



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

January 31, 2017

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Minutes of the Regular Meeting of the Power Authority of the State of New York held via video conference at the Clarence D. Rappleyea Building, 123 Main Street, White Plains, New York at approximately 9:36 a.m.

Members of the Board present were:

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

Gil Quiniones	President and Chief Executive Officer
Justin Driscoll	Executive Vice President and General Counsel
Jill Anderson	Executive Vice President and Chief Commercial Officer
Joseph Kessler	Executive Vice President and Chief Operating Officer
Robert Lurie	Executive Vice President and Chief Financial Officer
Parija Soubhagya	Senior Vice President and Chief Risk Officer
Jennifer Faulkner	Senior Vice President – Internal Audit
Kristine Pizzo	Senior Vice President – Human Resources
Karen Delince	Vice President and Corporate Secretary
Thomas Concadoro	Vice President and Controller
John Canale	Vice President – Procurement
Keith Hayes	Vice President – Economic Development
Patricia Lombardi	Vice President – Project Management
Ethan Riegelhaupt	Vice President – Corporate Communications
Susan Craig	Director – Media Relations
Richard Westle	Director – Knowledge Management
Javier Bucobo	Principal Attorney II
Sylvia Louie	Senior Project Manager – Executive Office/Public and Regulatory Affairs
Lorna Johnson	Senior Associate Corporate Secretary
Sheila Baughman	Senior Assistant Corporate Secretary
Jaiah Gottor	Manager – Network Services – Infrastructure
Joseph Rivera	Network Architect – Infrastructure
Glenn Martinez	Senior Network Analyst – Infrastructure
Brian U. Stratton	Director – NYS Canal Corporation
John C. Callaghan	Deputy Director – NYS Canal Corporation
Richard Kauffman	Chairman of Energy & Finance and Chairman of the New York State Energy Research & Development

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

Introduction

Chairman Koelmel said this is an historic day -- the first joint meeting of the New York Power Authority and the Canal Corporation Boards. He welcomed the Trustees and staff members who were present at the meeting. He said that the meeting had been duly noticed as required by the Open Meetings Law and called the meeting to order pursuant to the Authority's Bylaws, Article III, Section 3.

1. **Adoption of the January 31, 2017 Proposed Meeting Agenda**

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

Conflicts of Interest

The Trustees declared no conflicts of interest based on the list of entities provided for their review.

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

Mr. Chairman, I move that the Authority and Canal Board conduct an executive session pursuant to the Public Officers Law of the State of New York sections §105 (f) to discuss the financial, credit or employment history of a particular person or corporation. Upon motion made by Trustee McKibben and seconded by Vice Chairman Nicandri, an Executive Session was held.

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

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

Chairman Koelmel stated that no votes were taken during the Executive Session.

4. **COMMITTEE REPORT**

a. **Finance Committee Report**

This report was deferred to later in the agenda.

5. CONSENT AGENDA:

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

a. Governance Matters:

i. Approval of the Minutes

The Minutes of the Regular Meeting held on December 15, 2016 were unanimously adopted.

ii. **Authorization for Transfers of Interest in New York Power Authority Personal Property to New York State Canal Corporation**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to authorize the Authority's personal property Contracting Officer to transfer any interest in Authority personal property, valued at up to \$500,000 per transaction, to the New York State Canal Corporation ('Canal Corp.') in furtherance of Canal Corp.'s operation, maintenance, construction, reconstruction, improvement or development of the canal system.

BACKGROUND

Effective January 1, 2017, management and administration of the New York State Canal Corporation is an additional corporate purpose of the Authority. New York Public Authorities Law § 1005-b (2) authorizes the Authority to 'transfer to the canal corporation any moneys, real, personal, or mixed property or any personnel in order to carry out the purposes of this section...' to the extent that the Authority's Trustees deem it feasible and advisable. Under Public Authorities Law Title 5-A, Disposition of Property by Public Authorities, the Trustees annually designate a contracting officer as part of their approval of the Guidelines for the Disposal of New York Power Authority's Personal Property.

DISCUSSION

The Trustees' authorization for the Authority's personal property Contracting Officer to transfer any interest in Authority personal property to the Canal Corp., as the Contracting Officer deems prudent after balancing the respective needs of the Authority and the Canal Corp., will facilitate the Canal Corp.'s obligations to operate, maintain, construct, reconstruct, improve and develop the canal system. The Contracting Officer will authorize the transfer of Authority property, or any interest therein, only at the request of the Canal Corp. The Contracting Officer will report to the Trustees or committee thereof regarding such property transfers.

FISCAL INFORMATION

In accordance with the foregoing, such transfers of an interest in Authority personal property to Canal Corp. may be made without reimbursement to the Authority.

RECOMMENDATION

The Executive Vice President and Chief Financial Officer and the Senior Vice President – Public and Regulatory Affairs recommend that the Trustees authorize the Authority's personal property Contracting Officer to transfer to the Canal Corporation any interest in Authority personal property, valued at up to \$500,000 per transaction, in parity with the authorization level and signing authority set forth in the Guidelines for the Disposal of New York Power Authority Personal Property.

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

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

RESOLVED, That the Authority's personal property Contracting Officer is authorized to transfer any interest in Authority personal property, valued at up to \$500,000 per

transaction, to the Canal Corporation in furtherance of its operation, maintenance, construction, reconstruction, improvement or development of the canal system, or any of its other powers or duties; and be it further

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

b. Rate Making:

i. Increase in New York City Governmental Customer Fixed Cost Component – Notice of Adoption

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to take final action to approve an increase in the Fixed Cost component of the production rates by \$15.0 million or 11.5%, excluding Astoria Energy II ('AEII') plant expenses to be charged in 2017 to the New York City Governmental Customers ('NYCGCs' or 'Customers'). AEII plant expenses, although part of the Cost of Service ('COS'), are not subject to this Notice of Adoption ('NOA') proceeding as recovery of such costs has been agreed to by contract. The proposal is based on Authority staff's Final 2017 COS. The increase would be effective with the January 2017 bills.

BACKGROUND

At their September 27, 2016 meeting, the Trustees directed the publication in the New York *State Register* ('*State Register*') of a notice that the Authority proposed to increase the 2017 Fixed Costs component of the production rates by 12.7%, or \$16.6 million. The *State Register* notice was published on October 12, 2016 in accordance with the State Administrative Procedure Act ('SAPA'). The Authority's policies and procedures call for a public forum if the Fixed Costs component of the proposed rate increase exceeds 2.0%. Since the proposed increase (12.7%) was greater than 2.0%, a public forum was held on November 17, 2016. There were no public comments received during the public forum. The transcript from the public forum is attached as Exhibit '5b i-A' to this item.

The forty-five day public comment period, originally set to close on December 5, 2016, was extended by NYPA staff to December 16, 2016. The City of New York ('City') was the only NYCGC to file formal written comments on the Fixed Cost component of the 2017 COS.

Under the Customers' Long-Term Agreements ('LTAs'), the Authority must establish Fixed Costs based on cost-of-service principles and may make changes only under a SAPA proceeding with the approval of the Trustees. The LTAs establish two distinct cost categories: Fixed Costs and Variable Costs. Fixed Costs, which represent 21% of the total production cost-of-service, include Operation and Maintenance ('O&M'), Shared Services, Capital Cost, Other Expenses (i.e., certain directly assignable costs), and a credit for investment and other income. Variable Costs, representing 59% of the total production costs, include items such as fuel, purchased power, transmission costs, etc. The remaining portion of costs represents AEII plant expenses agreed to by contract.

DISCUSSION

In response to Customer comments received and staff's analysis, the final increase in Fixed Costs sought by this action is \$15.0 million. This represents a \$1.6 million decrease from the proposed Fixed Costs estimate in the September 27, 2016 Trustee meeting. Contributing to the \$15.0 million increase in Fixed Costs are a \$5.4 million increase in Other Expenses, a \$3.6 million increase in O&M, a \$3.3 million increase in Capital Cost, and a \$2.8 million increase in Shared Services Expense as compared to those levels in the Final 2016 COS.

The stated increase in Other Expenses is \$5.4 million in the Final 2017 COS as compared to the Final 2016 COS. However, in the Final 2016 COS, a total one-time \$5.3 million credit to correct for historical cost accounting related to Demand Side Management and Load Research Studies was recorded under Other Expenses and issued to the Customers. Not including the one-time \$5.3 million

credit recorded last year, Other Expenses were \$8.5 million, indicating an increase of approximately \$100,000, or 1.1%, in Other Expenses (\$8.6 million) in the Final 2017 COS.

The \$3.6 million increase in O&M is mainly driven by a planned increase in work at the Small Hydro facilities, of which the major projects are the continuation of tainter gate painting and concrete repair at Crescent, roof replacements at the Crescent and Vischer Ferry plants, and rebuilding Unit #1 at Jarvis.

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

The \$2.8 million increase in Shared Services is due to an overall increase in NYPA's Headquarters costs and a decrease in the Allocation to Capital credit.

Staff notes that prior to the 2017 request, the Fixed Costs have decreased noticeably since the end of 2011. Between 2012 and 2016, Fixed Costs decreased by 18%, and as proposed for 2017 would still be 9% lower as compared to the 2012 level. Fixed Costs, exclusive of those associated with AEII, are outlined in the following table:

Year	2012	2013	2014	2015	2016	2017
Fixed Costs (in millions)	\$159.7	\$154.3	\$138.3	\$135.8	\$131.0	\$146.0*

** If the Trustees accept staff's recommendations*

As part of the SAPA process, the City submitted formal written comments. The City urged the Trustees to scrutinize the proposed Fixed Costs and ensure that the rates to be charged to the City and other NYCGCs are appropriate and consistent with the provisions of the LTAs between NYPA and the NYCGCs. The City requested that the level of Fixed Costs for the 2017 COS should be reduced by \$3.2 million plus additional amounts discussed in the six points listed in the staff analysis below in more detail. The City's comments in its entirety are attached as Exhibit '5b i-B.'

Staff Review of 2017 LTA Annual Process: As in previous years, during this cycle of the LTA annual process, NYPA staff provided the Customers with detailed information on their COS in the form of a comprehensive Preliminary 2017 COS and accompanying staff report. In addition, NYPA staff responded to numerous data requests made during the discovery process.

The Preliminary 2017 Variable Costs were distributed to the NYCGCs on July 26, 2016 to assist NYPA and the NYCGCs in formulating their procurement plans for energy, capacity, and ancillary services for 2017. Preliminary Fixed Costs estimates were released on September 27, 2016. NYPA provided versions of updated Fixed Costs estimates on December 13, 2016, and December 29, 2016, capturing data used in NYPA's 2017 Official Budget which was approved by the Trustees on December 15, 2016. The December 29, 2016 update included back-up information on O&M and Shared Services cost estimations.

On October 5, 2016, the City of New York submitted the first set of discovery questions related to Fixed Costs and Variable Costs. There were twenty-three discovery requests, many of which contained multiple parts. NYPA responded on October 19, 2016, with a complete set of answers including various analyses. On October 19, 2016, the MTA followed the City of New York with a second set of seven

discovery questions related to Fixed Costs and Variable Costs, which were answered on October 31, 2016. NYPA did not receive any follow-up questions.

The following is staff's analysis and recommendations regarding six points raised by the City in its comments filed on December 8, 2016.

Point I: NYPA Should Engage In A Comprehensive Review And Audit Of Its Management And Operations

Comments: The City requests the Trustees to direct an independent management audit of NYPA's practices, with a focus on finding efficiency improvements within NYPA to provide lowest possible rates to its customers.

Staff Analysis: The City's request for an independent management and operational audit of NYPA's practices has been addressed by NYPA and discussed with the Customers in the previous four years. Each time, NYPA has responded by explaining that contrary to the City's belief that NYPA is opposed to performing such audits, NYPA has multiple public, private and internal independent audits performed regularly.

The Office of the State Comptroller ('OSC') performs an independent audit of NYPA's management and operations every five years and it periodically audits programs addressing aspects of the Authority's operations.

There is also an annual financial audit performed by an independent audit company (KPMG in most recent history).

Next, as a New York State public authority, NYPA is required to disclose a significant amount of information and follow numerous state guidelines. Information disclosed publicly includes NYPA's Budget and Financial Plan filed in accordance with section 2801 of Public Authorities Law, Annual 4-Year Budget and Financial Plan filed with the State Comptroller, as well as biographies and salaries of selected NYPA employees.

Further, NYPA contracts with independent experts in reviewing models, processes, and controls within the organization. These examinations are conducted with appropriate regularity to the particular business unit and specific function.

Lastly, NYPA's Internal Audit's function provides independent, objective auditing and consulting services designed to add value, manage risks and improve NYPA's operations. Its processes are designed to evaluate the effectiveness and efficiency of operations, ability to execute the strategic initiatives, reliability of financial reporting, and compliance with applicable laws and regulations.

Staff Recommendation: Contrary to the City's belief that NYPA is opposed to performing such audits, NYPA staff continues to hold that the existing independent external and internal audits, along with NYPA's extensive public disclosures, provide a sufficient review of NYPA's management and operations.

Point II: The NYCGCs Are Being Unduly And Inappropriately Burdened By Costs Related To The Small Hydroelectric Facilities

A. NYPA's Capital Investments In The Small Hydros Should Be Capitalized And Recovered Over Time

Comments: The City states that NYPA's capital investments in the Small Hydro facilities should be capitalized and recovered over the average service lives for the associated plant accounts in accordance with the State Legislature's statutory mandate, the LTAs and the Uniform System of Accounts.

Staff Analysis: As was stated in NYPA's staff response to Customer's comments on the 2015 Fixed Costs, NYPA maintains its books and records in accordance with generally accepted accounting principles, and its annual financial statements are audited by independent public accountants. Furthermore, NYPA follows the Uniform System of Accounts and utility accounting practices when determining whether expenditures are categorized as capital or O&M items. Under this method, NYPA establishes retirement units, which denote the smallest items or components of plant and equipment that NYPA will account for in its capital accounts as a 'Unit of Property.' The smaller components that make up the designated Units of Property are identified as minor items of property. Costs incurred in connection with additions or replacements of retirement units of property are accounted for as capital, while costs incurred in connection with additions or replacement of minor items of property are accounted for as O&M. NYPA applies this methodology consistently in capital versus expense determinations at all of its facilities.

NYPA staff previously provided the following responses to the City's discovery questions on October 19, 2016, regarding the planned non-recurring projects at the Small Hydro facilities and the justification of categorizing these projects as O&M rather than capital expenditures:

The life extension and modernization ('LEM') projects at Crescent and Vischer Ferry will still be in the assessment phase for 2017, with actual work anticipated to start in 2020. Assessments do not replace a major item of an asset nor do they provide additional functionality to the asset. Therefore, these projects are considered O&M while in the assessment phase. Once the assessment has been completed, NYPA Accounting staff will evaluate the project scope of the actual work and make the accounting determination on whether these projects for the actual work should be categorized as O&M or Capital Additions.

With respect to the roof replacement at Crescent and Vischer Ferry, as previously explained by NYPA, roofs are always categorized as a minor component of the asset. Under NYPA's Capitalization Policy, replacement of the roof is considered O&M, since a repair or replacement of a minor item of an asset, without adding functionality, is considered O&M rather than a capital improvement.

With respect to rebuilding Unit #1 at Jarvis, the project scope indicates repair of various components of the Unit #1 turbine due to corrosion of Runner Hub sockets and resealing surfaces. Since components of the turbine are considered minor components of the asset, this project was classified as O&M rather than a capital improvement.

Staff Recommendation: NYPA follows the Uniform System of accounts and utility accounting practices and remains consistent in its treatment of costs when determining expenditures as capital versus O&M. Staff holds that the current O&M categorization of the above-mentioned projects and associated costs is accurate and should not be capitalized.

B. The Labor Costs Charged To The Small Hydros Are Excessive

Comments: The City states that the labor costs charged to the Small Hydro facilities are excessive and that the Trustee should require NYPA to make efforts to streamline its operations and reduce the associated labor expense by at least 30%.

Staff Analysis: The responsibility to maintain the Small Hydro facilities is grounded in several principles, foremost of which is NYPA's obligation under its Federal Energy Regulatory Commission ('FERC') operating license. NYPA is required not only to operate the dams, but also to maintain the waterways in which the facilities exist.

The Small Hydro facilities are dedicated to serving the NYCGCs' load. In the 2017 Budget, there are thirty-four full-time equivalents ('FTEs') that are directly assigned to these facilities. Twenty-two FTEs are from the operations and maintenance staff at the Blenheim-Gilboa and Clark facilities. The balance of

the FTEs represent real estate, environmental, engineering, project management and site functions such as warehouse and purchasing that support the Small Hydro facilities work and projects. NYPA staff is often required to travel significant distances to the Small Hydro facilities, which is charged as working time to the cost center, in order to perform routine plant maintenance. Also, at some of the facilities, there are shoreline, recreational and environmental issues that must be addressed to comply with license requirements.

In response to the City's statement regarding the use of contractors for work at the Small Hydro facilities, they are utilized when it is more economical or NYPA staff does not have the expertise to perform certain tasks. The majority of the \$4.1 million for contracted services included in the Final 2017 Fixed Costs consists of non-recurring maintenance work for the continuation of tainter gate painting and concrete repair at Crescent, roof replacements at the Crescent and Vischer Ferry plants, and rebuilding Unit #1 at Jarvis, with the balance planned to support other recurring maintenance.

Staff Recommendation: Based upon the explanation provided, staff reaffirms that the included costs are justified and should remain as stated.

C. Cost-Benefit Analyses Should Be Performed Before Any Significant Expenditures Are Made

Comments: The City requests that NYPA perform cost-benefit analyses before any significant capital investments and O&M expenses for the Small Hydro facilities are made in 2017 and share the analyses with the Trustees and the NYCGCs.

Staff Analysis: Projects included in the Final 2017 Fixed Costs were vetted through the currently utilized Comprehensive Project Request database, with risk assessments considered. Expenses included in the Final 2017 Fixed Costs were reviewed and approved by management at NYPA as part of the normal course of business and should not require further review. As was stated in NYPA's response to the City's discovery questions, NYPA staff has begun creating a gated governance process to formally vet projects through the various stages of development, validate new project ideas, determine viable options and alternatives, and justify the solution chosen. When the process development is completed, major drivers behind each project, financial implications of proceeding or not proceeding with a project, overarching benefits of the project, and how they align to the organization (i.e. Strategic, Customer Solutions, Operational, Licensing, etc.) will be evaluated. Once the process development is completed for the gated governance process, NYPA staff will perform a formal cost-benefit analysis for new, large capital and O&M projects at the Small Hydro facilities, and will provide justification for major expenditures to the NYCGCs upon request.

Staff Recommendation: Sufficient analyses were performed and controls are set in place to ensure that spending at the Small Hydro facilities results in a safe, reliable and economic output from the facilities. No further review should be required.

Point III: The Use Of 4% And 10% Escalation Rates Is Not Appropriate And Results In Over Collection Of Fixed Costs

Comments: The City requests the Trustees to reject all uses of the proposed escalation factors in estimating Fixed Costs in the COS.

Staff Analysis: Based on the mutually agreed-upon timeline for the 2017 COS design and review process between NYPA staff and the NYCGCs, the Preliminary 2017 Fixed Costs were estimated in August 2016. The Staff Report and Preliminary 2017 COS were presented to the Customers and Trustees in September 2016. At the time the Preliminary 2017 COS was being developed, NYPA's overall budget development process had just begun and estimates needed to be made to create a reasonable Preliminary Fixed Costs forecast. Escalation factors are applied to those historic and/or preliminary budgeted fixed costs that are lacking actual information at that point in time. As the City

acknowledges in their comments, the methodology for developing the Preliminary Fixed Costs has been discussed with the Customers in the past and it was further addressed in NYPA's October 19, 2016 response to the Customer Information Requests on the Preliminary 2017 COS. The Customers were further assured that the Final Fixed Costs would be based on actual budgeted 2017 costs and that there would be no escalation factors used.

Staff Recommendation: NYPA staff confirms that escalation factors are not used in developing the Final Fixed Costs and that the Fixed Costs presented in the Final 2017 COS are based on actual budgeted cost amounts that are part of NYPA's overall 2017 budget approved by the Trustees on December 15, 2016. Furthermore, NYPA provided backup files, which demonstrate that the approved 2017 budgeted numbers tie to the Final 2017 Fixed Costs.

Point IV: NYPA Appears To Be Seeking Double Recovery Of The Same Project Costs For The 500 MW Unit

Comments: The City states that NYPA appears to be seeking double recovery of the same project costs for the 500 MW unit and requests that the 2017 COS be adjusted to exclude any duplicative amounts.

Staff Analysis: The table listing the Internally Funded Capital Additions ('Capital Additions') referenced in the City's filed comments was provided by NYPA to the Customers as a courtesy. The table lists NYPA's planned projects to be undertaken in 2016 and 2017 at the 500 MW unit. As previously stated by NYPA in their response to the City's Information Request 14, the Capital Additions costs are recovered from the Customers on an actual cost basis on a two-year lag, not on a projected cost basis. Capital Additions costs are recovered from the Customers only when the project is completed and NYPA has transferred the asset from Construction Work in Progress ('CWIP') to Electric Plant in Service ('EPIS'). Once the Capital Addition is transferred to EPIS, depreciation and interest on the asset based on the life of the asset is assessed as the Capital Additions costs to the Customers. Certain projects listed in the referenced table extend from 2016 into 2017 as these are multi-year projects. Staff confirms that the 2015 actual Capital Additions costs assessed in the 2017 COS do not include any Capital Additions costs planned in 2016 and 2017. The 2016 additions and 2017 costs would be recoverable when the Capital Additions projects are transferred to EPIS.

Staff Recommendation: NYPA staff confirms that only the actual 2015 costs for Capital Additions assets that have been transferred from CWIP to EPIS accounts are assessed in the 2017 COS, and therefore, no 'duplicative amounts' are included in these costs.

Point V: The Use Of Labor Ratios To Allocate Shared Services Costs To The NYCGCs Is Inconsistent With The Requirements Of The LTA And Is Not Required As A Matter Of Law

Comments: The City states that the use of labor ratios to allocate Shared Services headquarter costs to the NYCGCs is inconsistent with the LTA and is not required as a matter of law and requests the Trustees to address the City's assertions.

Staff Analysis: NYPA's utilization of labor ratios for the functionalization of costs (i.e., generation versus transmission) was a management decision approved by the Trustees to apply to all NYPA customers. The use of labor ratios to allocate Shared Services costs amongst NYPA's generation projects results from an action by its Preference Power customers in 1998, which required labor ratios to be used as an allocating factor. The underlying unpublished decision concerning this issue is attached as Exhibit '5b i-C' (Village of Bergen v. Power Auth. of N.Y., No. 081556 (Sup. Ct. Niagara Co. Mar. 17, 2000) and was upheld by Village of Bergen v. Power Auth. of N.Y., 284 A.D.2d 976, (lv. to app. den'd), 97 N.Y.2d 606 (2001). The court ruled that labor ratios, as opposed to capacity ratios, were to be used in the allocation of Shared Services headquarter costs. NYPA does not take the position that the use of the labor ratio is mandated by that case for all of its customers, including the NYCGCs. However, Village of Bergen v. Power Auth. of N.Y. is controlling for NYPA's Preference Power customers, which led to the

global, Board-approved management decision to apply the labor ratio allocation methodology uniformly across all NYPA customer classes. For internal control and financial tracking purposes, NYPA utilizes profit centers, which are organizational units that reflect a management-oriented structure of the organization. Further, in order to accurately allocate costs between profit centers, that is to make the sum of all parts equal the whole, it is necessary that the methodology for allocating costs be consistently applied to all parts (profit centers), as it is presently.

Staff Recommendation: NYPA staff has made considerable efforts over the recent years to further the Customers' understanding of how and why their allocation of Shared Services costs is determined, including providing backup files and presentations regarding the subject. Staff holds that the current allocation methodology for Shared Services costs is just and appropriate.

Point VI: The Cost-Of-Service Review Process Is Flawed, Lacks Transparency, And Places The NYCGCs At An Unacceptable Disadvantage

Comments: The City states that the COS review process is flawed, lacks transparency, and places the NYCGCs at an unacceptable disadvantage and recognizes the need for substantial changes in the future process with 2017 being the last year of the LTA for NYPA to serve the City.

Staff Analysis: In response to the City's assertion on these matters, NYPA has openly collaborated with the NYCGCs in the 2017 COS process. In April 2016, NYPA and the NYCGCs agreed to the '2017 Annual Planning and Pricing Process,' which was drafted by the Customers and NYPA staff and outlines the major milestones and deadlines for the 2017 COS year. The major difference from this year's process to last year's process was the accommodation to the NYCGCs request to shorten the timeline. In previous years, NYPA, per the NYCGCs request, agreed to bring the finalized COS to the Trustees in March. In this year's timeline, the NYCGCs requested that NYPA bring the finalized COS in January. NYPA acquiesced to the NYCGCs request, but it was stated to the Customers that if a delay in the process occurred that would not allow NYPA to bring the finalized COS to the Trustees in January, March would then become the default date.

