sisu Energy & Environmental, LLC	

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

None

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

None

Authority Extensions and/or Additional Funding Requests:

Operations – Power Generation & Waterways

At the July 28, 2020 meeting, Trustees approved a single-source non-personal services contract with the vendor listed below in the amount of \$466,500 for Niagara University Ground Maintenance and Landscaping. The Authority's Niagara Power Project campus and NU's campus are immediately adjacent to, and interconnected with, one another and share the use of certain roadways and appurtenant properties. In May 2013, the Authority and NU entered into a Memorandum of Understanding, entitled the "Shared Campus Initiative", which set forth mutual responsibilities for performing certain grounds maintenance and landscaping work on shared roadways and appurtenant properties. Due to resource constraints with the maintenance staff at the Niagara Power Project, NU has agreed to perform additional grounds maintenance and landscaping work on property owned by the Authority. The Authority has agreed that it is mutually beneficial for NU to perform this maintenance and be reimbursed for the work. A reassessment of the agreement with the Authority and NU was conducted in March 2025. The Authority performed an internal analysis and deemed the proposal received from NU is reasonable. Staff requests Trustee approval for the extension of the contract below through May 2030, and additional funding in the amount of \$541,372.

Vendor Name	Status
Niagara University	

Operations – Power Generation & Waterways

At the May 21, 2019 meeting, Trustees approved a five-year non-personal services contract with the vendor listed below in the amount of \$5,000,000 for Roof Maintenance and Repair Services. Due to internal scheduling delays and the need to complete necessary roof work, a one-year grace period extension was approved on July 17, 2024. An on-going multi-year contract is required to continue various as-needed roof

maintenance services on the existing SENY infrastructure. As such, Strategic Supply Management and SENY Operations are working on the preparation of commercial and technical bid documents required to competitively rebid these services. This one-year extension will allow for additional time to competitively rebid these services and provide continued uninterrupted roof maintenance and repair services for the SENY region, including critical roof repairs scheduled to be performed in 2025. Staff requests Trustee approval for the extension of the contract below through May 30, 2026. No additional funding is being requested at this time.

Vendor Name	PO/VC	Status
John Dineen dba John Dineen Contracting	4600003680	

Operations – Power Generation & Waterways

At the May 21, 2019 meeting, Trustees approved a non-personal services contract with the vendor listed below in the amount of \$5,000,000 for Cooling Tower Services, Maintenance & Repair. Due to administrative delays associated with contract renewal and the need to continue cooling tower services, a one-year grace period extension was approved on July 19, 2024. An on-going multi-year contract is required to continue various as-needed cooling tower service, maintenance and repairs associated with existing SENY cooling tower infrastructure. As such, Strategic Supply Management (SSM) and SENY Operations are working on the preparation of commercial and technical bid documents required to competitively rebid these services. This one-year extension will allow for additional time to competitively rebid these services and provide continued uninterrupted cooling tower support services for the SENY region. Staff requests Trustee approval for the extension of the contract below through May 31, 2026. No additional funding is being requested at this time.

Vendor Name	PO/VC	Status
Atlantic Cooling Technologies & Services LLC	4600003681	

Operations – Project Delivery

In July 25, 2017, the Trustees approved a construction contract with the vendor listed below in the amount of \$3,934,706 for Zeltmann Power Plant Fuel Oil Yard Foam Fire Suppression System. This contract was brought before the Trustees multiple times for extensions and additional funding due to additional requirements from the FDNY and NYC Department of Buildings (NYCDOB), most recently in September, 2022 resulting in a term through May 30, 2024. A grace period extension was approved to extend the term to May 30 2025. The system has been fully commissioned and tested by FDNY and final signoff from FDNY was obtained on January 16, 2025. The certificate of occupancy of the new foam house building and final signoff from NYCDOB are now pending. At this time, an additional extension through May 29, 2026 is needed due to the long wait time associated with NYSDOB's review / approval process. Trustee approval for the extension of the contract below through May 29, 2026. No additional funding is being requested at this time.

Vendor Name	PO/VC	Status
Dean Energy Solutions Corp	4500287027	

Operations – Project Delivery

On July 24, 2024, the Authority issued a construction services contract with the vendor listed below in the amount of \$1,513,918 for LSD Spillway 11 Concrete Refurbishment. The Long Sault Dam concrete structure has been in existence for over 65 years and is showing signs of weathering and freeze/thaw damage. Concrete deterioration is occurring at vertical and horizontal construction joints throughout all of the thirty

spillway gate bays. Significant deterioration occurring at the tailrace water elevation was identified during a FERC inspection, where areas of exposed rebar are beginning to show. FERC requested that corrective actions be taken, and it was committed by the Authority to implement the solution by the end of 2025. The original expectation was that the work would be completed within one year. However, over the course of the year, unanticipated spill events took place making it impossible to close sections of the spillway for rehabilitation. As a result of these events, additional term is necessary. The construction work is expected to be completed by the end of 2025 with contract close out by July 2026. Staff requests Trustee approval for the extension of the contract below for one year through July 23, 2026. No additional funding is being requested at this time.

Vendor Name	PO/VC	Status
Con Tech Building Systems, Inc	4500367739	

Authority and Canal Extensions and/or Additional Funding Requests:

Human Resources & Admin – Human Resources

In September 2024, the Authority issued a personal services contract with the vendor listed below in the amount of \$1,500,000 to provide implementation services for the ServiceNow Human Resource Service Delivery (HRSD) platform. Project work has been ongoing, however the Authority's resource constraints and request for a longer Hypercare period has led to an extension of the project schedule. The services were originally expected to be completed in less than one-year, however the revised timeline indicates it will take sixteen months, necessitating an extension for an additional four-month period. Staff requests Trustee approval for the extension of the contract below for four-months. No additional funding is being requested at this time.

Vendor Name	PO/VC	Status
Carahsoft Technology Corporation	4500365665	

Information Technology & Cyber Security – Information Technology & Cyber Security

In October 2024, the Authority issued non-personal services contracts with the vendors listed below in the amount of \$1,400,000 for Conference Room Upgrades and Meeting Support Services. These contracts were issued for a one-year term. While the bulk of the enhancements have already been completed, the team has been receiving additional requests to ensure continued support and maintenance of these critical systems through the end of 2025. The Authority will be issuing a comprehensive Managed Services RFP for Conference Room and Meeting Services in the second half of 2025, with the intent for that new agreement to be in place before the Authority relocates to its new office. That future award will be used at both our current White Plains Office and after the relocation. This contract extension request will be used to support ongoing conference room and meeting needs until the new RFP is awarded. Staff requests Trustee Approval for the extensions of the contracts below for one year and additional funding in the amount of \$350,000.

Vendor Name	PO/VC	Status
Critical Path Integrators, LLC	4600004765	
IVCi LLC	4600004740	

Canal Extensions and/or Additional Funding Requests:

None

FISCAL INFORMATION

Funds required to support contract services for various Business Units/Departments and Facilities have been included in the 2025 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 – Central Support Services; the Senior Vice President – Chief Information and Technology Officer; the Senior Vice President – Project Delivery; the Senior Vice President – Human Resources; the Senior Vice President – Strategic Supply Management; the Vice President – O&M Services and Technical Compliance; the Vice President – Engineering and Chief Engineer; the Vice President – Project and Construction Management; Regional Manager and Senior Vice President, Niagara; Regional Manager and Senior Vice President, Poletti; Regional Manager and Senior Vice President, St. Lawrence; the Assistant General Counsel – Real Estate; the Assistant General Counsel – Contracts, Licensing & Environmental; requests that the Trustees and Board of Directors approve the award of multiyear procurement (services) and other contracts to the companies and the extension and/or funding of the procurement (services) contracts 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.

Justin E. Driscoll
President and Chief Executive Officer

RESOLUTION

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and Canal Corporation, the award and funding of the multiyear procurement services contracts referenced hereto, are hereby approved for the period of time indicated, in the amounts and for the purposes listed therein, as set forth in the memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and Canal Corporation, the contracts referenced hereto, are hereby approved and extended for the period of time indicated, in the amounts and for the purposes listed therein, as set forth in the memorandum of the President and Chief Executive Officer; and be it further

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

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



Date: May 20, 2025

To: NEW YORK POWER AUTHORITY BOARD OF TRUSTEES

From: THE PRESIDENT AND CHIEF EXECUTIVE OFFICER

Subject: Automotive Tools and Equipment for "Charging Forward: New York State ZEV Train-the-Trainer Program." Transfer of Ownership to Rockland BOCES and The State University of New York at Oswego

SUMMARY

The New York Power Authority Trustees ("Trustees") are requested to approve transfer of ownership of Automotive Tools and Equipment, to Rockland BOCES and The State University of New York at Oswego without payment to the Authority. The cumulative acquired value of the tools and equipment in May of 2025 was \$21,656.49.

In accordance with the Authority's Guidelines for Disposal of Personal Property, the transfer of personal property ownership for less than fair market value requires Trustee Approval. Trustee approval will be requested at the May 20, 2025 meeting.

BACKGROUND

The New York Power Authority (NYPA), in collaboration with Hudson Valley Community College (HVCC), has been awarded a \$105,000 grant from Electrify America for the "Charging Forward: New York State ZEV Train-the-Trainer Program." This initiative led by the Environmental Justice Department aims to:

- Cultivate a highly skilled workforce in zero-emission vehicle (ZEV) technology across New York State by training 120 automotive technician instructors from high schools and community colleges over the next two years.
- Standardize EV education, provide necessary equipment and upgrades, and increase ZEV awareness and education.
- Support New York State in meeting its climate goals by facilitating the transition to electric vehicles and preparing the next generation of auto-tech workers.

To ensure that each of the identified training facilities for the "Charging Forward: New York State ZEV Train-the-Trainer Program" at Rockland BOCES and SUNY Oswego have the correct tools and equipment for the scheduled training sessions on June 23 and 24, 2025. Hudson Valley Community College has worked in partnership with our Environmental Justice Department to identify the necessary tools and equipment needed by each facility as follows:

- Class 0 HV gloves with outer liners (suggest at least 2 pairs)
- 850 insulation test meter or Snap-on EEDM650CCRT (Prefer Fluke)
- Fluke 114 meter with Loz for testing HV circuits
- Fluke 88V or Snap-On EEDM525FCRT meter (prefer Fluke)
- Extech 380560 Milli-ohmmeter
- Pico MT03A motor tester
- Pico 4425A scope kit

- Prolong Battery charger (order Highlander kit)
- Prolong battery discharger (order Highlander kit)
- Prius battery packs (used)
- Insulated tool kit

As part of our leading role in this program, we will be supporting the initiative by providing the necessary tools and equipment to ensure the training program's success and to meet the educational needs of the instructors and students.

DISCUSSION

Title 5-A of Article 9 of the Public Authorities Law (the "Act") and the Authority's Guidelines for the Disposal of Personal Property (the "Guidelines") allow the Authority, with the approval of the Trustees, to dispose of Authority property for less than fair market value when the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the property will remain with the government or any other public entity. Accordingly, based on the foregoing, the transfer of ownership of the Automotive Tools and Equipment to Rockland BOCES and The State University of New York at Oswego is in accordance with the Act and the Guidelines.

The Act and the Guidelines require that the purpose and the terms of such disposal are documented in writing and approved by resolution of the Trustees. Accordingly, this transfer is subject to approval by the Trustees. This Trustee action, if adopted, would constitute the required Trustee action.

The transfer is to be further conditioned upon the execution of an agreement between Rockland BOCES and The State University of New York at Oswego and the Authority. The terms of such an agreement are to include transferring the Automotive Tools and Equipment in its "as is" condition, a requirement that the ownership and use of the unit will remain with Rockland BOCES and The State University of New York at Oswego and such additional provisions that reasonably safeguard the Authority from future responsibility.

FISCAL INFORMATION

In accordance with the foregoing, the Automotive Tools and Equipment will be transferred to Rockland BOCES and The State University of New York at Oswego without payment to the Authority.

RECOMMENDATION

The Senior Vice President, Strategic Supply Management and the Vice President, Environmental Justice & Public Affairs recommend the Trustees approve the transfer of ownership of the Authority's Automotive Tools and Equipment to Rockland BOCES and The State University of New York at Oswego for less than fair market value as set forth above.

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

Justin E. Driscoll
President and Chief Executive Officer

RESOLUTION

RESOLVED, That pursuant to Title 5-A of Article 9 of the Public Authorities Law and the Authority's Guidelines for the Disposal of Personal Property, the Board of Trustees hereby approve the transfer of ownership of Automotive Tools and Equipment for less than fair market value to Rockland BOCES and The State University of New York at Oswego as set forth in the foregoing memorandum of the President and Chief Executive Officer; and be it further.

RESOLVED, That the 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.



**NY Power
Authority**

**Canal
Corporation**

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

March 25, 2025

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Minutes of the Joint Meeting of The Power Authority of the State of New York and New York State Canal Corporation was held on March 25, 2025, at approximately 10:30 a.m.

Members present were:

John Koelmel - Chair
Michael Cusick
Cecily Morris
Lewis M. Warren Jr. - videoconference
Laurie Wheelock
Bethaida González
Dennis Trainor

Also, in attendance were:

Justin E. Driscoll	President and Chief Executive Officer
Joseph Kessler	Executive Vice President and Chief Operating Officer
Adam Barsky	Executive Vice President and Chief Financial Officer
Lori Alesio	Executive Vice President and General Counsel
Karina Saslow	Senior Vice President - Human Resources
Daniella Piper	Executive Vice President and Chief Innovation Officer
Robert Piascik	Senior Vice President and Chief Information and Technology Officer
Alexis Harley	Senior Vice President and Chief Risk and Resiliency Officer
Charles Imohiosen	Senior Vice President - Communications and External Affairs
Salman Ali	Senior Vice President - Internal Audit
John Canale	Senior Vice President Strategic Supply Management
Maribel Cruz Brown	Senior Vice President - Internal Affairs
Patricia Lombardi	Senior Vice President Project Delivery
Christopher Hutson	Senior Vice President NYPA Development
Karen Delince	Vice President and Corporate Secretary
Kaela Mainsah	Vice President Environmental Justice
Lindsay Kryzak	Vice President Corporate Communications
Mario Roefaro	Vice President Community and Government Relations
Victor Costanza	Vice President Chief Information Security Officer
Steven Damsky	Senior Director - Supplier Relationship Management
Rebecca Hughes	Deputy Executive Director Canals - Canals Public Engagement
Brian Stratton	Director, New York State Canal Corporation
Christopher Vitale	Director - Projects
Ignacio Bullrich	Director Internal Audit
Joseph Flick	Director Crisis Management
Nishita Mody	Director Internal Audit
Sandra Bleckman	Workforce Development Project Director
David Mellen	Regional Manager and Senior Vice President, Site Administration - Canals
Sundeep Thakur	Controller
Christopher D'Angelo	KPMG
Ryan Gibbons	KPMG
Sheila Quatrocci	Senior Associate Corporate Secretary

Michele Stockwell	Senior Assistant Corporate Secretary
Fiona Khan	Senior Assistant Corporate Secretary

Chair Koelmel presided over the meeting. Vice President and Corporate Secretary Delince kept the Minutes.

Introduction

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

1. Adoption of the March 25, 2025 Proposed Meeting Agenda

On motion made by member Trainor and seconded by member Wheelock the agenda for the meeting was adopted, as amended.

Conflicts of Interest

Chair Koelmel and members Trainor, Morris, Wheelock, and Cusick declared no conflicts of interest based on the list of entities previously provided for their review.

Member Warren abstained from vote from item #5bi – Procurement (Services) and Other Contracts as it related to J.P. Morgan Chase.

2. Motion to Conduct an Executive Session

On motion made by member Wheelock and seconded by member Trainor, the members held an executive session to discuss the financial and credit history of a particular corporation, pursuant to §105f of the Public Officers Law.

3. Motion to Resume Meeting in Open Session

On motion made by member Wheelock and seconded by member Gonzalez, the meeting resumed in Open Session.

4. DISCUSSION AGENDA:

a. Strategic Initiatives

i. President and Chief Executive Officer's Report

President Driscoll provided highlights of his report to the members. He said that the report will include the Authority's refreshed VISION2030 Strategy after which the members' approval for its adoption will be requested.

President Driscoll introduced the Authority's new Senior Vice President of NYPA Development to the members. He said that Christopher Hutson previously worked at Patrick Engineering in Chicago; prior to that, he was the President and CEO of Aurora Gen located in Fort Lauderdale, Florida. He will be responsible for NYPA's transmission and renewables projects.

President Driscoll stated that rapid changes and uncertainties are taking place in the power industry. The Authority is, however, well-positioned to adapt to the uncertainties and take advantage of new opportunities for the organization to play an even greater role in the future.

- There are uncertainties in NYPA's business as it relates to offshore wind in the future, which is an important part of how the organization is looking to decarbonize downstate New York.
- The Authority is closely monitoring federal developments around Executive Orders and Tariffs. To date, there are no impacts on NYPA.

- The Department of Energy recently released funds in furtherance of a commitment to advancing Nuclear Technology.

The Authority has created a solid foundation in terms of the financial aspects of its business and for the work and challenges ahead. It has formed creative financial structures to be able to take advantage of new opportunities. The Authority is well-positioned to meet the challenges and where the organization is headed in the future.

VISION2030 Renewed

Since the VISION2030 Plan was adopted in December 2020, the energy landscape has evolved and the Authority had to adjust its course to reflect recent learnings, seize opportunities that have emerged and make sure that the organization is able to adapt to changing circumstances.

The original VISION2030 was developed based on expectations of stable costs, permitting reforms, grid expansions, and reimagination of the canals system. In the renewed Plan, there are areas that require realignment of the strategic trajectory, while, in other areas, the Authority is entering into an acceleration phase. The Authority is advancing to an acceleration phase with its commitment to New York's clean energy future.

As a leader of change, the Authority showcases its efforts toward reliability, resiliency, economic development, the revitalization of communities it serves, and responsible use and protection of the natural environment in which we live and work.

Teams across NYPA and Canals prepared the VISION2030 Renewed Plan. Leading changes in the Plan involved taking advantage of the Authority's core strengths and exercising its contributions and abilities of the intelligent, innovative, passionate and dedicated employees across NYPA and Canals.

After examination of the Authority's strategic priorities and foundational pillars, which involved reviewing the progress, identifying new challenges and embracing the ever-growing potential that lies ahead, the Authority sought to sharpen its focus and accelerate execution of the VISION2030 Renewed Plan. The Authority also used data-driven and stakeholder feedback to execute the Plan.

NYPA's VISION2030 Renewed Plan:

- Strengthens the Authority's commitment to advancing a clean energy future
- Harnesses NYPA's unique strengths and expanded authority; and
- Drives performance and resilience through deeper innovation.

Strategic Progress

Renewables Pipeline Status:

The Authority is executing on its Renewables Strategic Plan as follows:

1. Ongoing Growth in the Pipeline
2. Strategic Milestone Achieved
3. Boosting Industry Confidence
4. Strengthening Partnerships

The Authority has launched approximately thirty (30) projects from its Strategic Plan with approximately three gigawatts ("GWs") of projects. Approximately 6 GWs of projects are currently in review or negotiation.

The Authority acquired its first-owned solar project, Somers Solar, in Fort Edward, Washington County, which is a 20-Megawatt utility-scale project. This project will be in commercial operation by mid-2027. The

project will also boost industry confidence and show that the Authority is well-positioned to be able to execute on the mandate and get projects executed through the New York Independent System Operator (“NYISO”) process. In addition, it will create a template for the Authority as the organization goes forward with additional renewables projects, further strengthening the potential for future partnerships and sending a signal that the Authority will be bringing value to those partnerships.

Property Acquisition

NYPA will be acquiring a 15-acre parcel of land adjacent to its facility in Astoria, Queens. The property will be utilized to support the state’s clean energy transition.

Greenfield Projects

Greenfield projects include:

- 4 projects (approx. 200 MW) in the NYISO Cluster Study
- 2 projects (approx. 3 MW) in Full Feasibility Assessments
- 4 projects (approx. 10 MW) in Pre-feasibility Studies

NYPA is currently evaluating more than 25 projects exceeding 3 GW in capacity to be considered for future series of projects.