NYPA does acknowledge that there was a delay in meeting the November 28, 2016 milestone to provide the updated COS, including Preliminary Fixed Costs and base Variable Costs, as the overall 2017 NYPA budget was not readily available until December 13, 2016. Once available, the updated COS, which did not include any 'material changes' to the Preliminary 2017 COS, was immediately shared with the NYCGCs. The budget delay can be categorized as an 'unforeseen issue/change' as referenced in the process timeline.

The City submitted its comments on December 8, 2016, eight days prior to the close of the public comment period, which was scheduled for December 16, 2016.

Staff Recommendation: Staff believes that the COS review process is fully transparent and NYPA has accommodated Customers' requests for changes both in the past and for this year. Delays unfortunately do occur, but the Customers were kept informed throughout the process. NYPA looks forward to discussing mutually beneficial changes in the process under a new LTA.

Final Recommendation on 2017 Fixed Costs

Based on Customer comments received and further staff analysis, staff recommends an increase in the Fixed Cost as compared to the Final 2016 COS and a decrease from the originally proposed 2017 COS in the Notice of Proposed Rulemaking that was published in the *State Register* pursuant to Trustees direction at their September 27, 2016 meeting. This is a \$1.6 million decrease from the costs appearing in the October 12, 2016 SAPA notice, with Other Expenses increasing by \$0.1 million, O&M decreasing by \$3.3 million, and Shared Services increasing by \$1.7 million. Overall, the Fixed Costs for 2017 would increase by \$15.0 million, as compared to the Final 2016 Fixed Costs, to \$146.0 million. The increase in Fixed Costs will be reflected in the production rates effective with the January 2017 bills.

Description of Final 2017 COS and Customer Rates

Because the Variable Costs component (i.e., fuel and purchased power, risk management, New York Independent System Operator ancillary services and O&M reserve, less a credit for New York Independent System Operator ('NYISO') revenues from Customer-dedicated generation) is developed in collaboration with the Customers in accordance with the provisions of the LTAs previously approved by the Trustees, staff is not requesting the Trustees' approval of the Variable Costs component of the production rates for 2017. Additionally, the Authority passes through all Variable Costs to the Customers by way of the 'Energy Charge Adjustment with Hedging' cost-recovery mechanism that the Customers collectively selected for 2017. This cost-recovery mechanism offered under the LTAs employs a monthly charge or credit that reflects the difference between the projected Variable Costs of electricity (i.e., the Variable Costs recovered under the Customers' tariffs) and the monthly actual Variable Costs incurred by the Authority to serve the Customers.

For the Trustees' information, the projected Variable Costs are expected to increase by 16.5% from 2016 levels and, in combination with the recommended Fixed Costs increase and AEI costs, results in a Final 2017 COS of \$701.1 million.

Authority staff has included two new cost elements, the Clean Energy Standard ('CES') charge and the New York Transco cost recovery, within the Final 2017 Variable Costs. The CES charge for 2017 will only consist of a Zero Emission Credit ('ZEC') charge and will not include a Renewable Energy Credit charge as originally proposed in the Preliminary 2017 COS. These charges have been developed by the New York Public Service Commission to support the adoption of the Clean Energy Standard. The CES implements the clean energy goals of the 2015 New York State Energy Plan. ZECs are payments made to nuclear plants to support the preservation of existing at risk nuclear zero emissions attributes. It is estimated to cost the Customers approximately \$22.4 million to purchase ZECs for their load in 2017. Even though the ZEC costs are included in the Final 2017 COS, they will not be included in the Customer rates for 2017 but rather will be passed through to the Customers as a separate line item on their bill to allow for precise tracking of the incurred costs for the Customers. New York Transco costs are allocated to the Authority as a Load Serving Entity as part of the NYISO charges in accordance with the New York Transco settlement agreement approved by FERC. These New York Transco costs are related to the portfolio of interconnected transmission lines and substations created by the New York Transmission Owners in order to fulfill the objectives of the New York State Energy Highway Initiative. The New York Transco Costs for the Customers are estimated to be approximately \$3.3 million in 2017.

In addition, it is projected that fuel expenses for Astoria Energy II and the 500 MW CCU will increase by \$24.1 million.

Excluding the estimated CES charge for 2017, the Final 2017 COS is \$678.7 million. At existing rates, revenues of \$619.0 million would be produced, resulting in an under recovery of \$59.8 million when excluding CES charges from the COS. As a result, staff is recommending that rates be revised to increase revenue collection by 9.7%. The current 2016 Customer rates and recommended 2017 Customer rates with the overall 9.7% revenue increase are shown in Exhibit '5b i-D.'

FISCAL INFORMATION

The adoption of the Fixed Costs increase would result in an estimated \$15.0 million increase in revenue to cover the Fixed Costs associated with serving the NYCGCs, which is justified by the forecasted increase in the Fixed Costs. The Energy Charge Adjustment mechanism will protect NYPA from the effects of movements in Variable Costs above those projected.

RECOMMENDATION

The Director – Revenue & Pricing Analysis and the Vice President – Finance recommend that the Trustees authorize the Corporate Secretary to file a Notice of Adoption with the New York State

Department of State for publication in the New York *State Register* for an increase in Fixed Costs applicable to the New York City Governmental Customers under the LTAs.

The Trustees are also requested to authorize the Vice President of Economic Development, or his designee, to issue written notice of adoption and the revised tariff leaves, as necessary, to the affected Customers.

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

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

RESOLVED, That the Vice President – Economic Development or his designee be, and hereby is, authorized to issue written notice of this final action by the Trustees to approve an increase in the Fixed Cost component of the production rates by \$15.0 million or 11.5%, excluding Astoria Energy II plant expenses, to be charged in 2017 to the affected Customers; 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 New York State Department 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 rate increase; and be it further

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

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

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to approve an increase in the rates for the sale of firm power to the Westchester County Governmental Customers ('Customers') in 2017. This proposed action is consistent with the rate-setting process set forth in the 2006 Supplemental Electricity Agreements executed by the Customers and the Authority and in accordance with the State Administrative Procedure Act ('SAPA').

This proposed final action seeks approval to revise the production rates and billing of the Customers to increase revenue collection by 8.74% (including Zero Emission Credit ('ZEC') charge as explained below), as compared to the Final 2016 Cost-of-Service ('COS'). The increase would be effective with the January 2017 bills.

BACKGROUND

At their meeting on September 27, 2016, the Trustees directed the publication in the New York State Register ('State Register') of a notice that the Authority proposed to increase the production rates by 8.81%, or \$3.95 million, for rate year 2017. The *State Register* notice was published on October 12, 2016 in accordance with the SAPA. The forty-five day public comment period was then established and closed on December 5, 2016. The Authority's policies and procedures call for a public forum if the Fixed Costs component of the proposed rate increase exceeds 2.0%. Since the proposed Fixed Cost increase was greater than 2.0%, a public forum was held on November 17, 2016. There were no public comments received during the public forum or comment period. The transcript from the public forum is attached as Exhibit '5b ii-A' to this item.

DISCUSSION

As part of the proposed COS increase, the Fixed Costs component is expected to increase from \$1.95 million to \$3.09 million, an approximate \$1.14 million increase as compared to the Final 2016 COS. The proposed increase is primarily driven by an approximate \$805,000 increase in Operations & Maintenance ('O&M') costs, mainly due to a planned increase in work at the Small Hydro facilities. Also contributing to the Fixed Cost increase is a \$266,000 increase in Shared Services due to an increase in estimated headquarters costs.

The Variable Costs component is projected to increase from \$30.11 million to \$31.17 million, an approximate \$1.06 million or 3.5% increase as compared to the Final 2016 COS. The primary cost element, energy purchases, is projected to be \$23.44 million for 2017 and accounts for 68% of the total production costs. The main contributors to the increase in Variable Costs are two new cost elements, the Clean Energy Standard ('CES') charge and the New York Transco costs. The CES charge for 2017 will only consist of a Zero Emission Credit charge and will not include a Renewable Energy Credit charge as originally proposed in the Preliminary 2017 COS. These charges have been developed by the New York Public Service Commission to support the adoption of the Clean Energy Standard. The CES implements the clean energy goals of the State Energy Plan. ZECs are payments made to nuclear plants to support the preservation of existing at risk nuclear zero emissions attributes. It is estimated to cost the Customers approximately \$1.37 million to purchase ZECs for their load. Even though the ZEC costs are included in the Final 2017 COS, they will not be included in the Customer rates for 2017 but rather will be passed through to the Customers as a separate line item on their bill to allow for precise tracking of the incurred costs for the Customers. New York Transco costs are allocated to the Authority as a Load Serving Entity as part of the NYISO charges in accordance with the New York Transco settlement agreement approved by the Federal Energy Regulatory Commission. These New York Transco costs are related to the portfolio of interconnected transmission lines and substation created by the New York Transmission

Owners in order to fulfill the objectives of the New York State Energy Highway Initiative. The New York Transco Costs for the Customers are estimated to be \$0.20 million in 2017.

This represents a \$1.75 million, or 5.0%, decrease from the proposed production costs approved during the September 27, 2016 Trustees' meeting. The decrease from the Preliminary 2017 COS is primarily attributable to decreases in purchased power costs of the Variable Costs component related to energy purchases necessary to serve the Customers.

The Final 2017 Fixed Costs are projected to increase by \$0.33 million, or 12.0%, as compared to the Preliminary 2017 COS. Contributing to the Fixed Costs increase from the preliminary COS, are a \$0.26 million increase in Shared Services and a \$0.13 million increase in O&M, offset by a \$0.06 million decrease in Other Expenses.

Based on further staff analysis and NYPA's 2017 Official Budget approved by the Trustees on December 15, 2016, the Final 2017 COS is \$34.25 million. Excluding the estimated CES charges, the Final 2017 COS is \$32.88 million. At existing 2016 rates, estimated revenues are \$31.5 million, resulting in an under-recovery of \$1.4 million when excluding CES charges. As a result, staff is recommending that rates be revised to increase revenue collection by 4.38%.

In 2017, the Customers will continue to be subject to an Energy Charge Adjustment ('ECA') under which the Authority passes through all actual Variable Costs to the Customers. This cost-recovery mechanism employs a monthly charge or credit that reflects the difference between the projected Variable Costs of electricity recovered by the tariff rates and the monthly actual Variable Costs incurred by the Authority.

The current 2016 and final 2017 proposed rates with the 4.38% overall increase in revenues are shown in Exhibit '5b ii-B.'

FISCAL INFORMATION

The adoption of the 2017 production rate increase would have no net effect on NYPA's financial position. The adoption of the Fixed Costs increase would result in an estimated \$1.14 million increase in revenue to cover the Fixed Costs associated with serving the Customers. The Energy Charge Adjustment mechanism will protect NYPA's net revenues from the effects of movements in Variable Costs above those projected.

RECOMMENDATION

The Director – Revenue & Pricing Analysis and the Vice President – Finance recommend that the Trustees authorize the Corporate Secretary to file a Notice of Adoption with the New York State Department of State for publication in the New York *State Register* for the adoption of a production rate increase applicable to the Authority's Westchester County Governmental Customers.

The Trustees are also requested to authorize the Vice President of Economic Development, or his designee, to issue written notice of adoption and the revised tariff leaves, as necessary, to the affected Customers.

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

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

RESOLVED, That the Vice President – Economic Development or his designee be, and hereby is, authorized to issue written notice of this final action to increase revenue collection through production rates and billing by 8.74% for 2017 as compared to 2016 Cost-of-Service (“COS”) rates by the Trustees to the affected Customers; 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 New York State Department 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 rate increase; and be it further

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

c. Power Allocations

i. Hydropower Allocations – Extensions of Hydropower Allocations

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to:

- 1) approve an extension of a 500 kilowatt ('kW') Expansion Power ('EP') allocation awarded to Nestle Purina PetCare Company ('Nestle Purina') on December 15, 2011, which is scheduled to expire on April 30, 2017 (the '500 kW EP Allocation');
- 2) approve an extension of a 2,250 kW Preservation Power ('PP') allocation awarded to the Upstate Niagara Cooperative in North Lawrence ('Upstate Niagara') on May 24, 2011, which is scheduled to expire on April 30, 2017 (the '2,250 kW PP Allocation'); and
- 3) approve an extension of a 200 kW EP allocation awarded to Try-It Distributing Co., Inc. ('Try-It') on July 26, 2011, which is scheduled to expire on June 30, 2017 (the '200 kW EP Allocation').

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

The Trustees are also requested to authorize a public hearing pursuant to Public Authorities Law ('PAL') §1009 on proposed direct sale contracts for each of the foregoing allocations, the current forms of which are attached as Exhibit '5c i-A-1', '5c i-A-2' and '5c i-A-3'.

BACKGROUND

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

Among the factors to be considered when evaluating a request for an allocation of hydropower are the number of jobs created as a result of the allocation; the business' long-term commitment to the region as evidenced by the current and/or planned capital investment in the business' facilities in the region; the ratio of the number of jobs to be created to the amount of power requested; the types of jobs created, as measured by wage and benefit levels, security and stability of employment and the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed.

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

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

NYPA confers with Franklin, Jefferson and St. Lawrence counties along with the Northern New York ('NNY') representative of the Empire State Development Corporation to coordinate other economic development incentives that could help bring projects to New York State. Staff discusses potential recommendations with these entities to help maximize the value of hydropower to improve the economy of NNY and New York State.

DISCUSSION

1) Nestle Purina

Nestle Purina, a leading manufacturer of pet food and pet-related products, operates facilities in Dunkirk, NY. The Authority and Nestle Purina are parties to a power sale contract that covers four allocations. Three of the allocations (500 kW, 900 kW, and 2,000 kW of EP) are scheduled to expire on June 30, 2020. Awarded on December 15, 2011, the fourth allocation – the 500 kW EP Allocation – is scheduled to expire on April 30, 2017. The four allocations, collectively, are associated with commitments by Nestle Purina to maintain 419 jobs.

Nestle Purina has requested the award of an extension of the 500 kW EP Allocation. It indicates that a key component of the cost effectiveness of its Dunkirk operations is the low-cost power associated with its hydropower allocations, including the 500 kW EP Allocation.

Nestle Purina is willing to commit to continue to maintain 419 jobs through June 30, 2020, in exchange for an extension of the 500 kW EP Allocation. The company is currently in compliance with its contractual commitments for job creation and capital investments.

Staff recommends that the Trustees approve an extension of the 500 kW EP Allocation through June 30, 2020.

2) Upstate Niagara

Upstate Niagara, a dairy cooperative, operates a yogurt production facility in North Lawrence, NY. The Authority and Upstate Niagara are parties to a power sale contract that covers the 2,250 kW PP Allocation that is scheduled to expire on April 30, 2017. The 2,250 kW PP Allocation corresponds to a commitment to maintain 80 jobs through the term of the allocation.*

Upstate Niagara has requested an extension of the 2,250 kW PP Allocation. It has represented that this allocation is critical to the economic success of its North Lawrence operations.

Upstate Niagara is willing to commit to maintain a minimum of 80 jobs at the North Lawrence facility, through June 30, 2020, in exchange for an extension of the 2,250 kW PP Allocation. Upstate Niagara is currently in compliance with its contractual commitments for job creation and capital investment.

Staff recommends that the Trustees approve an extension of the 2,250 kW PP Allocation through June 30, 2020.

3) Try-It

Try-It, a major distributor of beverages in the Western New York area, operates its main facility in Lancaster, NY. The Authority and Try-It are parties to a power sale contract that covers the 200 kW EP

* The allocation was originally awarded at 3,000 kW, but was reduced to 2,250 kW upon agreement of the parties based upon an assessment of Upstate Niagara's load requirements at the time.

Allocation that is scheduled to expire on June 30, 2017. The 200 kW EP Allocation corresponds to a commitment to maintain 265 jobs through the term of the allocation.

Try-It has requested an extension of the 200 kW EP Allocation, representing that the allocation is critical to the economic success of its Lancaster operations.

Try-It is willing to agree to commit to maintain a minimum of 265 jobs at the Lancaster facility, through June 30, 2020, in exchange for an award the 200 kW EP Allocation through June 30, 2020. Try-It is currently in compliance with its contractual commitments for job creation.

Staff recommends that the Trustees approve an extension of the 200 kW EP Allocation through June 30, 2020.

CONTRACT INFORMATION

Each of the extended allocations would be covered by its own contract between the Authority and the customer. Staff intends to discuss the proposed form of customer agreement with the customers identified above, and anticipates reaching an agreement with them on a contract substantially similar to the form attached as Exhibits '5c i-A-1', '5c i-A-2' and '5c i-A-3'. Accordingly, the Trustees are requested to authorize a public hearing, pursuant to PAL §1009, on the proposed form of the aforementioned contracts.

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

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

RECOMMENDATION

The Manager – Business Power Allocations and Compliance recommends that the Trustees award an extension of the: (1) 500 kW EP Allocation to Nestle Purina PetCare Company; (2) the 2,250 kW PP Allocation to Upstate Niagara Cooperative; and (3) the 200 kW EP Allocation to Try-It Distributing Co., through June 30, 2020, respectively.

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

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

RESOLVED, That the Trustees hereby authorize an extension of the 500 kilowatt (“kW”) Expansion Power (“EP”) allocation awarded to Nestle Purina PetCare Company on December 15, 2011 as detailed in the foregoing report of the President and Chief Executive Officer, for a term ending June 30, 2020, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize an extension of the 2,250 kW Preservation Power allocation awarded to the Upstate Niagara Cooperative on May 24, 2011 as detailed in the foregoing report of the President and Chief Executive Officer, for a term ending June 30, 2020, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize an extension of the 200 kW EP allocation awarded to Try-It Distributing Co., Inc. on July 26, 2011 as detailed in the foregoing report of the President and Chief Executive Officer, for a term ending June 30, 2020, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing pursuant to Public Authorities Law (“PAL”) §1009 on the terms of the proposed form of the direct sale contracts finally negotiated with the aforementioned companies (the “Contracts”), the current form of which are attached as Exhibits “5c i-A-1,” “5c i-A-2” and “5c i-A-3,” subject to rates previously approved by the Trustees; and be it further

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

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

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

ii. Transfer of Power Allocations

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

The Trustees are requested to approve the following transfers of Authority hydropower subject to the conditions discussed in this report:

1. Transfer of a 6,000 kilowatt ('kW') Expansion Power ('EP') hydropower allocation, and 800 kW, 850 kW, 4,191 kW, and 250 kW Replacement Power ('RP') hydropower allocations, from Goodyear Dunlop Tires NA, Ltd. to Sumitomo Rubber USA, LLC in order to address ownership and organizational changes.
2. Transfer of a 1,000 kW RP allocation from Pride Pak Canada Ltd.'s facility in Medina, New York to its new facility also located in Medina, New York.
3. Transfer of a 1,500 kW EP allocation from RHI Monofrax, Ltd. to Monofrax, LLC in order to address ownership and organizational changes.
4. Transfer of a 300 kW EP allocation and a 1,200 kW RP allocation, from Tulip Corporation's facility in Niagara Falls, New York to its new facility located next door, also in Niagara Falls, New York.
5. Transfer of a 15,000 kW EP allocation and a 7,200 kW EP allocation from Yahoo! Inc. to Yahoo Holdings, Inc. to address ownership and organizational changes, contingent upon, among other things, completion of pending ownership and organizational changes.

DISCUSSION

The following discussion provides an explanation of the recommended actions for each of the transfers identified above.

1) Goodyear Dunlop Tires NA, Ltd.

Goodyear Dunlop Tires NA, Ltd. ('Goodyear') manufactures passenger, motorcycle, medium truck, light truck and All-Terrain Vehicle tires. Goodyear has five allocations: a 6,000 kW EP allocation, and 800 kW, 850 kW, 4,191 kW, and 250 kW RP allocations. These allocations are associated with an employment commitment of 1,239 jobs. Sumitomo Rubber Industries Ltd. purchased a seventy-five percent ownership in Goodyear from Goodyear's parent company, The Goodyear Tire and Rubber Company. Goodyear's name has changed to Sumitomo Rubber USA, LLC ('Sumitomo'). The parties request that the five hydropower allocations be transferred from Goodyear to Sumitomo. Sumitomo will agree to honor the employment, power utilization and capital investment commitments associated with Goodyear's allocations addressed in Goodyear's power sale contracts.

2) Pride Pak Canada, Ltd.

Pride Pak Canada, Ltd. ('Pride Pak') is a processor of organic fresh cut fruit and vegetables. The expansion project for which the company received its RP allocation of 1,000 kW with an associated employment commitment of 163 jobs was slated to be built-out at 1 Bernzomatic Drive, in Medina. However, the company completed the build out of its processing facility nearby in Medina at 11531 Maple Ridge Road. Pride Pak is ready to take down its allocation and requests that the allocation be transferred to the 11531 Maple Ridge Road facility. The company will agree to honor the employment, power utilization and capital investment commitments associated with this allocation.

3) RHI Monofrax, Ltd.

RHI Monofrax, Ltd. ('Monofrax') uses an electric furnace ceramic foundry to manufacture fused cast refractories primarily used to line melting furnaces for glass product manufacturing. Monofrax has a 1,500 kW EP allocation associated with an employment commitment of 181 jobs. The company was purchased by Callista Private Equity and the company's new name is Monofrax, LLC. The parties request that the 1,500 kW EP allocation be transferred to Monofrax, LLC which will agree to honor the employment, power utilization and capital investment commitments associated with this allocation.

4) Tulip Corporation

Tulip Corporation ('Tulip'), an injection-molding company, recycles rubber and plastic and manufactures battery cases for the major battery manufacturers. Tulip has a 300 kW EP allocation and a 1,200 kW RP allocation which are associated with an employment commitment of 70 jobs. The company built a new facility next door to its current facility and requests that its EP and RP allocations be transferred from 3125 Highland Avenue, Niagara Falls to 3123 Highland Avenue, Niagara Falls. The company will honor the employment, power utilization and capital investment commitments associated with these allocations.

5) Yahoo! Inc.

Yahoo! Inc. ('Yahoo') is a multinational technology company with its east coast regional data center and a contact center located in two facilities in Lockport, NY. Yahoo purchases a 15,000 kW EP allocation for use at its 5319 Enterprise Drive facility which houses the regional data center with an associated employment commitment of 125 jobs. The company also purchases a 7,200 kW EP allocation for use at its 5365 Crown Drive facility which houses the contact center and overflow for the regional data center, with an associated employment commitment of 115 jobs.

In 2016, Yahoo agreed to sell its operating business to Verizon Communications Inc. ('Verizon'). As part of this sale, Yahoo anticipates transferring and assigning all of its assets and liabilities associated with its operating business to Yahoo Holdings, Inc. ('Yahoo Holdings'), a wholly-owned subsidiary of Yahoo. Verizon would then purchase Yahoo Holdings. Yahoo is requesting that, contingent upon the completion of the sale to Verizon, the allocations be transferred to Yahoo Holdings. Staff was advised that Yahoo Holdings would agree to honor the employment, power utilization and capital investment commitments associated with the Yahoo EP allocations.

RECOMMENDATION

Staff recommends that the Trustees approve the transfers of the hydropower allocations identified above regarding Goodyear Dunlop Tires NA, Ltd., Pride Pak Canada Ltd., RHI Monofrax, Ltd., Tulip Corporation, and Yahoo! Inc., subject to the following conditions in addition to any conditions discussed above:

1. there be no material reductions in the base employment levels or capital investment commitments ('Supplemental Commitments') as a result of the transfers; and
2. the transfers are provided for in contract documents containing such terms and conditions determined by the Authority's executive management to be appropriate to effectuate each transfer and preserve Supplemental Commitments.

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

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

RESOLVED, That the transfer of the 6,000 kilowatt ("kW") Expansion Power ("EP") allocation and the 800 kW, 850 kW, 4,191 kW and 250 kW Replacement Power ("RP") allocations awarded to Goodyear Dunlop Tires NA, Ltd. ("Goodyear") for use at the facility at 10 Sheridan Drive, Tonawanda, New York, from Goodyear to Sumitomo Rubber USA, LLC ("Sumitomo") for Sumitomo's use at the same facility, as described in the foregoing report of the President Chief Executive Officer be, and hereby is, approved, subject to (i) such conditions and contingencies as set forth in the foregoing report of the President Chief Executive Officer, and (ii) the terms of any contract documents required by the Authority's executive management to effectuate this resolution, including preserving Supplemental Commitments, and be it further

RESOLVED, That the transfer of the 1,000 kW RP allocation awarded to Pride Pak Canada, Ltd. for use at the facility at 1 Bernzomatic Drive in Medina, New York, to its facility at 11531 Maple Ridge Road in Medina, New York, as described in the foregoing report of the President and Chief Executive Officer be, and hereby is, approved subject to (i) such conditions and contingencies as set forth in the foregoing report of the President Chief Executive Officer, and (ii) the terms of any contract documents required by the Authority's executive management to effectuate this resolution, including preserving Supplemental Commitments, and be it further

RESOLVED, That the transfer of the 1,500 kW EP Hydropower allocation awarded to RHI Monofrax, Ltd. for use at the facility at 1870 New York Avenue, Falconer, New York, from RHI Monofrax, Ltd. to Monofrax, LLC for Monofrax, LLC's use at the same facility, as described in the foregoing report of the President and Chief Executive Officer be, and hereby is, approved subject to (i) such conditions and contingencies as set forth in the foregoing report of the President Chief Executive Officer, and (ii) the terms of any contract documents required by the Authority's executive management to effectuate this resolution, including preserving Supplemental Commitments, and be it further

RESOLVED, That the transfer of the 300 kW EP Hydropower allocation, 1,200 kW RP Hydropower allocation, and Western New York Power Proceeds allocation awarded to Tulip Corporation for its use at its 3125 Highland Avenue, Niagara Falls, New York facility to its 3123 Highland Avenue, Niagara Falls, New York facility, as described in the foregoing report of the President and Chief Executive Officer be, and hereby is, approved subject to (i) such conditions and contingencies as set forth in the foregoing

report of the President Chief Executive Officer, and (ii) the terms of any contract documents required by the Authority's executive management to effectuate this resolution, including preserving Supplemental Commitments, and be it further

RESOLVED, That the transfer of the 15,000 kW EP Hydropower allocation and the 7,200 kW EP Hydropower allocation awarded to Yahoo! Inc. for use at its 5319 Enterprise Drive, Lockport, New York facility and 5365 Crown Drive, Lockport, New York facility, respectively, from Yahoo! Inc. to Yahoo Holdings, Inc. for Yahoo Holdings, Inc.'s use at the same facilities, as described in the foregoing report of the President and Chief Executive Officer be, and hereby is, approved subject to (i) such conditions and contingencies as set forth in the foregoing report of the President Chief Executive Officer, and (ii) the terms of any contract documents required by the Authority's executive management to effectuate this resolution, including preserving Supplemental Commitments, and contingent upon completion of pending ownership and organizational changes, and be it further

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

iii. **Contract for the Sale of Preservation Power – Transmittal to the Governor**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to:

- 1) Approve the proposed final contract ('Contract') for the sale of 600 kilowatts ('kW') of Preservation Power ('PP') to Roth Industries, Inc. ('Roth' or 'Company'), in accordance with Public Authorities Law ('PAL') §1009 as summarized below and in Exhibit '5c iii-A.'
- 2) Authorize transmittal of the Contract to the Governor for his review and requested authorization for the Authority to execute the Contract pursuant to PAL §1009.

The Contract is attached as Exhibit '5c iii-B.'

BACKGROUND

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

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

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

At their meeting on July 26, 2016, the Trustees awarded an allocation of 600 kW of PP to Roth Industries Inc., as described in Exhibit '5c iii-A.' At this meeting, the Trustees also authorized a public hearing on the contract for the sale of this allocation pursuant to PAL §1009.

DISCUSSION

In summary:

- The Contract before the Board would provide for the sale of this allocation under a direct sale arrangement.
- Transmission and delivery service would be provided by the Company's local utility in accordance with the utility's Public Service Commission-filed delivery service tariff.
- The Contract would provide for the direct billing of all production charges (*i.e.* demand and energy) as well as all New York Independent System Operator, Inc. ('NYISO') charges, plus taxes or any other required assessments, as set forth in the Trustee approved Service Tariff-10 ('ST-10').

- The Contract includes the Company's agreed-upon commitments with respect to employment, power utilization and capital investments. The Authority would retain the right to reduce or terminate the allocation if employment, power utilization, or capital investment commitments are not met.
- The Contract provides for the sale of additional allocations of PP to the Company, in appropriate circumstances, by incorporating new allocations into Schedule A of the Contract. The Trustees approved this convention in the 2010 long-term extension contract for hydropower, which simplifies contract administration.
- To accommodate non-payment risk that could result from the direct billing arrangement with the Authority, the Contract includes commercially reasonable provisions concerning, among other things, the ability to require deposits in the event of a customer's failure to make payment for any two monthly bills. This is consistent with broader Authority contract template changes that incorporate direct billing, including the Authority's Recharge New York contract forms.
- The Contract requires the Company to perform an energy efficiency audit at least once within five years at the facility receiving the low-cost power to help ensure the hydropower is utilized as effectively as possible.
- The Contract provides for collection of a Zero Emission Credit Charge and a Renewable Energy Credit Charge to allow the Authority to recover costs it would incur relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the load of the Company.

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

A public hearing on Contract was held on January 6, 2017 at the Frank S. McCullough, Jr. Hawkins Point Visitors' Center at the St. Lawrence/FDR Power Project in Massena. No oral statements were given at the public hearing. The official transcript of the public hearing and the written submittals are attached as Exhibit '5c iii-C.'

RECOMMENDATION

The Manager – Business Power Allocations and Compliance recommends that the Trustees approve the Contract for the sale of PP to Roth and authorize the transmittal of the Contract to the Governor for his review pursuant to PAL §1009.

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

RESOLVED, That the contract ("Contract") for the sale of 600 kilowatts of Preservation Power to Roth Industries, Inc. ("Roth") is in the public interest, and in accordance with Public Authorities Law §1009 should be submitted to the Governor for his review, and that a copy of such Contract, along with the record of the public hearing thereon, be forwarded to the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate

and the Chairman of the Senate Finance Committee; and be it further

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

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

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

iv. Contracts for the Sale of Replacement Power and Expansion Power – Transmittal to the Governor

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to:

- 3) Approve proposed final contracts for the sale of 400 kilowatts ('kW') of Replacement Power ('RP') to GEICO and 1,000 kW of RP to CI Filing Systems LLC ('CI Filing'), in accordance with Public Authorities Law ('PAL') §1009 as summarized below and in Exhibit '5c iv-A.'
- 4) Approve proposed final contracts for extended allocations through June 30, 2020, consisting of a 1,200 kW Expansion Power ('EP') allocation awarded to Buffalo Shredding and Recovery, LLC ('Buffalo Shredding'), and a 120 kW RP allocation awarded to Graphic Controls Acquisition Corp. ('Graphic Controls').
- 5) Authorize transmittal of the foregoing contracts (collectively, 'Contracts') to the Governor for his review and for the purpose of seeking his authorization for the Authority to execute the Contracts pursuant to PAL §1009.

The Contracts are attached as Exhibits '5c iv-B-1' to '5c iv-B-4.'

BACKGROUND

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

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

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

DISCUSSION

At their meeting on September 27, 2016, the Trustees awarded a 400 kW RP allocation to GEICO and 1,000 kW RP allocation to CI Filing, as described in Exhibit '5c iv-A.' At this meeting, the Trustees also authorized a public hearing on the proposed contracts for the sale of these allocations pursuant to PAL §1009. In addition, at this same meeting the Trustees approved allocation extensions for Buffalo Shredding (1,200 kW of EP) and Graphic Controls (120 kW of RP). Such allocations were scheduled to expire February 28, 2017 and October 31, 2016 respectively.

In summary:

- The Contracts before the Board would provide for the sale of the allocation to the Companies under a direct sale arrangement.
- Transmission and delivery service would be provided by the Companies' local utility in accordance with the utility's Public Service Commission-filed delivery service tariff.
- The Contracts would provide for the direct billing of all production charges (*i.e.* demand and energy) as well as all New York Independent System Operator, Inc. ('NYISO') charges, plus taxes or any other required assessments, as set forth in the Trustee approved Service Tariff WNY-1.
- The Contracts includes the Companies' agreed-upon commitments with respect to employment, power utilization and capital investments. The Authority would retain the right to reduce or terminate the allocation if employment, power utilization, or capital investment commitments are not met.
- The Contracts provide for the sale of additional allocations of WNY Hydropower to the Companies in appropriate circumstances by incorporating new allocations into Schedule A of the Contracts. The Trustees approved this convention in the 2010 long-term extension contract for hydropower, which simplifies contract administration.
- To accommodate non-payment risk that could result from the direct billing arrangement with the Authority, the Contracts include commercially reasonable provisions concerning, among other things, the ability to require deposits in the event of a customer's failure to make payment for any two monthly bills. This is consistent with broader Authority contract template changes that incorporate direct billing, including the Authority's Recharge New York contract forms.
- The Contracts require the Companies to perform an energy efficiency audit at least once within five years at the facilities receiving the low-cost power to help ensure the hydropower is utilized as effectively as possible.
- The Contracts provide for collection of a Zero Emission Credit Charge and a Renewable Energy Credit Charge to allow the Authority to recover costs it would incur relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the load of the Company.

The Authority has discussed the Contracts with the Companies and has received their consent to the Contracts. The Companies have also acknowledged application of the appropriate tariff, discussed above, to the allocation.

A public hearing on Contracts was held on January 10, 2017 at the Power Vista (Visitors Center) at the Niagara Power Project in Lewiston. No oral statements were given at the public hearing. The official transcript of the public hearing is attached as Exhibit '5c iv-C.' Staff has not identified any substantive changes to the Contracts as a result of the public hearing process.

RECOMMENDATION

The Manager – Business Power Allocations and Compliance recommends that the Trustees approve the contracts for the sale of RP to GEICO and CI Filing Systems LLC, and the contracts for the extended allocations to Buffalo Shredding and Recovery, LLC and Graphic Controls Acquisition Corp., and authorize the transmittal of the Contracts to the Governor for his review and to seek his authorization for the Authority to execute the Contracts pursuant to PAL §1009.

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

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

RESOLVED, That the contracts (collectively, “Contracts”) for the sale of 400 kilowatts (“kW”) of Replacement Power (“RP”) to GEICO, 1,000 kW of RP to CI Filing Systems LLC, 1,200 kW of Expansion Power (“EP”) to Buffalo Shredding and Recovery, LLC and 120 kW of RP to Graphic Controls Acquisition Corp., (“Contracts”) are in the public interest, and in accordance with Public Authorities Law §1009 should be submitted to the Governor for his review and to seek his authorization for the Authority to execute the Contracts, along with a copy of the record of the public hearing thereon, and copies of the Contracts along with the record of the public hearing thereon, be forwarded to the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee; and be it further

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

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

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

**v. Contracts for the Sale of Western New York
Hydropower – Transmittal to the Governor**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to:

- 6) Approve proposed final contracts ('Contracts') for the sale of a total of 5,250 kilowatts ('kW') of Expansion Power ('EP') or Replacement Power ('RP') to 3M Company (150 kW EP), Confer Plastics, Inc. (400 kW EP), Fresenius Kabi USA, LLC (2,000 kW RP), Niagara Coatings Services, Inc. (100 kW RP), North American Hoganas, Inc. (400 kW EP), Saint-Gobain Ceramics & Plastics, Inc. (300 kW RP), and Unifrax I LLC (1,900 kW RP), in accordance with Public Authorities Law ('PAL') §1009 as summarized below and in Exhibit '5c v-A.'
- 7) Authorize transmittal of the Contracts to the Governor for his review and for the purpose of seeking his authorization for the Authority to execute the Contract pursuant to PAL §1009.

The Contracts are attached as Exhibits '5c v-B-1' through '5c v-B-7.'

BACKGROUND

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

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

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

The Trustees previously awarded allocations of WNY Hydropower to 3M Company, Confer Plastics, Inc., Fresenius Kabi USA, LLC, Niagara Coatings Services, Inc., North American Hoganas, Inc., Saint-Gobain Ceramics & Plastics, Inc., and Unifrax I LLC (the 'Companies') as summarized below.

At its July 29, 2014 meeting, the Trustees approved a 150 kW allocation of EP to 3M Company for its commitment to invest at least \$1,985,000 and create at least 6 new jobs at its Tonawanda facility. The expansion project involves repurposing existing unused production equipment and installing a new production line to begin manufacturing a new product.

Confer Plastics, Inc. was awarded 400 kW of EP by the Trustees on September 29, 2015 for its commitment to invest at least \$2.6 million and create at least 24 new jobs at its North Tonawanda facility. The project involves expanding its plastic product output through the purchase of a new, large blow molding machine.

At its April 4, 2011 meeting, the Trustees approved a 2,000 kW allocation of RP to Fresenius Kabi USA, LLC for its commitment to invest at least \$30 million and create at least 90 new jobs at its Grand Island facility. The project involves expanding the company's pharmaceutical manufacturing capacity by installing new and used production equipment in space that had been used for warehousing and offices.

Niagara Coatings Services, Inc. was awarded 100 kW of RP by the Trustees on July 26, 2016 for its commitment to invest at least \$475,000 and create at least 3 new jobs at its facility in the Town of Niagara. The project involves expanding its industrial sandblasting, coating and painting services by opening a second facility across the street from its existing operations.

At its May 19, 2015 meeting, the Trustees approved a 400 kW allocation of EP to North American Hoganas, Inc. for its commitment to invest at least \$3 million and create at least 10 new jobs at its Niagara Falls facility. The expansion project involves building two 5,000-square-foot pre-fab metal facilities to expand iron powder production, copper scrap-to-copper powder operations, and other metal powder production.

Saint-Gobain Ceramics & Plastics, Inc. was awarded 300 kW of RP by the Trustees on February 26, 2015 for its commitment to invest at least \$4,530,000 and create at least 7 new jobs at its Niagara Falls facility. The project involves capacity expansion with the installation of a new ceramic materials production line and a new 40,000-square-foot building expansion.

Unifrax I LLC was awarded 1,900 kW of RP by the Trustees on October 15, 2014 for its commitment to invest at least \$33 million and create at least 50 new jobs at its Tonawanda facility. The expansion project involves adding a third ceramic fiber insulation production line in a new 43,000-square-foot facility on its site.

At their meeting on September 27, 2016, the Trustees authorized a public hearing on the proposed Contracts for the sale of WNY Hydropower to the Companies pursuant to PAL §1009.

DISCUSSION

In summary:

- The Contracts before the Board would provide for the sale of the allocations to the Companies under a direct sale arrangement.
- Transmission and delivery service would be provided by the Companies' local utility in accordance with the utility's Public Service Commission-filed delivery service tariff.
- The Contracts would provide for the direct billing of all production charges (*i.e.* demand and energy) as well as all New York Independent System Operator, Inc. ('NYISO') charges, plus taxes or any other required assessments, as set forth in the Trustee approved Service Tariff WNY-1.
- The Contracts include the Companies' agreed-upon commitments with respect to employment, power utilization and capital investments. The Authority would retain the right to reduce or terminate the allocation if employment, power utilization, or capital investment commitments are not met.
- The Contracts provides for the sale of additional allocations of WNY Hydropower to the Companies in appropriate circumstances by incorporating new allocations into Schedule A of the Contracts. The Trustees approved this convention in the 2010 long-term extension contract for hydropower, which simplifies contract administration.

- To accommodate non-payment risk that could result from the direct billing arrangement with the Authority, the Contracts include commercially reasonable provisions concerning, among other things, the ability to require deposits in the event of a customer's failure to make payment for any two monthly bills. This is consistent with broader Authority contract template changes that incorporate direct billing, including the Authority's Recharge New York contract forms.
- The Contracts require the Companies to perform an energy efficiency audit at least once within five years at the facilities receiving the low-cost power to help ensure the hydropower is utilized as effectively as possible.
- The Contracts provide for collection of a Zero Emission Credit Charge and a Renewable Energy Credit Charge to allow the Authority to recover costs it would incur relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the customer's load.

The Authority has discussed the Contracts with the Companies and has received consent to the Contracts. The Companies have also acknowledged application of the appropriate tariff, discussed above, to the allocations.

A public hearing on Contracts was held on January 10, 2017 at the Power Vista (Visitors Center) at the Niagara Power Project in Lewiston. No oral statements were given at the public hearing. The official transcript of the public hearing is attached as Exhibit '5c v-C.' Staff has not identified any substantive changes to the Contracts as a result of the public hearing process.

RECOMMENDATION

The Manager – Business Power Allocations and Compliance recommends that the Trustees approve the Contracts for the sale of WNY Hydropower to 3M Company, Confer Plastics, Inc., Fresenius Kabi USA, LLC, Niagara Coatings Services, Inc., North American Hoganas, Inc., Saint-Gobain Ceramics & Plastics, Inc., and Unifrax I LLC and authorize the transmittal of the Contracts to the Governor for his review and to seek his authorization for the Authority to execute the Contracts pursuant to PAL §1009.

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

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

RESOLVED, That the contracts for the sale of 5,250 kilowatts (“kW”) of Expansion Power (“EP”) or Replacement Power (“RP”) to 3M Company (150 kW EP), Confer Plastics, Inc. (400 kW EP), Fresenius Kabi USA, LLC (2,000 kW RP), Niagara Coatings Services, Inc. (100 kW RP), North American Hoganas, Inc. (400 kW EP), Saint-Gobain Ceramics & Plastics, Inc. (300 kW RP), and Unifrax I LLC (1,900 kW RP) (“Contracts”) are in the public interest, and in accordance with Public Authorities Law §1009 should be submitted to the Governor for his review and to seek his authorization for the Authority to execute the Contracts, along with a copy of the record of the public hearing thereon, and copies of the Contracts along with the record of the public hearing thereon, be forwarded to the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the

Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee; and be it further

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

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

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

d. Procurement (Services) Contracts:

**i. Procurement (Services) Contract –
Human Resources – Knowledge Management
Initiative – Enterprise Search – Contract Award**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to ratify and approve the award of a five-year contract (4500280548) with Enterprise Search Software and Services, in the aggregate amount of \$950,650, to the firm Iknow LLC ('Iknow') of Princeton, NJ, in support of the Knowledge Management Initiative.

Interim approval to commence services effective December 29, 2016, in the initial not-to-exceed award amount of \$422,540, was authorized in accordance with the Authority's Guidelines for Procurement Contracts and Expenditure Authorization Procedures.

BACKGROUND

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

DISCUSSION

To ensure that the Authority continues to meet performance and business goals, Human Resources have developed expenditure requirements for the Knowledge Management Initiative.

The Knowledge Management Initiative is a multiyear program that will improve the Authority's ability to leverage the experience and expertise of its employees, and the enterprise information stored in multiple repositories. The program seeks to improve the capture, codification, and access to critical knowledge, to accelerate and improve NYPA's delivery of projects and services.

The Evaluation Committee comprised of Application Services, Corporate Records, IT, Project Management, Procurement, and Knowledge Management participated in bid evaluation and bidder presentations from BA Insight, Conway Dierking and Hillman Inc., and Iknow LLC.

The Evaluation Committee evaluated the BA Insight bid and determined it did not meet the technical requirements for Taxonomy Management, including Change Management and Role-based Permissions and, in addition, did not submit a Service Delivery proposal that met the discovery, planning, and training requirements. The Evaluation Committee evaluated the Conway Dierking and Hillman Inc. bid and determined it did not meet the technical requirement for Integration and User Experience. The bidder's response to both of these product requirements required the development of a custom solution in the Microsoft Framework.

The Evaluation Committee selected the Iknow LLC bid, based on its meeting all the Technical and Service requirements of the RFP.

FISCAL INFORMATION

Funding for this activity is included in the 2017 budget. Funds for subsequent years, were applicable, will be included in the budget submittals for those years. Payments will be made from the Authority's Capital or Operations Fund, as appropriate.

RECOMMENDATION

The Senior Vice President - Human Resources and Enterprise Shared Services recommends that the Trustees approve a contract award to Iknow LLC, for a total contract amount of \$950,650 and a term of up to five years, to provide Enterprise Search Software and Services in support of the Authority's Knowledge Management Initiative.

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

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to ratify and approve the award of a five-year contract with Iknow LLC, to provide Enterprise Search Software and Services for the Knowledge Management Initiative;

VENDOR

Iknow LLC
Princeton, NJ

(Q16-6112RM;
4500280548)

CONTRACT APPROVAL

\$950,650

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

ii. **Procurement (Services) Contract –
KPMG, LLP – Accounting and Other Services**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve an increase of \$1,275,000 to the KPMG contract #4500249908, to provide continuing consultation services to the Authority for the transfer of the New York State Canal Corporation (the Canal Corporation) which includes, but is not limited to, integration services, information technology project support and financial due diligence. The Trustees previously authorized the engagement of KPMG LLP to provide such services under the existing contract for independent accounting services at the March 29, 2016 and July 26, 2016 Board meetings.

BACKGROUND

Pursuant to the Authority's Expenditure Authorization Procedures, such additional funding for cumulative change orders in excess of \$500,000 above the original contract amount require the approval of the Authority's Board of Trustees.

On April 1, 2016, legislation authorized the transfer of the New York State Canal Corporation (the 'Canal Corporation') from the New York State Thruway Authority (the 'Thruway Authority') to the Authority was passed by the New York State legislature. The legislation authorizes the Authority to transfer moneys, property and personnel to the Canal Corporation and also authorizes the Authority to issue debt for the purposes of financing the construction, reconstruction, development and improvement of the New York State Canal system. As required by the legislation, the Authority assumed operational control of the Canal Corporation on January 1, 2017. KPMG has provided significant consulting support to the interagency integration team assigned to complete the transfer. Going forward, this integration team will be working on post Day 1 tasks including, but not limited to, stabilizing systems and processes, planning for exiting transitional service agreements with the Thruway Authority, developing a Day 2 target operating model and a 100-Day plan. Staff is recommending that NYPA continue to utilize KPMG to support the continuing integration work effort.

Integration services and integration project support are specialized and complex fields and KPMG has the expertise and experience to provide advice to the Authority as to the provisions of the Canal transfer. These project support services are not services prohibited under relevant auditor independence standards. Management and the KPMG audit team will monitor the services provided on an on-going basis to ensure that independence between KPMG and the Authority is maintained. As required by New York State Public Authorities Law Section 2802(5), the Authority's Audit Committee authorized the engagement of KPMG LLP to provide such services at the March 29, 2016 meeting under the existing contract with KPMG.

DISCUSSION

The Authority's contract with KPMG for independent accounting and auditing services, as well as other audit and non-audit services, as may be required, was approved by the Trustees at their July 29, 2014 meeting, for a term of up to five years through July 31, 2019, in the amount of \$2,500,000. The Authority's President and Chief Executive Officer authorized an initial change order of \$500,000 for advisory services increasing the contract amount to \$3 million. At the July 26, 2016 Board meeting, the Authority's Trustees approved a request for additional funding of \$6,410,000 and increasing the total approved contract amount to \$9,410,000. Compensation for these services is being paid to KPMG at discounted rates quoted within their letter of engagement.

FISCAL INFORMATION

Funds of \$7,535,000 are currently available within the contract for non-audit advisory services, which are being utilized for the Canal Corporation. Staff estimates that an additional \$1,275,000 will be needed for advisory services relating to the Canal Corporation between February 1, 2017 and June 30, 2017. The additional funding request will result in increasing the total approved contract amount to \$10,685,000. Funding is included in the 2017 budget. As with prior payments under this contract, additional payments approved hereby will be made from, or allocated to, amounts released from the lien of the Authority's General Resolution Authorizing Revenue Obligations, adopted February 24, 1998, as amended and supplemented, in accordance with provisions contained therein.

RECOMMENDATION

The Executive Vice President and Chief Financial Officer, and the Vice President and Controller recommend the Trustees approve an increase of \$1,275,000 in the KPMG engagement to provide services associated with the transfer of the New York Canal Corporation to the Authority, under the existing contract with KPMG for independent accounting services.

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

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted to increase by \$1,275,000 the KPMG engagement to provide services associated with the transfer of the New York Canal Corporation to the Authority under the existing contract with KPMG for independent accounting services;

Contractor

**KPMG, LLP
(PO#4500249908)**

Contract Approval

**Current contract: \$9,410,000
Additional funding request: \$1,275,000
Revised total authorized: \$10,685,000**

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

NIA / STL

iii. Procurement (Services) Contract – Niagara and St. Lawrence Projects – On-Call Crane and Hoist Consulting Services – Contract Awards

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve the award of two multiyear personal services contracts to NPE Consultants, LLC, of Franklin, CT and MWH Global, Inc. (now part of Stantec Consulting Services, Inc.), of New York, NY for on-call crane and hoist consulting services for the Authority's Niagara and St. Lawrence Power Projects. The awards are for a term of up to five years and an aggregate amount of \$5,500,000.

BACKGROUND

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

The Authority's Expenditure Authorization Procedures require the Trustees' approval for the award of personal services contracts in excess of \$1,000,000.

DISCUSSION

The Authority issued a Request for Proposals (“RFP”) to perform technical engineering and assessment services for cranes and hoists required to maintain the Authority's critical infrastructure during daily and emergency power generation activities. The services include, but are not limited to, technical consulting for the development of crane and hoist testing and maintenance guidelines, the design and engineering of new cranes, and the technical evaluation and design of repairs, modifications and upgrades for the various existing and/or newly-acquired cranes and hoists for the Authority's St. Lawrence and Niagara facilities.