VISION2030 Renewed

The Authority reshaped its strategic priorities and pillars to reflect where the organization is currently.

The Strategic Priorities are as follows:

Clean Energy – The Authority will continue to drive the clean energy transformation through emissions-free generation, which also includes renewables.

Transmission – This is a critical part of the Authority’s business. The Authority will continue its efforts to “lean-in” with new projects. The Authority will also continue to do larger and more transmission projects.

Customers – The Authority will continue to assist customers with their decarbonization efforts.

Revitalize the New York State Canal System – The Authority plans to focus on the infrastructure of the canal system while continuing to do projects that will improve the users’ experience on the canal.

Digitization – The Authority will continue its efforts to innovate its operations using a digital platform.

Diversity, Equity & Inclusion (“DEI”) – The Authority will increase its focus on serving the diverse communities in which it operates.

In closing, President Driscoll stated the Authority will focus on execution, adaptability, community engagement and connectedness in the next five years. The Authority also is well-positioned and on track to achieve the goals of its VISION2030 Renewed Plan.

1. VISION2030 Renewed – Resolution

Daniella Piper, Executive Vice President and Chief Innovation Officer, presented a summation of the Authority’s VISION2030 Renewed Strategic Plan to the members as follows:

Piper explained that VISION2030 was established in 2020. At the midpoint of the plan, the Authority decided it was the right time to take a step back and question whether the organization was on the right track given all our accomplishments and changes that occurred in the energy landscape. Piper explained that she will be sharing the details of NYPA’s due diligence process, how the strategy has evolved organizations’ focus moving forward.

Process and Methodology

The process – engages not only the board but also the customers, external stakeholders, subject matter experts, and staff across the organization in various ways including survey, workshops and interviews. In response to the board's challenge to consider how risks formed our view of the future; the result was the Authority working closely with the Risk group to evaluate both risks and opportunities that confront us to determine targeted areas where NYPA's competencies directly address the evolving market challenges and stakeholder needs.

Analyzing Risks

The organization is confronting an unprecedented pace of change such as shifts in state and federal policies and customer demands to emerging technology.

Piper mentioned a few emerging risks that the Authority is monitoring:

- The multigenerational increase in load growth and how they will impact energy affordability.
- The risk that NYPA is unable to pivot quickly and falls behind evolving energy policies and regulations.
- Increasing levels of opposition to new development that may impede progress toward modernizing the grid and meeting the evolving energy needs of the State and the Authority's customers.
- Nuclear resurgence, which presents both a risk and an opportunity, potentially, not only diverting investments from traditional renewables but also presenting new, clean energy options for the State to address energy needs.

The refreshed strategy plan not only reduces risks where possible but also demonstrates a willingness to adapt and take calculated risks (such as in creative partnerships that the Authority has formed in the transmission space) in response to the needs of its customers and the state.

Mapping the Strategic Evolution

The insights gathered enable the Authority to map NYPA's transformation from 2020 through today and project into 2030. The Authority has laid out this evolution along the following three critical dimensions:

- Market & Policy Conditions
- Core Competencies & Competitive Advantage
- Strategic Insights & Opportunities

Mapping External and Internal Pathways - Market & Policy Conditions

- In 2020, New York State was at 28% renewable electricity with targets to increase that number to 70% by 2030 and achieve a fully decarbonized grid by 2040. Today, the State is lagging slightly, and forecasts indicate that we will achieve 53% electricity from renewables by 2030.
- With the increasing electrification of transportation, heating and cooling for building, and increased energy demand from advanced manufacturing and datacenters, projections indicated that up to 20 GW of new renewables resources may be needed to meet the state's 2040 goal.
- NYPA's expanded authority and nuclear resurgence provides additional pathways to achieving the Climate Leadership and Community Protection Act ("CLCPA") goal. Despite all of this, the state remains committed to a just transition to net zero economy.

Grid Conditions

- In 2020, the grid faced congestion and challenges with the integration of renewable energy; there were over 275 applications in the interconnections queue.

- Though progress has been made, grid congestion continues to be a challenge. Despite process reforms, there are nearly 500 applications in the interconnection queue, while generator deactivations are outpacing the inclusion of new supply additions.
- For 2030, the NYISO forecasts a 23% increase in congestion statewide, with the grid transitioning to winter peaking due to electrification of heating and transportation.
- An exciting development derived from the Public Service Commission's ("PSC's") Grid of the Future Proceeding that projects New York will have 3 GW of grid flexibility potential by 2030 and 8 GW by 2040 and a tremendous opportunity to manage the cost of the transition, and the management of supply and demand behind the meter.

Market Dynamics

- In 2020, economic pressures on traditional energy markets prevailed, and the PSC's Reforming the Energy Vision proceeding sought to animate the market at the grid edge.
- Customers decarbonization solutions have primarily focused on energy efficiency solutions.
- The current markets have evolved and we are seeing supply chain disruptions, interest rate fluctuations, commodity price volatility, and offshore wind uncertainty.
- By 2030, flexible energy resources like hydro are expected to become more valuable, with AI-driven solutions enabling a more dynamic energy market.

Policy Evolutions & Further Factors

- In 2020, NYPA was in the throes of integrating an aging canal system with limited funding and reduced commercial shipping. Presently, NYPA has de-risked the canal system through infrastructure investments and asset managed best practices. More recently, the Authority secured \$54 million in capital appropriation from the state.
- In the 2023-2024 Enacted State Budget, NYPA received expanded authority to develop, own and operate renewable energy projects, providing an exciting new tool addressing customer and state energy costs.
- Forecasting 2030, the Authority anticipates that the policy evolution will continue to emphasize enhanced community engagement and affordability to manage the transition equitably.

Core Competencies & Competitive Advantage

Power Generation

- In 2020 - NYPA provided 25% of New York's electricity with 80% carbon-free hydropower.
- By 2025 – Next Generation Niagara, a \$1.2 billion project to extend the life of the project, is well underway ensuring that this asset will continue to support grid reliability for another 60 years.
- Forecasting 2030 – the Authority envisions fully decarbonized operations with an expanded portfolio of emission-free resources, including 450 MW of storage, and mature Vehicle Power Plant ("VPP") capability that enables the organization to leverage a share of New York State's 3 GW of grid flexibility potential.

Transmission & Infrastructure

- In 2020 - NYPA's ¾ billion-dollar Transmission Life Extension and Modernization efforts was well underway along with a multi-million-dollar Communication Backbone and Sensor deployment program.
- The Authority unveiled the first Evolve NY High-Speed Electric Vehicle Charging Hub. By 2025 - NYPA had executed on its commitment to be the leading transmission developer in the state – completing projects such as Smart Path and Central East Energy Connect.
- Forecasting 2030 - NYPA aims to achieve climate resilient operations with clarity on nuclear and wind energy integration into the transmission system.

Customer & Innovation

- In 2020 – NYPA's solid track record of customer partnerships included delivering clean energy solution such as energy efficiency and street lighting with digital transformation well underway through Advanced Grid Innovation Laboratory for Energy (“AGILE”), Integrated Smart Operating Center (“iSOC”), and New York Energy Manager platforms.
- Today – the Authority is developing new customer offerings and digital capabilities are maturing with AI integration.
- Forecasting 2030 – the Authority envisions a more sophisticated customer engagement model supporting a range of behind the meter solutions with increased grid integration e.g. Vehicle to Grid (“V2G”), Grid Interactive Buildings (“GIBs”), Vehicle Power Plant (“VPP”) and Thermal Energy networks, along with comprehensive AI-enabled enterprise and operations ecosystem.

Financial Strength, Funding & Workforce

- In 2020 – NYPA maintained a strong balance sheet with investment-grade credit ratings. Emphasis was placed on embedding diversity equity and inclusion in how the Authority works and what we do. Focus was also placed on workforce development and planning to build organizational resiliency.
- To date – NYPA has committed \$25 million annually towards developing the state's clean energy workforce and has allocated more than \$25 million to date. It has also secured federal grant awards for various projects totaling over \$116 million and developed core capabilities in new areas of business such as Renewable Development.
- Forecasting 2030 – NYPA would have invested over \$150 million dollars developing the clean energy workforce of the future, fostering a collaborative, safe, and inclusive knowledge-sharing culture.

Piper explained that the summary of where we were and where we are going directionally sets the stage for the areas that we will focus on moving forward. She spotlighted the success of NYPA's plan to date, which forms the foundation of NYPA's plans going forward.

Midpoint Highlights & Successes

Piper noted that the Authority's ability to establish innovative partnerships coupled with expertise in Asset Management, Large Infrastructure Project Delivery, and Power System Engineering have enabled the organization to deliver grid and customer solutions. She said that in addition to upgrading our existing asset base, NYPA has done the following:

- Added 150 miles of new transmission
- Installed over 1,000 charging ports in support of customer fleet electrification and the EVolve Program
- Installed 64 MW of distributed solar at customer sites and 22 MW of storage
- Delivered 9.6 trillion British Thermal Units (“BTUs”) in energy savings to customers through energy efficiency efforts
- Increased number of customers served by 16% since 2020
- Added a new team to deliver an expanded portfolio of renewable energy assets

Piper added that at NYPA and Canals we are fortunate to have a purpose driven and committed workforce. Since 2020, NYPA staff has ranked the Power Authority one of the best mid-sized employers on three occasions. Through the organization’s talent development programs, the Authority has delivered customized training and exposure to assist all staff to reach their full potential, bringing emphasis to the following:

- NYPA doubled down on its commitment to DEI internally and externally, thereby integrating DEI into the fabric of the Authority expanding the number of diverse suppliers.
- Awarded scholarships to 50 students and hosted 82 Pathways in Technology (“P-TECH”) interns since 2020 through the Future Energy Leadership Scholarship Program.
- Expanded NYPA’s Advanced Grid Innovation Laboratory for Energy – a leading power system laboratory designed to accelerate the deployment of grid solution and the integration of renewable generation.
- Enhanced asset management capabilities with advanced analytics and industry leading robotics program boasting as the first utility to receive authorization for drone flights beyond visual line of sight.

Piper advised that all of this is predicted by maintaining a strong financial position, balancing the need for investments in existing assets with NYPA’s portfolio of customer projects and new areas of growth. The recent credit rating upgrades are a testament to the effectiveness of NYPA’s financial strategies.

Critical Uncertainty

- Although the Authority had based plans going forward on risks that were identified, there remain critical associated uncertainties, e.g. uncertainty stemming from the new federal administration.
- Tariffs, inflation and a reduction of federal investment in clean energy innovation could increase costs and uncertainty around Offshore Wind (“OSW”) may drive a need for more land-based solutions and additional transmission in other areas.
- The current administration appears to be supportive of nuclear, but it remains to be seen what investments they will make to support the resurgence.

Midpoint Assessment

The conclusions from the midpoint assessment:

- The strategic direction of the organization has been validated.

- NYPA's vision and mission remains unchanged – leading the transition to carbon-free, economically vibrant New York through customer partnerships, innovative solutions and responsible electricity supply.
- Canals maintains and operates a premier waterway and trail system honoring unique recreational and tourism opportunities while promoting sustainable economic development throughout the canal corridor.
- NYPA's progress remains on track despite challenging market conditions.
- NYPA has made tactical adjustments to ensure resilience against evolving market conditions, streamlined the priorities for impact and strengthened the foundational pillars for future needs.
- The Authority recognizes that it is managing a moving target and must build resilience and be agile in response to change. The organization recognizes customers' needs have changed and require a focus on innovation and deeper partnerships.

Piper advised that improving the user experience and community revitalization remain key elements of our Canals vision along with safe and secure investments while seeking funds to meet the long-term needs of Canals. She added that the capabilities the Authority has built, position us to meet the needs of the moments and the next 5 years are about execution, adaptability and community engagement.

Strategic Adjustment to Pillars and Priorities

Clean Energy – The Authority has consolidated its efforts around Clean Energy. It has combined “Preserve Hydropower”, “Decarbonize SNGP” (“Small Natural Gas Plants”), and new NYPA Renewable efforts under the banner of “Drive Clean Energy Transformation” reflecting an integrated renewable portfolio management approach that is responsive to the energy transition and customer needs.

Transmission Development – Building on success of the last five years, NYPA continues to invest \$200-400M annually in transmission development to grow the states transmission infrastructure. The key to successfully building (out) is stakeholder engagement.

Customer Solutions – NYPA is building on its role as a trusted advisor that is committed to delivering innovative Customer Solutions and will deliver ready market offerings to overcome commercial and industrial decarbonization barriers.

Piper advised that as the Canals Bicentennial is celebrated, NYPA remains committed to enhancing public safety, the use experience, along with prioritizing safe and secure investments based on an increased understanding of asset risk and focus on climate resilience during which the canals will continue to serve communities for another 200 years.

The Foundational Pillars strengthened for future needs:

- **People and Values** – NYPA is built on the foundation of the DEI and Resource Alignment pillar and fosters a safety-first culture while enhancing the employee experience through skill building, career growth and continued commitment to uphold DEI values.
- **Communities** – The New pillar focused on communities impacted by NYPA and Canals. It incorporated and expanded the external facing component of the original VISION2030 DEI pillar. Environmental Justice programs such as Pathways in Technology (“P-TECH”) scholarship program and our supplier diversity programs. These programs incorporate NYPA's commitment supporting skilled and diverse energy workforce in New York State. The Authority's commitment of up to \$25M

annually is expanded to ensure impacted communities are included in and benefit from NYPA's work and the clean energy transition.

- **Innovation** – The Authority is building on its digitization efforts, tapping on the creativity of its people and investments in Digitalization. It is emphasizing innovation which is critical to performance and growth. The Authority is focused on realizing the value of its investment through the creation of an ecosystem that accelerates grid modernization and enables next generation-customer decarbonization technologies.
- **Sustainability** – After successfully meeting our goal and being the first utility to issue an Environmental, Social, Governance (“ESG”) focus area reporting, the Authority is now focused on comprehensive climate adaptation planning and the integration of sustainability into what the organization does daily.
- **Resilience** – The organization has expanded from traditional infrastructure hardening to recognize and respond to changes in our operating environment.

Governance and Implementation Framework

- The Authority's new priorities, pillars and putting them into required planning, governance and effective implementation. In order to drive accountability, key roles were established for each priority and pillar thus ensuring clear ownership at every level of the organization.
- Key performance indicators and monthly reporting allow the organization to remain focused on critical milestones and allow for quick response to challenges or market changes.

Suggested Trustee Governance and Cadence

- The Authority's objective is to provide you with regular updates on progress towards the organization's goals. A strategy is a living document and NYPA expects to have regular discussions on how changes to our risk profile impact the strategy. The organization will align those discussions with the Enterprise Risk Program and deliver updates and forward-looking plans on a quarterly and year-end basis.

Strategy on a Page

- As an organization, the Authority is proud of its accomplishments and excited about this plan along with the opportunities that lie ahead. Piper added that this is an exciting time in the energy industry and NYPA has a long history of stepping up and delivering for the people of New York and are uniquely positioned to meet this moment.

President Driscoll thanked Piper for sharing the presentation plan and advised that it is a strong and compelling narrative that highlights not only the growth and scope of NYPA's evolving asset base but also the strategic direction that ties everything together -- Canals, EV infrastructure, renewables, transmission and deeper community engagement.

President Driscoll briefly reflected on the scope of the asset portfolio beyond the Canals, which spans over 500 miles. Looking beyond the snapshot of NYPA's existing transmission footprint. He highlighted that the map included our EVolve NY fast chargers now over 400 strong. He added that the Authority's asset portfolio, apart from the 500 miles of Canals infrastructure, includes:

- Smart Plan – 86 miles/230kV
- Central East Energy Connect – 93 miles/345kV (NYPA, LS Power Grid New York)
- Smart Path Connect – 110 miles/230/345kV (NYPA, National Grid)

- Propel NY Energy – Est. 90 miles of new line 138/345kV (In-service Q2 2030 – NYPA, NY Transco)
- 5 Boro – *proposed* In-service 2030 NYPA

President Driscoll added that the Authority is expanding its reach, responsibilities and impact. Although there are risks, the organization is confident it can deliver and requested the members vote in favor of the VISION2030 Renewed Plan.

On motion made by member Gonzalez and seconded by member Trainor, the following resolution was unanimously adopted. Member Warren was excused from vote.

RESOLVED, That the Trustees hereby acknowledge that they have read, understand and adopt the Authority's Strategic Plan, VISION2030 Renewed, attached hereto and as discussed in the foregoing memorandum of the President and Chief Executive Officer; and be it further

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

b. Risk and Resiliency

i. Chief Risk and Resiliency Officer's Report

Alexis Harley, Senior Vice President, Chief Risk and Resiliency Officer presented the Chief Risk and Resiliency Officer's Report.

Harley reported on the regulatory and legislative environment, specifically the federal transition.

Federal Transition

Since the presidential inauguration, there has been an unprecedented number of executive orders, memorandums, formal actions and corresponding reactions from the legislative branches of government. This has introduced complex uncertainties, both in the United States and globally.

To aid the Authority navigate the changes, a mobilization of key Subject Matter Experts ("SME") across NYPA and Canals have taken the following approach:

- Legal, policy and regulatory affairs are continuously monitoring and tracking presidential actions and federal developments through both formal and informal channels. Guidehouse Consulting, an external counsel, is helping to identify those specific items that are relevant to NYPA and Canals, New York State Energy and to the energy sector at large to aid in understanding the implications.

Three items that will have the most potential for impact on the organization are in review and include import tariffs, the unleashing American Energy Executive Order, and the Wind Generation Memorandum.

- **25% Import Tariffs** on goods from Canada, Mexico and China, potentially including steel and aluminum, with the removal of exceptions formerly in place. Two complications as a result of this action are the treatment of electricity and the possibility of retaliation by other countries as they respond to the United States' imposed tariffs on their products.
- **The American Energy Executive Order** pauses the IJA Executive Order and IRA fund disbursements. NYPA does not directly depend on federal funding but pursues opportunities for these grants to help offset costs, especially for customers.

- **The Wind Generation Memorandum** pauses new approvals for leasing and permitting for Offshore Wind.

The Authority's Legal and Regulatory Affairs team shares the latest vetted developments through these priority areas into a cross-functional federal transition working group established by the Authority. The group includes members of the NYPA's Strategic Supply Management ("SSM"), Operations, Customer Solutions, Finance, Legal Risk, External Affairs, and Cybersecurity areas to ensure that there is a comprehensive view of the various potential changes.

The group meets weekly to identify/assess possible impacts and share observations/experiences from their area of business. The Authority also leverages APPA, LPPC and other industry memberships as well as the New York Independent System Operator ("NYISO") and the Governor's Office.

To help uncover potential secondary and tertiary impacts, Toffler and Associates were hired to facilitate "Scenario Workshops" with the Authority's Working Group, Subject Matter Experts ("SMEs") and the Executive Team. Scenario thinking is a component of the Authority's plan to enhance its resilience capabilities and was used for the framework for federal transition workshops.

The workshops include consideration of policies, global reactions, supply chain and the workforce related to the potential changes to DEI and immigration policies, projects, customers and communities across the state. Through these efforts, the team identified and prioritized potential challenges and benefits such as new talent.

The preliminary assessment has not shown significant impact on NYPA and Canals in the near-term directly by any of the three discussed orders due to the organization's existing practices and operating model. For example, the Authority has a Buy America clause in our contracts, and long-term contracts for major pieces of equipment mitigate against the potential steel price increase.

These dynamics are multifaceted, and the outcomes cannot be predicted. The Working Group is currently performing additional targeted assessments on the Authority's top projects; understanding potential customers' concerns; keeping the Executive Leadership informed of insights; and potential recommendations. The Working Group will also continue to watch for indications of medium and long-term impacts, especially indirect impacts.

The team is continuously monitoring and assessing conditions and, if warranted, have positioned themselves to efficiently escalate any concerns through the existing decision-making channels.

c. Canal Corporation Revitalization

i. Director's Report

Brian Stratton, Director of the New York State Canal Corporation, provided highlights of the report. He said that this is the beginning of the 201st consecutive season of navigation on the Erie Canal.