The Authority issued an advertisement in the New York State *Contract Reporter* and bid packages were available for downloading from its website on September 14, 2016. Thirty-nine firms downloaded the RFP (Q16-6016HM), of which six were duplicates. On October 11, 2016, five proposals were received in response to the RFP from the following firms:

1. NPE Consultants, LLC
2. MWH Global, Inc. (now part of Stantec Consulting Services, Inc.)
3. Han-Tek, Inc.
4. Simmers Crane Design & Services
5. Zinter Handling, Inc.

The proposals were evaluated based on responsiveness to the RFP, specifically, cited related work experience, proposed project team's experience and expertise, the hourly rates, familiarity with hydropower operations and safety practices that meet the Authority's requirements.

The project team reviewed the proposals and conducted interviews with the three most responsive bidders to review and resolve technical requirements, resource capabilities and any commercial exceptions. Based on the interviews, all exceptions were resolved with the exception of one bidder. As such, staff recommends that contracts be issued to the two most technically qualified and commercially acceptable firms:

1. NPE Consultants, LLC. (NPE)
2. MWH Global, Inc. (MWH) – now part of Stantec Consulting Services, Inc.)

Both NPE and MWH have extensive experience with crane and hoist assessments, consulting and engineering services, and experience with hydropower facilities. Both firms have a comprehensive understanding of industry practices and relevant codes and both provided competitive rates for the required services. All exceptions taken to the RFP were resolved to the satisfaction of the Authority.

Awarding contracts to two firms provides options in the event that one firm is unable to meet an emergency situation or need and also provides the Authority with a competitive selection when several tasks are to be performed at once.

FISCAL INFORMATION

Payment will be made from the Operating Fund or Capital Fund, depending upon the task.

RECOMMENDATION

The Senior Vice President - Operations Support Services, the Vice President - Project Management, the Vice President - Strategic Supply Management, the Project Manager - Western New York, and the Project Manager - Northern New York recommend that the Trustees approve the award of personal services contracts for a term of up to five years, in an aggregate amount of \$5,500,000, to NPE Consultants, LLC, and MWH Global, Inc. (now part of Stantec Consulting Services, Inc.), respectively, to provide on-call crane and hoist consulting services for the Authority's Niagara and St. Lawrence Power Projects.

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

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted to award contracts to NPE Consultants, LLC, of Franklin, CT and MWH Global, Inc. (now part of Stantec Consulting Services, Inc.) of New York, NY, respectively, for a term of up to five years, in the aggregate amount of \$5,500,000, to provide on-call crane and hoist consulting services for the Niagara and St. Lawrence Power Project facilities, as recommended in the foregoing report of the President and Chief Executive Officer;

<u>Contractor</u>	<u>Contract Approval</u>
NPE Consultants, LLC Franklin, CT	\$2,750,000
MWH Global, Inc. New York, NY (now part of Stantec Consulting Services, Inc.)	<u>\$2,750,000</u> <u>\$5,500,000</u> (aggregate)
(Q16-6016HM)	

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

e. Capital Expenditure Authorization Requests:

**i. Niagara Power Project – Gantry Crane
Parapet Bus Replacement and Upgrade –
Capital Expenditure Authorization Request**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve capital expenditures in the amount of \$3,912,238 for the replacement and upgrade of the Robert Moses 100-Ton (RM 100T) Gantry Crane Parapet Bus at the Niagara Power Project.

This expenditure request is part of a larger program to replace and upgrade five cranes at the Niagara Power Project. The total estimate for this program is approximately \$7.6M which includes the upgrade for the RM 100T and upgrades to RM 630T, RM 30T, LP 150T and LP 65T. Approval for the balance of the capital expenditures is anticipated in 2018-2020.

BACKGROUND

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

The RM 100T and its parapet bus system was installed during the original construction of the plant in 1962. This equipment has experienced intermittent electrical failures. Upon completion of an engineering inspection, the crane's parapet bus system was found to be in poor condition. The equipment has exceeded its useful life and is need of replacement. In conjunction with its replacement, the new parapet bus system will be designed and installed with an additional fourth grounding bus bar which is needed for compliance with the latest requirements of the National Electrical Code.

DISCUSSION

The scope-of-work for this project includes the engineering design, fabrication, delivery, assembly, testing, and installation of a new parapet bus system.

After issuance of a Request for Proposal and a competitive bidding process, Simmers Crane Design & Services ('Simmers') is recommended for award of a contract in the amount of \$2,320,000. Simmers has extensive experience in design and fabrication of cranes, has demonstrated knowledge of the scope-of-work and is capable of completing the project in accordance with the schedule. Simmers has also successfully worked with the Authority on past projects and has demonstrated its ability to adhere to schedule and budget. Pending approval of these capital expenditures, the contract will be awarded to Simmers. The work is scheduled for completion by the end of 2017.

Preliminary capital funding in the amount of \$721,444 was previously authorized to initiate the crane inspection and perform associated preliminary engineering work.

The total project cost is estimated at \$3,912,238, as follows:

Preliminary Engineering/Engineering Design	\$ 721,144
Construction/Installation	\$2,988,730
Authority Indirect and Direct Expenses	<u>\$ 202,364</u>
TOTAL	<u>\$3,912,238</u>

FISCAL INFORMATION

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

RECOMMENDATION

The Senior Vice President – Operations Support Services, the Vice President – Project Management, the Vice President – Strategic Supply Management, the Regional Manager – Western NY, and the Project Manager – Western New York recommend that the Trustees approve capital expenditures in the amount of \$3,912,238, for the replacement and upgrade of the Robert Moses 100-Ton Gantry Crane Parapet Bus at the Niagara Power Project.

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

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

RESOLVED, That pursuant to the Authority's Expenditure Authorization Procedures, capital expenditures in the amount of \$3,912,238 are hereby approved for the replacement and upgrade of the Robert Moses 100-Ton Gantry Crane Parapet Bus at the Niagara Power Project, as recommended in the foregoing report of the President and Chief Executive Officer;

<u>Capital</u>	<u>Expenditure Authorization</u>
Niagara Power Project RM Gantry Crane Parapet Bus Upgrade Project	<u>\$3,912,238</u>

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

f. Real Estate

i. Grant of Access Road Easement – Town of Waddington, County of St. Lawrence

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The Trustees are requested to authorize the grant of a non-exclusive access road easement over and across certain lands, totaling approximately 11.36 acres, to the Town of Waddington, St. Lawrence County, for no consideration. The property to be transferred is shown on the map attached hereto as Exhibit '5f i-A.'

BACKGROUND

The Authority acquired the property in the name of the People of the State of New York by appropriation in 1955 in support of the construction of its St. Lawrence/FDR Power Project. The access road over which the Town now seeks an easement is the Authority's sole access to the Iroquois Dam, which expedites the formation of solid ice cover on the St. Lawrence River in the winter months, optimizing river flows for power production.

DISCUSSION

As shown on the attached map, the Town owns property adjacent to the Authority's access road and wishes to develop recreational opportunities and control unregulated use of those adjoining lands. The access road presently provides the only improved access to large portions of the Town's property. The Authority has generally allowed the Town to utilize the access road on an as needed basis, but in light of its intention to expand use of the adjoining lands, the Town has now requested a formal easement.

The proposed easement will allow the Town to use the road in common with the Authority and will be subject to the Authority's ownership rights. The Easement will also contain language requiring that the Town, its agents, invitees and assigns indemnify and hold the Authority harmless for the Town's use of the road. The appraised fair market value of the easement is \$4,351, which the Authority proposes to waive.

Title 5-A of Article 9 of the Public Authorities Law (the 'Act') and the Authority's Guidelines for the Disposal of Real Property (the 'Guidelines') allow the Authority, with the approval of the Trustees, to dispose of Authority property by negotiation and 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 asset will remain with the government or any other public entity. The deed of easement will include language to this effect.

As the subject property is owned by the People of the State of New York, acting by and through the Authority, the grant of easement is subject to prior review and approval by the NYS Department of Law Real Property Bureau.

FISCAL INFORMATION

There will be no fiscal impact as a result of this disposal.

RECOMMENDATION

The Vice President – Enterprise Shared Services and the Regional Manager, Northern New York recommend that the Trustees approve the access road easement, totaling approximately 11.36 acres, to the Town of Waddington, St. Lawrence County.

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

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

RESOLVED, That pursuant to the provisions of Article 5, Title 1 of the Public Authorities Law, the Trustees hereby authorize the grant of an access road easement, to be used in common with the Authority, over and across certain lands totaling approximately 11.36 acres, in the Town of Waddington, St. Lawrence County, to the Town of Waddington for no consideration; and be it further

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

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

ii. **Disposal of 117.09 Acres of Surplus Land –
Town of Prattsville, County of Greene**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to authorize the conveyance of a parcel of unimproved surplus land, totaling approximately 117.09 acres, located along Oakley's Road in the Town of Prattsville, Greene County, to the New York City Department of Environmental Protection ('DEP'). The property to be conveyed is shown on the map attached hereto as Exhibit '5f ii-A.'

BACKGROUND

The Authority purchased the subject property in 1982 for \$70,250 in support of its prospective 'Prattsville Pumped Storage Power Plant' project, which was never constructed.

DISCUSSION

The subject property is located within the watershed of New York City's Schoharie reservoir. As part of ongoing efforts to protect the quality of its water supply, DEP has expressed interest in acquiring the property for its fair market value.

Pursuant to Title 5-A of Article 9 of the Public Authorities Law (the 'Act') and the Authority's Guidelines for the Disposal of Real Property (the 'Guidelines'), the Authority is required to periodically inventory its real property portfolio to determine whether any such property is surplus, and, if so, to dispose of such property as promptly as possible. The Act also authorizes the Authority, with the approval of the Trustees, to transfer Authority real property to 'the state or any political subdivision' by negotiation for the estimated fair market value.

The Regional Manager of the Blenheim-Gilboa Power Project has determined that the subject property is not required for Authority operations and is deemed surplus. The independently-appraised fair market value of the property is \$295,625.25 (\$2,525 per acre), which DEP has offered. Conveyance of the property is contingent on DEP satisfying standard due diligence requirements.

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

Pursuant to Sections 2896 and 2897((6)(d) of the Act, when the Authority contemplates the disposal, by negotiation, of real property exceeding \$100,000 in fair market value, an explanatory statement setting forth the terms and conditions of the disposal must be submitted to the Comptroller, the Director of the Budget, the Commissioner of General Services, the Legislature and the Authorities Budget Office not less than 90 days prior to such disposal.

FISCAL INFORMATION

Funds realized from the property disposition will be deposited into the Authority's Capital Fund.

RECOMMENDATION

The Vice President – Enterprise Shared Services, the Regional Manager – Central New York and the Vice President – Environmental, Health and Safety recommend that the Trustees approve the conveyance of surplus land, totaling approximately 117.09 acres, located in the Town of Prattsville, Greene County, to the New York City Department of Environmental Protection.

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

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

RESOLVED, That pursuant to the provisions of Article 5, Title 1 of the Public Authorities Law, the Authority has determined that the real property, totaling approximately 117.09 acres, located in the town of Prattsville, Greene County, shown on the map attached hereto as Exhibit “5f ii-A” is surplus and may be transferred to the New York City Department of Environmental Protection for the fair market value of \$295,625.25; and be it further

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

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

g. Energy Efficiency

i. Program Time Extension for the Five Cities Energy Plan, Solar MAP, and EE-Map Programs

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The Trustees are requested to approve a common end date of December 31, 2018 for three previously authorized programs: Phase 1 of the Five Cities Energy Plans; Solar Market Acceleration Program (Solar MAP); and Energy Efficiency Market Acceleration Program (EE-MAP).

BACKGROUND

The Trustees previously approved three (3) programs: Solar MAP, EE-MAP, and the Five Cities Energy Plans in support of the Authority's energy efficiency programs.

In February 2015, the Trustees approved program funding for the first Phase of the program for competitive grants and energy managers to support the development of energy plans within the following Five Cities: Albany, Buffalo, Rochester, Syracuse, Rochester, and Yonkers. The program expired in December 2016. In March 2012, the Trustees approved program funding to support solar photovoltaic ('PV') training, and demonstration projects targeting PV cost as well as new innovative financing models under Solar MAP. The Solar MAP program expires in March 2017. In June 2012, the Trustees approved program funding to support market development activities, and demonstration projects targeting the deployment of energy efficiency products and systems under EE MAP. The EE-MAP program expires in June 2017.

DISCUSSION

The Trustees previously approved the Five Cities Energy Plan, Solar MAP and EE-MAP through December 2016, March 2017, and June 2017, respectively. The time extension is needed to allow for completion of projects and phase out of the programs. The funding for each of these programs previously approved by the Trustees is sufficient to complete each program, so no additional funding is requested at this time.

FISCAL INFORMATION

Implementation of these programs has been funded from the Authority's Operating Fund. Funding for implementation of the programs has been accounted for the 2017 and 2018 Commercial Operations business unit's budget approved at the December Trustees' meeting.

RECOMMENDATION

The Vice President of Business Development and Market Development recommends that the Trustees approve the requested term extensions for the implementation of the Five Cities Energy Plan, Solar Market Acceleration Program, and Energy Efficiency Market Acceleration Program during 2017-18 as described above.

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

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

RESOLVED That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the Trustees hereby authorize the term extension of the Five Cities Energy Plans, Solar Market Acceleration Program ("Solar MAP"), and Energy Efficiency Market Acceleration Program ("EE-MAP") through December 31, 2018 as described in the foregoing report of the President and Chief Executive Officer; and be it further

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

ii. Request for Increased Funding – Municipal and Rural Cooperative Electric Utilities Electric-Drive Vehicle Program

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to approve \$3 million in additional funding for the Municipal and Rural Cooperative Electric Utilities Electric-Drive Vehicle Program ('Muni-Coop E-D Program' or 'Program'). This amount is in addition to the \$5 million previously approved by the Trustees at their May 2003, February 2009, and December 2013 meetings, respectively. This Program enables the Authority's Municipal ('Munis') and Rural Electric Cooperative ('Coops') utilities to purchase electric and hybrid-electric vehicles for use in their fleets, as well as battery charging equipment, where required. These funds will be recovered from the Program participants over a period of up to three years through a surcharge to their electric bills.

BACKGROUND

Since the 1980s, through its Energy Services Programs ('ESP'), the Authority has offered various types of energy services and clean energy technologies programs to participants throughout the state to help lower energy usage and/or achieve a cleaner and more energy efficient use of energy and natural resources.

At their May 29, 2003 meeting, the Trustees authorized \$1.2 million to finance the Muni-Coop E-D Program, a new partnership program between NYPA and the Munis and Coops. This Program facilitated the purchase of electric and hybrid-electric vehicles for the Muni and Coop systems' municipal fleets. At their meeting on February 24, 2009, the Trustees authorized an additional \$1.8 million. At their meeting on December 17, 2013, the Trustees authorized an additional \$2 million. As of November 1, 2016, sixty-one (61) such vehicles were placed within 24 municipal systems.

DISCUSSION

The current Muni-Coop E-D Program is available to all Muni and Coop utilities. The Muni and Coop utilities apply to the Authority for funding to purchase on-road passenger vehicles; heavy-duty work vehicles; or off-road work vehicles. The vehicles are used by the Muni and Coop utilities' personnel and/or their affiliated municipal agencies to carry out their functions. The funds made available to the Muni and Coop utilities for the purchase of these vehicles are recovered over three years through a monthly bill to the participating utility.

In addition, the Trustees have previously authorized that the full-requirements Muni and Coop utility customers, regulated by the Authority, be permitted to recover from their retail customers all costs associated with the electric-drive vehicle finance program, as well as any other energy-efficiency programs and initiatives that the Authority offers to the Muni and Coop Systems. Recovery of these costs will be through the Purchased Power Adjustment Charge. The partial-requirements systems, regulated by the New York Public Service Commission ('PSC'), may request similar permission from the PSC to recover costs associated with the vehicle purchase and other energy-efficiency programs from their customers.

The additional funding will enable the Authority to continue its successful partnership with the Munis and Coops to expand the integration of electric-drive vehicles into their municipal fleets.

FISCAL INFORMATION

With the addition of the requested funding, the Muni-Coop E-D Program will provide financing up to \$8 million for the purchase of vehicles and the purchase and installation of battery charging equipment, where applicable. These costs will be recovered directly from the Program participants over a period of up to three years through an electric bill surcharge. To date, there have been no issues with the repayment of loans in the initial or subsequent phases of the program.

The Program will be funded from Commercial Paper Note proceeds and/or Operating Fund monies. A small portion of the funding will be supplemented by POCR funds allocated to the Authority by the New York State legislature; the POCR funding will be used strictly to offset the internal NYPA interest charges.

RECOMMENDATION

The Executive Vice President and Chief Commercial Officer recommends that the Trustees authorize an additional \$3 million in funding for the implementation of the Municipal and Rural Cooperative Electric Utilities Electric-Drive Vehicle Program and continue the use of the Purchased Power Adjustment Charge to allow the full-requirements municipal and rural cooperative electric utilities regulated by the Authority to recover their costs for the program.

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

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

RESOLVED, That an additional funding in the amount of \$3 million for the Municipal and Rural Cooperative Electric Utilities Electric-Drive Vehicle Program, as described in the foregoing report of the President and Chief Executive Officer, is hereby authorized; and be it further

RESOLVED, That the Electric-Drive Vehicle Program may be funded with the proceeds of Series 1, 2, or 3 Commercial Paper Notes, Operating Fund monies, and/or Petroleum Overcharge Restitution funds allocated to the Authority by New York State legislation, with such POCR funding being in amounts as deemed advisable by the Executive Vice President and Chief Commercial Officer; and be it further

RESOLVED, That the Trustees hereby authorize the full-requirements Municipal and Rural Co-operative systems served by the Authority to recover costs for this, and other energy-efficiency programs, through the Purchased Power Adjustment Charge; and be it further

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

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

iii. **Participation in the Public Service Commission's
Zero Emissions Credit Program**

The President and Chief Executive Officer submitted the following report:

SUMMARY

In keeping with the Governor's 2015 New York State Energy Plan and the New York State Public Service Commission's ('PSC') 'Clean Energy Standard' ('CES') program, the Trustees are requested to authorize 1) the Authority's voluntary participation the PSC's Zero Emissions Credit ('ZEC') program; and 2) the execution of an agreement with the New York State Energy Research and Development Authority ('NYSERDA') for the purchase of such ZECs associated with the share of the Authority's load that is appropriate for ZEC charges.

BACKGROUND

A cornerstone of the Governor's 2015 New York State Energy Plan is the reduction of greenhouse gas emissions. Nuclear facilities, which produce zero carbon from their generation process, are important assets for the avoidance of such emissions. On August 1, 2016 the PSC issued an order establishing a CES and a ZEC requirement ('CES Order') that established a 12-year program of payments to eligible nuclear power plants to support their continued production of zero emission electricity. The CES Order directed the purchase of the plants' ZECs by NYSERDA under certain specified terms and conditions. Further, it imposed an obligation on load-serving entities to purchase ZECs from NYSERDA in proportion to their retail energy sales at the price paid by NYSERDA plus an administrative charge. The Authority has advised the PSC that, subject to review by its Trustees, it intends to comply with the CES' ZEC requirements.

DISCUSSION

As stated in the CES Order, the purpose of the ZEC program is to avoid the loss of carbon-free generation while the State works towards the CES goal of 50% renewable energy by 2030. The CES Order determined that the three upstate nuclear plants (Ginna, Fitzpatrick and Nine Mile Point) are currently eligible for ZEC payments because they are at-risk of closing before their operating licenses expire. The price to be paid by NYSERDA for ZECs is set at \$17.54 per MWh for the period of April 2017 through March 2019. Subsequently, the price may increase to reflect the growing social cost of carbon (as determined by the federal government) or may decrease to the extent that wholesale power prices are forecasted to increase, and where monetary support for the plants would be unnecessary.

In order for the Authority to voluntarily meet the ZEC requirements of the CES Order, the Authority must execute a contract with NYSERDA for the purchase of ZECs in proportion to the ratio of the energy distributed to its customers as compared to total statewide energy consumption. The term of the contract will extend from December 19, 2016 until March 31, 2019.

FISCAL INFORMATION

It is estimated that the cost to the Authority for its purchase of ZECs will be approximately \$47 million in 2017 and \$64 million for 2018. Subsequently, costs could increase with the projected social cost of carbon as determined by the federal government or decrease with forecasted wholesale market prices, as outlined in the CES Order. The Authority anticipates in its current budget that ZEC costs will be substantially recovered from its customers.

RECOMMENDATION

The Executive President and Chief Commercial Officer recommends that the Trustees approve the Authority's execution of a contract for Zero Emission Credits ('ZECs') from New York State Energy

Research and Development Agency ('NYSERDA') in accordance with the Clean Energy Standard ('CES').

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

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

RESOLVED, That the Authority should voluntarily participate in the New York Public Service Commission's Clean Energy Standard Order ("CES Order") regarding the purchase of Zero Emission Credits ("ZECs"); and be it further

RESOLVED, That the Trustees hereby authorize the Authority to enter into a contract with New York State Energy Research and Development Agency to purchase ZECs associated with the Authority's applicable share of energy sales, consistent with the foregoing report and the terms set forth in the CES Order; and be it further

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

h. Finance

i. Release of Funds in Support of the Residential Consumer Discount Program Created in Connection with the Recharge New York Power Program

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

The Trustees are requested to approve the release of \$30.0 million in funds during 2017 in support of the monthly Residential Consumer Discount Program created in connection with the Recharge New York ('Recharge NY') Power Program, as authorized by Chapter 60 of the Laws of 2011 ('Chapter 60'). The funds are to be released monthly at a level of \$2.5 million per month. It is estimated that the \$30.0 million authorized for the Residential Discounts in 2017 will be entirely off-set from (1) Recharge NY hydropower allocated and sold to Recharge NY customers, and (2) unallocated Recharge NY hydropower sold into the wholesale market.

BACKGROUND

The Authority is requested, from time to time, to make financial contributions and transfers of funds to the State or to otherwise provide financial support for various State programs including the Residential Consumer Discount Program related to Recharge NY.

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

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

DISCUSSION

In March 2011, Governor Cuomo signed into law legislation creating the Recharge NY Power Program. The Program utilizes 455 megawatts ('MW') of the firm power from the Authority's Niagara and St. Lawrence hydroelectric facilities, combined with market-based power purchases, forming a new, 910-megawatt economic development power program to replace and expand upon the Power For Jobs ('PFJ') and Energy Cost Savings Benefits ('ECSB') economic development programs.

As part of the Recharge NY Power Program, the Authority, on August 1, 2011, withdrew all 455 MW of the firm hydroelectric power previously sold to certain utility companies for the benefit of their residential consumers. To mitigate the price impacts of this withdrawal on the residential consumers, the Authority was authorized by Chapter 60, as deemed feasible and advisable by the Trustees, to fund monthly 'Residential Consumer Discount Program' payments for the benefit of such consumers on a

declining schedule. For each of the first three years following the withdrawal, the Authority is authorized to provide \$100 million per year to fund the discounts. In years four and five following the withdrawal, the Authority is authorized to fund discounts of \$70 million and \$50 million, respectively. Beginning in year six following the withdrawal, and for each year thereafter, the Authority is authorized to fund discounts of \$30 million per year.

The Authority is authorized to use the revenues from the sale of the withdrawn power, together with any other funds of the Authority as the Trustees may deem feasible and advisable, to support the Residential Consumer Discount Program. The net cost to the Authority of the Residential Discounts after taking into account the resale of the power following the withdrawal from its prior use to supply certain utility companies for the benefit of their residential consumers, is projected to be entirely off-set from (1) Recharge NY hydropower allocated and sold to Recharge NY customers, and (2) unallocated Recharge NY hydropower sold into the wholesale market during 2016. Given the volatility in market prices, however, there is no assurance that the sale of this power will produce sufficient revenues to cover this amount of the residential discounts.

The Trustees have previously approved the release of funds in support of the Residential Consumer Discount Program, the most recent action being taken at the January 26, 2016 meeting. Under consideration today are payments for 2017. Staff intends to return to the Trustees with a recommendation as to the release of any future amounts related to the Residential Consumer Discount Program based on how the overall program is progressing as well as the financial circumstances of the Authority at the time such payments are to be considered.

Staff has reviewed the effects of the \$30.0 million in anticipated payments of the Residential Consumer Discount Program on the Authority's projected financial position and reserve requirements. In addition, in accordance with the Board's Policy Statement, staff calculated the impact of these releases together with (i) the release of \$60 million approved in November 2016 for Thruway reimbursements and integration costs associated with the transfer of the Canal Corporation, (ii) the release of up to \$44 million approved in December 2016 for additional Thruway reimbursements, 2016 integration costs and Canal related expenses for January 2017, (iii) the release of a total of \$91 million in voluntary contributions (\$20 million of which was approved in December 2016 and \$71 million approved in March 2016), and (iv) the release of a total of \$15 million in Canal related operating expenses for the months of February 2017 and March 2017, on the Authority's debt service coverage ratio and determined it would temporarily fall below the 2.0 reference level using Net Cash from Operating Activities for the twelve month period for the latest calendar quarter December 31, 2016. Based on the Authority's Four-Year Budget and Financial Plan, the 2.0 reference point level is forecasted to be met for each year-end of the forecast period 2017-2020. For purposes of the Board's Policy Statement these expenditures are treated as amounts being withdrawn or paid out directly or indirectly to a State entity, so that such expenditures will be 'Prior Contributions to the State' under such Policy Statement. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to provide \$30.0 million of the Residential Consumer Discount Program at this time.

FISCAL INFORMATION

Staff has determined that sufficient funds are available in the Operating Fund to provide \$30.0 million in support for the Residential Consumer Discount Program authorized by Chapter 60 at this time, and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution. The release of \$30.0 million associated with the Residential Consumer Discount Program payments was anticipated and reflected in the Power Authority's 2017 Operating Budget approved by the Trustees at their December 15, 2016 meeting. The net cost to the Authority of the Residential Consumer Discounts, after taking into account the resale of the power following the withdrawal from its prior use to supply certain utility companies for the benefit of their residential consumers, is projected to be entirely off-set from Recharge NY hydropower allocated and sold to

Recharge NY customers and unallocated Recharge NY hydropower sold into the wholesale market during 2017. These monthly payments will be recorded as an expense at the time of payment.

RECOMMENDATION

The Treasurer recommends that the Trustees approve that the release of \$30.0 million related to the Residential Consumer Discount Program is feasible and advisable and to authorize such payments.

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

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

RESOLVED, That the Trustees hereby authorize the release of \$30.0 million from the Operating Fund during 2017 to support the monthly Residential Consumer Discount Program as authorized by Chapter 60 of the Laws of 2011 and as discussed in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the amount \$30.0 million to be used for the Residential Consumer 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 as a condition to making the payments specified in the foregoing resolutions, on the day of such payment the Treasurer or the Deputy Treasurer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

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

ii. Release of Funds in Support of the NYS Canal Corporation

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

The Trustees are requested to authorize the release of up to \$15.0 million in funding to the New York State Canal Corporation ('Canal Corporation') to support the operations of the Canal Corporation for the period from February 1, 2017 to March 31, 2017.

BACKGROUND

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

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

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

DISCUSSION

The Canal Corporation became a subsidiary of the Authority effective January 1, 2017. At the December 15, 2016 meeting, the Trustees authorized the release of up to \$14.0 million in funding to support operating and capital expenses of the Canal Corporation for the period from January 1, 2017 to January 31, 2017. The Authority expects the Canal Corporation to incur costs of up to \$15.0 million related to the operation of the Canal Corporation for the period from February 1, 2017 to March 31, 2017.

Staff has reviewed the effect of releasing the requested \$15.0 million in funding at this time on the Authority's expected financial position and reserve requirements. In accordance with the Board's Policy Statement adopted May 24, 2011, staff also calculated the impact of this release, together with (i) the release of \$60 million approved in November 2016 for Thruway reimbursements and integration costs associated with the transfer of the Canal Corporation, (ii) the release of up to \$44 million approved in December 2016 for additional Thruway reimbursements, 2016 integration costs and Canal related operating and capital expenses for January 2017, (iii) the release of a total of \$91 million in voluntary contributions (\$20 million of which was approved in December 2016 and \$71 million approved in March 2016), and (iv) the release of \$30 million in Recharge New York Discounts for 2017, on the Authority's debt service coverage ratio and determined it would temporarily fall below the 2.0 reference level using Net Cash from Operating Activities for the twelve-month period for the latest calendar quarter December

31, 2016. Based on the Authority's Four-Year Budget and Financial Plan, the 2.0 reference point level is forecasted to be met at each year-end of the forecast period 2017-2020. For purposes of the Board's Policy Statement these expenditures are treated as amounts being withdrawn or paid out directly or indirectly to a State entity, so that such expenditures will be 'Prior Contributions to the State' under such Policy Statement. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to release such amounts from the trust estate created by the Bond Resolution consistent with the terms thereof. With regard to Canal Corporation operating expenses for the period from April 1, 2017 – December 31, 2017, staff is not requesting any action at this time, but will return to the Board quarterly to request additional releases.

FISCAL INFORMATION

Staff has determined that sufficient funds are available in the Operating Fund to release up to \$15.0 million in funding to support operation of the Canal Corporation for the period from February 1, 2017 to March 31, 2017. Staff has further determined that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution. The expenses associated with the operation of the Canal Corporation for the period from February 1, 2017 to March 31, 2017 are included in the 2017 Canal Corporation Budget and the Amended 2017 Power Authority Budget that are being presented to the Canal Corporation Board of Directors and the Trustees, respectively, for review and approval at this January 2017 meeting.

RECOMMENDATION

The Treasurer recommends that the Trustees authorize and ratify the release of up to \$15.0 million in funding to the Canal Corporation to support the operations of the Canal Corporation for the period of February 1, 2017 to March 31, 2017. The Treasurer further recommends that the Trustees affirm that such releases are feasible and advisable, that such funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution and that the release of such funds is authorized.

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

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

RESOLVED, That the Trustees hereby authorize and ratify the release of up to \$15.0 million in funding to the Canal Corporation to support operation of the Canal Corporation for the period from February 1, 2017 to March 31, 2017, as discussed in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the amount of up to \$15.0 million in funding as described in the foregoing resolution 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 providing such amount is feasible and advisable; and be it further

RESOLVED, That as a condition to making the payments specified in the foregoing resolutions, on the day of such payments, the Treasurer or the Deputy Treasurer

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

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

6. DISCUSSION AGENDA:

a. Informational Item

i. New York State Energy Policy - Update

President Quiniones welcomed Mr. Richard Kauffman, Chairman of Energy & Finance and Chairman of the New York State Energy Research and Development Authority ("NYSERDA") to the meeting. He said Mr. Kauffman is the architect of the Governor's energy policy agenda, *Reforming the Energy Vision* ("REV"), which is internationally known as the most innovative energy policy to change the way energy is produced, distributed and used. He said Mr. Kauffman also oversees and coordinates the activities of all New York State energy agencies and authorities including NYPA, the Long Island Power Authority, NYSERDA, and the Public Service Commission. Under his leadership, the state created an Energy Plan that is one of the most forward-looking and aggressive Energy Plan. The goals of that Plan is to achieve 40 percent greenhouse gas emission reductions relative to 1990 levels by 2030; mandate that 50 percent of the state's generation of electricity must come from renewable energy by 2030; and 23 percent decrease in energy consumption in buildings across the State of New York relative to their use in 2012 levels.

Mr. Kauffman said that on behalf of the Governor he wanted to thank the Trustees for their service to the state. He said NYPA has always been an important asset for the people of New York and even more so given the changes related to the New York State energy policy, REV, *Reforming the Energy Vision*. He then provided an update of the energy policy as follows:

Cost of Electricity

Mr. Kauffman said that after hurricane Sandy, the Governor had discussions with him regarding the power sector in the state; his principal focus on resilience.

In the utility industry, business as usual is not sustainable from a resiliency standpoint given the frequency and magnitude of storms and the fact that the utility industry does not take into account major storms when measuring resiliency.

The current system does not adequately address emissions; is not responsive to changing customer needs; individual, corporate and community desires for more control over their energy; better power quality and greener and cleaner energy. Distributed solutions such as these are getting cheaper; so, business as usual is not sustainable, economically.

The system is getting more expensive and more than one million people in New York are having difficulty paying their power bills. Power costs are low but the cost of transmission and distributing this power continue to increase. The end effect on customers has continued to be an increase in costs.

Over the last 10 years, \$17 billion have been spent to maintain the systems in New York State (in the next 10 years the amount spent will be \$30 billion). This spending is not making the system more resilient or smarter; it is just replacing the infrastructure; and the system is getting peakier.

The grid has large power plants at one end through long distance transmission into a distribution system to customers, electrons flow in one direction and the supply is based upon a fixed demand. The system, however, was not designed for renewable or distributed resources.

The new REV policy's energy goal is 50 percent renewables, 40 percent greenhouse gas reductions and 23 percent efficiency by 2030. To that end, a new energy efficient system has to be built. This new system will change the financial incentives of both utilities and competitive markets to drive capital to build this grid of the future. The grid of the future is a hybrid system, and will still consist of

large power plants and transmission lines, in addition to distributed resources that are integrated into the system.

NYS 2017 Energy Priorities

- Mobilizing Communities to Develop Microgrids

The state is assisting with the creation of opportunities for microgrid projects by providing \$40 million to fund a Community Microgrid Competition, New York Prize, for large-scale microgrids. The state has received more than 150 proposals and has funded 83 projects, to date. The view is that several microgrids projects will be financeable without public support because they will be located in areas of great constraint. Microgrid projects will not only be able to provide resilience to communities but will be providing services to the grid as a whole, and will result in financial and energy benefits to the grid.

- Value of Distributed Energy Resources

A Public Service Commission Order will mandate that distributed resources be deployed to locations where those resources have the most value.

- REV Demonstration Projects

- Change Business model, culture and attitudes of the utilities through REV Demonstration projects.
- Several REV demonstration projects were announced last year.
- The state has contracted with a consulting firm, REV Connect, to assist with connecting innovative companies with the utilities

- Offshore Wind

The Governor recently announced that the goal for energy from offshore wind is 2.4 gigawatts by 2030.

- Clean Energy Standard Implementation

This is the mechanism for developing large-scale renewables in the state, as well as for providing support for upstate nuclear plants.

- NYPA and REV

1. NYPA has agreed to participate in the implementation of Clean Energy Standard. NYPA and its customers are making a huge contribution on behalf of the people of New York.
2. NYPA is assisting with Prepaid PPAs that will significantly reduce the cost of renewables for customers.
3. NYPA is Leveraging its investment in technology with commercial partners:
 - o NYEM
 - o Predix
 - o Energy Efficiency Technologies

4. Building the transmission Backbone

The transmission backbone needs to be built in a way that it can take into account the changing nature of infrastructure - more renewables; more distributed solutions; connecting to the demand side of generation.

5. Customer Solutions

NYPA has an opportunity to broaden the kinds of solutions it can offer to customers, e.g. K-Solar and Partnering with NYSERDA on community-based activities.

b. Strategic Initiatives

i. President and Chief Executive Officer's Report

President Quiniones provided highlights of the Authority's performance for the year 2016 (Exhibit "6b-A").

Performance Scorecard

Strategic Initiatives

President Quiniones reported that the Authority was able to deliver on the 21 key milestones for the 2016 Strategic Initiative in terms of advancing the Authority's Strategic Plan.

Customer Empowerment

- New York Energy Manager ("NYEM")

The New York Energy Manager, located at SUNY Poly, is a control center where energy usage of about 1200 state buildings is monitored with the use of sensors, smart meters and data acquisition devices, creating a digital twin of those buildings, in order to retrieve information on their energy usage. The objective is to help those buildings operate more efficiently in order to meet the goals of reducing energy consumption 20 percent by 2020. More importantly, this location will be like a digital foundry with a standard application interface whereby technology companies, utilities, the grid operator, and researchers can use the information to develop new products and services, not only for public sector buildings, but also for the private sector as the state move to a more integrated, hybrid, distributed energy grid.

- Economic Development

The Authority continues with its main mission to help power the economic development of the state. The Authority also continues to allocate low-cost power in return for job retention, job expansion and capital commitments by its customers in New York State.

Infrastructure Modernization

- Marcy-South Series Compensation

The Authority is in the process of conducting life extension and modernization of its power plants. The Marcy-South Series Compensation Project, a smart grid technology called series compensation, is applied to the existing transmission line from the Utica area to the lower Hudson Valley. By applying this smart grid technology using the existing lines, the Authority is able to drive 440 MW more power from upstate to downstate New York. This project was built in partnership with New York State Electric and Gas.

- GE Predix Software

The Authority also partnered with GE to create digital twins of its power plants and substations and placed data acquisition devices at various locations to stream information to its integrated smart operations center. The Authority will monitor the real-time health of its power plant equipment, substation equipment, and transmission system. The Authority will now be able to maintain its asset based on the health of that specific equipment. This will optimize the Authority's capital and O&M investments into its own assets in addition to making its assets more controllable and smarter and be able to better integrate renewable energy into its transmission system.

NYPA is the only utility in the United States that is digitizing its generation and transmission system. The Authority is finding ways to improve the reliability of its system. The integrated smart operation center will open before the end of the year in the White Plains Office.

- Resource Alignment

The Authority is also improving its internal infrastructure and systems with the launch of IBM Maximo, an asset management software for Human Resource Management. The Authority is also digitizing its internal processes and systems to make its operation and support services as effective and efficient as possible.

2016 Accomplishments

- Financial Strength

Moody's and Standard & Poor's rating agencies have affirmed NYPA's plans for future investments and the financial management of NYPA. Because of this affirmation, NYPA will have the capacity to implement its Strategic Plan.

- Community Engagement - Power Vista Visitors Center

NYPA is an active member of the communities where it operates its large facilities. NYPA recently opened its renovated Power Vista Visitors Center in Niagara. The expectation is that tourists who visit the Niagara Falls State Park will take a side trip to the Visitors Center.

The Authority is also working with the public school system in the Niagara area in terms of structured programs for the students.

- Canal Corporation

The Authority completed the integration with the Canal Corporation in a very short time-frame, July to January. The Authority is now in the process of making sure that it operates the Canal system in an efficient manner.

2017 Look Ahead

- NYPA is working on its objective to make the organization the first digital utility in the United States with operation of the New York Energy Manager ("NYEM"). NYPA's generation business is competitive and by digitizing, NYPA can enhance productivity and be more competitive.
- NYPA plans to reimagine the Canal system by exploring synergies for the system to be more cost-efficient, e.g., the use of certain sections for tourism, recreation, and water supply for farmers.
- NYPA plans to expand its transmission lines. To that end, NYPA has submitted two proposals under a competitive process administered by the New York Independent System Operator and the Public Service Commission.
- The grid in Western New York needs to be upgraded and the Authority has partnered with New York State Electric and Gas to build a transmission system in Western New York.
- The Authority has also partnered with LS Power, a private sector transmission developer, to bring more power, about 1000 megawatts, from upstate, Albany and the lower Hudson Valley, to downstate New York.

- In order to expand its revenue opportunities, NYPA plans to participate in the Prepaid PPA and other types of financing options to enable the building of large-scale renewables; this will help in achieving the state's goal for 50 percent of energy from renewables by 2030.

Customer Solutions

- In order to make the system more capital efficient, the Authority assists customers with installation of solar equipment; the use of battery storage system for large facilities; microgrids; and electric vehicle infrastructure such as charging stations.

President Quiniones ended by saying that for the year 2017, the Authority plans to launch two businesses: 1) large-scale renewables such as offshore wind and solar and how to interconnect those renewables to the grid, and 2) how to supercharge the Authority's existing energy efficiency business.

In response to questioning from Trustee Kress, President Quiniones said that there are communities that are not going to be favorable to having wind farms in their areas. The state is committed to being very sensitive to any controversial or sighting issues. To that end, NYSERDA will be working on a master plan that will include extensive stakeholder management and participation to make sure there are no sighting issues relating to offshore wind projects.

In terms of workforce, President Quiniones said that since NYPA is on the way to becoming a digital utility, there will be more requirements for employees with expertise in math and statistics and also computers and graphics technicians to fit in with the changes in the industry.

As to renewable energy, President Quiniones said that the state, through NYSERDA and NYPA, as well as the Department of Labor and the Empire State Development Authority, are working together on a plan to make sure that the people who design and install the renewable energy and maintain renewable energy assets are located in the state.

Mr. Kauffman said that the most recent offshore wind project epitomizes change in culture and processes and has implications on the workforce. President Quiniones added that last week the Long Island Power Authority signed an agreement that will enable the construction of a 90-megawatt offshore wind project on Long Island, the first and largest wind project. He said renewable energy is the direction that the industry needs to move towards and NYPA can be a leader in this endeavor.

c. **Enterprise Risk Management**

i. **Chief Risk Officer Report**

This report was withdrawn.

d. Operations and Finance:

i. Utility Operations Report

Mr. Joseph Kessler provided highlights of the report to the Trustees (Exhibit “6d i-A”).

Performance Measures

Generation Market Readiness

- Year-to-date Generation Market Readiness factor was at 99.78%, which is above the annual target of 99.40%.

Transmission reliability

- Year-to-date, transmission reliability is 94.56%, which is below the target of 94.89%.

Environmental Incidents

- Year-to-date Environmental incidents have improved with 19 incidents versus a target of 32.

Safety

- The NYPA DART (Days Away, Restricted or Transferred) Rate through December 2016 was 0.95; target was 0.78.
- Utility Operations DART Rate for December was 1.38; target was 1.08.
- Year-to-date, there has been sixteen (16) DART-related injuries NYPA-wide as compared to fifteen (15) DART-related injuries during the same period in 2015.

Key Issues - Life Extension and Modernization Programs

- **Transmission - Life Extension and Modernization (T-LEM)**

The first 765 kV high voltage circuit breaker replacement, which is part of the multiyear \$726 million Transmission Life Extension Modernization (T-LEM) to upgrade NYPA's transmission assets, has been installed and commissioned. This is the first of six 765 kV high voltage circuit breakers being replaced as part of the T-LEM Program.

- **Lewiston Pumped-Generation Plant (LPGP)**

LEM work on LPGP Unit 12 is scheduled to be completed in February 2017.

Operations is achieving its goals and moving ahead on its targets.

Looking Ahead - 2017

- Organizational Changes

Succession Planning

Utility Operations continue to address succession issues regarding QA/QC reliability compliance and environmental health & safety (EH&S) compliance. Utility Operations wants to ensure that it keeps that culture of high standard for NYPA in compliance and safety & environmental responsibilities. The Board will be updated on the organizational changes to make Utility Operations more agile and dynamic in keeping with the workforce changes reported by President Quiniones earlier in his report.

Drills

With regard to emergency management drills, Utility Operations recently conducted an “Active Shooter” drill at the Niagara Project. There were many impactful lessons learned from that drill; Utility Operations plans to conduct additional drills across the region.

- PV-20 Submarine Cable Installation

Utility Operations plans to energize the PV-20 Submarine Cable sometime in the fall. This transmission project, which is between Vermont and New York, consists of four, 230 kV transmission cables (three phase conductors and one spare) crossing under Lake Champlain. The route extends 1.7 miles between NYPA's Cumberland Head Transition Station in NY and VELCO's Grand Isle/Gordon's Landing Transition Station in Vermont. The project involves interagency coordination with VELCO.

In response to a question from Chairman Koelmel, Mr. Kessler said Utility Operations' leadership team is in place with the promotions of Patricia Lombardi, Bradford Van Auken and Paul Tartagli. The groups are track with their projects.

In response to further questioning from Chairman Koelmel, Mr. Kessler said Utility Operations, in collaboration with John Callahan, Brian Stratton and their staff from Canal Corporation, are trying to understand the conditions and risks associated with the Canal integration from a financial, employee health and safety and also public safety perspective. Utility Operations have consultants and subject matter experts in place to start working project planning to achieve its goals.

ii. Commercial Operations Update

Ms. Jill Anderson provided highlights of the report to the Trustees (Exhibit “6d ii-A”) as follows:

- In 2016, the Authority's overall revenue from contracts and the markets was down 11 percent from the budget; this was due primarily to the lower price of power in the wholesale market which was down 22 percent; primarily driven by the very low natural gas prices.
- For the month of January natural gas prices continued to be low, averaging \$3.00 - \$4.00; therefore, commodity prices were low.
- The low natural gas prices persisted throughout 2016 and resulted in a total underspend on fuel of approximately \$70 million year-end actuals compared to 2016 budget.

Business Development

The Authority is considering the development of large-scale renewables, new transmission infrastructure and interconnection services development, the details of which were outlined by President Quiniones earlier in his report to the Board.

Economic Development

The Authority continues to seek opportunities for the use of its low-cost power for the benefit of New York State.

Customer

Energy Efficiency

President Quiniones issued a directive for staff to grow the customer side of the Authority's business through the increase of distributed energy and services to the Authority's customers. In 2016, staff exceeded the targets for such projects. The 2017 target investment is \$206 million. Staff is currently closing on contracts for 2018 that will lead to further increases by approximately \$70 million in 2018 to a target of \$270 million. Examples of those projects include a combined heat and power project with New York State Office of General Services; a microgrid connection; and the MTA bridge lighting project to relight the bridges that the MTA controls in New York City over the five boroughs.

In response to a question from Vice Chairman Nicandri, President Quiniones said that this project would save the MTA money compared to using non-LED technology. If the MTA installed standard lighting rather than high-efficiency LED lighting on the bridges, it would be much more expensive than NYPA's relighting project.

In response to a question from Trustee McKibben, Ms. Anderson said the Authority is the overall Project Manager for the lighting project. NYPA will contract vendors to perform the actual installation.

In response to a question from Vice Chairman Nicandri, President Quiniones said that the MTA will be paying the Authority for this service through a fifteen-year financial agreement.

New York Energy Manager

The New York Energy Manager is continuing to grow with 1,200 buildings connected in 2016. The Authority plans to increase this initiative for 2017.

K-Solar

The Authority completed the first K-Solar project in December. New awards for solar projects are in progress.

In response to a question from Chairman Koelmel, Ms. Anderson said that, as indicated in her 100-day plan, she did some reorganization in Commercial Operations and is now in a very good place with her leadership team. She held an all-hands meeting with the Commercial Operations staff at which time she discussed the organization's objectives to accomplish the goals for 2017, which are in line with the vision that President Quiniones outlined in his presentation to the Board.

Ms. Anderson ended by saying that Commercial Operations is in the process of implementing digitization tools to be used for project management; scheduling and planning; tracking time and improving estimates. Also, under Keith Hayes' leadership, the group will be embarking on a major reformation on how the Authority will handle its customers and digitizing that customer experience. Mr. Hayes will provide an update to the Board as this project develops.

iii. **Financial Report**

Mr. Robert Lurie provided an update of the financial report to the Trustees (Exhibit “6d iii-A”). He said that the Authority had a stronger finish in 2016 than anticipated.

Bond Rating

Moody's, Standard & Poor's and Fitch rating agencies gave the Authority a positive review on its short-term debt. This is good news for the Authority because it not only allows the Authority to borrow at cheap rates, but it also gives the Authority maximum access to the capital markets so that it can fund its strategic plan. As President Quiniones mentioned, the Authority is going to be capital intensive because of its transmission and the large-scale renewables projects over the next 10 years, which are going to require a lot of funding. The ratings are a sign that the Authority has the ability to fund those plans.

NYPA Rate Case

The Authority successfully concluded its transmission rate case. This outcome will help the Authority fund its budget plan in 2017 and in the future. The outcome will also put a financial model in place that will allow the Authority to recover its costs on investments in the transmission system; the benefits to customers from those investments will exceed the cost of those investments.

Bond Issuance

The Authority continues to monitor market conditions for an appropriate time to move forward with a bond issuance. The Trustees will be kept abreast of the status of that financing in the first quarter of 2017.

Net Income

- The budget was prepared to earn a positive \$51 million. At that time, there was no legislation for the Canal Corporation's transfer to NYPA and the associated expenses related to that transfer.
- The Authority made more revenue from transmission than expected at the time the budget was prepared. This includes additional revenues from the FERC rate case and from a reduction of lease payments for the HTP transmission line. The HPT line has been out of service and because of the multiple outages that have occurred the Authority was able to offset its lease payments and this resulted in some positive variance compared to budget.
- The Authority also underran its operating expenses for the year, and this resulted in a positive variance of about \$47 million in the different operating expense categories.
- Canal Corporation's integration cost the Authority \$75 million of reimbursements that it was obligated to make to the New York State Thruway Authority since the legislation passed in April and up to the point of the actual transfer in January.
- There was a drop in energy prices during the year. The Authority lost \$55 million of margin versus budget due to that drop in energy prices.
- The year ended with a \$20 million Net Income. This number was better than expected but still significantly below the target. The Authority is trying to reach a Net Income target of about \$80 million, the goal set for the next four years.

Economic Value Added

Economic value added is slightly above zero. The economic value added is an operating income metric. It is a measure of how the Authority is doing in the profitability of its operating assets, not including state contributions or the Canal Corporation. The target is zero, which means that the Authority earned back, not just its operating expenses, but also its interest costs and the return on its invested capital.