Erie Canal Bicentennial Commission

February 16, 2025 marks the opening day of the 201st consecutive season of navigation on the Erie Canal. The Canal staff is working with members of Governor Hochul's Bicentennial Commission. The First Gentleman, William J. Hochul, Jr. and Stratton are co-chairing the Committee. The other members include: Secretary of State Walter Mosley, New York State, Empire State Development Corporation President Hope Knight and the Commissioner Pro Tem of the New York State Department of Parks and Historic Preservation Randy Simons.

Canal Corporation Commissioned Work:

The Commission has been primarily focused on maximizing the number of events and opportunities to enable organizations and communities to commemorate Erie Canals' 200th year.

- Albany Symphony series will perform through July 4th week across the Canals.
- NYPA's new documentary series produced by the Public Broadcasting Station ("PBS") and Mohawk-Hudson Television ("WMHT"), will be aired in segments next month on PBS member stations across the state. The entire documentary premieres at the World Canals Conference in Buffalo, September 21st - September 25th.

Maximizing Community Events & Commemorations:

- The New York State Lottery has partnered with NYPA and Canals to hold an Erie Canal Bicentennial raffle providing 15 chances for members of the public to win \$1 million.
- The Authority is working with the Department of State and the New York State Commission on African American History to ensure that they tell an inclusive story about the history of the Canal and its impact.
- A Bicentennial Flotilla will be organized with members of the public following the Seneca Chief's 30-day journey from the World Canals Conference to New York Harbor.
- The event will culminate on Sunday, October 26th at Pier 26 in New York Harbor in Hudson River Park. That date commemorates 200 years to the day when Governor DeWitt Clinton opened the Canal in 1825, and the West Point Band agreed to perform on that day as they did 200 years ago.

Interactive Bicentennial Events Calendar

The Corporation's partners at the Erie Canal National Heritage Corridor have an interactive Bicentennial calendar of the events. To date, more than 100 events have been posted on the calendar.

2025 World Canals Conference

The 2025 World Canals Conference begins on Sunday, September 21st in Buffalo, New York. Since the September Board meeting will be held in Buffalo, the members will have the opportunity to participate in the activities.

Call for Presentations

- More than 60 submissions from 11 countries have been submitted so far.

Public Events and Tours

- Several proposals from NYPA and Canal Corporation staff were selected to cover a range of topics from the historic role of Lock Tenders to presentations by artists and residents.
- Capital projects such as the construction of the Brockport Pedestrian Bridge will be featured and the application of a slurry wall on the earthen embankment in Royalton, New York.
- Participation will be diverse from people around the world as well as NYPA and Canal Corporation colleagues.
- Pre-conference events include the America Gateway Tour and a historic motorcoach journey from New York to Buffalo following in the footsteps of immigrants who came to America.
- Post conference tour will explore the Buffalo arts scene, Niagara Falls, Canadian points of interest, including the wetlands and canal.

- Visit wcc2025buffalo.com for regular updates.

ii. Public Access Report

Rebecca Hughes, Deputy Executive Director – New York State Canal Corporation, presented the Canal Revitalization: Public Access Report.

Hughes explained that the VISION2030 serves as a roadmap and business plan. During the January meeting the Canal Recreation Ways 2050 Plan was presented. We are looking back to where we've been, where we are today and where we are headed. The plan for 2050 is to treat Canals 500+ miles of waterway, trails, park-like spaces like a park system that welcomes the public.

Turning Challenges into Opportunities: Designing Amenity Standards

Creating a Standard Kit of Parts

The plan is to be more intentional about the look and feel of the Canal sites. The Authority is also standardizing to achieve efficiency in maintaining stockpiles of parts for maintenance crews to make equipment repairs or replacements.

Brand and Wayfinding Signage

Signage holds high importance, especially when it is missing or inaccurate. The team developed the brand identity for the Canal signage at the Canal locks along the Empire State Trail, which is comprised of the Canalway Trail along the Erie and the Champlain. The signage will make it easier for visitors to identify where they are along the system and what amenities are located in the towns that they are visiting.

The next phase of this standardization work is to standardize public safety signage when near a low-head dam and standardizing safety barriers like railing and fencing. The usage of amenities and signage attracts people where we want them to recreate while using standardized amenities to keep people away from hazards when visiting our iconic spaces.

Refreshing Brand Identifiers

In honor of the Bicentennial, the team plans to introduce new iconography, updating identifiers for both the Erie Canalway and the Champlain trailways. The strategic process is a two-year initiative with involvements across departments and groups at NYPA and Canals. The new identifier honors the former look while signaling a new era for recreation and use. She said the installation will be gradual replacing signage and items as needed.

Advantages of Standardizing Planting

The team is developing standards for vegetation at the sites that are being dominated by turf grass and giving thought to the different climate zones, what plantings might enhance habitat and ecological benefit while reducing the areas that need to be mowed. This will improve our sites and the user experience as well as reduce any burden of maintenance.

iii. Operations Report

David Mellen, Regional Manager and Senior Vice President – New York State Canal Corporation presented the Canals Revitalization: Operations Report.

Mellen issued a brief operational update starting with a review of the last five months, a peek at the season ahead, and requested the Board's approval of the naming of the second tugboat vessel.

Canals Winter Work Program

- The winter work program was deemed very successful despite challenging weather conditions in Western Region and along Corridor 81.
- There are approximately 30 active projects across the state, including ten Pump-out projects and 20 contracted projects.
- 20 trips were made to break ice that got to approximately 14 inches thick in 2025; in 2024 only 4 trips were made. Flooding was avoided in March 2025 due to the frequent icebreaking trips.
- The Authority set to hire an estimate of 165 to 170 seasonal employees. Headcount remains unchanged at about 475. Vacancy holds steady at 10 percent.
- Buoys will be set up across the system. At the end of April, the team will start watering-up of the Western Erie; and movable dams in the first week of May.

Building Resilience

The crew worked on critical pump-outs and Lock C-8 needs repair, which will cost approximately \$1.5 million and is expected to be completed by the end of April.

Leveraging Technology to Advance Operations

Technology will allow the organization to manage risks associated with water impounding structures, for example, the use of robotics platforms with drones and a robotic dog to detect leaks. These tools were found to be effective at the Upland Disposal sites and dredging operations on the canal. In addition, these risk mitigation tools will improve the quality and efficiency of inspections and water management.

2025 Navigation Season

- Extended Navigation Season: May 16 to November 3
- Open Daily: 8:00 a.m. – 6:00 p.m.
- NYPA Canals and operations teams are ready and prepared to support the numerous summer commemorative events.
- Free for recreational vessels
- Training efforts continue to grow with two dedicated coordinators at Canals with assistance from NYPA.

In 2023, twenty-two learning items identified a basic training package for new employees. To date, 168 learning outcomes have been identified; 50% have been completed.

Investing in Fleet Modernization

- In 2023 the Board approved four tugboats with a total cost of \$35 million.
- Anticipated delivery of: Thomas X. Grasso as previously discussed is expected to arrive in June 2025.
- Naming committee recommending 'Rome' as name of new vessel that is set to arrive in the fall of 2025.

The reasoning behind the committee selecting the tug vessel name, Rome stems from Rome, New York's rich history, relative to the Canal Corporation. The construction of the canal began in 1817 in Rome, New York and the Rome-Utica section was completed by 1819, basically it is where they started with the first shovel in the ground. Tug Rome is the sister to tug Thomas X. Grasso.

Mellen thanked the board and requested they vote in favor of the naming of the vessel – ‘Rome’.

1. Vessel Naming in Honor of the City of Rome – Resolution

RESOLVED, that the Trustees and Canal Corporation Board of Directors dedicate a newly fabricated tug vessel ‘Rome’ in recognition of the historical significance of the City of Rome; and be it further

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

On motion made by member González, and seconded by member Morris, the following resolution, as recommended by the President and Chief Executive Officer, was unanimously adopted. Member Warren was excused from vote.

d. Risk and Resiliency Committee Report

Chair Morris reported that the Risk and Resiliency Committee met on January 28, 2025, and Chief Risk and Resiliency Officer Alexis Harley introduced four agenda items as follows: The year-end Enterprise Risk results; Emerging Risk update; Merchant Portfolio Hedging Program Update, and Cyber Security update.

The year-end Enterprise Risk report included an overview of the NYPA and Canals risk assessment results. The key takeaway was that there were no major movements in risk scores since the 2024, mid-year update; the profile has remained stable. It was also noted that the updated risk appetite ranges were added to the risk management and controls graphic illustrating the relationship between risk management and controls and risk appetite.

The Emerging Risk Update included the emerging risk dashboard identifying six trend emerging risks along with business implications, time horizon and change in trend since the last report. The report highlighted two new emerging risks of Political Transition and Nuclear Resurgence including the potential impacts across multiple dimensions.

The Merchant Portfolio hedging update recapped our programmatic approach, which layers on hedges throughout the year to reduce downside risk and stabilize revenue outcome. The annual review of our multi-year hedging strategy was reviewed and approved by the Executive Risk Management and Resiliency Committee in December 2024. The updated strategy was then shared with the Risk and Resiliency Committee members. As we head into 2025, we anticipate reaching targeted hedging percentage for 2025, 2026, and 2027.

The Cyber Security update focused on key accomplishments in 2024 such as enhanced IT/OT Cyber Kill Chain Capabilities and improved ability to respond. Key areas of focus for 2025 such as Continuous Management of the Attack Surface and Increasing Cyber Awareness and Training were highlighted.

Chair Morris added that the minutes of the meeting held on September 17, 2024, were adopted and there were no other items that required board vote.

Chair Morris concluded that the next meeting would take place on September 16, 2025.

e. Finance Committee Report

The Chair of the Finance Committee reported that the Committee met on March 18, 2025, adopted minutes, received a staff report, and adopted the following resolutions for approval by the Trustees:

i. Finance Committee Recommendations for Approval:

On motion made by member Trainor and seconded by member Wheelock, the following (10) resolutions were unanimously adopted. Member Warren was excused from vote. One vote was taken for items 1-10.

1. Release of Funds in Support of the New York State Canal Corporation for Q2 2025 – Resolution

RESOLVED, that the Finance Committee hereby recommends that the New York Power Authority Board of Trustees authorize the release of up to \$27.0 million in the funding to the Canal Corporation to support operations of the Canal Corporation in Q2 2025, as discussed in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, that the Finance Committee recommends that the New York Power Authority Board of Trustees affirm that amounts presently set aside as reserves in the Operating Fund are adequate for the purposes specified in Section 503.2 of the Authority's General Resolution Authorizing Revenue Obligations, dated February 24, 1998, as amended and supplemented (the "General Bond Resolution"), that the amount of up to \$27.0 million in funding as described in the foregoing report is not needed for any of the purposes specified in Section 503.1(a)-(c) of the General Bond Resolution of that the release of such amount is feasible and advisable; and be it further

RESOLVED, that the Finance Committee recommends that the New York Power Authority Board of Trustees affirm that as a condition to making the payments specified in the foregoing report, on the day of such payments, either the Executive Vice President & Chief Financial Officer or the Treasurer shall certify that such monies are not then needed for any of the purposes specified in Section 503.1(a)-(c) of the General Bond Resolution; and be it further

2. Release of Funds for the Western New York Power Proceeds Fund – Resolution

RESOLVED, that the Finance Committee hereby recommends that the Board of Trustees authorize the release of \$31,500,000 million from the Operating Fund to the Western New York Economic Development Fund ("WNYEDF"), to the extent such amount of net earnings is generated for the period from January 1, 2025 through December 31, 2025, as authorized by Chapter 58 of the Laws of 2012 and as discussed in the foregoing memorandum of the Interim President and Chief Executive Officer; and be it further

RESOLVED, that the Finance Committee recommends that the Board of Trustees affirm that amounts presently set aside as reserves in the Operating Fund are adequate for the purpose specified in Section 503.2 of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented (the "General Bond Resolution") and that the amount of \$31,500,000 million to be released to the WNYEDF for the purposes authorized by Chapter 58 of the Laws of 2012 described in the foregoing resolution is not needed for any of the purposes specified in Section 503.1(a)-(c) of the General Bond Resolution and that such release is deemed feasible and advisable; and be it further

RESOLVED, that the Finance Committee recommends that the NYPA Board of Trustees affirm that as a condition to making the releases specified in the foregoing resolutions, on the day of such payment, either the Executive Vice President & Chief Financial Officer or the Treasurer shall certify that such monies are not then needed for any of the purposes specified in Section 503.1(a)-(c) of the Authority's General Bond Resolution; and be it further

3. Release of Funds for the Voluntary Contribution of Funds to State Energy Programs – Resolution

RESOLVED, that the Finance Committee hereby recommends that the New York Power Authority Board of Trustees authorize the release of funds from the Operating Fund to the State's general fund in the amount of \$5 million as authorized by Section 19 of Part XX of Chapter 56 of the Laws of 2024 as discussed in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, that the Finance Committee recommends that the New York Power Authority Board of Trustees affirm that amounts presently set aside as reserves in the Operating Fund are adequate for the purposes specified in Section 503.2 of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented (the "General Bond Resolution") and that the amount of \$5 million to be released to the State's general fund described in the foregoing memorandum is not needed for any of the purposes specified in Section 503.1(a)-(c) of the Authority's General Bond Resolution and that such release is deemed feasible and advisable; and be it further

RESOLVED, that the Finance Committee recommends that the New York Power Authority Board of Trustees affirm that as a condition to making the payments specified in the foregoing resolution, on the day of such payments, either the Executive Vice President & Chief Financial Officer or the Treasurer shall certify that such monies are not then needed for any of the purposes specified in Section 503.1(a)-(c) of the Authority's General Bond Resolution; and be it further"

4. Workforce Development Funding – Authorization to Release Funds – Resolution

RESOLVED, that the Finance Committee recommends that the Authority's Board of Trustees approve the release of up to \$25 million of funding to support the Authority's Workforce Development initiatives, and be it further

RESOLVED, that the Finance Committee recommends that the Authority's Board of Trustees affirm that amounts presently set aside as reserves in the Operating Fund are adequate for the purposes specified in Section 503.2 of the Authority's General Resolution Authorizing Revenue Obligations, dated February 24, 1998, as amended and supplemented (the "General Bond Resolution"), that the aggregate amount of \$25 million in funding as described in the foregoing report is not needed for any of the purposes specified in Section 503.1(a)-(c) of the General Bond Resolution and that the release of such amount is feasible and advisable; and be it further

RESOLVED, that the Finance Committee recommends that the Authority's Board of Trustees affirm that as a condition to making the payments specified in the foregoing report, on the day of such payments, either the Executive Vice President & Chief Financial Officer or the Treasurer shall certify that such monies are not then needed for any of the purposes specified in Section 503.1(a)-(c) of the General Bond Resolution; and be it further

5. Project Luminate – Contract Awards – Resolution

RESOLVED, that the Finance Committee hereby recommends that the New York Power Authority Board of Trustees, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, authorize the award of the following four contracts for the final portion of the Project:

- 7-year Software contract in the amount of \$3,155,671 to Ivalua, Inc.,
 - 7-year Software contract in the amount of \$7,027,963 to Workday, Inc.,
 - 3-year Services contract in the amount of \$15,374,874 to Deloitte Consulting LLP,
 - 3-year Services contract in the amount of \$13,121,807 to Gartner, Inc.;
- and be it further

RESOLVED, that the Finance Committee recommends that the Trustees approve the Authority's use of Capital Funds, which may include proceeds of debt issuances, to finance the costs of the Project; and be it further

RESOLVED, that the Finance Committee recommends that the Trustees declare in accordance with Treasury Regulation Section 1.150-2, the Authority's official intent to finance as follows: The Authority intends to reimburse to the maximum extent permitted by law with the proceeds of tax-exempt obligations to be issued by the Authority, all expenditures made and which may be made in accordance with the Project described in the foregoing report of the President and Chief Executive Officer; and be it further

6. Service Providers for Energy Efficiency Program - Additional Funding – Resolution

RESOLVED, that the Finance Committee recommends that the Trustees approve, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures the additional funding of \$800 million for the following (19) Service Providers for Energy Efficiency Program: AECOM USA Inc, Arcadis of NY, Barile Gallagher & Associates, Bette & Cring Inc, CDM Constructors Inc, Dynamic US Inc, The Fulcrum Group, Guth DeConzo Consulting Engineers PC, Imperia Engineering Partners LLC, John W Danforth Co, Labella Associates DPC, LIRO Engineers Inc, Macan Deve Engineers DPC, Noresco LLC, Pres Services LLC, Ramboll Americas Integrated Solutions Inc, Stark Tech Operating Company LLC, Wendel Energy Services LLC, and Willdan Energy Solutions; and be it further

RESOLVED, that the Finance Committee recommends that the Trustees approve the Authority's use of Capital Funds, which may include proceeds of debt issuances, to finance the costs of projects; and be it further

RESOLVED, that the Finance Committee recommends that the Trustees declare in accordance with Treasury Regulation Section 1.150-2, the Authority's official intent to finance as follows: The Authority intends to reimburse to the maximum extent permitted by law with the proceeds of tax-exempt obligations to be issued by the Authority, all expenditures made and which may be made in accordance with the Project described in the foregoing report of the President and Chief Executive Officer; and be it further"

7. Astoria Property Acquisition – Resolution

RESOLVED, that the Finance Committee recommends that the Board of Trustees, pursuant to the Authority's Capital Planning and Budgeting Procedures, approve authorized funds for capital expenditures in the amount up to \$210 million for the purchase of a 15.7± acre land parcel, adjacent to NYPA's existing property in Astoria, as recommended in the foregoing memorandum of the President and Chief Executive Officer; and be it further;

RESOLVED, that the Authority will use Operating and/or Capital Funds, which may include proceeds of debt issuances, to finance the costs of this Property acquisition; and be it further

RESOLVED, that the Finance Committee recommends that the Trustees declare in accordance with Treasury Regulation Section 1.150-2, the Authority's official intent to finance as follows: The Authority intends to reimburse to the maximum extent permitted by law with the proceeds of tax-exempt obligations to be issued by the Authority, all expenditures made and which may be made in accordance with the Project described in the foregoing report of the President and Chief Executive Officer; and be it further

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

RESOLVED, that the Finance Committee recommends that the Trustees approve a 10-Year Review settlement agreement with local communities and an increase in capital expenditures of \$51.7 million establishing a total authorized amount of \$234 million to facilitate and accomplish implementation of, and

compliance with, the new License issued by the Federal Energy Regulatory Commission for the St. Lawrence-FDR Power Project, as well as the settlement agreements associated therewith.

9. Workforce Development – Grant Funding Request – Resolution

RESOLVED, that the Finance Committee recommends that the Authority's Board of Trustees approve funding of Workforce Development initiatives for an aggregate total of \$3.95 million for the Workforce Development initiative;

Training Provider:	Funding Allocation:
Bronx Economic Development Corporation	\$200,000
Laborers' International Union of North America	\$1.33 million
New York State Labor Management Committee	\$1.05 million
Osborne Association	\$755,000
Willdan Clean Energy Academy	\$615,000

and be it further

RESOLVED, that the Finance Committee recommends that the New York Power Authority Board of Trustees affirm that amounts presently set aside as reserves in the Operating Fund are adequate for the purposes specified in Section 503.2 of the Authority's General Resolution Authorizing Revenue Obligations, dated February 24, 1998, as amended and supplemented (the "General Bond Resolution"), that the aggregate amount of \$3.95M in funding as described in the foregoing report is not needed for any of the purposes specified in Section 503.1(a)-(c) of the General Bond Resolution and that the release of such amount is feasible and advisable; and be it further

RESOLVED, that the Finance Committee recommends that the New York Power Authority Board of Trustees affirm that as a condition to making the payments specified in the foregoing report, on the day of such payments, either the Executive Vice President & Chief Financial Officer or the Treasurer shall certify that such monies are not then needed for any of the purposes specified in Section 503.1(a)-(c) of the General Bond Resolution; and be it further

10. Financial Advisory Services – Resolution – Contract Award

RESOLVED, that the Finance Committee recommends that the Trustees approve, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, the award of eleven (11) contracts for Financial Advisory Services, each for a term of five (5) years, to: Baker Tilly Advisory Group, LP of Madison, Wisconsin; CohnReznick LLP of Parsippany, New Jersey; CRA International, Inc. Of Boston, Massachusetts; Credit Agricole Corporate and Investment Bank of New York, New York; Ernst & Young U.S. LLP of Secaucus, New Jersey; FTI Consulting, Inc. of Bowie, Maryland; Goldman Sachs & Co. LLC of New York, New York; Guidehouse, Inc. of McLean, Virginia; J.P. Morgan Securities LLC of Brooklyn, New York; Jones Lange LaSalle Americas, Inc. of Chicago, Illinois; and PFM Financial Advisors LLC of Philadelphia, Pennsylvania in the aggregate amount of \$17 million; and be it further

RESOLVED, that the Finance Committee recommends that the Authority approve the use of Capital Funds, which may include proceeds of debt issuances, to finance the costs of projects; and be it further

RESOLVED, that the Finance Committee recommends that the Trustees declare in accordance with Treasury Regulation Section 1.150-2, the Authority's official intent to finance as follows: The Authority intends to reimburse to the maximum extent permitted by law with the proceeds of tax-exempt obligations to be issued by the Authority, all expenditures made and which may be made as described in the foregoing report of the President and Chief Executive Officer; and be it further

f. Governance Committee Report

The Chair of the Governance Committee met on March 18, 2025, adopted minutes, received (4) staff reports and adopted the following resolutions for approval by the Trustees:

i. Governance Committee Recommendations for Approval:

On motion made by member Trainor and seconded by member Wheelock, the following (7) resolutions were unanimously adopted. Member Warren was excused from vote. One vote taken for items 1-7.