In response to a question from Chairman Koelmel, Mr. Lurie said that the HPT outage was more serious than expected based on what had happened in the past on that line and NYPA's own experience with its water transmission line. The Authority made a conservative assumption that the line would come back in service but that did not happen. Approximately \$15 million of the \$22 million difference is due to the HTP line being out of service.

In response to further questioning from Chairman Koelmel, Mr. Lurie said the HPT line is still out of service and the Authority is accruing a benefit from it being out of service. The line being out of service does not compromise the Authority's ability to provide power to its customers.

In response to a question from Trustee McKiben, Mr. Lurie said that the financial team communicates with the Business Units across the Authority to capture their financial goals. The team needs to have a better system in place to reflect that communication in its year-end budget projections so that when the Board receives the forecast for 2017, it will reflect the most up-to-date results based on the knowledge captured on how spending is likely to play-out across the Authority. He will come back to the Board at the March meeting with a plan on how for how the team intends to better control the forecast for next year's budget.

In response to a question from Chairman Koelmel, Mr. Lurie said that the 2016 budget plan was prepared based on the knowledge of what the Authority was likely to spend in 2016 and what may get delayed into 2017. After incorporating all of the available information to date, Finance is confident that the 2017 budget plan is accurate.

iv. **Preservation Power Allocation**

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

The Trustees are requested to approve an allocation of 400 kilowatts ('kW') of Preservation Power ('PP') to Potsdam Specialty Paper, Inc. ('PSPI') which is proposing to expand its current operations in the Town of Potsdam in St. Lawrence County.

The allocation, which is described in further detail in Exhibits '6d iv-A' and '6d iv-A-1,' would support capital investment of at least \$2 million and the creation of at least 22 new jobs in the North Country.

The Trustees are also requested to authorize a public hearing pursuant to Public Authorities Law ('PAL') §1009 on the proposed direct sale contract for PSPI, the current form of which is attached as Exhibit '6d iv-B.'

BACKGROUND

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

Among the factors to be considered when evaluating a request for an allocation of hydropower are the number of jobs created as a result of the allocation; the business' long-term commitment to the region as evidenced by the current and/or planned capital investment in the business' facilities in the region; the ratio of the number of jobs to be created to the amount of power requested; the types of jobs created, as measured by wage and benefit levels, security and stability of employment and the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed.

The Authority works closely with business associations, local distribution companies and economic development entities to garner support for the projects to be recommended for allocations of Authority hydropower. For PP, NYPA confers with Franklin, Jefferson and St. Lawrence counties along with the Northern New York ('NNY') representative of the Empire State Development Corporation ('ESD') to coordinate other economic development incentives that could help bring projects to New York State. Staff discusses potential recommendations with these entities to help maximize the value of hydropower to improve the economy of NNY and New York State. Each organization has expressed support for the following recommended allocation.

There is currently 243 MW of PP available to allocate to qualified businesses.

DISCUSSION

While there has been a paper-making operation at this location since the late 1890s, PSPI was formed in 2008 after purchasing the existing business and facility from Westvaco Corp. PSPI specializes in latex saturation of base papers that are used in several different products in the building and construction, automotive, home décor and medical industries. The company's primary product is a specialized masking tape.

In order to enhance production capacity and efficiency and create new products, PSPI is planning to expand operations to the site by purchasing and installing a complete paper and film coating production line.

The installation of the new production line would allow PSPI to add value to existing products, increase its competitiveness, help drive efficiencies, create new production capacity, gain additional market and order demand, and create and develop new products.

The primary product that would be produced on the new line is base paper that is converted into general purpose masking tape, painters tape and similar tapes utilized in the construction, home décor and automotive industries.

With the installation of the new production line, PSPI would gradually move to three shifts and hire 22 new employees over three years.

The spending breakout for the expansion is anticipated to be roughly as follows: purchase, dismantle and relocate used coating line/slitting equipment, \$220,000; purchase new floatation dryer system to accommodate process design parameters, \$600,000; install coating line, slitter, and ancillary equipment and complete necessary tie-ins to building utilities and services, \$800,000; and additional miscellaneous costs. PSPI would expend at least \$2 million and have the expansion project up and running by March 2017.

The job creation ratio for the proposed allocation of 400 kW is 55 new jobs per MW. This ratio is well above the historic average of 30 new jobs per MW based on allocations made during the past six years. The total project investment of at least \$2 million would result in a capital investment ratio of \$5 million per MW. This ratio is below the five-year historic average of \$23.4 million per MW.

Staff recommends an allocation of 400 kW of PP be awarded to PSPI in support of its proposed expansion, which includes a capital investment of at least \$2 million and the creation of at least 22 new jobs at its facility in the Town of Potsdam, as further detailed in Exhibits '6d iv-A' and '6d iv-A-1.'

CONTRACT INFORMATION

The Authority is in the process of discussing the proposed hydropower sales contract with PSPI, and anticipates receiving PSPI's agreement to a contract substantially similar to the form attached as Exhibit '6d iv-B.' Accordingly, the Trustees are requested to authorize a public hearing, pursuant to PAL §1009, on the contract form attached as Exhibit '6d iv-B.'

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

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

The general form of the proposed contract is consistent with recently-approved contracts for the sale of PP and/or other hydropower. Some pertinent provisions of the proposed form of the contract include: (i) the provision for direct billing of all production charges (i.e., demand and energy) as well as all New York Independent System Operator, Inc. ('NYISO') charges, plus taxes or any other required assessments, as set forth in the Authority's Service Tariff No. 10; (ii) the collection of a Zero Emission Credit Charge and a Renewable Energy Credit Charge to allow the Authority to recover costs it would incur relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the customer's load; (iii) commercially reasonable provisions relating to financial security to reflect a direct billing arrangement between the Authority and its PP customers; and (iv) and provisions authorizing data

transfers and addressing other utility-driven requirements which are necessary for efficient program implementation.

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

The recommended allocation would be sold pursuant to the Authority's Service Tariff No. 10, also included in Exhibit '6d iv-B.' Transmission and delivery service would be provided by National Grid or New York State Electric & Gas in accordance with its Public Service Commission-filed service tariffs.

RECOMMENDATION

The Vice President - Economic Development recommends that the Trustees approve an allocation of 400 kW of PP to PSPI as further described herein and in Exhibits '6d iv-A' and '6d iv-A-1.'

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

Mr. Keith Hayes provided highlights of staff's recommendation to the Trustees.

In response to a question from Trustee McKibben, Mr. Hayes said, and Vice Chairman Nicandri agreed, that the average salary and benefits for the employees is set at about \$60,000 annually, which is double the median salary in that part of the state.

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

RESOLVED, That an allocation of 400 kilowatts ("kW") of Preservation Power ("PP") to Potsdam Specialty Paper, Inc. ("PSPI") as detailed in the foregoing report of the President and Chief Executive Officer and Exhibits "6d iv-A" and "6d iv-A-1," be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing pursuant to Public Authorities Law ("PAL") §1009 on the terms of the proposed form of the direct sale contract for the sale of PP finally negotiated with PSPI (the "Contract"), the current form of which is attached as Exhibit "6d iv-B", subject to rates previously approved by the Trustees; and be it further

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

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

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

v. Replacement Power Allocation

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The Trustees are requested to approve an allocation of 200 kilowatts ('kW') of Replacement Power ('RP') to Mayer Bros. Apple Products Inc. ('Mayer Bros.') which is proposing to expand its current operations in the Town of Somerset in Niagara County.

The allocation, which is described in further detail in Exhibits '6d v-A' and '6d v-A-1', would support capital investment of at least \$3.2 million and the creation of at least 19 jobs in Western New York ('WNY').

The Trustees are also requested to authorize a public hearing pursuant to Public Authorities Law ('PAL') §1009 on the proposed direct sale contract for Mayer Bros., the current form of which is attached as Exhibit '6d v-B.'

BACKGROUND

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

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

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

At this time, 33,860 kW of unallocated EP and 83,341 kW of unallocated RP is available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).

DISCUSSION

Mayer Bros. has been a family-owned business since 1852 and is now into its fifth generation of ownership as a manufacturer of bottled beverages including apple cider, fruit juices, water and other related beverage products in WNY.

The business has two principal plant operations, one in the town of West Seneca (Erie County) and one in the Town of Somerset (Niagara County).

Mayer Bros. is proposing to build a 40,000-square-foot building adjacent to its existing facility at 7389 Lake Road in Somerset. The project would add a second hot fill production line to meet new customer needs. Mayer Bros. has applied for 250 kW of hydropower in exchange for the creation of 19 new jobs (\$44,700 salary/benefits) and total capital investment in the project of at least \$3.2 million.

The new production line is needed as the company continues to add new business relating to bottling products. Mayer Bros. plans to begin construction within the next few months and to be fully operational by August 2017.

The cost of the building is estimated to be \$1.2 million and machinery and equipment, \$2 million. The machinery and equipment would include: a bottle inverter/washer/filler/capper; a cooling tunnel and tower; boiler, a pasteurizer and batch tanks/blenders; and packaging machines-labeler/box maker/palletizer and other conveyors, table sorters, scanners and printers.

Mayer Bros.' commitment to WNY continues to be evident as it has averaged more than \$2.3 million in capital expenditures during the past five years at its two facilities.

Empire State Development has approved an Excelsior Jobs Program Refundable Tax Credit of \$500,000 and the Niagara County Industrial Development Agency has approved a 15-year PILOT in support of the expansion project.

The job creation ratio for the proposed allocation of 200 kW is 95 new jobs per MW. This ratio is well above the historic average of 30 new jobs per MW based on allocations made during the past six years. The total project investment of at least \$3.2 million would result in a capital investment ratio of \$16 million per MW. This ratio is below the five-year historic average of \$23.4 million per MW.

Staff recommends an allocation of 200 kW of RP be awarded to Mayer Bros. in support of its proposed expansion, which includes a capital investment of at least \$3.2 million and the creation of at least 19 new jobs at its facility in the Town of Somerset, as further detailed in Exhibits '6d v-A' and '6d v-A-1'.

CONTRACT INFORMATION

Staff intends to discuss the proposed form of customer agreement with Mayer Bros., and anticipates reaching agreement with Mayer Bros. on a contract substantially similar to the form attached as Exhibit '6d v-B.' Accordingly, the Trustees are requested to authorize a public hearing, pursuant to PAL §1009, on the proposed form of contract for Mayer Bros. attached as Exhibit '6d v-B.'

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

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

The general form of the proposed contract is consistent with recently-approved contracts for the sale of PP and/or other hydropower. Some pertinent provisions of the proposed form of the contract include: (i) the provision for direct billing of all production charges (i.e., demand and energy) as well as all New York Independent System Operator, Inc. ('NYISO') charges, plus taxes or any other required

assessments, as set forth in the Authority's Service Tariff No. WNY-1; (ii) the collection of a Zero Emission Credit Charge and a Renewable Energy Credit Charge to allow the Authority to recover costs it would incur relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the customer's load; (iii) commercially reasonable provisions relating to financial security to reflect a direct billing arrangement between the Authority and its PP customers; and (iv) and provisions authorizing data transfers and addressing other utility-driven requirements which are necessary for efficient program implementation.

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

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

RECOMMENDATION

The Vice President - Economic Development, recommends that the Trustees approve an allocation of 200 kW of Replacement Power to Mayer Bros. Apple Products Inc, as further described herein and in Exhibits '6d v-A' and '6d v-A-1.'

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

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

RESOLVED, That an allocation of 200 kilowatts ("kW") of Replacement Power ("RP") to Mayer Bros. Apple Products Inc. ("Mayer Bros."), as detailed in the foregoing report of the President and Chief Executive Officer and Exhibits "6d v-A" and "6d v-A-1" be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing pursuant to Public Authorities Law ("PAL") §1009 on the terms of the proposed form of the direct sale contract for the sale of Replacement Power finally negotiated with Mayer Bros. (the "Contract"), the current form of which is attached as Exhibit "6d v-B," subject to rates previously approved by the Trustees; and be it further

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

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

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

e. Finance

i. Amended 2017 Power Authority Budgets

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The Trustees are requested to approve the Amended 2017 Budgets for the Power Authority, specifically including the expenditures for the (i) Amended 2017 Operations and Maintenance ('O&M') Budget (attached as Exhibit '6e i-A'), (ii) Amended 2017 Capital Budget (attached as Exhibit '6e i-B'), (iii) 2017 Energy Services Budget (attached as Exhibit '6e i-C') and (iv) 2017 Canal Development Fund Budget (collectively, with Exhibits '6e i-A', '6e i-B', and 'C', the 'Amended 2017 Power Authority Budgets').

The Amended 2017 Power Authority Budgets set forth the expected expenses of the Authority and include the recommended expenditures in the following amounts:

<u>Amended 2017 Power Authority Budgets</u>	<u>(\$ million)</u>
O&M	\$ 559.5
Capital	\$ 319.4
Energy Services	\$ 208.5
Canal Development Fund	\$ 3.1

At their December 15, 2016 meeting, the Trustees approved the 2017 Power Authority Budgets, which did not include budget information relating to the Canal Corporation since it was not under the Power Authority's jurisdiction at the time. The Amended 2017 Power Authority Budgets include the budget information of the Canal Corporation and are intended to replace the 2017 Power Authority Budgets.

As compared to the 2017 Power Authority Budgets, these figures represent (i) an increase of \$84.3 million for O&M expenses, (ii) an increase of \$60.5 million in Capital expenses and (iii) the addition of \$3.1 million in Canal Development Fund expenses. The Amended 2017 Power Authority Budgets are inclusive of expenses relating to the operation of the Canal Corporation (i) for the period from January 1, 2017 through January 31, 2017, for which the Trustees had authorized the release of up to \$14.0 million in funding at the December 15, 2016 meeting and (ii) for the period from February 1, 2017 through March 31, 2017, for which the Trustees are being asked to authorize the release of up to \$15.0 million in funding at this January meeting.

BACKGROUND

Legislation was enacted on April 4, 2016 which provides for the transfer of the New York State Canal Corporation (the 'Canal Corporation'), and responsibility for certain management responsibilities regarding the New York State Canal System, from the New York State Thruway Authority to the Power Authority, effective January 1, 2017. The Amended 2017 Power Authority Budgets include expenses of the Power Authority and the Canal Corporation.

The Amended 2017 Power Authority Budgets are intended to provide the Power Authority's operating facilities with, and support organizations by providing, the resources needed to meet the Power Authority's overall mission and strategic objectives, and to fund the expenses of the Canal Corporation. Any transfers of funds from the Power Authority to the Canal Corporation would be subject to compliance with the Power Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented. Canal Development Fund expenses are expected to be reimbursed to the Power Authority by the State Comptroller with moneys held in the New York State Canal System Development Fund as discussed in the Canal Corporation Budget memorandum.

In approving the Amended 2017 Power Authority Budgets, the Trustees will be authorizing spending for 2017 operations, spending for capital projects, and spending for general plant purchases of \$750,000 or less. The 2017 Power Authority Budgets includes requests for 60 new positions (20 positions pooled and funded in a cost center under the Executive Office, 15 positions with no funding and 25 positions embedded in specific departments and funded accordingly).

In accordance with the Power Authority's Expenditure Authorization Procedures, the President and Chief Executive Officer may, during the course of the year, authorize an additional 1.0% in the O&M Budget, up to 15 new positions, capital projects of \$3 million or less, or an increase in spending of no more than \$1 million to a capital project previously approved by the Trustees. All other spending authorizations must be approved by the Trustees.

DISCUSSION & FISCAL INFORMATION

Copies of the 2017 Power Authority Budgets memorandum presented to the Trustees in the December 2016 Trustee meeting (attached as Exhibit '6e i-D') and the 2017 Canal Corporation Budget being presented to the Canal Corporation Board of Directors at this January 2017 Canal Corporation Board of Directors meeting (attached as Exhibit '6e i-E') are attached to this document to provide Discussion and Fiscal Information detail.

RECOMMENDATION

The Chief Financial Officer recommends that the Trustees approve the Amended 2017 Power Authority Budgets, specifically including the expenditures for the (i) Amended 2017 Operations and Maintenance Budget, (ii) Amended 2017 Capital Budget, (iii) 2017 Energy Services Budget and (iv) 2017 Canal Development Fund Budget, each as discussed herein.

In connection with the 2017 Amended Capital Budget, the Chief Financial Officer recommends the Trustees authorize the transfer of up to \$319.4 million from the Operating Fund to the Capital Fund, subject to compliance with the General Resolution Authorizing Revenue Obligations, as amended and supplemented.

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

Mr. Lurie provided highlights of staff's recommendation to the Trustees.

Chairman Koelmel said the Finance Committee met earlier today and recommended that the Board adopt the Canal Corporation's budget and NYPA's budget to incorporate the Canal Corporation's budget.

Trustee McKibben, Chair of the Finance Committee, said the Committee voted and recommend to the full Board the adoption of the 2017 amended Authority budget, as well as the Canal Corporation's budget.

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

RESOLVED, That the Amended 2017 Power Authority Budgets, specifically including the expenditures for the (i) Amended 2017 Operations and Maintenance Budget, (ii) Amended 2017 Capital Budget, (iii) 2017 Energy Services Budget and (iv) 2017 Canal Development Fund Budget, each as discussed in the foregoing report of the

President and Chief Executive Officer, are hereby approved; and be it further

RESOLVED, That up to \$319.4 million of monies in the Operating Fund are hereby authorized to be withdrawn from such Fund and deposited in the Capital Fund, provided that at the time of withdrawal of such amount or portions of such amount, the monies withdrawn are not then needed for any of the purposes specified in Sections 503(1)(a)-(c) of the General Resolution Authorizing Revenue Obligations as amended and supplemented, with the satisfaction of such condition being evidenced by a certificate of the Treasurer or the Deputy Treasurer; and be it further

RESOLVED, That the Board of Trustees acknowledges that any transfers of funds from the Power Authority to the Canal Corporation would be subject to compliance with the Power Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

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

f. Informational Item:

i. Overview of Energy Hedging

Ms. Jill Anderson and Mr. Soubhagya Parija provided an overview of the Authority's energy hedging portfolio.

NYPA's Portfolio

Ms. Anderson said that the purpose of hedging NYPA's energy portfolio is to provide revenue and budget certainty.

NYPA operates 16 power plants across the state representing 25% of the power generated and consumed in the state. NYPA sells approximately 70 percent of the output through bilateral agreements between NYPA and economic development customers or the Southeastern New York governmental customers. In addition, by statute, NYPA sells power from its hydro assets to neighboring states. The remaining 30 percent output not sold directly to customers, Merchant sales, is sold in the wholesale energy market operated by the New York Independent System Operator ("NYISO"). Merchant sales include energy and capacity sold directly to the markets controlled by the NYISO and hedges through physical and financial swaps. NYPA hedges the power available for Merchant sales in order to protect it from unexpected drops in power prices and provide revenue certainty for budgeting purposes.

The Authority operates in a very volatile environment; therefore, hedges are very important. The Authority has hedges in place for 2017, which will guarantee that the minimum the Authority will get from the Merchant Portfolio is sufficient to cover its operating expenses. The Authority plans to start layering more hedges in order to provide that certainty for years going forward.

Merchant Portfolio Management

Mr. Parija provided an update on how the Authority implements hedges. He said that the Authority uses a multi-year hedging strategy that has a greater range of options to manage its budget, and thereby protect its gross margin. The Authority wants to make sure that it capitalizes on opportunities in the market.

Risk Management Framework

The Authority will set risk limits then analyze and execute the portfolio strategies on a continuous basis. The Framework for management of the portfolio that the Authority will implement is as follows:

- Set performance targets. A cross-functional approach with Risk Management, Utility Operations, Commercial Operations and Finance Business Units set the gross margin target.
- Set Risk Appetite vs. Targets. Limit structure to ensure that risks are within the set targets (not below 1.75 times); and
- Governance Structure. Monitoring and reporting of gross margin at risk limits on a daily basis in order to have an early warning indicator.

Technology and People

A Merchant Energy Risk Appetite workshop was conducted in July 2016. The Authority plans to hire a System Integrator to operate the Energy Commodity Risk Management and the Portfolio Analytics Risk Management and Analytic software technology tools to be implemented by the end of 2017. Additional staff, proficient in Trading and Risk, will be hired, as needed.

7. **Next Meeting**

The Annual meeting of the Trustees will be held on March 21, 2017 **at the Clarence D. Rappleyea Building, White Plains, New York**, unless otherwise designated by the Chairman with the concurrence of the Trustees.

Closing

Upon motion made by Trustee McKibben and seconded by Trustee Kress, the meeting was adjourned at approximately 1:00 p.m.

Karen Delince

Karen Delince
Corporate Secretary

1 MS. DELINCE: Good morning.
2 This public forum on the proposed
3 increase in production rates for the
4 Authority's Westchester County and New
5 York City governmental customers is
6 being conducted pursuant to a Power
7 Authority policy adopted by the
8 trustees in 1990.

9 My name is Karen Delince and I'm
10 the Authority's Corporate Secretary.

11 This public forum is not
12 required by law and is being held in
13 addition to the State Administrative
14 Procedure Act, or SAPA, process. The
15 SAPA process, which provides for a
16 45-day public common period, began on
17 October 12th and is scheduled to end
18 on November 26th.

19 The purpose of this forum is to
20 offer affected customers and the
21 general public an opportunity to
22 present data, views and positions for
23 the Authority's Trustees to consider
24 prior to taking final action on the
25 proposed rate increase.

1 If you plan to make an oral
2 statement at this forum, I ask that
3 you so indicate on the sign-in sheet.

4 Also, if you have a written
5 statement, please give a copy to Lorna
6 Johnson and one to the reporter.

7 Written statements may be of any
8 length, and both oral and written
9 statements will be included in the
10 official record.

11 The record will remain open for
12 additional comments through close of
13 business Monday, November 28th, 2016.

14 Additional comments should be
15 mailed, faxed or emailed to the
16 Corporate Secretary at 123 Main
17 Street, 11-P, White Plains, New York
18 10601; or (914) 390-8940; or
19 secretarys.office@NYPA.government.

20 At this point, I would like to
21 introduce Mr. Keith Hays, the
22 Authority's Vice President of
23 Marketing, who will provide additional
24 details on the proposed rate increases
25 for the Westchester County and New

1 York City Governmental Customers.

2 Thank you.

3 Mr. Hayes.

4 MR. HAYES: Thank you, Ms. Delince.

5 Good morning. My name is Keith
6 Hayes, and I'm the Vice President of
7 Marketing at the New York Power
8 Authority.

9 I'm here today to present an
10 overview of the proposed increase in
11 the energy production rates that NYPA
12 charges to its New York City
13 Governmental Customers and Westchester
14 County Governmental customers. It is
15 important to note that the energy
16 delivery rates and service for these
17 customers are provided by Consolidated
18 Edison of New York and not NYPA.

19 The Authority provides
20 electricity to 11 New York City
21 customers which includes the City of
22 New York, the MTA and the Port
23 Authority. In addition, NYPA provides
24 electricity to 103 Westchester
25 customers in Westchester County, which

1 includes the County of Westchester,
2 school districts, housing authorities,
3 cities, towns of villages.

4 The basis for providing service
5 is contained in the Long-Term
6 Agreement with the New York City
7 customers and the supplemental
8 Electricity Agreements with the
9 Westchester customers. Under the LTA,
10 NYPA and the New York City customers
11 agree to undertake a joint annual
12 planning and pricing process that
13 includes analysis of fixed and
14 variable costs, future energy and fuel
15 market risks, development of
16 alternative market risk hedging
17 strategies, submission of load
18 forecasts and supply resource
19 planning. The Supplemental Agreement
20 pertaining to the Westchester
21 customers permits the Authority to
22 modify the customers' rates at anytime
23 based on a fully supported pro forma
24 cost-of-service subject to customer
25 review, comment and compliance with

1 the State Administrative Procedure Act
2 process and allows the Authority to
3 apply an energy charge adjustment
4 mechanism to the customers' bills each
5 month.

6 For New York City customers, the
7 current 2016 fixed costs were adopted
8 by the Trustees at their March 29th,
9 2016 meeting, when they approved a
10 3.6 percent decrease in the fixed cost
11 component in the cost-of-service as
12 compared to the prior year's
13 cost-of-service. Based on the
14 preliminary cost-of-service, the
15 increase in fixed costs is 12.7 percent
16 higher than the fixed costs included
17 in the final 2016 cost-of-service.
18 Primary factors contributing to the
19 increase in fixed costs are both a
20 projected increase in O&M and other
21 fixed expenses as compared to those
22 levels in the final 2016 cost-of-service.
23 The increase in O&M is mainly driven
24 by a planned increase in work at the
25 Small Hydro Facilities. The stated

1 increase in other expenses is due to a
2 total one-time credit imbedded in the
3 2016 final cost-of-service to correct
4 historical cost accounting related to
5 demand side management and load
6 research studies. This has not been
7 included in the preliminary 2017
8 cost-of-service.

9 For Westchester customers, the
10 current 2016 base production rates
11 were adopted by the Trustees at their
12 March 29, 2016 meeting, when they
13 approved a 2.37% decrease over the
14 2015 production rates. Staff is now
15 proposing an increase in production
16 rates of 8.81%, which is largely due
17 to expected increases in energy
18 purchases over 2016 rates, which are
19 part of the variable costs component
20 of the cost-of-service. In addition,
21 the fixed costs component is also
22 expected to increase from \$1.95 million
23 to \$2.76 million in total. Similar to
24 the New York City customers, this is
25 primarily due an increase in O&M

1 costs, which is mainly driven by a
2 planned increase in work at the Small
3 Hydro facilities. The total
4 preliminary 2017 cost-of-service for
5 the Westchester customers which,
6 again, is largely made up of variable
7 costs that are not under NYPA's
8 control, is \$36.01 million as compared
9 to \$32.06 million in 2016.

10 Consistent with the Authority's
11 past rate-making practices and with
12 the rate-setting process set forth in
13 the Long-Term Agreements for the New
14 York City customers and Supplemental
15 Agreements for the Westchester
16 customers, the proposed rate increases
17 are based on a pro forma Cost of
18 Service for next year.

19 As Ms. Delince stated earlier,
20 the Authority will accept your
21 comments on the Notice of Proposed
22 Rulemaking until December 5th, 2016.

23 I will now turn the forum back
24 over to Ms. Delince.

25 MS. DELINCE: Thank you,

1 Mr. Hayes.

2 Since no one has signed up to
3 speak at this forum, we will recess
4 and reconvene as they arrive.

5 (Recess taken: 11:11 a.m.)

6 (Resumed: 3:00 p.m.)

7 MS. DELINCE: It is now 3 p.m.
8 As previously stated, the record of
9 the forum will remain open for
10 additional comments through close of
11 business, Monday, November 28th, 2016.

12 The November 17th, 2016 public
13 forum on the proposed increase on
14 production rates for the Authority's
15 Westchester County and the New York
16 City Governmental Customers is now
17 officially closed.

18 Thank you, and good day.

19 (Time noted: 3:01 p.m.)

C E R T I F I C A T I O N

I, Reva Weiss, a Court Reporter and
Notary Public within and for the State of
New York, do hereby certify that the
foregoing is a true and accurate
transcription of my stenographic notes.

I further certify that I am not employed
by nor related to any party to this action.



REVA WEISS

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December 8, 2016

VIA E-MAIL AND OVERNIGHT DELIVERY

Ms. Karen Delince
Corporate Secretary
New York Power Authority
123 Main Street, 11-P
White Plains, New York 10601

Re: SAPA No. PAS-41-16-00013-P – Rates for the Sale of Power and Energy

Dear Ms. Delince:

Enclosed please find the Comments of the City of New York on the New York Power Authority's proposal to increase the Fixed Costs component of the production rates for its New York City Governmental Customers for 2017. These comments are submitted in response to the notice published in the New York State Register on October 12, 2016 and in accordance with the review process agreed to between and among the New York Power Authority and the New York City Governmental Customers.

If you have any questions regarding these comments, please feel free to contact me.

Sincerely,

COUCH WHITE, LLP

Kevin M. Lang

Kevin M. Lang

Enclosure

cc: Hon. Lisette Camilo, Commissioner, DCAS
Mr. Anthony J. Fiore, Deputy Commissioner – Energy Management, DCAS
Suzanne M. Lynn, Esq., General Counsel, DCAS
Ms. Susan Cohen, Assistant Commissioner – Energy Budget, Supply & Reporting, DCAS
Gail Rubin, Esq., Chief, Affirmative Litigation, NYC Law Department

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

Rates for the Sale of Power and Energy

SAPA No. PAS-41-16-00013-P

**COMMENTS OF
THE CITY OF NEW YORK**

December 8, 2016

**COUCH WHITE, LLP
540 BROADWAY
ALBANY, NEW YORK 12207
Telephone: (518) 426-4600
Telecopier: (518) 426-0376**

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PRELIMINARY STATEMENT

The City of New York (“City”) offers the following comments on the New York Power Authority’s (“NYPA”) proposed 2017 Cost-of-Service. As the City has noted in prior years, setting the Cost-of-Service at a reasonable and fair level is very important. Accordingly, the City respectfully urges the Board of Trustees (“Board”) to scrutinize the proposed fixed costs and ensure that the rates to be charged to the City and other New York City Governmental Customers (“NYCGCs”) are just, appropriate, and consistent with the provisions of the Long Term Agreements (“LTA”) between NYPA and the NYCGCs.

Based on its review and analysis of the proposed 2017 Cost-of-Service, the City believes that certain cost elements are overstated, the NYCGCs are being double-charged for the same projects, the Cost-of-Service includes some costs that are not permitted under the LTA, and that the NYCGCs are being unreasonably burdened by expedited recovery of capital costs for long-lived assets. The City also continues to assert that NYPA should engage in a comprehensive management and operations audit to demonstrate the reasonableness of the costs and expenses included in the Cost-of-Service. In total, the fixed costs should be reduced by \$3.2 million plus the additional amounts discussed below for which NYPA must perform the adjustment calculations.

PROCEDURAL SETTING

A “*Preliminary Staff Report – New York City Governmental Customers Annual Planning and Pricing Process Analysis, Including: Preliminary 2017 Cost-of-Service*” (“COS Report”) was provided to the NYCGCs on or about September 27, 2016. The COS Report called for a 13.7% increase in the overall 2017 Cost-of-Service, including a 12.7% increase in the fixed costs.

Certain of the proposed fixed costs apparently were determined solely by escalating similar cost elements as set forth in the 2016 Cost-of-Service by 4% or 10%, and NYPA has not offered any information indicating whether there is any correlation between these escalated figures and its actual planned expenditures.

A Notice of Proposed Rulemaking related to the fixed cost portion of the 2016 Cost-of-Service was published in the October 12, 2016 edition of the New York State Register. Notwithstanding the November 28, 2016 deadline for comments associated with that Notice, by prior agreement among NYPA and the NYCGCs, comments are due December 5, 2016.

Although it was the NYCGCs' understanding that they would be provided updated information prior to the date these comments are due, NYPA has advised the NYCGCs that provision of the updated information has been delayed. Accordingly, the City respectfully submits these comments on the fixed cost portion of the 2017 Cost-of-Service based on the information that has been provided by NYPA to date.

COMMENTS

POINT I

NYPA SHOULD ENGAGE IN A COMPREHENSIVE REVIEW AND AUDIT OF ITS MANAGEMENT AND OPERATIONS

For many years, the City has submitted comments to the Board arguing that the costs being charged to the NYCGCs are excessive. In developing these arguments, the City has conducted a series of analyses of the cost elements that comprise the fixed costs. However, the analyses have been limited to publicly available information and the minimal back-up documentation provided as part of the Cost-of-Service process. While the amount of information provided had increased prior to this year, there continues to be a lack of transparency. Moreover,

because the structure of the Cost-of-Service review process does not contain any checks and balances, similar to the role served by an administrative law judge in a utility rate case, NYPA has unfettered discretion in the manner in which it provides information to the City and other NYCGCs. As a result, the City has been unable to definitively prove that the fixed costs are excessive.

In utility rate cases, particularly those for Consolidated Edison Company of New York, Inc. (“Con Edison”), the City and other parties had for many years raised similar concerns with respect to the utilities’ practices and spending levels. Oftentimes, however, the parties could not obtain the detailed information needed to prove or disprove their theories.

In contrast to the information available to parties in a rate case, the consultants performing periodic management and operational audits of the utilities, required pursuant to Public Service Law § 66(19), are given virtually complete access to the utilities’ books and records. The results of those audits has been startling, and they have proven the concerns that the City and other parties had harbored.

For example, in 2008-2009, the Public Service Commission conducted a comprehensive management audit of Con Edison that resulted in 92 separate recommendations for improvement.¹ Implementation of those recommendations has resulted in numerous efficiency improvements and saved Con Edison’s customers tens, or perhaps hundreds, of millions of dollars. Similar findings have been made for each utility that was audited, and utility ratepayers have realized substantial savings as a result.

¹ See PSC Case 08-M-0152, Comprehensive Management Audit of Consolidated Edison Company of New York, Inc., Final Report Management Audit of Consolidated Edison Company of New York, Inc., prepared by The Liberty Consulting Group, dated June 16, 2009.

Based largely of the experiences with the utility management and operational audits, in each of the past three years, the City has urged the Board to conduct a comprehensive management audit of NYPA's operations. Each year, NYPA has opposed this request, arguing that the routine internal and external audits already performed are sufficient. They are not.

Based on its review of NYPA's annual reports, financial statements, audit reports, and other publicly available information, as well as responses to its information requests in the Cost-of-Service review process, the City has found no evidence that NYPA engages in any audit, either internal or external, that is akin to a management or operational audit. Internal and external accountants review NYPA's books to ensure compliance with applicable accounting and financial reporting requirements and to confirm the accuracy of the entries. NYPA may also audit its inventories and supplies to confirm the veracity of its records, but such an audit does not examine purchasing practices and policies or whether the inventories and supplies are appropriate and necessary. NYPA may audit specific projects, but again, those audits are primarily intended to confirm the veracity of work orders, property records, and the like.

Like NYPA, every regulated utility engages in a panoply of internal and external audits each year. However, as with the NYPA audits, the utility audits are for specifically defined purposes, none of which are similar to a management audit. Also like NYPA, the regulated utilities opposed the need for management audits, arguing that their existing audits were sufficient. The facts have amply demonstrated otherwise.

The City believes that there are many opportunities for efficiency improvements within NYPA, but none of NYPA's existing audits are designed or intended to identify such opportunities. As explained above, no NYPA audit is focused on the same or similar tasks as a management and operational audit.

In fact, it is inexplicable to the City why NYPA and the Board oppose performing a management and operational audit. Public Authorities Law § 1005 requires NYPA to provide service to its customers at the lowest possible rates. As a quasi-governmental entity, NYPA should desire to minimize waste and inefficiency, and it should strive for complete transparency. If NYPA and the Board believe that management and operations are already highly efficient, they should welcome an audit and conformation of their beliefs. Put another way, the long-standing opposition to the audit suggests that NYPA and the Board either have cause for concern or are not interested in efficiency improvements and adhering to the statutory mandate to provide low-cost power.

For all of the above reasons, and because of the potentially significant benefits that could result from the performance of a management and operational audit, the Board should direct the performance of an independent management audit of NYPA's practices and operations in 2017.

POINT II

THE NYCGCS ARE BEING UNDULY AND INAPPROPRIATELY BURDENED BY COSTS RELATED TO THE SMALL HYDROELECTRIC FACILITIES

For many years, the City has raised concerns related to the four small hydroelectric facilities ("small hydros") included in their supply portfolio. Each year, the costs of these facilities are well in excess of their revenues, and the City does not see any efforts to limit the burdens these facilities impose on the NYCGCs.

1. NYPA's Capital Investments In The Small Hydros Should Be Capitalized And Recovered Over Time

In other settings, including its transmission rate case before the Federal Energy Regulatory Commission ("FERC"),² NYPA has stated that it maintains its books in accordance with the Uniform System of Accounts. A review of the FERC's regulations related to the Uniform System of Accounts, 18 CFR Part 101 reveals that there are clear rules for ascribing costs to capital or expense accounts. Importantly, there is no provision of Part 101 that provides for capital investments to be treated, and recovered, as O&M expenses.

For the 2017 Cost-of-Service, NYPA has included over \$6 million of projects at the small hydros for which it proposes full recovery in 2017. In response to City Information Request ("IR") 6, NYPA provided some details on the proposed projects. They include life extension and modernization projects at Crescent and Vischer Ferry, replacement of building roofs at Crescent and Vischer Ferry, rebuilding Unit #1 and Jarvis, and work associated with the construction of a permanent crane platform at Jarvis. There can be no legitimate dispute that these are all capital projects or part of larger capital projects. As such, the Uniform System of Accounts dictates that the costs should be capitalized and recovered over the life of the assets. However, in response to IR 6, NYPA stated that because these improvements are considered to be "minor components of the asset[s]," NYPA plans to treat them as O&M expenses and fully recover them on an as incurred basis.

NYPA, itself, has considered these projects to be capital improvements, not O&M expenses. In a press release issued on June 15, 2015, NYPA stated that it "has reached the halfway mark in two ambitious, multi-year capital improvement projects to overhaul and extend the life of three small hydroelectric facilities – the Crescent Plant and Vischer Ferry Plant, on the

² *New York Independent System Operator, Inc.*, FERC Docket No. ER16-835.

Mohawk River in the Capital Region, and the Ashokan Plant on the Ashokan Reservoir in Ulster County.” The heading of that press release also refers to the projects as “Capital Improvement Work.”

Accordingly, NYPA’s proposed treatment of these capital investments as O&M expenses is inconsistent with both Section II.B.1.a of the LTA and the Uniform System of Accounts. It is also unjust and unreasonable to require the NYCGCs to bear the entirety of these costs in 2017. As NYPA’s regional manager for Central New York observed (as quoted in the press release), “[t]he ongoing upgrades at these facilities will ensure they continue operating efficiently for many years to come, contributing to the state’s economical power supplies.” As with all long-term capital investments, the future beneficiaries of these life extension capital improvements should share in paying the costs of the investments.

Finally, the proposed as-incurred cost recovery for these capital investments is contrary to NYPA’s statutory mandate to provide low cost power.³ NYPA has the unfettered ability to appropriately capitalize these costs and recover them over the ensuing decades. Doing so would reduce the 2017 fixed costs by millions of dollars.⁴

In considering this issue, the Board should obey the State Legislature’s statutory mandate, as well as the LTA and well-established regulatory principles, and require that all of these costs be recovered over the average service lives for the associated plant accounts.

³ See Public Authorities Law § 1005; *see also* NYPA CES Comments at pp. 5-8.

⁴ The City does not have sufficient information to calculate the amount of the reduction. The Board should direct NYPA to perform this calculation.

2. The Labor Costs Charged To The Small Hydros Are Excessive

According to NYPA's response to City IR 10(a), 31 full-time employees are charged to the small hydros. According to Figure 2 from the 2017 COS Report, the projected total site payroll for the small hydros, which are staffed intermittently and on an as-needed basis, is \$6.1 million. In comparison, the total site payroll for the 500 MW Unit, which is staffed on a 24 x 7 x 365 basis, is \$14.3 million. Similarly, the payroll cost for "SENY," which NYPA has previously reported to the NYCGCs to include about 30 full-time equivalent employees, is only \$4.3 million.

It is important to consider that the Cost-of-Service includes an additional \$5.1 million for contracted services for the small hydros. In other words, the workforce operating and maintaining those facilities is actually much larger than the 31 reported employees. What is not clear from the minimal information provided to the City is the extent of the duplication of effort between the work performed by NYPA employees and the retained contractors. The response to City IR 10(a) indicates that the workforce includes engineers, project managers, environmental personnel, and individuals performing "site functions." In prior years, NYPA has provided information that contracted services may include environmental support, project-related support (including engineering), and personnel performing site functions.

NYPA should be making efforts to streamline its operations and reduce the cost burdens associated with the small hydros. In considering the appropriate level of fixed costs for the 2017 Cost-of-Service, the Board should require NYPA to do so. At a minimum, the Board should reduce the labor expenses associated with the small hydros by at least 30%, or approximately \$1.8 million, which would make them commensurate with the SENY labor cost (for which an equivalent number of full-time equivalent employees are assigned).

3. Cost-Benefit Analyses Should Be Performed Before Any Significant Expenditures Are Made

A corollary issue pertains to the process used by NYPA to decide on the capital and O&M plans for the small hydros. Based on the information provided by NYPA to the NYCGCs this year and in prior years, it does not appear that NYPA has performed any comprehensive, or case-by-case, analyses of the costs and benefits of additional investments in the small hydros. Before allowing NYPA to make any capital investments or significant O&M expenses for the small hydros for 2017, the Board should require NYPA to perform a cost-benefit analysis to determine whether and what costs should be spent, if any. Such analysis, once completed, should be shared with both the Board and the NYCGCs. Indeed, considering that these units do not provide net economic benefits overall, it may be shown that pursuit of additional capital investments or significant O&M expenses would not be economic and should be foregone.

POINT III

**THE USE OF 4% AND 10% ESCALATION RATES IS NOT
APPROPRIATE AND RESULTS IN OVERCOLLECTION
OF FIXED COSTS**

In prior years, NYPA had disclosed to the NYCGCs that for purposes of developing the preliminary Costs-of-Service, it would escalate the previous year's *budgeted* cost elements by 4% and use those figures as placeholders. Then, once it prepared its operating budget for the subsequent year, it would substitute its actual budgeted amounts for the placeholders. As discussed below, this approach has resulted in consistent overcollections from the NYCGCs.

This year, NYPA compounded the likelihood of overcollecting the fixed costs by increasing the escalation rate for labor expenses and contracted services to 10% over the 2016 Cost-of-Service levels. This represents a 150% increase in the escalation rate, places the escalation rate at more than six times the rate of inflation, and was included surreptitiously in the

2017 Cost-of-Service figures. NYPA disclosed its use of a 10% rate only in responding to the City's discovery requests, but even then, NYPA offered no explanation at all for the use of this excessive rate.⁵ The City respectfully urges the Board to reject all uses of the proposed 10% escalation factor.⁶

Turning to the use of the 4% escalation rate for other cost elements, that rate may have been appropriate when economic conditions were different, but it no longer is reasonable. Interest rates continue to be at very low levels, and inflation is also low. For the 12 months ended October 2016, the inflation rate was only 1.6%, according to the U.S. Bureau of Labor Statistics, the first increase after a five-year downward trend.

In response to City IR 13, NYPA provided the variances between the O&M expenses included in the Costs-of-Service and its actual expenditures. In 2014, NYPA collected \$0.7 million more than its actual expenses. In 2015, NYPA collected \$3.5 million more than its actual expenses. For 2016, the information provided by NYPA shows an overcollection of \$3.9 million (through July 2016). Moreover, over the period 2008 to 2015, NYPA's actual expenses grew by a smaller rate than the growth in the annual O&M budgets included in the Costs-of-Service. This further indicates that escalating the prior year's budget has the tendency to overstate the revenues needed. In sum, the facts demonstrate that NYPA's fixed costs are not escalating at a rate of 4% per year. For this reason, the Board should reject all uses of the

⁵ NYPA's failure to affirmatively disclose this change is itself a concern and supports the City's assertion, discussed below, that the review process must be significantly modified in the event the parties decide to continue their relationship past 2017. NYPA's failure to provide any justification for the use of this significantly higher escalation rate is a separate concern and further demonstrates the need for an entirely different, and unbiased, process if the parties decide to continue their relationship past 2017.

⁶ Based on the limited information provided by NYPA in response to City IR 9, it was not possible for the City to calculate the impact on the fixed costs of the use of the 10% escalation rate.

proposed 4% and 10% escalation factors, resulting in a reduction of at least \$1.4 million in the 2017 fixed costs.

POINT IV

NYPA APPEARS TO BE SEEKING DOUBLE RECOVERY OF THE SAME PROJECT COSTS FOR THE 500 MW UNIT

In response to City IR 14, NYPA provided a list of nine capital projects planned for 2017 for the 500 MW Unit. In response to City IR 15, NYPA provided a list of nine capital projects undertaken in 2015 for the 500 MW Unit, and a list of 20 capital projects planned, in progress, or completed in 2016. Seven of the projects planned for 2017 appear to be the same as on the 2016 list. One of the projects, related to upgrading the gas leak detection system for the combustion turbines, is described in the response to City IR 14 thusly: “[t]he installation will take place during the 2016 outage.” The table below shows the two project lists and associated dollar amounts, copied verbatim from the information provided by NYPA.

Planned Projects for 500 MW Unit			
Preliminary Request for 2016		Preliminary Request for 2017	
<u>Capital Addition</u>	<u>\$</u>	<u>Capital Addition</u>	<u>\$</u>
Access & Platform Program	\$88,918	SENY Access & Platform Program #1251	\$306,466
500 MW Gas Compressors Controls Upgrade	\$1,670,298	500 MW Gas Compressors Controls Upgrade	\$1,217,181
500 MW Cathodic Protection System Evaluation & Upgrade	\$1,237,095	500 MW Cathodic Protection System Evaluation & Upgrade	\$39,688
Replacement of Inlet Air Filter Systems on CT7A & CT7B	\$52,500	PID - Replacement of Inlet Air Filter Systems on CT7A & CT7B	\$265,973
500MW Control Room Redesign	\$205,273	500MW Control Room Redesign (CPR 1083)	\$1,356,528
Upgrade Gas Leak Detection System for CT and Gas Compress	\$595,380	500 MW Upgrade Gas Leak Detection System for Combustion Turbines	\$224,194
Upgrade Combustion Turbine Fire Protection System for CT7A	\$127,458	Upgrade Combustion Turbine Fire Protection System for CT7A and C	\$1,057,750
Vibration Monitoring System	\$680,487		
R-22 Inlet Chilling System	\$29,438		

Install Advanced HGP (Hot Gas Path) Components	\$22,443		
Replacement of CO Catalyst in 500 MW HRSG 7A	\$33,870		
Replacement of SCR Catalyst in 500 MW HRSG 7B	\$31,500		
Replacement of SCR Catalyst in 500 MW HRSG 7A	\$31,500		
Replacement of CO Catalyst in 500 MW HRSG 7B	\$33,870		
500 MW-Protection System for Demineralized Water Trailer	\$249,737		
500 MW-Admin Building New 480 Volt Service	\$182,501		
500 MW Station and Combustion Turbine Battery Replacement	\$29,438		
500MW Steam Turbine Bypass System	\$26,717		
DFR Replacement At 500 MW	\$85,759		
500 MW Storage Facilities	\$66,357		
		PID - GSU Transformer Overhaul	\$2,626,784
		PID - 500 MW Fuel Oil Yard Fire Suppression System	\$3,948,373
Totals	\$5,480,539		\$11,042,937
Totals - Common Projects	\$3,976,922		\$4,467,780

While it is possible that some of these projects are carry-over from 2016 to 2017, the City questions whether so many projects are actually multi-year projects. The City's concern is heightened by two factors – the inclusion of a 2017 project that appears to have been completed in 2016 and the absence of any overlap at all between the 2015 and 2016 project lists.

The NYCGCs should not be paying twice for the same projects, and the 2017 Cost-of-Service should not include as additional costs investments that were completed and presumably booked in 2016 (*i.e.*, such costs should already be included in the carry forward of the 2016 debt

expense). Accordingly, the 2017 Cost-of-Service should be adjusted to exclude any duplicative amounts.⁷

POINT V

THE USE OF LABOR RATIOS TO ALLOCATE SHARED SERVICES COSTS TO THE NYCGCS IS INCONSISTENT WITH THE REQUIREMENTS OF THE LTA AND IS NOT REQUIRED AS A MATTER OF LAW

The City continues to assert that the use of labor ratios to allocate shared services headquarters costs (Figure 3 of the Cost-of-Service) is inappropriate. The allocation percentages appear to be taken from the labor ratios used to assign O&M costs as shown in Figure 2. The shared services then appear to be allocated without any consideration of whether the underlying costs were incurred to provide service to the NYCGCs, as required by the LTA. It seems unlikely that the level of effort expended by headquarters personnel on the small hydros equates to \$4.5 million on top of the 13 full time headquarters employees and 17 Blenheim-Gilboa employees directly assigned to the small hydros. (see Figure 3 of the 2016 Preliminary Cost-of-Service).⁸ Rather, it appears that the NYCGCs are, in effect, subsidizing other NYPA customers, in violation of the LTA.

NYPA has asserted to the NYCGCs that the New York Courts have required it to allocate costs to the NYCGCs, including shared services expenses, based on labor ratios, citing to the decision in *Village of Bergen v. Power Auth. Of the State of N.Y.*, 249 A.D.2d 902 (4th Dept.

⁷ It also bears mention that NYPA's response to City IR 14 states that an update to the planned projects for the 500 MW Unit for 2017 will be provided only as part of the Final 2017 Cost-of-Service. Such action demonstrates yet another shortcoming of the review process in that the City is deprived of any opportunity to provide comments to the Board on the reasonableness of the revised projects. Moreover, such action creates significant uncertainty regarding the level of the 2017 fixed costs and could result in the City and other NYCGCs facing substantially higher rate increases and no opportunity to contest them

⁸ See 2017 COS Report, Figure 3, and NYPA's response to City IR 10(a).

1998), *appeal den'd*, 97 N.Y.2d 606 (2001). However, a review of that decision reveals that the case is neither controlling nor dispositive. The NYCGCs' cost allocation was not at issue, and there is no discussion of it, or of the LTA contractual provision in the decision. Rather, the case pertained to NYPA's statutory requirement for setting preference power rates at the "lowest possible rate" (*id.* at 903), which is a different standard than that set forth in the LTA.