1. Procurement and Related Reports for New York Power Authority and Canal Corporation (January – December 2024) -- Resolution

RESOLVED, That pursuant to Section 2879 of the Public Authorities Law and the Procurement and Related Reports for New York Power Authority and Canal Corporation, as amended, be, and hereby are, approved; and be it further

Procurement and Related Reports
NYPA Procurement Contracts Summary
Disposal of Personal Property
Supplier Diversity Program (SDP)
Inventory Statistics
Fossil Fuels Activity
Corporate Finance Activity
Transfer of Interest in Personal Property to Canal Corporation
Canal Corporation Procurement Contracts Summary
Canal Corporation Disposal of Personal Property

RESOLVED, That the Procurement and Related Reports, and hereby are, reviewed and approved; and be it further

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

2. Annual Report of Procurement Contracts, and Annual Review of Open Procurement Service Contracts -- Resolution

RESOLVED, That pursuant to Section 2879 of the Public Authorities Law and the Authority's and Canal's Procurement Guidelines, the Annual Report of Procurement Contracts, and the Guidelines for the use, awarding, monitoring and reporting of Procurement Contracts, as amended, be, and hereby are, approved; and be it further

RESOLVED, That the open service contracts exceeding one year be, and hereby are, reviewed and approved; and be it further

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

3. Annual Review and Approval of Guidelines and Procedures for the Disposal and Acquisition of Real Property, and Annual Reports for the Disposal and Acquisition of Real Property – Resolution

RESOLVED, That the Governance Committee recommends approval of the Authority's 2025 Real Property Disposal Guidelines, 2025 Real Property Acquisition Guidelines, 2024 Annual Report of the Disposal of Real Property in excess of \$15,000, 2024 Annual Report of the Acquisition of Real Property in excess of \$15,000 and 2024 Report of Acquisition and Disposal of Real Property to the Trustees and Board of Directors as required by Section C.5 of the Governance Committee Charter; and be it further

RESOLVED, That the Governance Committee recommends approval of the Canal Corporation's 2025 Canal Real Property Disposal Guidelines, 2025 Canal Real Property Acquisition Guidelines, 2024 Annual Report of the Disposal of Canal Real Property in excess of \$15,000, 2024 Annual Report of the Acquisition of Canal Real Property in excess of \$15,000 and 2024 Report of Acquisition and Disposal of Real Property to the Trustees and Board of Directors as required by Section C.5 of the Governance Committee Charter; and be it further

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

4. Annual Review and Approval of Certain Policies for New York Power Authority and Canal Corporation -- Resolution

RESOLVED, That the Governance Committee recommends that the New York Power Authority's Board of Trustees and the Canal Corporation's Board of Directors adopt the below listed policies pursuant to Section 2824 of the Public Authorities Law, Section 2 of Article II of the Authority's and the Canal Corporation's By-laws and Section (C)(1) of the Authority's and Canal Corporation Charters:

AND BE IT FURTHER RESOLVED That the Governance Committee recommends that the Authority's Trustees and the Canal Corporation's Board of Directors authorize the President and Chief Executive Officer to modify the foregoing policies, as necessary, except in the event that any powers, duties or obligations of the Trustees and Board of Directors would be affected by such modification; and be it further

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

NYPA	Policy	Name	Policy Number	Revision Date
	NYPA's Workplace Violence Policy		CP 1-8	10/1/2024
	Equal Employment Opportunity Anti Harassment Anti Discrimination Policy		CP 1-14	3/25/2024

Gender-Based Violence and the Workplace Policy	CP 1-16	7/30/2024
Screen and Pre-Employment Bargaining Unit Positions at Operating Facilities	EP 1-4	2/25/2025
Separation from Service	EP 1.6	11/21/2023
Transfer or Re-Employment in Public Service	EP 1.9	1/27/2025
Foreign National Sponsorship Policy	EP 1.13	12/21/2023
Management Non-Exempt and Facility-Based Exempt Overtime	EP 2.4	12/12/2024
Management Exempt Emergency Crisis Response Compensation	EP 2.5	6/3/2024
Management Employee Categories and Eligibility for Benefits	EP 3.1	1/13/2025
Family and Medical Leave Act (FMLA)	EP 3.3	7/2/2024
Employee Assistance Program	EP 3.5	1/31/2025
Tuition Reimbursement	EP 3.6	02/21/2024
Relocation Benefits for New and Transferred Employees	EP 3.8	01/14/2025
Management Time Away from Work	EP 3.12	02/25/2025
Performance Improvement	EP 4.2	05/9/2024
Fitness for Duty	EP 4.5	5/29/2024
Attendance and Flexible Hours	EP 4.6	3/3/2025
No Smoking Policy	EP 4.7	10/31/2024
Employee Resource Group Policy	HR-ERG-BUP-001	04/23/2024
Code of Conduct		
Anti-Retaliation Policy	CP 1-7	9/25/2021
Canal Policy Name	Policy Number	Revision Date
2025 Seasonal and Occasional PEF Transportation Construction Inspector (TCI) Rates	ASB-2025-002	1/21/2025
Rehired Retiree Eligibility for Accruals/Holiday Pay	ASB-2024-018	
Driver License Requirements and Verification Procedure	ASB-2024-023	12/1/2024
Assignment and Use of Canal Corporation Vehicles	CADM-POL-001	6/2/2022
Reasonable Accommodation in Public Programs and Services for People with Disabilities	CADM-POL-004	9/5/2023
Reasonable Accommodation of Religious Observances or Practices	CADM-POL-005	9/5/2023
Reasonable Accommodation of Disabilities Pregnancies and Domestic Violence	CADM-POL-006	9/5/2023
Nursing Related Rights Policy	CADM-POL-007	10/17/2023
Attendance Rules	CCP-2022-001	10/7/2022
MC Handbook	CCP-2025-001	02/2025
Succession Planning	CGP-2023-002	12/15/2023
Gender Based Violence in the Workplace	CGP-2022-004	12/7/2022
Positive Workplace Policy	CGP-2022-003	2/15/2023
Salary Administration Manual		10/2024
Social Leave for Holiday Luncheons 2024		10/28/2024
Social Leave for Holiday Luncheons 2024 HQ Employees		11/26.2924

5. New York Power Authority and Canal Corporation 2024 Annual Board Evaluation Pursuant to Sections 2800 and 2824 of the Public Authorities Law and Guidance of the Authorities Budget Office -- Resolution

RESOLVED, Pursuant to Sections 2800(1)(a)(15) and 2800(2)(a)(15) and Section 2824(7) of the Public Authorities Law and Guidance of the Authorities Budget Office, the Authority and Canal Board is required to annually submit a summary of the Board Evaluation to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller and the Authorities Budget Office, within 90 days after the end of its fiscal year; and be it further

RESOLVED, That the Governance Committee recommends the adoption of the 2024 Annual Board Evaluation Summary to the Authority's Board of Trustees and the Canal Corporation's Board of Directors as required by Section C (2) of the Governance Committee Charter.

RESOLVED, That pursuant to Sections 2800(1)(a)(15) and 2800(2)(a)(15) and Section 2824(7) of the Public Authorities Law and Guidance of the Authorities Budget Office, the 2024 Annual Board Evaluation Summary is hereby adopted and the Corporate Secretary is hereby authorized to submit to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller, and the Authorities Budget the adopted 2024 summary; and be it further

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

6. Annual Review and Approval of Guidelines for the Investment of Funds and 2024 Annual Report on Investment of Authority Funds -- Resolution

RESOLVED, That the Committee recommends that the Trustees adopt the Annual Report on Investments of the Authority Funds and adopt the Guidelines for the Investment of Funds to support the continued growth of and strengthen the fiduciary controls over the internal investment portfolio, and approve the debt service and operating reserve levels (\$175 million and \$104 million, respectively) as discussed in the foregoing memorandum of the President and Chief Executive Officer; and be it further

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

7. Strategic Plan and Mission Statement -- Resolution

RESOLVED, That the Governance Committee recommends that the Authority's Trustees approve the 2025 Mission Statement and Strategic Plan at their March 25, 2025 meeting, as discussed in the foregoing memorandum of the President and Chief Executive Officer; and be it further

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

g. Audit Committee Report

Chair Trainor reported that the Audit Committee met on Tuesday, March 25, 2025, and adopted the minutes from the December 10, 2024, Audit Committee meeting. The Committee also received a report from Salman Ali on the 2024 Internal Audit Plan Update. In addition, KPMG presented their Audit results and strategy for the year ending December 31, 2024. The following (4) items are now before the NYPA Trustees and New York State Canal Corporation Board of Directors for adoption:

i. Audit Committee Recommendations for Approval:

Chair Trainor reported that the Audit Committee met on Tuesday, March 25, 2025, and adopted the minutes from the December 10, 2024 Audit Committee meeting. The Committee also received a report from Salman Ali on the 2024 Internal Audit Plan Update. In addition, KPMG presented their Audit results and strategy for the year ending December 31, 2024. The Committee's recommendations are now before the NYPA Trustees and NYS Canal Corporation Board of Directors for adoption.

On motion made by member Gonzalez and seconded by member Morris, the following (4) resolutions were unanimously adopted. Member Warren was excused from vote. One vote was taken for items 1-4.

1. New York Power Authority and Canal Corporation 2025 Internal Audit Plan and Strategy -- Resolution

RESOLVED, that the New York Power Authority Board of Trustees and the Canal Corporation Board of Director's approve the New York Power Authority and Canal Corporation 2025 Internal Audit Plan as presented to, described, and discussed during the Audit Committee meeting held on March 25, 2025.

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

2. 2024 Financial Reports Pursuant to Section 2800 of the Public Authorities Law and Regulations of the Office of the State Comptroller -- Resolution

RESOLVED, That pursuant to Section 2800 of the Public Authorities Law, the Audit Committee hereby recommends that the Authority's financial reports are adopted and the Corporate Secretary be, and hereby is, authorized to submit to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller, and the Authorities Budget Office the attached financial report for the year ending 2024 in accordance with the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, that pursuant to 2 NYCRR Part 203, the Audit Committee hereby recommends that the Authority's report of actual vs. budgeted results for the year 2024 is approved in accordance with the foregoing report of the President and Chief Executive Officer, and the Corporate Secretary is authorized to post the report on the Authority's website; and be it further

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

3. New York Power Authority and Canal Corporation Audit Committee Charter -- Resolution

RESOLVED, That the Committee recommends that the attached Authority's and Canal Corporation Audit Committee Charter be approved by the NYPA Board of Trustees and New York State Canal Corporation Board of Directors; and be it further

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

4. New York Power Authority Internal Audit Charter (Corporate Policy5-1) – Resolution

RESOLVED, That the Committee recommends that the attached Internal Audit Charter be approved by the Trustees; and be it further

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

5. CONSENT AGENDA

On motion made by member Wheelock and seconded by member Cusick, the all items on the Consent Agenda and the following resolutions were unanimously adopted. Member Warren, abstained vote on item 5bi.

a. Customer Solutions

i. Expansion Power Allocations and Hydropower Allocation Modification – Resolution

RESOLVED, That an allocation of 700 kilowatts ("kW") of Expansion Power ("EP") to Big Heart Pet Brands, Inc. ("Big Heart") for a term of ten years to support the company's proposed expansion at 243 Urban Street, Buffalo, New York, as detailed in the foregoing memorandum of the President and Chief Executive Officer ("Memorandum"), be and hereby is approved, subject to rates previously approved by the Board of Trustees; and be it further;

RESOLVED, That an allocation of 4,500 kW of EP to Rosina Food Products, Inc. ("Rosina") for a term of ten years to support the company's proposed expansions at 3100 Clinton Street and 75 Empire Drive, West Seneca, New York as detailed in the foregoing Memorandum, be and hereby is approved, subject to rates previously approved by the Board of Trustees; and be it further;

RESOLVED, That the Board of 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 with Big Heart and Rosina for the sale of the EP allocations (the "Contracts"); and be it further;

RESOLVED, That modifications to (1) existing EP allocations made to Yahoo Holdings Inc., resulting in a total combined EP allocation of 14,000 kW to be served under Service Tariff No. WNY-2 through December 31, 2028 for use at both Lockport facilities, and (2) associated job and capital investment commitments, as detailed in the foregoing Memorandum, be and hereby are approved; and be it further

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

ii. Municipal and Rural Electric Cooperative IEDP Allocation (Village of Marathon) – Resolution

RESOLVED, That the Trustees hereby approve the allocation of 350 kW of hydropower to the Village of Marathon under the Municipal and Rural Electric Cooperative Industrial Economic Development Program as set forth in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Senior Vice President, Customer Solutions or such official's designee, hereby is authorized on behalf of the Authority to provide for final terms and conditions that will be applicable to the foregoing allocation and/or project, including without limitation progress milestones and provisions for the expiration of the allocation in the event that such milestones are not met; and be it further

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

iii. Preservation Power Allocation Modification – Resolution

RESOLVED, That the Preservation Power ("PP") allocation previously awarded to Potsdam Specialty Paper, Inc. ("PSPI") for use at its facility located at 547A Sissonville Road, Potsdam, New York, St. Lawrence County, is reduced from 400 kilowatts ("kW") to 320 kW, the term of PSPI's modified PP allocation is extended from 7 years to up to 10 years, PSPI's job creation commitment associated with its expansion project is reduced from 22 jobs to 5 jobs, and PSPI's job retention commitment is increased from 67 jobs to 77 jobs, for the reasons detailed in the foregoing memorandum of the President and Chief Executive Officer; and be it further

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

iv. RNY Power – New, Extend and Modification – Resolution

RESOLVED, That the Trustees hereby accept the recommendations of the Economic Development Power Allocation Board ("EDPAB") and approve the extension of each of the existing 17 Recharge New York ("RNY") Power allocations previously awarded in the manner described in the accompanying memorandum of the President and Chief Executive Officer ("Memorandum") for a term of seven years, to commence on (1) the expiration of the term of the allocation, or (2) in the Authority's discretion, commencing on a date to be agreed upon by the Authority and the customer for a term not to exceed seven years (collectively, the "Extended Term"), subject to the following conditions:

- (a) the sale of the allocations as extended hereunder shall be made pursuant to the contract form approved by the Board of Trustees on March 26, 2019, and Authority Service Tariff RNY-1; and
- (b) in order to receive an extension of its allocation, the customer agrees to provide the supplemental commitments for jobs, capital investment and power utilization that are the same or determined by the Authority to be substantially similar to the recommendations (subject to adjustments described above) for the Extended Term, through the incorporation of such supplemental commitments in the final contract that is executed by the parties, and RNY Power customers who do not have an ongoing project/expansion

capital investment commitment shall meet a minimum capital investment commitment which may be satisfied through capital expenditures made over a five-year period; and be it further

RESOLVED, That the Trustees hereby accept the recommendations of the EDPAB and approve the 15 modifications/adjustments to the RNY Power allocations, extensions, and/or related supplemental commitments described in the Memorandum for the reasons indicated in the Memorandum; and be it further

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the three new RNY Power allocations for retention purposes for the reasons indicated in the Memorandum; and be it further

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the three new RNY Power allocations for expansion purposes for the reasons indicated in the Memorandum; and be it further

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the five RNY Power allocations for retention and/or expansion purposes to the small businesses and/or not-for-profit applicants for the reasons indicated in the Memorandum; and be it further

RESOLVED, That the Senior Vice President, Customer Solutions or such official's designee, hereby is authorized on behalf of the Authority to provide for final terms and conditions that will be applicable to the foregoing allocations and/or projects, including without limitation progress milestones and provisions for the expiration of any allocation in the event that such milestones are not met; and be it further

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

v. Transfer of RNY Power Allocations – Resolution

RESOLVED, That the transfer of a 90 kilowatt (“kW”) allocation and a 130 kW allocation of Recharge New York Power (“RNY”) awarded to Nova Bus (US) Inc., for use at its facilities at 252 Banker Road, Plattsburgh, NY 12901, and 260 Banker Road, Plattsburgh, NY 12901, to Micro Bird USA LLC, as described in the foregoing memorandum of the President and Chief Executive Officer (“Memorandum”) be, and hereby is, approved subject to (1) such terms and conditions as are set forth in the foregoing Memorandum, and (2) such terms and conditions as are required by the New York Power Authority (“Authority”) in contract documents prepared by the Authority in order to effectuate the transfer; and be it further

RESOLVED, That the transfer of a pending 100 kW RNY Power allocation awarded to 230 Hill Road LLC, for use at its 90 Brentwood Drive, Wappingers Falls, NY 12590, New York facility, to Reserve Snacks Inc., as described in the foregoing Memorandum be, and hereby is, approved subject to (1) such terms and conditions as are set forth in the foregoing Memorandum, and (2) such terms and conditions as are required by the Authority in contract documents prepared by the Authority in order to effectuate the transfer; and be it further

RESOLVED, That the transfer of a pending 120 kW and 200 kW RNY Power allocations awarded to Howlett Farms Feed, LLC, for use at its 2773 Pratt Road, Batavia, NY 14020, New York facility, to Howlett Farms, Inc., to address organizational changes, as described in the foregoing Memorandum be, and hereby is, approved subject to (1) such terms and conditions as are set forth in the foregoing Memorandum, and (2) such terms and conditions as are required by the Authority in contract documents prepared by the Authority in order to effectuate the transfer; and be it further

RESOLVED, That the transfer of a 150 kW RNY Power allocation awarded to Mindshift Technologies, Inc., for use at its 500 Commack Rd., Commack, NY 11725, New York facility, to Ricoh USA, Inc., to address organizational changes, as described in the foregoing Memorandum be, and hereby is, approved subject

to (1) such terms and conditions as are set forth in the foregoing Memorandum, and (2) such terms and conditions as are required by the Authority in contract documents prepared by the Authority in order to effectuate the transfer; and be it further

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

b. Procurement (Services) and Other Contracts

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and Canal Corporation, the award and funding of the multiyear procurement services contracts referenced hereto, are hereby approved for the period of time indicated, in the amounts and for the purposes listed therein, as set forth in the memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and Canal Corporation, the contracts referenced hereto, are hereby approved and extended for the period of time indicated, in the amounts and for the purposes listed therein, as set forth in the memorandum of the President and Chief Executive Officer; and be it further

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

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

c. Real Estate

i. Artpark Occupancy Agreement – Town of Lewiston, County of Niagara – Resolution

RESOLVED, That the President and Chief Executive Officer and the Assistant General Counsel – Real Estate be, and hereby are, authorized to enter into an extension of an Occupancy Agreement with New York State Office of Parks, Recreation and Historic Preservation for the operation and maintenance of Artpark, on substantially the terms set forth herein, subject to approval of documents by the Executive Vice President and General Counsel or her designee; and be it further

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

RESOLVED, That the Chair, the President and Chief Executive Officer, and all other officers of the Authority be, and each of them hereby is, authorized on behalf of the Authority and Canal

Corporation to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

d. Governance Matters

i. Approval of Minutes:

- 1. Minutes of the Joint Meeting of the New York Power Authority's Board of Trustees and Canal Corporation's Board of Directors held on January 8, 2025**

6. NEXT MEETING

The next meeting of the Joint Meeting of the New York Power Authority Board of Trustees and New York State Canal Corporation Board of Directors will be held on Tuesday, May 20, 2025.

Adjournment

On motion made by member Trainor and seconded by member Morris, the meeting was adjourned at approximately 12:42 p.m.



Karen Delince
Vice President and Corporate Secretary



NYRED

Memorandum

Date: May 20, 2025

To: BOARD OF DIRECTORS OF NEW YORK RENEWABLE ENERGY DEVELOPMENT HOLDINGS CORPORATION

From: BETHAIDA GONZALEZ

Subject: Election of Chair of New York Renewable Energy Development Holdings Corporation (NYRED)

SUMMARY

The Board of Directors of New York Renewable Energy Development Holdings Corporation ("NYRED") is requested to elect Chair John R. Koelmel, as Chairman of NYRED, effective immediately.

BACKGROUND and DISCUSSION

NYRED's Bylaws provide that the Directors may elect from their number a chair.

RECOMMENDATION

Mr. Koelmel has held leadership roles in numerous professional and community organizations in Buffalo and Western New York. Based on his strong managerial and business talents and many years of experience, it is hereby recommended that Mr. Koelmel be elected to serve as Chairman of NYRED effective immediately.

The attached resolution is recommended for adoption.

Bethaida Gonzalez

RESOLUTION

RESOLVED, That John R. Koelmel, hereby is, elected to serve as Chair of the New York Renewable Energy Development Holdings Corporation, effective immediately and be it further

RESOLVED, that the Chair, the President, and all other officers of NYRED be authorized on behalf of NYRED 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.



NYRED

Memorandum

is

Date: May 20, 2025

To: BOARD OF DIRECTORS OF NEW YORK RENEWABLE ENERGY DEVELOPMENT HOLDINGS CORPORATION

From: JOHN KOELMEL

Subject: Committee Appointments – New York Renewable Energy Development Holdings Corporation

SUMMARY

The Board of Directors of New York Renewable Energy Development Holdings Corporation (“NYRED”) is requested to adopt the committee appointments as indicated below.

BACKGROUND and DISCUSSION

The recommended memberships of the New York Renewable Energy Development Holdings Corporation (“NYRED”) are proposed as follows:

GOVERNANCE COMMITTEE

Bethaida Gonzalez (Chair), John R. Koelmel, Dennis G. Trainor, Cecily L. Morris, Lewis M. Warren Jr.

AUDIT COMMITTEE

Dennis G. Trainor (Chair), John R. Koelmel, Michael J. Cusick, Lewis M. Warren Jr., Laurie Wheelock

FINANCE COMMITTEE

John R. Koelmel (Chair), Dennis G. Trainor, Bethaida Gonzalez, Michael J. Cusick, Cecily L. Morris, Lewis M. Warren Jr., Laurie Wheelock

RECOMMENDATION

I recommend the approval of the above-requested action by the adoption of the resolution below.

John Koelmel
Chairman

RESOLUTION

RESOLVED, That the members of the NYRED Governance Committee shall be:
Bethaida Gonzalez (Chair), John R. Koelmel, Dennis G. Trainor, Cecily L. Morris, Lewis
M. Warren Jr.; and be it further

RESOLVED, That the members of the NYRED Audit Committee shall be: Dennis G.
Trainor (Chair), John R. Koelmel, Michael J. Cusick, Lewis M. Warren Jr., Laurie Wheelock; and
be it further

RESOLVED, That the members of the NYRED Finance Committee shall be: John R.
Koelmel (Chair) Dennis G. Trainor, Bethaida Gonzalez, Michael J. Cusick, Cecily L. Morris,
Lewis M. Warren, Jr., Laurie Wheelock; and be it further

RESOLVED, that the Chair, the President, and all other officers of NYRED be authorized
on behalf of NYRED 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.

MINUTES OF THE MEETING
of the New York Renewable Energy Development Holdings Corporation
January 28, 2025

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Minutes of the meeting of the New York Renewable Energy Development Holdings Corporation Board of Directors held at New York Power Authority's White Plains office, at approximately 11:20 a.m.

Members of the Board of Directors present were:

John R. Koelmel
Michael J. Cusick
Dennis G. Trainor
Bethaida Gonzalez
Cecily L. Morris
Laurie Wheelock
Adam Barsky, ex officio

Excused:

Lewis M. Warren, Jr.
Justin E. Driscoll, ex officio

Lori Alesio	Executive Vice President and General Counsel
Joseph Kessler	Executive Vice President and Chief Operating Officer
Adam Barsky	Executive Vice President and Chief Financial Officer
Daniella Piper	Executive Vice President and Chief of Innovation Officer
Alexis Harley	Senior Vice President and Chief Risk & Resiliency Officer
Yves Noel	Senior Vice President and Chief Strategy Officer
Robert Piascik	Senior Vice President – Chief Information & Technology Officer
Karina Saslow	Senior Vice President – Human Resources
Maribel Cruz-Brown	Senior Vice President – Clean Energy Solutions
Joshua Cortes	Deputy Chief of Staff – Executive Office
Nicholas Gonzalez	Senior Advisor Renewable Power
Karen Delince	Vice President & Corporate Secretary
Vennela Yadhati	Vice President – Renewable Project Development
Christopher Vitale	Director Projects – Business Services
Sheila Quatrocci	Senior Associate Corporate Secretary
Michele Stockwell	Senior Assistant Corporate Secretary

Board Member John R. Koelmel presided over the meeting. NYPA Vice President and Corporate Secretary Delince kept the Minutes.

Introduction

Board Member John R. Koelmel welcomed the members and the Authority's senior staff to the meeting. He said that the meeting has been duly noticed as required by New York State's Open Meetings Law and called the meeting to order.

1. Adoption of the January 28, 2025 Proposed Meeting Agenda

On motion made by Member Michael Cusick and seconded by Member Cecily Morris, the agenda for the meeting was adopted.

2. DISCUSSION AGENDA:

a. Adoption of Resolution Organizing New York Renewable Energy Development Holdings Corporation and Related Matters

Nicholas Gonzalez, Senior Advisor of Renewable Power submitted the following report:

SUMMARY

The Board of Directors of New York Renewable Energy Development Holdings Corporation will be requested at its inaugural meeting on January 28, 2025 to approve and adopt the Organizing Resolution of the Board of Directors of New York Renewable Energy Development Holdings Corporation ("NYRED"). NYRED is a wholly owned subsidiary of NYPA incorporated under NYS Business Corporation Law ("BCL").

BACKGROUND

The Trustees of the Power Authority of the State of New York (the "Authority") approved at the October 8, 2024 meeting of the Board of Trustees (the "NYPA Board"), pursuant to NYS Public Authorities Law ("PAL") §1005(27-a), the formation of New York Renewable Energy Development Holdings Corporation, a wholly-owned subsidiary of the Authority incorporated under NYS Business Corporation Law ("BCL") §402, and made certain findings in connection therewith. Related thereto, the Trustees approved the forms of certain corporate formation documents: (i) the Certificate of Incorporation filed with the Secretary of State of the State of New York to create NYRED (the "Certificate of Incorporation"), (ii) the By-Laws to be adopted by the initial board of directors of NYRED (the "By-Laws") and (iii) the Shared Services Agreement to be entered into by the Authority and NYRED to govern the provision of services by the Authority to NYRED and payment therefor (the "Shared Services Agreement"). Finally, the Trustees approved the release of \$100 million from the General Bond Resolution and the transfer of such amount to NYRED in order to fund the operations of NYRED and make certain capital investments necessary to develop renewable energy projects.

After the October 8, 2024 Board meeting and after a 60-day notice period filed with the authorities budget office, the governor, the comptroller, and the legislature, the Authority, on November 18, 2024, filed Articles of Incorporation with the NYS Department of State to create NYRED. On November 21, 2024, the NYS Department of State approved the creation of the entity.

On December 31st, 2024, NYPA executed the transfer of \$100m in funds to fund operations and anticipated capital investments to develop renewable energy projects.

DISCUSSION

To finalize the corporate formation, the Board of Directors of New York Renewable Energy Development Holdings Corporation must hold a meeting and approve an organizational resolution.

The organizational resolution is a set of rules adopted by the NYRED Board that outlines the structure, procedures, and organization of the subsidiary. The organizational resolution will provide for the ratification of actions taken by the Sole Incorporator, including the adoption of the By-Laws, the filing of the Certificate of Incorporation and the election of the initial directors; appointment of the officers of NYRED, including President, Chief Financial Officer, Secretary, and Treasurer; approval for the President of the Corporation to enter contracts or execute any instrument on behalf and in the name of the Corporation; adoption of the form of the stock certificate and approval of the issuance of shares; appointment of committees, including the Audit, Finance, and Governance Committees and Charters; adoption of corporate policies, including the Investment Policy, Code of Conduct, Board Conflict of Interest and Whistleblower; establishing a fiscal year; authorization to establish banking accounts; authorizing a Shared Services Agreement with the Authority; and adopting and approving the Strategic Plan to be executed by the subsidiary, including granting the President and the Chief Financial Officer the authorization to pay and commit to pay up to \$10,000,000 for each project in the Strategic Plan and to execute and deliver any agreements, instruments, and other documents as may be necessary.

FISCAL INFORMATION

The formation of NYRED will ultimately have a positive fiscal impact on the Authority as the creation of the subsidiary isolates the Authority from NYRED, minimizing the credit impact of the subsidiary's debts and obligations on the Authority. It is expected that the debts and obligations of the subsidiary will be separately rated and distinct from the Authority, isolating the Authority's exposure to NYRED to its equity contributions. This further allows the Authority to sustainably invest in other areas of the business without having NYRED debts impact the Authority's capitalization ratios for its transmission and hydro costs of service.

NYRED, much like the Authority's utilization of Separately Financed Projects (as defined in the General Bond Resolution), will allow additional leverage and financing capabilities for the Authority, and reduce equity needs. It is also expected that NYRED will provide positive cash inflows, reducing the Authority's investment necessary to fund the business and possibly distribute dividends back to the Authority. The Authority will also be paid by the subsidiary for any services provided. Although the first few years may be the round-tripping of equity provided by the Authority, once the business begins to produce revenues, it can be expected these payments from NYRED or any related subsidiary will be a net positive to the organization by reducing expenses and improving coverage ratios.

RECOMMENDATION

The Board of Directors of New York Renewable Energy Development Holdings Corporation hold an organizational meeting of the New York Renewable Energy Development Corporation are requested to approve the following resolutions:

I. Ratification of Actions Taken by the Sole Incorporator.

RESOLVED, the Organization Statement of the Sole Incorporator of the Corporation dated November 18, 2024 (the "Organization Statement"), a copy of which is attached hereto as Exhibit A, is in all respects approved. The actions set forth in the Organization Statement, therein recited or thereby taken, including the filing of the Certificate of Incorporation (as defined in the Organization Statement), the adoption of By-Laws (below) and the election of the initial directors, are approved, ratified and confirmed.

**BY-LAWS
OF
NEW YORK RENEWABLE ENERGY DEVELOPMENT HOLDINGS
CORPORATION**

The name of the corporation is NEW YORK RENEWABLE ENERGY DEVELOPMENT HOLDINGS CORPORATION (the "Corporation"), a wholly-owned subsidiary of the Power Authority of the State of New York ("NYPA").

ARTICLE I

ANNUAL MEETING; OPEN MEETINGS LAW

Section 1. Annual Meetings. The annual meetings of the sole shareholder to elect Directors and the transaction of such other business as may properly come before the meeting, shall be held on the 13th day of November in each year, if not a legal holiday, or if a legal holiday, on the next succeeding day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the sole shareholder, unless otherwise regulated by statute, may be called at any time by the President, by the sole shareholder or by resolution of the Board of Directors. Such request shall state the purpose of the proposed meeting.

Section 3. Place of Meeting. All meetings of the sole shareholder shall be held at the principal business office of the Corporation in the State of New York (the "State") or at such other place as may be designated in the notice of meeting.

Section 4. Notice of Meetings. Notice of each meeting of the sole shareholder shall be in writing and signed by the President or the Secretary or an Assistant Secretary and shall be sent in the manner herein provided to all persons entitled to such notice. Such notice shall state the purpose or purposes for which the meeting is called and the time when, and the place where, it is to be held, and a copy thereof shall be served personally or by certified mail, to the sole shareholder entitled to vote at such a meeting, not less than ten days before the meeting.

Section 5. Quorum. At each meeting of the sole shareholder there must be present, to constitute a quorum for the transaction of business at such meeting, except as may be otherwise provided by statute, in person or by proxy, the sole shareholder or a duly authorized agent thereof.

Section 6. Voting. The sole shareholder shall be entitled to vote at meetings either in person or by proxy appointed by instrument in writing subscribed by the shareholder or its duly authorized agent.

Section 7. Open Meetings Law. The meetings of the Corporation held pursuant to Article I or Article II hereof and notices thereof shall be subject to the applicable requirements of the New York Open Meetings Law (“NYOML”) pursuant to Section 2829 of the New York Public Authorities Law (“PAL”).

ARTICLE II

BOARD OF DIRECTORS

Section 1. Number. The number of Directors of the Corporation shall be nine (9), of which two (2) Directors shall be appointed and serve *ex officio*: (a) the President and Chief Executive Officer of NYPA and (b) the Executive Vice President and Chief Financial Officer of NYPA.

Section 2. Election. The Directors shall be elected (or with respect to *ex officio* Directors, confirmed) by the sole shareholder at the annual meeting of the sole shareholder, and each of such Directors shall serve until the next annual meeting and until such Director’s successor has been elected and qualified. The Directors may elect from their number a Chair and a Vice Chair to act in the absence of the Chair. The composition of the Board shall at all times comply with the requirements of governing law, including, as applicable, the inclusion of a sufficient number of independent Directors in accordance with Section 2825(2) of the PAL.

Section 3. Regular Meetings. The Board of Directors by resolution may provide for the holding of regular meetings of the Board and may fix the time and place for the holding of such meetings. Notice of regular meetings shall be given in accordance with NYOML.

Section 4. Special Meetings. Special meetings of the Board may be called by the President and shall be called by the President or Secretary upon the written request of one or more Directors.

Section 5. Notice of Special Meetings. Notice of the time and place of each special meeting of the Board shall be served upon each Director in one of the following ways: by ordinary mail directed to such Director at such Director’s usual place of business or residence at least five (5) days before the day of the meeting, by delivering the same to such Director personally at least two (2) days before the day of the meeting, by sending the same to such Director by electronic mail, or by notifying such Director by telephone at least three (3) days before the day of the meeting. Notice of special meetings shall be given in accordance with NYOML.

Section 6. Quorum and Adjournment. The presence of five (5) Directors shall constitute a quorum at any meeting.¹ A majority of the Directors present at any meeting,

although less than a quorum, may adjourn the same from time to time, without further notice, until a quorum shall attend. No additional notice need be given of such adjourned meeting.

Section 7. Voting. Any action taken by the Directors of the Corporation shall be taken by majority vote of the entire Board of Directors (assuming no vacancies or disqualifications)² at a public meeting held in accordance with NYOML. *Ex officio* Directors acting in such capacity shall enjoy all the rights, powers, duties, liabilities and immunities of other Directors including the right to vote at meetings of the Board.

¹ Section 2826 of the PAL requires a quorum to consist of at least a majority of the “whole number” of the board, meaning “the total number which such board would have were there no vacancies and were none of the members of such board disqualified from acting.”

² Section 2826 of the PAL requires the approval of not less than a majority of the whole number of the board to perform and exercise the powers authorized and provided under the PAL.

Section 8. Participation by Videoconference. To the extent permitted by the NYOML, any one or more members of the Board or any Committee thereof may participate in a meeting of the Board or such Committee by means of a video conference or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time; provided, that the requirements under NYOML for quorums and public access to locations of such meetings are satisfied.

Section 9. Removal of Directors. Any Director may be removed either with or without cause at any time by the affirmative vote of the sole shareholder. A Director may be so removed at any annual or special meeting of the sole shareholder or at a separate meeting.

Section 10. Vacancies. Any vacancy in the Board occasioned by the death, resignation or removal of a Director may be filled for the remainder of such Director’s term of office by the affirmative vote of the sole shareholder at any annual or special meeting of the sole shareholder.

Section 11. Compensation. No Director or officer of the Corporation shall receive, directly or indirectly, any salary, compensation or emolument from the Corporation, except as provided by the Board and as permitted under applicable state statutes including Section 74 of the New York Public Officers Law. Pursuant to Section 2824(3) of the PAL, no Director who is also the chief executive officer shall participate in determining the level of compensation or reimbursement, or time and attendance rules for the position of chief executive officer.

Section 12. Committees. The Board of Directors may appoint, by vote, such committees, and, subject to Section 7 of this Article, may delegate such powers and duties to them, as the Board may deem advisable. The Board shall appoint and maintain such committees as are required by governing law, including, as applicable, an Audit Committee, Governance Committee and Finance Committee. Members of such committees shall satisfy the independence requirements under the PAL.

Section 13. Resignations. Any Director may resign from office at any time by delivering a resignation in writing to the Corporation, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

ARTICLE III

OFFICERS

Section 1. Number and Designation. The officers shall be a President, a Chief Financial Officer, a Secretary, one or more Assistant Secretaries, a Treasurer, one or more Assistant Treasurers and such other officers as may be appointed by the Board of Directors. All officers shall hold office until their death, removal, resignation or the election of their successors. One person may hold any two or more offices except those of President and Secretary.

Section 2. President. The President and Chief Executive Officer of NYPA shall be appointed and serve *ex officio* as the President of the Corporation (the “President”). The President shall be the Chief Executive Officer and, subject to the direction of the Board of Directors, shall have general control of the business of the Corporation and shall supervise the work of the other officers. The President may attend meetings of the Board of Directors and may submit such recommendations and information as the President may consider proper concerning the business, duties and affairs of the Corporation. The President shall preside at all meetings of the sole shareholder and, if there is no member of the Board of Directors designated by the Directors to preside at meetings of the Directors, the President shall preside at such meetings. The President may sign in the name of the Corporation any and all contracts or other instruments authorized by the Board in accordance with these By-Laws. The President may, as deemed appropriate, delegate their powers and responsibilities to any officers of the Corporation.

Section 3. Chief Financial Officer. The Executive Vice President and Chief Financial Officer of NYPA shall be appointed and serve *ex officio* as the Chief Financial Officer of the Corporation (the “Chief Financial Officer”). The Chief Financial Officer shall be responsible for the overall supervision of the financial activities of the Corporation, and shall exercise such other duties as the President or Board of Directors shall from time to time determine. The Chief Financial Officer shall report directly to the President and shall, when requested, give advice to the Board of Directors. The Chief Financial Officer may, as deemed appropriate, delegate their powers and responsibilities to any officers of the Corporation.

Section 4. Secretary. The Corporate Secretary of NYPA shall be appointed and serve *ex officio* as the Secretary of the Corporation (the “Secretary”). The Secretary shall cause notices of all meetings to be served as prescribed in these By-Laws, shall keep the minutes of all meetings, shall have charge of the seal of the Corporation and the corporate records and shall affix the seal to such papers or documents as may be proper and, when the seal is so affixed, the Secretary shall attest the same by the Secretary’s signature whenever required and

shall perform such other duties as are assigned to the Secretary by the President or the Board. Any Assistant Secretary shall be empowered to perform all of the duties of the Secretary.

Section 5. Treasurer. The Treasurer of the Corporation (the “Treasurer”) shall be appointed by vote of the Board of Directors. The Treasurer shall have the custody of all monies and securities of the Corporation and shall keep or cause to be kept regular books of the accounts of the Corporation. The Treasurer shall endorse on behalf of the Corporation for collection checks, notes and other obligations, and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as the Board of Directors may designate. The Treasurer may sign with the President, or such other person or persons as may be designated for such purpose by the Board of Directors, all bills of exchange or promissory notes of the Corporation, and shall perform all other duties that are assigned to the Treasurer by the President or the Board. Any Assistant Treasurer shall be empowered to perform all of the duties of the Treasurer.

Section 6. Other Officers. Such other officers as the Board may from time to time appoint shall perform such duties and have such authority as the Board may determine.

Section 7. Removal. Any officer may be removed, either with or without cause, at any time by the affirmative vote of a majority of the entire Board. The “entire Board” means the total number of Directors the Corporation would have if there were no vacancies.

ARTICLE IV

CONTRACTS AND BANK ACCOUNTS

Section 1. The Board of Directors may authorize any officer or officers, agent or agents, to take any action and to enter into any contract or execute and deliver all kinds of instruments, including but not limited to checks, notes, drafts and bills of exchange in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. The funds of the Corporation shall be deposited with such banks or other depositories, and shall be subject to withdrawal under such regulations as shall be adopted from time to time by the Board.

Section 2. The funds of the Corporation shall not be commingled with the funds of NYPA.

ARTICLE V

CAPITAL SHARES

Section 1. Certificates. Certificates of shares in the Corporation shall be in such form as shall be approved by the Board. They shall be signed by the President and by the Secretary, Assistant Secretary or Treasurer; and in appropriate books of record shall be entered the name of the sole shareholder, the number of shares and the date of issuance. All Certificates exchanged and returned to the Corporation shall be marked “Cancelled” with

the date of cancellation by the President, the Secretary, Assistant Secretary or the Treasurer, and shall be filed among the corporate records of the Corporation.

Section 2. Lost, Stolen and Destroyed Certificates. In the case of lost, stolen or destroyed certificates, new certificates may be issued to take the place thereof upon receipt by the Corporation of such bond of indemnity, and under such regulations, as shall be prescribed by the Board of Directors, but the giving of a bond of indemnity may be waived by the Board.

ARTICLE VI

CONFLICTS OF INTEREST

Section 1. The Directors, officers and employees of the Corporation shall be subject to the Corporation's Code of Conduct, Board Conflict of Interest Policy, Section 74 of the Public Officers Law and (if applicable) Section 73 of the Public Officers Law.

ARTICLE VII

INDEMNIFICATION

Section 1. (a) General Scope of Indemnification. The provisions of this Article for indemnification shall be in addition to and shall not supplant any indemnification by the State heretofore or hereafter conferred upon any Director, officer or employee by any statute, by Section 18 of the Public Officers Law, or otherwise. This Article is to be construed liberally in favor of each Director, officer and employee of the Corporation to the fullest extent permitted by law, and any ambiguity, uncertainty or reasonable doubt as to facts, interpretation or legal conclusions shall be resolved in favor of such Director, officer or employee. The provisions of this Article shall inure only to the Directors, officers or employees of the Corporation or of its subsidiaries, and to their estates, shall not enlarge or diminish the rights of any other party, and shall not impair, limit or modify the rights and obligations of any insurer under any policy of insurance.

(b) Directors and Officers. The Corporation shall save harmless and indemnify any person (or such person's estate) who shall have served as a Director or officer of the Corporation or of a subsidiary of the Corporation against financial loss or reasonable litigation expense incurred in connection with any claim, demand, suit, action or proceeding, whether civil or criminal, or the defense thereof, and arising out of (i) any transaction of the Corporation or of a subsidiary of the Corporation, or (ii) any act or failure to act by any such Director or officer while engaged in the discharge of such person's duties on behalf of the Corporation or its subsidiaries. In the event any such claim, demand, suit, action or proceeding shall occur, such Director or officer shall be saved harmless and indemnified to the fullest extent possible consistent with Article 7 of the New York Business Corporation Law (the "BCL").

(c) Employees. The Corporation shall save harmless and indemnify any person (or such person's estate) who shall have served as an employee

of the Corporation or of a subsidiary of the Corporation against financial loss or reasonable litigation expense incurred in connection with any claim, demand, suit, actions or proceeding, whether civil or criminal, or the defense thereof, and arising out of (i) any transaction of the Corporation or of a subsidiary of the Corporation, or (ii) any act or failure to act by any such employee while engaged in the discharge of such person's duties on behalf of the Corporation, or its subsidiaries. In the event any such claim, demand, suit, action or proceeding shall occur, such employee shall be saved harmless and indemnified to the fullest extent as herein provided, unless such individual is found by a final judicial determination not to have acted, in good faith, for a purpose which such person reasonably believed to be in the best interests of the Corporation or of its subsidiaries, and, in criminal actions or proceedings, in addition, not to have had reasonable cause to believe that such person's conduct was lawful.

Section 2. Conditions Precedent and Representation of Persons Indemnified. Except in a criminal proceeding, the right to indemnification shall be conditioned on (i) the prompt delivery to the Corporation of a copy of the summons, complaint, process, notice, demand or pleading commencing any such claim, demand, suit, action or proceeding, (ii) a contemporaneous offer to name counsel to the Corporation as counsel to the said Director, officer or employee in the defense of such claim, demand, suit, action or proceedings and (iii) the full cooperation of the said

Director officer or employee, in the event the offer is accepted, in the making of such defense. The Corporation may, either by its own staff counsel or by outside counsel of its choice, accept the offer and assume the representation of any person who becomes a party to the claim, demand, suit, action or proceeding, except in situations in which (x) choice of counsel is governed by statute, or (y) the Corporation's counsel determines that it is inappropriate or inadvisable for such person to be represented by counsel chosen by the Corporation. In the event the Corporation does not assume such representation, such person shall have the right to engage private counsel of such person's choice and the Corporation shall have the obligation of indemnification for the reasonable fees and expenses of such private counsel as provided in this Article and, to the extent applicable, Article 7 of the BCL; provided, however, that the Corporation as a condition to such indemnification for the cost of private counsel may require appropriate groups of persons to be represented by the same counsel.

Section 3. Advances of Expenses. (a) Directors and Officers. A Director or officer who becomes a party to an action or proceeding may request that the Corporation advance expenses pending the final disposition of such action or proceeding. Such advancement shall be made in the manner delineated by Section 724 of the BCL.

(b) Employees. Reasonable litigation expenses incurred by an employee who becomes a party to an action or proceeding shall be paid by the Corporation from time to time pending the final disposition of such action or proceeding without necessity for any authorization, findings, or other action by the Directors prior to the making of such advances; provided, however, that the Directors (i) may make a preliminary finding at any time prior to the final disposition of such action or proceeding that it then appears that an employee has clearly not acted, in good faith, for a purpose reasonably believed to be in the best interests

of the Corporation or of its subsidiaries and in criminal actions or proceedings, in addition, that the employee clearly had not had reasonable cause to believe that such person's conduct was lawful, or may seek an opinion in writing of outside legal counsel with respect to that issue, and if such a preliminary finding shall be made or a negative opinion on that issue shall be given, no further advances under this paragraph shall be made with respect to expenses of such employee, and (ii) may determine, or provide for the determination of, the reasonableness of expenses sought to be advanced.

(c) Repayment. The Corporation shall require each person receiving amounts advanced under paragraph (a) or (b) of this Section to agree in writing that the same shall be repaid if the person receiving such advances is ultimately found not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced by the Corporation or allowed by a court exceed the indemnification to which such person is ultimately found to be entitled.

ARTICLE VIII

AMENDMENTS

Section 1. The By-Laws may be altered, amended or repealed, and new By- Laws added, only with the consent of the sole shareholder.

4905-8528-2061.1

B-8 ARTICLE IX

DIVIDENDS

Section 1. The Board of Directors shall by vote declare dividends from the available net earnings of the Corporation whenever, in their opinion, the condition of the corporation's affairs will render it expedient for such dividends to be declared.

ARTICLE X

SEAL

Section 1. The seal of the Corporation shall be circular in form and shall bear the name of the Corporation, the words "Corporate Seal," the year of incorporation and the words "New York," and may be affixed to any instrument by causing it to be impressed or otherwise reproduced thereon.

ARTICLE XI

SPECIAL ACTIONS

Section 1. The prior written consent of the sole shareholder is required prior to the Board of Directors authorizing any of the following actions:

- (i) Dissolution, liquidation, termination or winding-up of the Corporation;

(ii) (a) Consent of the institution of bankruptcy or insolvency proceedings against the Corporation, (b) the filing of a petition seeking or consent to reorganization or relief under any applicable federal or state law relating to bankruptcy or insolvency, (c) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official for the Corporation or a substantial part of its property, (d) the making of a general assignment for the benefit of creditors, or (e) admission in writing of the Corporation's inability to pay its debts generally as they become due; or

(iii) Merger or consolidation of the Corporation with any other entity, or the sale of all or substantially all of the Corporation's assets or the acquisition by the Corporation of all or substantially all of the assets or capital stock or other ownership interest of or in any other entity.

ARTICLE XII

CERTIFICATE OF INCORPORATION

Section 1. These By-Laws, the powers of the Corporation and its directors, and all matters concerning the conduct and regulation of the business of the Corporation shall be subject to the provisions of the Corporation's certificate of incorporation adopted and filed with the Secretary of State of the State of New York, as the same may be amended from time to time (the "Certificate of Incorporation").

II. Election of Officers.

RESOLVED, that the following persons are hereby elected to the offices of the Corporation set forth below to serve until their successors have been duly appointed or elected and qualified:

- (i) President: Justin E. Driscoll, as the President and Chief Executive Officer of the Power Authority of the State of New York ("NYPA"), to serve *ex officio*;
- (ii) Chief Financial Officer: Adam Barsky, as the Executive Vice President and Chief Financial Officer of NYPA, to serve *ex officio*;
- (iii) Secretary: Karen Delince, as the Corporate Secretary of NYPA, to serve *ex officio*; and
- (iv) Treasurer: Nicholas Gonzalez, by this vote of the Board of Directors.

III. Contracts.

RESOLVED, that unless otherwise specifically provided for by the Board of Directors, the President of the Corporation may enter into any contract or execute any instrument on behalf of and in the name of the Corporation, whether or not a seal is affixed thereto, unless specific resolution of the shareholder or the Board of Directors is required to enter into such agreement pursuant to the NYBCL.

IV. Form of Stock Certificate.

RESOLVED, that the form of stock certificate (below) is adopted and approved as the stock certificate of the Corporation, and a specimen copy of the stock certificate shall be inserted in the corporate minute book together with this action.

SPECIMEN
[TO BE PRINTED ON STOCK CERTIFICATE PAPER]

Number	Shares
S-1	100

Incorporated under the Laws of the State of New York

NEW YORK RENEWABLE ENERGY DEVELOPMENT HOLDINGS CORPORATION

THIS CERTIFIES THAT the POWER AUTHORITY OF THE STATE OF NEW YORK is the owner of one hundred (100) fully paid and non-assessable Shares of Common Stock of NEW YORK RENEWABLE ENERGY DEVELOPMENT HOLDINGS CORPORATION, are not transferable on the books of the Corporation by the holder, other than upon transfer to the Corporation in redemption or dissolution upon surrender of this Certificate properly endorsed.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by its duly authorized officers as of the ____ day of _____ 2024.

By: _____
President

By: _____
Secretary

FOR VALUE RECEIVED, _____ hereby sell, assign and transfer unto _____ Shares represented by the within Certificate, and do hereby irrevocably constitute and appoint _____ Attorney _____ to transfer the said Shares on the books of the within named Company with full power of substitution in the premises.

Dated _____

In presence of

NEW YORK RENEWABLE ENERGY
DEVELOPMENT HOLDINGS
CORPORATION

*** 100 Shares of Common Stock ***

Issued to

Power Authority of the State of New York

_____, 202__

V. Issuance of Shares.

RESOLVED, that the issuance of 100 shares of the Corporation's Common Stock, no par value and with full voting rights, to NYPA, is approved and ratified.

VI. Committees.

RESOLVED, that the Corporation establish the Audit Committee, whose purposes, powers and responsibilities shall be, to the extent permitted by law, as set forth in its charter substantially in the following form:

AUDIT COMMITTEE CHARTER

A. *PURPOSE*

The Audit Committee ("Committee") of the Board of Directors ("Board of Directors") of the New York Renewable Energy Development Holdings Corporation ("Corporation") oversees the Corporation's internal audit function and external audits of the Corporation performed by independent auditors and other external agencies as well as management's corrective action and implementation plans to all audit findings.

The responsibilities of the Committee are to: recommend to the Board of Directors the hiring of a certified independent accounting firm for the Corporation, establish the compensation to be paid to the accounting firm and provide direct oversight of the performance of the independent audit conducted by the accounting firm hired for such purposes, provide direct oversight of the Corporation's internal audit function including through any internal audit department established by the Board of Directors, and perform such other responsibilities as the Board of Directors may assign it. The Committee is also responsible to provide oversight and guidance for external audits applicable to the Corporation.

B. MEMBERSHIP AND ORGANIZATION

(1) Committee Composition. The Committee shall be comprised of not less than five (5) members of the Board of Directors, of which not less than (3) three shall be independent members. All members shall possess the necessary skills to understand the duties and functions of the Committee and have familiarity with corporate finance and accounting. Committee members and the Committee Chair will be selected by a vote of the Board of Directors. In addition, Committee members shall not engage in any private business transactions with the Corporation or receive compensation from any private entity that has material business relationships with the Corporation or be an immediate family member of an individual that engages in private business transactions with the Corporation or receives compensation from an entity that has material business relationships with the Corporation.

(2) Term. Committee members will serve for a period of five years subject to their term of office under Public Authorities Law § 1003. Committee members may be re-elected to serve for additional periods of five years subject to their term of office. A Committee member may resign his or her position on the Committee while continuing to serve as a Director. In the event of a vacancy on the Committee due to death, resignation or otherwise, a successor will be selected to serve in the manner and for the term described above.

(3) Removal. A Committee member may be removed if he or she is removed as a Director for cause, subject to Public Authorities Law § 2827, or is no longer eligible to serve as a Committee member.

(4) Meetings and Quorum. The quorum of the Committee is a majority of the number of regular Committee members selected by the Board of Directors. A majority vote of all Committee members present is required to take action on a matter. The Committee shall hold regularly scheduled meetings at least once annually. A Committee member may call a special meeting of the Committee individually, or upon the request of the President ("CEO"), General Counsel to the Corporation ("GC"), or the chief audit executive for the Corporation appointed by the Board of Directors ("CAE"). The notice of meeting need not state the purpose for which the meeting has been called. In order to transact business, a quorum must be present.

In addition, the Committee: (1) will meet at least once annually with the CAE for the purpose of reviewing audit activities, audit findings, management's response, remediation action plans, and providing the CAE with an opportunity to discuss items and topics of relevance with the Committee; (2) will meet at least once annually with the independent auditors to discuss the audit work plans, objectives, results and recommendations; and (3) may meet independently with the CEO, GC or CAE on matters or issues and items within the Committee's purview as it deems necessary. These meetings may be held as part of a regular or special meeting at the Committee's discretion.

An agenda will be prepared and distributed to each Committee member prior to each meeting and minutes of each meeting will be prepared in accordance with the New York Open Meetings Law. Minutes of the meeting should include, at a minimum:

- a. *Date; location; time meeting was called to order and adjourned; and if other Board committee is meeting simultaneously.*
- b. *Title and name of attendees; public comments period; title and name of public speakers.*
- c. *Approval of the official proceedings of the previous month's Committee meeting.*
- d. *Pre-Approval of audit and non-auditing services as appropriate, all auditing services and non-audit services to be performed by independent auditors will be presented to and pre-approved by the Committee:*
 - (i) *External Audit Approach Plans: Independent auditor presents approach/service plan, which is to be submitted to the Committee electronically.*
 - (ii) *Internal Audit Activity Report: CAE provides overview of internal audit activities.*
- e. *Follow-up items including communications to the Committee of the current status of selected open issues, concerns, or matters previously brought to the Committee's attention or requested by the Committee.*
- f. *Status of audit activities as appropriate; representatives of the certified independent accounting firm or agency management will discuss with the Committee significant audit findings/issues, the status of on-going audits, and the actions taken by agency management to implement audit recommendations.*
- g. *Copies of handouts or materials presented to the Committee.*

To the extent permitted by the New York Open Meetings Law, any meeting of the Committee may be conducted by video conferencing and the Committee may hold meetings or portions of meetings in executive session.

C. FUNCTIONS AND POWERS

The Committee has the following responsibilities:

(1) General Powers. *The Committee may call upon the resources of the Corporation to assist the Committee in the discharge of its oversight functions. Such assistance may include the assignment of staff and the retention of external advisors subject to the requirements of the Public Authorities Law. The Committee may communicate directly with the CEO. The Committee may direct any employee to make oral or written reports to the Committee on issues and items within the Committee's purview. The Committee may direct the internal auditors to conduct special audits of items and issues of concern to the Committee.*

(2) Oversight of Independent Auditors. *The Committee will oversee the Corporation's relationship with independent auditors. To accomplish these objectives, the Committee will:*

- a. *Provide advice to the Board of Directors on the selection, engagement, compensation, evaluation, and discharge of the independent auditors.*
- b. *Review and discuss as necessary the financial statements including any material changes in accounting principles and practices with the independent auditors or members of management.*

- c. *Review and approve the annual audited financial statements (including the independent auditors' associated management letter).*
- d. *Oversee the establishment of procedures for the effective receipt and treatment of (i) matters regarding auditing, internal auditing, and accounting matters, and (ii) the confidential submission of concerns raised by whistleblowers and other persons regarding accounting or auditing practices.*
- e. *Review at least annually the scope, objectives, and results of the independent auditors' examination of the annual financial statements and notes, and report to the Board of Directors on the Committee's findings.*
- f. *Assure the independence of the independent auditors by approving any non-audit work by them for the Corporation and examining the independent auditor's relationship with the Corporation.*
- g. *Report to the Board of Directors on any matters relevant to the audit process or independent auditor's communications and make such recommendations as the Committee deems appropriate.*

(3) *Oversight of Internal Audit Function.* *The CAE and/or other management or staff responsible for the Corporation's internal audit function will report directly to the Committee. Accordingly, the Committee will:*

- a. *Have authority over appointment, dismissal, compensation, and performance reviews of the CAE.*
- b. *Review the charter, activities, staffing and organizational structure of the internal audit function with the CEO and the CAE.*
- c. *Ensure that the internal audit function is organizationally independent from Corporation operations.*
- d. *Provide oversight of the internal audit function and its resources and activities to facilitate the improvement of internal controls.*
- e. *Provide oversight for an EH&S Compliance Audit Program if established as part of internal audit activities to ensure an independent assessment is conducted for EH&S compliance at the facilities.*
- f. *Review internal audit reports and recommendations of the CAE. This review will include a discussion of significant risks reported in the internal audit reports, and an assessment of the responsiveness and timeliness of management's follow-up activities pertaining to the same.*
- g. *Require the CAE to attend any meeting of the Committee and to prepare and deliver such reports as the Committee requests.*
- h. *Present periodic reporting to the Board of Directors on how the Committee has discharged its duties and met its responsibilities, and regularly report activities, issues, and recommendations.*

- i. *Review the Committee's charter annually, reassess its adequacy, and recommend any proposed changes to the Board of Directors.*
- j. *Conduct an annual self-evaluation of performance, including its effectiveness and compliance with the charter.*

Standards Conformance

- k. *Inquire of the CAE about steps taken to ensure that the internal audit activity conforms with the IIA's International Standards for the Professional Practice of Internal Auditing (Standards).*
- l. *Ensure the internal audit activity has a quality assurance and improvement program and that the results of these periodic assessments are presented to the Audit Committee.*
- m. *Ensure that the internal audit activity has an external quality assurance review every five years.*
- n. *Review the results of the independent external quality assurance review and monitor the implementation of the internal audit activity's action plans to address any recommendations.*
- o. *Advise the Board of Directors about any recommendations for the continuous improvement of the internal audit activity.*

(4) *Oversight for External Audits.* *The Committee will provide oversight for any external audits including the Office of the State Comptroller, Inspector General investigations, and substantive Freedom of Information Law requests. Accordingly, the Committee will:*

- a. *Receive all external requests, investigations, and audit notifications from the requesting entity.*
- b. *Receive information at significant milestones during the request, investigation or audit regarding:*
 - i. *Preliminary reports of findings.*
 - ii. *Final draft reports.*
 - iii. *Management resolutions due 180 days after publication.*
- c. *Provide sign-off on management comments to final draft reports.*

RESOLVED, that the Corporation establish the Finance Committee, whose purposes, powers and responsibilities shall be, to the extent permitted by law, as set forth in its charter substantially in the following form:

FINANCE COMMITTEE CHARTER

A. PURPOSE

The purpose of the Finance Committee ("Committee") is to provide guidance to the Board of Directors ("Board of Directors") of the New York Renewable Energy Development Holdings Corporation ("Corporation") and management concerning financial related matters; review proposals for the issuance of debt, review certain contracts that have a financial implication or other financial initiatives, and make recommendations; and perform such other responsibilities as the Board of Directors may assign to it.

B. MEMBERSHIP AND ORGANIZATION

(1) Committee Composition. The Committee shall be a "committee of the whole" comprised of the full membership of the Board of Directors. All members shall possess the necessary skills to understand the duties and functions of the Committee. The Committee Chair shall be selected by a vote of the Board of Directors.

(2) Term. Committee members shall serve for a period of five years subject to their term of office under the Public Authorities Law § 1003. Committee members may serve for additional periods of five years subject to their term of office. A Committee member may resign their position on the Committee while continuing to serve as a Director. In the event of a vacancy on the Committee due to death, resignation or otherwise, a successor will be selected to serve in the manner and for the term described above.

(3) Removal. A Committee member may be removed if they are removed as a Director for cause, subject to Public Authorities Law § 2827, or is no longer eligible to serve as a Committee member.

(4) Meetings and Quorum. The Committee shall hold a regular meeting at least once annually and may meet more often as needed to fulfill its responsibilities. A Committee member may call a special meeting of the Committee individually, or upon the request of the President or Chief Financial Officer.

An agenda shall be prepared and distributed to each Committee member prior to each such meeting and minutes shall be prepared in accordance with the New York Open Meetings Law. A majority of the total Committee composition established pursuant to section B(1) of this Charter shall constitute a quorum for the purposes of conducting the business of the Committee and receiving reports.

To the extent permitted by the New York Open Meetings Law, any meeting of the Committee may be conducted by video conferencing and the Committee may hold meetings or portions of meetings in executive session.

C. FUNCTIONS AND POWERS

The Committee shall provide guidance to the Board of Directors and management concerning the Corporation's practices relating to capital structure, debt issuances, and such other financial related matters as the Board of Directors shall assign to it from time to time.

The Committee shall have responsibilities which include but are not limited to the following: review proposals for the issuance of Corporation debt and the use of any related financial derivative instruments, and review certain contracts that have a financial implication or other financial initiatives that the board deems appropriate and make recommendations to the Board of Directors.

The Committee may call upon the resources of the Corporation to assist the Committee in the discharge of its responsibilities.

RESOLVED, that the Corporation establish the Governance Committee, whose purposes, powers and responsibilities shall be, to the extent permitted by law, as set forth in its charter substantially in the following form:

GOVERNANCE COMMITTEE CHARTER

A. PURPOSE

The purpose of the Governance Committee ("Committee") is to: keep the Board of Directors ("Board of Directors") of the New York Renewable Energy Development Holdings Corporation ("Corporation") informed of current best governance practices; review corporate governance trends; recommend updates to the corporate governance principles; advise appointing authorities on the skills and experiences required of potential Directors; examine ethical and conflict of interest issues; perform self-evaluations; review and recommend by-laws which include rules and procedures for conduct of business; and perform such other responsibilities as the Board of Directors shall assign to it.

B. MEMBERSHIP AND ORGANIZATION

(1) Committee Composition. The Committee shall be comprised of not less than five (5) members of the Board of Directors, of which not less than (3) three shall be independent members. All members shall possess the necessary skills to understand the duties and functions of the Committee. Committee members and the Committee Chair shall be selected by a vote of the Board of Directors.

(2) Term. Committee members shall serve for a period of five years subject to their term of office under Public Authorities Law § 1003. Committee members may be reelected to serve for additional periods of five years subject to their term of office. A Committee member may resign his or her position on the Committee while continuing to serve as a Director. In the event of a vacancy on the Committee due to death, resignation or otherwise, a successor will be selected to serve in the manner and for the term described above.

(3) Removal. A Committee member may be removed if he or she is removed as a Director for cause, subject to Public Authorities Law § 2827, or is no longer eligible to serve as a Committee member.

(4) Meetings and Quorum. The Committee shall hold a regular meeting at least once annually and may meet more often as needed to fulfill its responsibilities. A Committee member may call a special meeting of the Committee individually, or upon the request of the Chair or the President.

The Committee shall discuss the effectiveness of the organization's overall ethics and compliance program and reported instances of Code of Conduct violations as part of a regular or special meeting at the Committee's discretion.

An agenda shall be prepared and distributed to each Committee member prior to each meeting and minutes shall be prepared in accordance with the New York Open Meetings Law. A majority of the total Committee composition established pursuant to section B(1) of this Charter shall constitute a quorum for the purposes of conducting the business of the Committee and receiving reports.

To the extent permitted by the New York Open Meetings Law, any meeting of the Committee may be conducted by video conferencing and the Committee may hold meetings or portions of meetings in executive session.

C. FUNCTIONS AND POWERS

(1) Code of Conduct, Ethics, Compliance and Governance Practices. The Committee shall seek to: (i) ensure the effectiveness of management's monitoring of the Corporation's compliance with the Code of Conduct and programs and Corporation policies designed to ensure compliance with legal and regulatory matters; and (ii) promote honest and ethical conduct by the Board of Directors, officers and employees to enhance public confidence in the Corporation. To accomplish these objectives the Committee shall:

- a. Review at least annually the Code of Conduct and require the Secretary to coordinate revisions to the Code for consideration and approval by the Board of Directors.
- b. Provide oversight and guidance relating to the programs and policies designed to ensure compliance with applicable laws and regulations.
- c. Periodically review and as necessary recommend changes to the By-laws.
- d. Periodically review and as necessary recommend changes to the written corporate policies, including policies relating to conflicts of interest, corporate governance principles, equal opportunity employment, procurement of goods and services, acquisition and disposition of real and personal property or interests therein, record keeping and reporting of contacts by persons who attempt to influence the procurement process, regulations and rate proceedings, and the protection of whistleblowers.
- e. Report at least annually to the Board of Directors on matters relating to compliance with the Code of Conduct and applicable legal and regulatory matters and make such recommendations as the Committee deems appropriate.

(2) Director Performance. The Committee shall advise appointing authorities on the skills and experiences required of Board of Directors and perform self-evaluations.

(3) Investigations and Meetings. The Committee shall have the authority to authorize investigations into any matter within the Committee's purview. The Committee may retain independent counsel, accountants, or other professionals pursuant to the procurement and expenditure policies and procedures to assist it in the conduct of any such investigations. The Committee shall have the authority to meet with staff on compliance issues.

(4) Hiring. The Committee shall review and make recommendations to the Board of Directors concerning the election and compensation of all officers, consistent with the By-laws, the needs of the Corporation, good organizational management practices and such other criteria the Committee deems appropriate.

(5) Reports. The officers or employees responsible for the Corporation's compliance programs shall report to the Committee at all regularly scheduled meetings. The Committee shall have the authority to require other staff to prepare additional reports and to produce documents for Committee review.

VII. Adoption of Corporate Policies.

RESOLVED, that the following proposed Investment Policy of the Corporation, Code of Conduct and Board Conflict of Interest Policy, are hereby approved and adopted.

RESOLVED, that the Corporation shall adopt NYPA's corporate records retention schedule and records retention guidelines, *mutatis mutandis* in respect of the Corporation and in accordance with applicable law, as the Records Retention Policy of the Corporation.

INVESTMENT POLICY

I. General

The purpose of this investment policy (this "Policy") is to provide guidelines to the Board of Directors ("Board of Directors") and management of the New York Renewable Energy Development Holdings Corporation (the "Corporation") which detail the Corporation's operative policy and instructions regarding the investing, monitoring and reporting of funds, in accordance with the provisions of Section 2925 of the New York State Public Authorities Law.

II. Responsibility for Investments

The Treasurer shall have the responsibility for the investment of Corporation funds under the supervision of the Chief Financial Officer and the President and the general oversight of the Finance Committee to the Board of Directors. The Treasurer shall ensure that an operating manual is maintained that provides a detailed description of procedures for maintaining records of investment transactions and related information.

The Corporation may engage the services of one or more external investment advisors to assist in the management of the Corporation's investment portfolio in a manner consistent with the Corporation's objectives. Such external advisors may be granted authority to purchase and sell investment securities in accordance with this Policy. Such managers must be registered under the Investment Advisers Act of 1940.

III. Investment Goals

The Treasurer is responsible for maximizing the yield on investments consistent with requirements for safety, liquidity and minimization of risk. Monies will not be invested for terms in excess of the projected use of funds.

IV. Authorized Investments

A. The Corporation's funds shall be invested in Authorized Investments or Authorized Certificates of Deposit, defined as follows:

"Authorized Investments" shall mean:

- 1. Direct obligations of or obligations guaranteed by the United States of America or the State of New York;*
- 2. Bonds, debentures, notes or other obligations issued or guaranteed by any of the following: Federal National Mortgage Association (including Participation Certificates), Government National Mortgage Association, Federal Financing Bank, Federal Home Loan Mortgage Corporation and Federal Home Loan*

Banks, Federal Housing Administration, Federal Farm Credit Banks Funding Corporation, Federal Farm Credit Banks, Federal Intermediate Credit Banks, Federal Banks for Cooperatives, Federal Land Banks, Farmer Mac, Tennessee Valley Authority (“TVA”), Export-Import Bank of the United States (“EXIM”) or any other agency controlled or supervised by and acting as an instrumentality of the United States government;

3. *Obligations of any state of the United States of America or any political subdivision thereof or any agency, instrumentality or local government unit of any such state or political subdivision that shall be rated at the time of the investment in any of the three highest long-term Rating Categories, as such term is defined in the Power Authority of the State of New York General Resolution Authorizing Revenue Obligations, adopted February 24, 1998, as supplemented and amended, and the General Resolution Authorizing Transmission Project Revenue Obligations adopted December 7, 2021, as supplemented and amended (collectively, the “Resolutions”), or the highest short-term Rating Category by a Rating Agency, as such term is defined in the Resolutions;*

4. *Public Housing Bonds issued by Public Housing Authorities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an Annual Contributions Contract with the United States of America; or Project Notes issued by Local Public Agencies, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America; provided that such Bonds or Notes are guaranteed by the United States of America;*

5. *Money market funds, as defined in the Investment Company Act of 1940, registered under the Federal Securities Act of 1933, and whose objective is to maintain a constant share value of \$1.00, provided that: (a) no more than \$100 million of the Corporation’s investments shall be invested in any one money market fund for more than thirty consecutive business days; (b) fund investments are restricted to securities described in paragraph (1) or (2) of this subdivision; and (c) no more than 40 percent of the total amount of the Authority’s investments shall be invested in money market funds at any time;*

6. *Guaranteed Investment Contracts or GIC Funds issued by creditworthy insurance companies rated A or higher by A.M. Best Co. and collateralized by issuer’s general or separate account assets, provided that no more than \$50 million of the Authority’s investments shall be invested in any one contract or fund; and*

7. *Repurchase and reverse repurchase agreements (“Repurchase Agreements”), including “gestation” repurchase agreements of agency-backed collateral with a physical trust certificate from a FINRA-licensed broker dealer, with any bank or trust company organized under the laws of any state of the United States of America, which agreement is secured by any one or more of the securities described in paragraph (1) or (2) of this subdivision, which securities shall at all times have a market value of not less than the full amount of the repurchase agreement and be delivered to another bank or trust company organized under the laws of New York State or any national banking association domiciled in New York State, as custodian.*

“Authorized Certificate of Deposit” shall mean a certificate of deposit authorized by the Resolutions as an “Authorized Investment.” These include CDs offered through the Certificate of Deposit Account Registry Service (“CDARS”) program (or other CDARS comparable, FDIC-insured reciprocal products) provided the co-operative property/casualty insurance company retains title on each CD purchased.

If the credit rating of a security is subsequently downgraded below the minimum rating level for a new investment of that security, the Treasurer shall evaluate the downgrade on a case-by-case basis in order to

determine if the security should be held or sold. The Treasurer will apply the general objectives of safety, liquidity, yield and legality to make the decision.

B. If the Corporation borrows proceeds of tax-exempt obligations it shall promulgate and comply with arbitrage rebate rules under the provisions of Section 148(f) of the Internal Revenue Code of 1986, as amended. The Corporation will engage a consultant to prepare an arbitrage rebate and yield restriction compliance report regarding the accrued arbitrage rebate liability and the accrued yield restriction liability of the Corporation with respect to investment of gross proceeds from tax-exempt bond obligations (“Bonds”). The Corporation will prepare a report no later than the fifth-year anniversary from the date of issuance of the Bonds, and no later than every fifth-year anniversary thereafter until the final redemption of the bonds (the final computation period). The Corporation may elect at its discretion to prepare an interim report as deemed necessary. If there is positive rebate liability or yield restriction liability accrued the required payment will be made to the United States Treasury Department. In no event shall Corporation funds be invested in a manner that would violate the provisions of such arbitrage regulations.

V. Provisions Relating to Qualifications of Dealers and Banks

A.1. A list will be maintained of financial institutions and depositories authorized to provide investment services. In addition, a list will be maintained of approved security broker/dealers selected by conducting a process of due diligence. These may include “primary” dealers or regional dealers that qualify under Securities and Exchange Commission (SEC) Rule 15C3-1 (uniform net capital rule) or FDIC/Federal Reserve-regulated banks that are investment grade or better as rated by a nationally recognized statistical ratings organization (“NRSRO”).

Banks and Dealers shall have demonstrated an ability to:

- (a) offer superior rates or prices on the types and amounts of securities required;
- (b) provide a high degree of attention to the Authority's investment objectives; and
- (c) execute trades in a timely and accurate manner.

If the services of an investment advisor are engaged by the Corporation, the investment advisor may execute approved trades on behalf of the Corporation with dealers or banks that are not on the Corporation's list of authorized Banks and Dealers if those organizations provide the best security available. Said transactions, however, will be included in periodic transaction recap reports provided by the investment advisor.

A.2. Authorized Investments may also be purchased or sold through minority-owned, women-owned, and service-disabled veteran owned firms authorized to transact business in the U.S. government and municipal securities markets. Such qualified firms shall demonstrate the qualities detailed in clauses (a), (b) and (c) of Section V.A.1.

A.3. Municipal securities qualifying as Authorized Investments may also be purchased or sold through any municipal bond dealer registered in the State of New York (the “State”) that demonstrates the qualities detailed in clauses (a), (b) and (c) of Section V.A.1.

In addition, bonds, debentures, notes, swaps or other outstanding obligations issued by the Corporation or its related entities may be purchased for the purpose of redemption, retirement or defeasance.

B. *Authorized Certificates of Deposit and time deposits (“Time Deposits”) shall be purchased directly from Banks that:*

- (1) are members of the Federal Reserve System transacting business in the State;*
- (2) have capital and surplus aggregating at least \$50 million; and*
- (3) demonstrate all the qualities detailed in clauses (a), (b) and (c) of Section V.A.1.*

C. *Authorized Investments purchased by the Corporation or collateral securing its investments shall be deposited only with custodians designated by the Corporation. In lieu of traditional cash or security collateral, the Corporation may accept municipal letters of credit (“MULOC”) issued by the FHLB or other federal agency. Such custodians shall be Banks that are members of the Federal Reserve System transacting business in the State of New York or creditworthy banks or trust companies authorized to do business in the State of New York.*

D. *The Corporation shall file with each qualified dealer or investment advisor a letter agreement that designates the (1) type of authorized investments, (2) Corporation employees who are authorized to transact business and (3) delivery instructions for the safekeeping of investments.*

E. *The Corporation shall enter into a written contract with any (1) Dealer from which Authorized Investments are purchased subject to a Repurchase Agreement and (2) Bank from which Authorized Certificates of Deposit are purchased.*

VI. General Policies Governing Investment Transactions

A. *Competitive quotations or negotiated prices shall be obtained except in the purchase of government securities at their initial auction or upon initial offering. A minimum of three quotes shall be obtained and documented from Dealers and/ or Banks, except as indicated above, and the most favorable quote accepted. The Chief Financial Officer or Treasurer may waive this or other requirements and limits on a single-transaction basis only if warranted by market conditions and documented in writing.*

B. *Authorized Investments purchased shall be either delivered to the Corporation’s designated custodian or, in the case of securities held in a book-entry account maintained at the Federal Reserve Bank of New York or the Depository Trust Company, recorded in the Corporation’s name or in the name of a nominee agent or custodian designated by the Corporation on the books of the Federal Reserve Bank of New York or the Depository Trust Company. Payment shall be made to the Dealer or Bank only upon receipt by the Corporation’s custodian of (1) the securities or (2) in the case of securities held in a book-entry account, written advice or wire confirmation from the Federal Reserve Bank of New York or the Depository Trust Company that the necessary book entry has been made.*

C. *Each purchase or sale of Authorized Investments or Authorized Certificates of Deposit shall be authorized by the Treasurer. Investment orders may be placed by Corporation employees as designated by the Treasurer. The custodian shall have standing instructions to send a transaction advice to the Corporation’s controller for purposes of comparison with internal records. The controller shall advise the Treasurer of any variances, and the Treasurer shall ensure appropriate corrections are provided.*

VII. Policies Concerning Certain Types of Investment Diversification Standards Required

A. *Authorized Certificates of Deposit and Time Deposits.*

1. *Authorized Certificates of Deposit and Time Deposits shall be purchased directly from an approved Bank or Dealer.*

2. *Authorized Certificates of Deposit and Time Deposits shall be continuously secured/collateralized by Authorized Investments defined in subsection (1) or (2) of Section IV.A., having a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such Certificates of Deposit or Time Deposits. Such Authorized Investments shall be segregated in a separate custodian account on behalf of the Authority. Collateral pledged for Certificates of Deposit or Time Deposits held as investments shall be market valued (marked to market) not less than once per week.*

3. *Investments in Authorized Certificates of Deposit or Time Deposits shall not exceed 25% of the Corporation's invested funds. The par value of Authorized Certificates of Deposit purchased from any one Bank shall not exceed \$25 million.*

B. *Repurchase Agreements.*

The Corporation may from time to time elect to enter into arrangements for the purchase and resale or the sale and repurchase of Authorized Investments. This type of investment transaction shall be used only when there is no other viable, short-term investment alternative.

1. *A Repurchase Agreement shall be transacted only with banks or trust companies authorized to do business in the State of New York or from broker dealers on the Federal Reserve Bank of New York's list of primary government securities dealers.*

2. *Authorized Investments purchased subject to a Repurchase Agreement shall be marked to market daily to ensure their value equals or exceeds the purchase price.*

3. *A Repurchase Agreement shall be limited to a maximum fixed term of 30 days. Payment for the purchased securities shall be made against delivery to the Corporation's designated custodian (which shall not be a party to the transaction as seller or seller's agent) or, in the case of securities held in a book-entry account maintained at the Federal Reserve Bank of New York or the Depository Trust Company, written advice that the securities are recorded in the Corporation's name or in the name of a nominee, agent or custodian designated by the Corporation on the books of the Federal Reserve Bank or the Depository Trust Company.*

4. *No more than \$50 million of Authorized Investments shall be purchased under a Repurchase Agreement with any one Dealer or Bank. This requirement may be waived by the Chief Financial Officer on a single-transaction basis only if warranted by special circumstances and documented in writing.*

5. *The aggregate amount invested in Repurchase Agreements may not exceed \$250 million. The Chief Financial Officer may waive this requirement on a single-transaction basis only if warranted by cash-flow requirements and documented in writing.*

VIII. *Review*

This Policy and any proposed amendments shall be submitted for review and approval by the Board of Directors at least once a year.

In addition to the Corporation's periodic review, the Corporation's independent auditors, in connection with their examination of the Corporation, shall perform an annual audit of the investment portfolio, review

investment procedures and prepare a report, the results of which will be made available to the Board of Directors.

IX. Reports

A. The Treasurer shall submit an investment report to the Directors, at least quarterly. Such report shall contain a (1) detailed description of each investment; (2) summary of the dealers and banks from which such securities were purchased and (3) a list of fees, commissions or other charges, if any, paid to advisors or other entities rendering investment services.

B. The Treasurer shall submit an annual report for approval by the Board of Directors. In addition to the information provided quarterly, the Annual Report shall include (i) a copy of this Policy; (ii) an explanation of this Policy and any amendments hereto since the last annual report; (iii) the results of an annual independent audit of investment inventory and procedures and (iv) a record of income earned on invested funds. The approved report shall be submitted to the State Division of the Budget with copies distributed to the Office of the State Comptroller, the Senate Finance Committee and the Assembly Ways and Means Committee. Copies shall be made available to the public upon written reasonable request.

C. Any waivers that occurred during the prior month shall be reported to the Chief Financial Officer.

X. Miscellaneous

A. This Policy is intended for guidance of officers and employees of the Corporation only, and nothing contained herein is intended or shall be construed to confer upon any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision thereof.

B. Nothing contained in this Policy shall be deemed to alter, affect the validity of, modify the terms of or impair any contract, agreement or investment of funds made or entered into in violation of, or without compliance with, the provisions hereof.

C. No provisions in this Policy shall be the basis of any claim against any Director, officer or employee of the Corporation in his or her individual or official capacity or against the Corporation itself.

D. The Chief Financial Officer or Treasurer may waive requirements or limits on a single-transaction basis if warranted by cash-flow requirements and documented in writing, if in adherence with State Comptroller guidelines.

E. Exceptions to this Policy may be approved by the Chief Financial Officer and shall be reported to the General Counsel.

CODE OF CONDUCT

I. STANDARDS OF CONDUCT

New York Renewable Energy Development Holdings Corporation (“Corporation”) employees, officers and directors shall perform their duties with integrity and:

1. Refrain from engaging in outside activities, including other employment and financial interests, which could impair their independence of judgment or prevent the proper exercise of their official Corporation duties. All outside employment and publicly elected positions held or being sought must be

reported to your supervisor, department or business unit head for evaluation to ensure the absence of conflicts of interest.

2. Conduct themselves at all times in a manner that avoids any appearance of or situation where they could be either improperly influenced, give or be given preferential treatment to or by any person or entity or act in violation of the public trust. This includes the requirement to (i) disclose any and all possible professional and personal conflicts of interest to your supervisor, department or business unit head, and your subsequent refusal from engaging in any Corporation business activity where the conflict appears or exists; and (ii) refrain from seeking or accepting a monetary loan from any employee under one's direct or indirect supervisory authority, or providing a monetary loan to your immediate supervisor and anyone to whom that individual reports, up to and including the Board of Directors.

3. Not use or attempt to use their official position to secure unwarranted privileges for themselves, their relatives or any other party, including contracts and employment with the Corporation.

4. Not participate in any decision or process to hire, promote, discharge, discipline or supervise a relative.

5. Not endorse the products or services of other entities or individuals as a representative of the Corporation, including appearing in publications advertising, endorsing or selling products or services of third parties.

6. Not engage in any Corporation transaction or work assignment (including contract development, solicitation, evaluations, awards) involving another business in which they or a relative have a direct or indirect financial interest. This provision does not apply to ownership of shares of stock commonly owned in a mutual fund. It does include personally owned and directed stock of any corporation traded on a recognized stock exchange, where there is an ownership interest greater than or equal to 10% in the corporation.

7. Not supply the Corporation with any goods and/or services (individually or through another business entity) except in the performance of their official position. Relatives of Corporation employees are also subject to this prohibition in accordance with applicable procurement guidelines.

8. Not use Corporation property, including but not limited to, equipment, vehicles, staff and other assets or resources in a manner inconsistent with applicable laws, the Corporation's policies and mission.

9. Not accept, receive or solicit any gift or gratuities of more than nominal value where the circumstances would infer that (a) the gift is intended to influence the individual in the performance of official business or (b) the gift represents a tip, reward or sign of appreciation for any official act. Gifts include any form of financial discounts and payments, services, loans, travel reimbursements, lodging, meals, entertainment or promise from any entity doing business with or seeking to do business with the Corporation. Gifts from disqualified sources (consultants, contractors, vendors, customers) are prohibited.

10. Not directly or indirectly advise or assist any person in making a financial investment or other decision utilizing confidential information acquired at the Corporation, nor disclose any confidential information as a result of information obtained through Corporation employment.

11. Refrain from acquiring and trading in the securities of electric and gas utility corporations doing business within New York State (other than shares owned in a mutual fund).

12. *Prohibit the appearance of elected government officials and candidates in advertisements or promotions paid with public funds.*

13. *Not use one's official position to compel or induce any other state officer or employee to make or promise to make any political contribution, nor inquire about a prospective or current employee's political party affiliation, contributions or voting record.*

14. *Not appear or practice before or receive compensation from the Corporation or other entities where the former employee will be involved in providing goods or services to the Corporation for two (2) years following Corporation employment. This does not preclude "re-employment" by the Corporation subject to any applicable statutory cap on earnings. Counsel to the Corporation must be consulted prior to the re-employment in any manner of any former Corporation employee for evaluation to ensure consistency with the post-employment restrictions contained in the Public Officers Law.*

15. *Not appear or practice before or receive compensation from the Corporation or other entities where the former employee will be involved in providing goods or services to the Corporation at any time following one's Corporation employment relating to matters on which one personally worked for the Corporation. This does not preclude "re-employment" by the Corporation subject to any applicable statutory cap on earnings. Counsel to the Corporation must be consulted prior to the re-employment in any manner of any former Corporation employee for evaluation to ensure consistency with the post-employment restrictions contained in the Public Officers Law.*

The term "Relative" as used in this Code of Conduct means any person living in the same household as the Corporation employee, officer or director and any person who is a direct descendant of that individual's grandparents or the spouse of such descendant.

This Code of Conduct do not replace and is in addition to the requirements of all applicable laws and regulations, including but not limited to, NYS Public Officers Law and Business Corporation Law.

II. CERTIFICATION AND IMPLEMENTATION

This Code of Conduct shall be provided to all employees, officers and directors upon commencement of employment or appointment. Employees, officers and directors will be requested to certify annually that they have read the Code of Conduct and that they comply with its standards. Counsel to the Corporation will provide periodic reports to the Governance Committee of the Board of Directors about the status and disposition of concerns and issues raised hereunder.

III. REMEDIES

In addition to any penalty contained in any other provision of law, a Corporation employee, officer or director who violates this Code of Conduct may be disciplined upon findings and recommendations prepared by the President and/or General Counsel. Remedies and disciplinary action may include one or more of the following actions:

- *Issuance of job performance counseling and written warnings*
- *Direction of written corrective action to eliminate a conflict of interest*
- *Restitution*
- *Adverse salaried employee performance assessments*

- *Changes in assigned job duties*
- *Suspension or termination of employment*

Any disciplinary action arising out of violations of this Code of Conduct affecting a bargaining unit employee will be administered in accordance with the applicable collective bargaining agreement.

The concurrence of the President and General Counsel is required for any suspension or termination of employment solely arising out of violations of the Code of Conduct.

Former Corporation employees, officers and directors who are later found to have violated the Code of Conduct during their Corporation employment may also be precluded from doing business with the Corporation.

IV. REPORTING UNETHICAL BEHAVIOR

Directors, officers and employees are required to report any unethical behavior or any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse to the General Counsel. You are also encouraged to utilize NYPA's toll-free Employee Concerns Line (1-877-TEL-NYPA). It is accessible 24 hours a day, 7 days a week. Calls may be made anonymously.

Anyone reporting an ethical concern in good faith or participating in the investigation of a reported concern is protected from retaliation by the Corporation's policies and the law.

SCHEDULE 1

BOARD CONFLICT OF INTEREST PROCEDURE

I. Purpose and Scope

This Procedure is designed to implement the New York Renewable Energy Development Holdings Corporation (the "Corporation") Code of Conduct, with respect to Board members' conflict of interest. This Procedure addresses the conflict of interest that may arise when a board member has a significant involvement (in whatever capacity) with organizations that seek action by the board.

II. Applicability

This procedure applies to all board members.

III. Responsibility

The Secretary of the Corporation (the "Secretary") is responsible for carrying out this procedure.

IV. Implementation

In accordance with the Corporation's Code of Conduct, all board members shall conduct themselves at all times in a manner that avoids any appearance of or situation where they could be either improperly influenced, give or be given preferential treatment to or by any person or entity or act in violation of the public trust. This includes the requirement to disclose any and all possible professional and personal conflicts of interest to the Secretary, and the subsequent recusal from participating in any discussion or

voting where the conflict appears or exists, and the recording in the declared conflict in the meeting minutes.

V. Conflict of Interest Review

Prior to every board meeting, the Secretary will provide board members with a list of organizations that are scheduled to come before the board. The board members are asked to review the list of organizations and inform the Secretary as soon as possible regarding any perceived conflict of interest. The Secretary, the General Counsel to the Corporation and outside counsel are available for consultation in the event a board member has questions about the potential conflict.

VI. Recusal

At the board meeting, a member with a conflict shall recuse himself/herself from any discussion or vote dealing with that matter. The minutes of the meeting shall include the members declared conflict and his/her recusal from discussion and vote on the recommendation.

VII. Annual Review

Once a year, the Secretary will forward the Code of Conduct and this Procedure to the board members for review. The Secretary will also provide board members with a certification, which is to be signed, dated and returned to the Secretary's office after the review.

WHISTLEBLOWER POLICY

I. PURPOSE AND SCOPE

This Policy is applicable to all New York Renewable Energy Development Holdings Corporation ("Corporation") employees, officers and directors. It prohibits discrimination, harassment and/or retaliation of any kind against anyone who reports in good faith, based upon a reasonable belief (i) a complaint and/or provides information concerning an actual, potential or suspected act of fraud, misconduct, wrongdoing or other inappropriate behavior by an employee or Corporation business partner as further described in this Policy, or (ii) a complaint and/or provides information regarding any alleged conduct that violates or demonstrates non-compliance with the Corporation's Code of Conduct, Corporation policies and procedures and/or any applicable laws and regulations affecting the organization ("Whistleblowing Events"). This policy is not applicable to retaliation complaints based upon equal employment, harassment or discrimination.

Reports of Whistleblowing Events may be made to (i) General Counsel to the Corporation, (ii) a member of the Corporation's supervisory staff, (iii) any other person employed by the Corporation who has the authority to discover, investigate or substantiate fraudulent activity, misconduct and wrongdoing and (iv) a federal or state regulatory agency, law enforcement or other governmental agency. This Policy is an integral component of the Corporation's ethics and compliance program.

II. APPLICABILITY

This Policy shall be adhered to by all employees, officers and directors. Implementing procedures or guidelines shall be prepared as necessary to provide appropriate guidance in meeting the management controls.

III. IMPLEMENTATION

(1) *General.* The Corporation has established an anti-retaliation policy to:

- a. *Encourage employees to report Whistleblowing Events in an expeditious manner, while ensuring that employees are protected as provided for in this Policy.*
- b. *Encourage employees to provide information, cause information to be provided, or otherwise assist or participate in investigations or proceedings relating to Whistleblowing Events.*
- c. *Protect employees from discrimination, harassment, or retaliation for disclosing information or otherwise assisting or participating in investigations concerning Whistleblowing Events engaged in by Corporation employees or Corporation business partners.*

(2) *Responsibilities.* The General Counsel, or his/her designee, is responsible for the implementation of this Policy. The General Counsel will review each Whistleblowing Event as it is received either through the Employee Concerns Hotline or through any other reporting source. He/she will discuss the nature of the complaint, any allegations and/or other information provided with the General Counsel and determine the manner in which the Whistleblowing Event will be addressed, including whether a formal investigation will be conducted to further review the Whistleblowing Event.

(3) *Employee Concerns Hotline.* This Policy establishes and encourages the utilization of a centralized, outsourced, toll-free hotline for reporting any Whistleblowing Events. Employees may remain anonymous if they choose to do so. This centralized Employee Concerns Hotline is accessible twenty-four (24) hours a day, seven (7) days a week at 1-877-TEL-NYPA.

(4) *Investigation Implementation.* Any employee who wishes to report a Whistleblowing Event may do so through a number of mechanisms, including direct discussion with a member of the Corporation's supervisory staff or the General Counsel in person or via telephone, e-mail, or use of the Employee Concerns Hotline.

Every Whistleblowing Event will be reviewed, and a determination will be made as to whether it can be substantiated, either in whole or part. This review will include an assessment of specific information including, but not limited to, dates, times, locations, participants, and any other relevant data needed to conduct a thorough evaluation or investigation. A reported Whistleblowing Event which is vague and/or conclusory in nature without sufficient details, will be reviewed but may not be formally investigated, if it is determined that there is insufficient information with which to conduct a meaningful investigation.

Upon the conclusion of a Whistleblowing Event review and/or investigation, the General Counsel, or his/her designee, and General Counsel will meet with the appropriate members of the Board of Directors to determine the extent to which the alleged violation(s) have been substantiated and what, if any, corrective and/or disciplinary action will be recommended to resolve the matter. The Governance Committee of the Board of Trustees will be notified as necessary in accordance with its responsibilities to oversee the Corporation's ethics and compliance program. In addition, a decision will be made regarding the feedback which may be provided to the source of the Whistleblowing Event and any other affected employees or business partners. Investigation files will be maintained in accordance with the Corporation's records retention procedures.

(5) *No Retaliation for Good Faith Reports.* Employees reporting a Whistleblowing Event in good faith, based upon a reasonable belief, are protected from discrimination, harassment, or retaliation of any kind for making the report. No employee may demote, discharge, harass, suspend, threaten, or in any other manner discriminate or retaliate against an employee based upon that employee's good faith and reasonable belief in engaging in any of the following behavior:

- a. *Reporting a Whistleblowing Event or filing a claim with respect to an actual, potential or suspected Whistleblowing Event to any person with supervisory authority over the employee (or such other Corporation employee who has the authority to discover, investigate or determine misconduct or workplace violations) or a federal or state regulatory agency, law enforcement or other governmental agency.*
- b. *Providing information, causing information to be provided, or otherwise assisting or participating in an investigation or proceeding related to a Whistleblowing Event.*

Any employee who believes that he or she is the subject of retaliation or who observes retaliation against another in violation of this Policy shall immediately report such retaliation in accordance with this Policy.

(6) Remedies For Employees Making False Allegations. Employees shall not knowingly report false allegations against other employees or Whistleblowing Events, either through the Employee Concerns Hotline or by any other means. Any employee who knowingly submits a false allegation or Whistleblowing Event or who retaliates against another employee or anyone reporting and/or cooperating in the review/investigation of a Whistleblowing Event, is subject to disciplinary action up to and including termination of employment.

IV. VIOLATIONS

Violations of this Policy and related policies and procedures 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 the Corporation'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.

V. 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.

VIII. Organizational Expenses; Corporate Books.

RESOLVED, that the Corporation shall cause all fees and expenses incident and necessary to the organization of the Corporation to be paid; the Secretary shall procure all books necessary and shall be responsible for preparing the Corporation's minutes of the directors' meetings and shareholders' meetings and for authenticating records of the Corporation; and the Secretary shall maintain the Certificate of Incorporation, the Bylaws, such minutes and all other appropriate corporate records in a corporate minute book as a part of the Corporation's permanent records.

IX. Fiscal Year.

RESOLVED, that the fiscal year of the Corporation shall end on the last day of December in each calendar year.

X. Bank Accounts.

RESOLVED, that the officers are hereby appointed as the Corporation's authorized agents to open and maintain on behalf of the Corporation one or more bank accounts in any bank or banks as any of them may select for the deposit of the funds of the Corporation by its officers, agents and employees, and to designate those officers and other employees of the Corporation who may sign with a facsimile signature checks, drafts and other instruments having to do with the receipt, deposit and disbursement of such funds in connection with each bank account; and any bank shall be authorized to honor such checks, drafts and other instruments.

RESOLVED, that the Board of Directors hereby adopts the form of the banking resolution required by any bank in which the Board of Directors determines to open an account if any of the officers of the Corporation evidences such adoption by attaching to this Resolution copies of such resolutions, which will thereupon be deemed to have been adopted by the Board of Directors with the same force and effect as if originally attached to this Resolution.

RESOLVED, that the Chief Financial Officer, the Treasurer of the Corporation, or such other individuals as may be directed by the Treasurer, are authorized to invest and reinvest monies in the account for, and on behalf of, the Corporation.

XI. Shared Services Agreement.

RESOLVED, that the Board of Directors has determined it is advisable and in the Corporation's interests to enter into that certain Administrative Services, Shared Employee and Shared Space Agreement between NYPA and the Corporation (the "Shared Services Agreement"), which shall set forth terms and conditions for the use of NYPA resources by the Corporation, including personnel support, information technology and office space.

RESOLVED, that the President of the Corporation is hereby specifically authorized to execute and deliver the Shared Services Agreement on behalf of the Corporation, together with any amendments, restatements or modifications as may from time to time be necessary or desirable.

XII. Execution and Delivery of Documents.

RESOLVED, that any director or officer of the Corporation be and hereby is authorized to execute and deliver on behalf of the Corporation such agreements, instruments, indentures and other documents as may be necessary or appropriate in the conduct of the ordinary business of the Corporation.

XIII. Foreign Qualifications.

RESOLVED, that the Corporation qualify to do business as and when necessary, and the officers of the Corporation are hereby authorized to execute and file in the name and on behalf of the Corporation all such documents as may be necessary or desirable in connection therewith and to take any and all other actions which may be necessary or desirable in connection therewith.

XIV. NYPA Renewables Strategic Plan.

RESOLVED, that the final inaugural NYPA Renewables Strategic Plan adopted by the Board of Trustees of NYPA (the “Strategic Plan”) is hereby adopted and approved by the Board of Directors on behalf of the Corporation, and that the Board of Directors hereby authorizes the Corporation to plan, design, develop, finance, acquire, construct, own, operate, maintain and improve, either alone, or jointly with other entities through the use of public-private agreements, any of the projects identified and approved in the Strategic Plan (each, a “Project”).

RESOLVED, that the President and the Chief Financial Officer of the Corporation are hereby jointly authorized to pay and commit to pay Project costs with available funds of the Corporation in an amount not to exceed \$10,000,000 for each Project without further approval by the Board of Directors, and to execute and deliver on behalf of and in the name of the Corporation any agreements, instruments, indentures and other documents as may be necessary or appropriate in connection with same.

XV. Ratification of Corporate Actions.

RESOLVED, that all actions taken by the officers of the Corporation, acting in the name of and on behalf of the Corporation, are hereby in all respects ratified, confirmed and approved in their entirety.

RESOLVED, that the New York Renewable Energy Development Holdings Corporation (“NYRED”) Board of Directors hereby approves and adopts the Organizing Resolution of the Board of Directors of New York Renewable Energy Development Holdings Corporation with such amendments, supplements, changes, insertions and omissions thereto as may be approved by the Chair or the President of NYRED, which amendments, supplements, insertions and omissions shall be deemed to be part of such resolution as approved and adopted hereby; and be it further

RESOLVED, that the Chair, the President, and all other officers of NYRED be authorized on behalf of NYRED 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.

Mr. Nicholas Gonzalez, Senior Advisor Renewable Power, provided highlights of the resolution to the members. He said that The Resolution Organizing New York Renewable Energy Development Holdings Corporation, which is an adoption of the following matters, is now before the Board of Directors.

Upon motion from member Trainor seconded by Member Wheelock, the Board of Directors of New York Renewable Energy Development Holding Corporation, a New York corporation organized under Section 402 of the Business Corporation Law of the State of New”), voted to approve the aforementioned resolutions.

3. Next Meeting

Member Koelmel stated that the next meeting of the New York Renewable Energy Development Holding Corporation is to be determined.

Closing

On motion made by Member Trainor and seconded by Member Wheelock, the meeting was adjourned at approximately 11:59 a.m.

A handwritten signature in black ink that reads "Karen Delince". The script is cursive and fluid.

Karen Delince
Vice President and Corporate Secretary - NYPA



May 20, 2025

Next Meeting

The next meeting of the New York Power Authority's Trustees and the Canal Corporation's Board of Directors will be held on Tuesday, July 29, 2025, unless otherwise designated by the Chairman with the concurrence of the members.