Contrary to NYPA's assertions, the Court did not mandate the use of labor ratios. Instead, it remanded the matter for further discovery because "this record does not provide a basis for any other rate calculations." *Id.* at 904. The Court then held that "it is not possible to determine whether the petition should be granted." *Id.* A court decision remanding a case for further discovery, in which NYPA did not contest the use of labor ratios for calculating preference power rates for certain upstate hydropower municipal customers, does not govern the manner in which NYPA determines the fixed costs applicable to the NYCGCs under a different legal standard.

The only other case of which the City is aware that addressed this issue is a later lawsuit commenced by the Village of Bergen – *Village of Bergen v. Power Auth. Of the State of N.Y.*, 284 A.D.2d 976 (4th Dept. 2001). That case also dealt with preference power rates, and, the Court rejected NYPA's position due to its failure to preserve issues for appeal and its reliance on "mere speculation" instead of evidence. *Id.* at 977. For the same reasons discussed above, this case is not controlling or dispositive.

The City raised this same issue with respect to the 2016 Cost-of-Service. A review of the Staff Analysis provided to the Board, which was included with the minutes of the Board's March 29, 2016 meeting (at which the Final 2016 Cost-of-Service was adopted by the Board), supports the City's position. NYPA conceded that the first Village of Bergen case addressed only the

development of preference power rates. NYPA then argued that it must use labor ratios to allocate costs among all customer segments, but it offered no legal basis for its contention. It did not cite to any statute, regulation, case law precedent, established regulatory principle or practice, or other source for its position.

As noted above, NYPA is employing different approaches to allocate research and development costs among its customer segments, which appears to result in double recovery of some research and development costs. The Board should not allow NYPA to use conflicting methodologies for some costs and simultaneously require adherence to a methodology that was never intended to apply to the NYCGCs for allocating other costs. Moreover, although NYPA attempted to skirt the City's argument that Village of Bergen decision does not apply to the NYCGCs, the Board cannot do so, and it should directly address the City's assertions.

POINT VI

THE COST-OF-SERVICE REVIEW PROCESS IS FLAWED, LACKS TRANSPARENCY, AND PLACES THE NYCGCS AT AN UNACCEPTABLE DISADVANTAGE

Over the past few years, NYPA has worked with the City and other NYCGCs to improve the process by which the Cost-of-Service is established. For the most part, the steps taken had constituted reasonable improvements, and the City appreciates NYPA's efforts. Transparency had improved, and prior to this year, the NYCGCs had an opportunity to review the actual costs rather than preliminary estimates.

This year, NYPA's actions constitute a large step backwards. The provision of actual cost information has been delayed until after the date comments are due, making it impossible for the City or other NYCGCs to comment on the actual proposed fixed costs. As noted above, with no explanation or justification, and for the first time since the LTA was executed, NYPA

decided to increase some cost elements by 10% over the 2016 final budgeted amounts, even though NYPA's actual costs have been below forecasted levels.

As another example of the inadequacy of the process, the City respectfully refers the Board to NYPA's response to City IR 18. There, the City asked for information that would allow it to reconcile forecasts and actual expenditures for research and development projects. For each of 2015 and 2016, NYPA provided charts that show planned expenditures by general category and actual expenditures by individual project. For almost all projects, therefore, the variances are equal to the planned or actual amounts and it is impossible to perform a comparison or determine whether any project remained within its budgeted amount. Provision of information in this manner, with no explanation whatsoever, demonstrates the lack of transparency in and unreasonableness of the review process.

The City recognizes that 2017 marks the last year that NYPA will serve the City under the LTA. Discussions about a future relationship are ongoing, but the deficiencies in this process reinforce the need for substantial changes in a future process. As the City has been observing in its comments for years, any review process under a new paradigm must be unbiased and objective.

CONCLUSION

The City respectfully requests that the NYPA Board of Trustees adjust the level of fixed costs for the 2017 Cost-of-Service and adopt other changes in accordance with the discussion and recommendations set forth herein.

Respectfully submitted,

/s/ Kevin M. Lang

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Dated: December 8, 2016
Albany, New York

/s/ Anthony J. Fiore

Anthony J. Fiore
New York City Department of Citywide
Administrative Services
Deputy Commissioner, Energy Management
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New York, New York 10007
E-mail: afiore@dep.nyc.gov

Dated: December 8, 2016
New York, New York

At a Term of the Supreme Court, County of
Niagara, held at the Courthouse, Niagara
Falls, New York, on the 1st day of April,
1999.

HON. NORMAN E. JOSLIN, J.S.C., Justice Presiding

STATE OF NEW YORK
SUPREME COURT : County of Niagara

**VILLAGE OF BERGEN, VILLAGE OF
BOONVILLE, VILLAGE OF FREEPORT,
VILLAGE OF GREENPORT, CITY OF
JAMESTOWN, TOWN OF MASSENA,
VILLAGE OF PENN YAN, AND VILLAGE
OF ROCKVILLE CENTRE,**

Plaintiffs

-v-

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

Defendant

THOMAS J. LYNCH, ESQ.
for Plaintiffs

DUNCAN, WEINBERG, GENZER & PEMBROKE, P.C.
(Richmond F. Allan, of counsel)
for Plaintiffs

DAVID E. BLABEY, ESQ., GENERAL COUNSEL
New York State Power Authority
(Arthur Cambouris, of counsel)
for Defendant

LIPPES, SILVERSTEIN, MATHIAS & WEXLER, P.C.
(Sharon M. Porcellio, of counsel)
for Defendant

MEMORANDUM DECISION

Joslin, J.

This action, having been commenced as a Declaratory Judgment action and now restored to that form, was brought to adjudicate and determine the rights of Plaintiff municipalities in relation to preference power provided to them from the Niagara power Project by Defendant Power Authority of the State of New York (PASNY).

On appeal the Appellate Division (249 AD2d 902) rejected the "contention of PASNY that it has broad discretion to establish rates" and remitted the matter for additional discovery in order to enable Plaintiffs to calculate the rate using a labor allocator and, if necessary, for trial. On remand, this Court rejected any further attempts to again litigate the question of the propriety of the capacity allocator, and directed that discovery proceed.

Thereafter, each side was permitted ample opportunity for discovery and there has been a voluminous exchange of information and calculations.

Plaintiffs now move for summary judgment, having placed before the Court its analyses and comparisons of rates and charges based both on the capacity ratio actually used by PASNY and on the labor ratio which Plaintiffs espouse. In response to these submissions, including the definitive analysis of Donald Saunders (dated 3/26/99), PASNY has given the Court no countervailing or alternative analysis, but rather has submitted the affidavits of Uffelman, Zarakas, Small and Hall, which do not deal directly with the calculations or the methods used, but rather have focused on vague generalities about hydro and nuclear cost methodology and the "functionalization" of cost analysis. At the very least, PASNY had sought in this litigation the

opportunity to show why Plaintiff's proposal is not viable. However, while PASNY continued to dispute the appropriateness of Plaintiffs use of the labor ratio rate, it never gave any reason or basis for its position or submitted any alternative calculations.

Thus, the Court finds that Plaintiffs have illustrated that their proposed methodology does result in achieving lower costs, meeting, for the purposes of this litigation, the "lowest" requirement in the statutory directive that they be charged the "lowest possible rate" (Public Authorities Law § 1005 [5]).

In addition to seeking this declaration from the Court that cost of service should be determined by application of the labor allocator, Plaintiffs seek to be reimbursed for the amount of their overpayments, that is, the difference between the rates actually charged by PASNY and the rates that would have been due if the labor allocator had been used. While it has continued to maintain that the labor allocator does not provide the appropriate method for calculating indirect overhead costs and that the capacity allocator should be used, PASNY does concede the arithmetic accuracy of Plaintiffs' calculations.

Since PASNY virtually admits the correctness of the figures used by Plaintiffs, it appears that the ultimate disagreement between the parties ends up being a narrow one: should the labor ratio be applied exactly as PASNY applied the capacity allocator, that is, by including certain discounts which had been given by PASNY and by freezing the rate at the 1994 level, as had been done, or whether the labor ratio should be applied to the cost of service without any other adjustments. By discounting the cost of service amounts—calculated by using the labor allocator—by exactly the same amount as PASNY had discounted these amounts when using the capacity allocator and by also freezing the rates at the 1994 level, Plaintiffs claim they are owed

and seek to recover the following amounts:

Plaintiff	Actual Charges	Charges at Proper Rates	Aggregate Principal Overcharges	Amount of 9% Interest 5/1/92 - 5/31/92
Bergen	\$ 650,061.80	\$ 526,885.98	\$ 123,175.82	\$ 33,921.69
Boonville	3,112,414.00	2,520,611.15	591,802.85	178,648.83
Freeport	11,232,608.55	8,979,115.81	2,253,492.74	690,912.87
Greenport	1,335,705.92	1,076,203.17	259,502.75	81,925.86
Jamestown	21,292,386.72	17,095,709.93	4,196,676.79	1,290,500.52
Massena	6,471,205.11	5,207,110.33	1,264,094.78	383,860.28
Penn Yan	3,157,596.53	2,546,945.36	610,651.17	178,685.60
Rockville Ctr.	8,462,145.11	6,785,971.12	1,676,173.99	508,862.04
TOTALS	55,714,123.74	44,738,552.85	10,975,570.89	3,347,317.69
			GRAND TOTAL	14,322,888.58

By way of background, a comparison of the rates as calculated both by labor allocator and by using the capacity allocator as applied by PASNY is as follows:

Rate Year May 1 - Apr. 30	Defendant's Cost-of-service Amounts Using Capacity Ratios	Reduction Applied by Defendant	Rate Charged By Defendant	Cost-of-service Amounts Using Labor Ratios Mills per Kilo- watt Hour
1992	4.26	0.44	3.82	3.01
1993	4.70	0.35	4.35	3.42
1994	5.11	0.19	4.92	3.80
1995	5.54	----	4.92	4.18

PASNY makes the argument that if the labor allocator were to be used, it should be applied without the adjustments which it had applied when using the capacity allocator. These figures would be as follows:

Results of Applying Labor Ratios Cost-of-Service Amounts Without Discounts And Without Holding at 1994 Level		
Plaintiff	Principal Amount of Over- Charges Through 4/30/99	Amount of Interest Through 5/31/99
Bergen	\$ 78,127.28	\$ 22,914.96
Boonville	378,247.97	120,713.18
Freeport	1,443,716.87	467,625.16
Greenport	166,820.29	55,489.99
Jamestown	2,690,283.26	874,217.78
Massena	809,816.31	260,367.87
Penn Yan	387,935.04	120,247.61
Rockville Center	1,072,431.96	344,302.08
TOTALS	7,027,378.98	2,265,878.63
	GRAND TOTAL	9,293,257.61

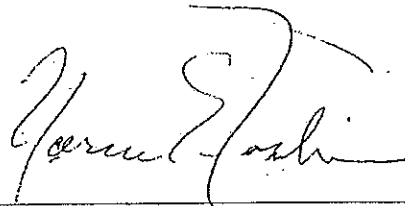
PASNY makes this argument, however, without giving any explanation as to why these reductions were appropriate for use with the capacity allocator or why they are not appropriate when the labor allocator is applied. PASNY's claim that there can be no discounting of the labor based rates because discounting had not been adopted by the Trustees, flies in the face of the reality of how PASNY did business during the years in question. In the absence of any rationale for deviating from the methodology originally used by PASNY, the Court can find no issue of fact raised with regard to Plaintiffs' calculations.

Finally, Plaintiffs seek a direction of this Court that in the absence of further order of the Court PASNY must continue to charge no more for preference power than 3.61 mills per kilowatt hour. This the Court is unwilling to do. The statutory mandate is not that PASNY provide power to Plaintiffs at the lowest cost, but that it provide power at the "lowest possible cost"(emphasis added). Economic realities may make it no longer possible for PASNY to continue to provide preference power at the 3.61 rate while it still remains in conformity with the statutory requirement. If Plaintiffs conclude that any rate set after April 1999 does not conform with this mandate, they must apply to the Court at that time.

Accordingly, the Court declares that preference rates should be set by applying a labor allocator, that, for the period from May 1, 1992 through April 30, 1999, the labor allocator should be applied exactly as PASNY applied the capacity allocation, and that Plaintiffs are entitled to judgment in the amount of \$14,322,888.58, as more specifically set forth in Table I.

THE FOREGOING CONSTITUTES THE ORDER OF THE COURT.

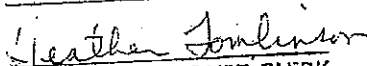
Dated: Buffalo, New York
March 17, 2000



NORMAN E. JOSLIN, J.S.C.

G R A N T E D
MAR 17 2000

GRANTED:


COURT CLERK

To be entered in Niagara Co.

NEW YORK CITY GOVERNMENTAL CUSTOMERS

EXHIBIT "D"

Service Tariff No. 100 Rate Comparison (Current vs. Proposed)

Service Classification	Demand (\$/kW)		ENERGY (¢/kWh)											
			SUMMER		SUMMER ON PEAK		SUMMER OFF PEAK		WINTER		WINTER ON PEAK		WINTER OFF PEAK	
	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017
SC 62 Conventional	\$0.00	\$0.00	6.156	6.465					5.647	5.955				
SC 65 Conventional	\$7.54	\$8.34	4.351	4.640					3.852	4.141				
SC 66 Conventional	\$0.00	\$0.00	4.553	4.573					4.553	4.573				
SC 68 Conventional	\$14.67	\$14.32	4.091	4.606					3.582	4.097				
SC 68 TOD	\$16.28	\$16.51			5.288	5.849	3.129	3.690			4.191	4.751	3.037	3.598
SC 69 Conventional	\$12.11	\$12.58	4.240	4.679					3.731	4.171				
SC 69 TOD	\$12.39	\$13.19			5.346	5.741	3.233	3.628			4.272	4.667	3.143	3.539
SC 69 KIAC TOD	\$12.39	\$13.19			4.084	4.454	1.971	2.341			3.010	3.380	1.881	2.252
SC 80 Conventional	\$1.49	\$1.73	4.143	4.099					4.143	4.099				
SC 82 Conventional	\$8.84	\$8.76	4.396	4.669					3.887	4.160				
SC 85 Conventional	\$12.11	\$12.25	4.260	4.676					3.766	4.183				
SC 91 Conventional	\$12.12	\$13.35	4.220	4.835					3.711	4.326				
SC 91 TOD	\$14.04	\$15.29			5.356	5.867	3.198	3.709			4.259	4.770	3.106	3.617
SC 93 Conventional	\$6.55	\$8.15	4.457	4.771					3.953	4.268				
SC 98 Conventional	\$6.00	\$4.80	4.085	4.611					3.576	4.103				
SC 98 TOD	\$11.07	\$12.00			5.501	5.753	3.388	3.640			4.427	4.679	3.299	3.550

Service Tariff No. 100 Demand Standby Rate Comparison (Current vs. Proposed)

Service Classification	CONTRACT STANDBY DEMAND (\$/KW)				AS-USED DAILY DEMAND (\$/kW-day)			
	Low Tension		High Tension		Low Tension		High Tension	
	2016	2017	2016	2017	2016	2017	2016	2017
SC 65 Conventional	\$0.226	\$0.250	\$0.214	\$0.237	\$0.240	\$0.266	\$0.227	\$0.252
SC 68 Conventional	\$0.440	\$0.430	\$0.409	\$0.399	\$0.466	\$0.457	\$0.433	\$0.424
SC 68 TOD	\$0.489	\$0.495	\$0.453	\$0.460	\$0.518	\$0.526	\$0.481	\$0.488
SC 69 Conventional	\$0.363	\$0.377	\$0.338	\$0.351	\$0.385	\$0.401	\$0.358	\$0.373
SC 69 TOD	\$0.372	\$0.396	\$0.353	\$0.375	\$0.394	\$0.421	\$0.374	\$0.399
SC 80 Conventional	\$0.045	\$0.052	\$0.042	\$0.048	\$0.047	\$0.055	\$0.044	\$0.051
SC 82 Conventional	\$0.265	\$0.263	\$0.246	\$0.244	\$0.281	\$0.279	\$0.261	\$0.259
SC 85 Conventional	\$0.363	\$0.368	\$0.348	\$0.352	\$0.385	\$0.391	\$0.369	\$0.374
SC 91 Conventional	\$0.364	\$0.401	\$0.338	\$0.372	\$0.386	\$0.426	\$0.358	\$0.395
SC 91 TOD	\$0.421	\$0.459	\$0.391	\$0.426	\$0.447	\$0.488	\$0.415	\$0.453
SC 93 Conventional	\$0.197	\$0.244	\$0.185	\$0.229	\$0.208	\$0.260	\$0.196	\$0.244
SC 98 Conventional	\$0.180	\$0.144	\$0.167	\$0.134	\$0.191	\$0.153	\$0.177	\$0.142
SC 98 TOD	\$0.332	\$0.360	\$0.315	\$0.341	\$0.352	\$0.383	\$0.334	\$0.363

1 MS. DELINCE: Good morning.
2 This public forum on the proposed
3 increase in production rates for the
4 Authority's Westchester County and New
5 York City governmental customers is
6 being conducted pursuant to a Power
7 Authority policy adopted by the
8 trustees in 1990.

9 My name is Karen Delince and I'm
10 the Authority's Corporate Secretary.

11 This public forum is not
12 required by law and is being held in
13 addition to the State Administrative
14 Procedure Act, or SAPA, process. The
15 SAPA process, which provides for a
16 45-day public common period, began on
17 October 12th and is scheduled to end
18 on November 26th.

19 The purpose of this forum is to
20 offer affected customers and the
21 general public an opportunity to
22 present data, views and positions for
23 the Authority's Trustees to consider
24 prior to taking final action on the
25 proposed rate increase.

1 If you plan to make an oral
2 statement at this forum, I ask that
3 you so indicate on the sign-in sheet.

4 Also, if you have a written
5 statement, please give a copy to Lorna
6 Johnson and one to the reporter.

7 Written statements may be of any
8 length, and both oral and written
9 statements will be included in the
10 official record.

11 The record will remain open for
12 additional comments through close of
13 business Monday, November 28th, 2016.

14 Additional comments should be
15 mailed, faxed or emailed to the
16 Corporate Secretary at 123 Main
17 Street, 11-P, White Plains, New York
18 10601; or (914) 390-8940; or
19 secretarys.office@NYPA.government.

20 At this point, I would like to
21 introduce Mr. Keith Hays, the
22 Authority's Vice President of
23 Marketing, who will provide additional
24 details on the proposed rate increases
25 for the Westchester County and New

1 York City Governmental Customers.

2 Thank you.

3 Mr. Hayes.

4 MR. HAYES: Thank you, Ms. Delince.

5 Good morning. My name is Keith
6 Hayes, and I'm the Vice President of
7 Marketing at the New York Power
8 Authority.

9 I'm here today to present an
10 overview of the proposed increase in
11 the energy production rates that NYPA
12 charges to its New York City
13 Governmental Customers and Westchester
14 County Governmental customers. It is
15 important to note that the energy
16 delivery rates and service for these
17 customers are provided by Consolidated
18 Edison of New York and not NYPA.

19 The Authority provides
20 electricity to 11 New York City
21 customers which includes the City of
22 New York, the MTA and the Port
23 Authority. In addition, NYPA provides
24 electricity to 103 Westchester
25 customers in Westchester County, which

1 includes the County of Westchester,
2 school districts, housing authorities,
3 cities, towns of villages.

4 The basis for providing service
5 is contained in the Long-Term
6 Agreement with the New York City
7 customers and the supplemental
8 Electricity Agreements with the
9 Westchester customers. Under the LTA,
10 NYPA and the New York City customers
11 agree to undertake a joint annual
12 planning and pricing process that
13 includes analysis of fixed and
14 variable costs, future energy and fuel
15 market risks, development of
16 alternative market risk hedging
17 strategies, submission of load
18 forecasts and supply resource
19 planning. The Supplemental Agreement
20 pertaining to the Westchester
21 customers permits the Authority to
22 modify the customers' rates at anytime
23 based on a fully supported pro forma
24 cost-of-service subject to customer
25 review, comment and compliance with

1 the State Administrative Procedure Act
2 process and allows the Authority to
3 apply an energy charge adjustment
4 mechanism to the customers' bills each
5 month.

6 For New York City customers, the
7 current 2016 fixed costs were adopted
8 by the Trustees at their March 29th,
9 2016 meeting, when they approved a
10 3.6 percent decrease in the fixed cost
11 component in the cost-of-service as
12 compared to the prior year's
13 cost-of-service. Based on the
14 preliminary cost-of-service, the
15 increase in fixed costs is 12.7 percent
16 higher than the fixed costs included
17 in the final 2016 cost-of-service.
18 Primary factors contributing to the
19 increase in fixed costs are both a
20 projected increase in O&M and other
21 fixed expenses as compared to those
22 levels in the final 2016 cost-of-service.
23 The increase in O&M is mainly driven
24 by a planned increase in work at the
25 Small Hydro Facilities. The stated

1 increase in other expenses is due to a
2 total one-time credit imbedded in the
3 2016 final cost-of-service to correct
4 historical cost accounting related to
5 demand side management and load
6 research studies. This has not been
7 included in the preliminary 2017
8 cost-of-service.

9 For Westchester customers, the
10 current 2016 base production rates
11 were adopted by the Trustees at their
12 March 29, 2016 meeting, when they
13 approved a 2.37% decrease over the
14 2015 production rates. Staff is now
15 proposing an increase in production
16 rates of 8.81%, which is largely due
17 to expected increases in energy
18 purchases over 2016 rates, which are
19 part of the variable costs component
20 of the cost-of-service. In addition,
21 the fixed costs component is also
22 expected to increase from \$1.95 million
23 to \$2.76 million in total. Similar to
24 the New York City customers, this is
25 primarily due an increase in O&M

1 costs, which is mainly driven by a
2 planned increase in work at the Small
3 Hydro facilities. The total
4 preliminary 2017 cost-of-service for
5 the Westchester customers which,
6 again, is largely made up of variable
7 costs that are not under NYPA's
8 control, is \$36.01 million as compared
9 to \$32.06 million in 2016.

10 Consistent with the Authority's
11 past rate-making practices and with
12 the rate-setting process set forth in
13 the Long-Term Agreements for the New
14 York City customers and Supplemental
15 Agreements for the Westchester
16 customers, the proposed rate increases
17 are based on a pro forma Cost of
18 Service for next year.

19 As Ms. Delince stated earlier,
20 the Authority will accept your
21 comments on the Notice of Proposed
22 Rulemaking until December 5th, 2016.

23 I will now turn the forum back
24 over to Ms. Delince.

25 MS. DELINCE: Thank you,

1 Mr. Hayes.

2 Since no one has signed up to
3 speak at this forum, we will recess
4 and reconvene as they arrive.

5 (Recess taken: 11:11 a.m.)

6 (Resumed: 3:00 p.m.)

7 MS. DELINCE: It is now 3 p.m.
8 As previously stated, the record of
9 the forum will remain open for
10 additional comments through close of
11 business, Monday, November 28th, 2016.

12 The November 17th, 2016 public
13 forum on the proposed increase on
14 production rates for the Authority's
15 Westchester County and the New York
16 City Governmental Customers is now
17 officially closed.

18 Thank you, and good day.

19 (Time noted: 3:01 p.m.)

C E R T I F I C A T I O N

I, Reva Weiss, a Court Reporter and
Notary Public within and for the State of
New York, do hereby certify that the
foregoing is a true and accurate
transcription of my stenographic notes.

I further certify that I am not employed
by nor related to any party to this action.



REVA WEISS

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WESTCHESTER GOVERNMENTAL CUSTOMERS

EXHIBIT "B"

Service Tariff No. 200 Rate Comparison (Current vs. Proposed)

Service Classification	Demand (\$/kW)		ENERGY (¢/kWh)											
			SUMMER		SUMMER ON PEAK		SUMMER OFF PEAK		WINTER		WINTER ON PEAK		WINTER OFF PEAK	
	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017
SC 62 Conventional	\$0.00	\$0.00	4.858	5.269					4.349	4.760				
SC 66 Conventional	\$0.00	\$0.00	4.098	4.237					4.098	4.237				
SC 68 Conventional	\$1.40	\$2.29	5.762	5.704					5.253	5.195				
SC 69 Conventional	\$1.17	\$1.93	6.012	6.080					5.503	5.572				
SC 69 TOD	\$1.61	\$2.63			6.723	6.681	4.610	4.568			5.649	5.607	4.520	4.479
SC 82 Conventional	\$1.40	\$2.29	5.762	5.704					5.253	5.195				

Service Tariff No. 200 Demand Standby Rate Comparison (Current vs. Proposed)

Service Class	CONTRACT STANDBY DEMAND (\$/KW)				AS-USED DAILY DEMAND (\$/KW-day)			
	Low Tension		High Tension		Low Tension		High Tension	
	2016	2017	2016	2017	2016	2017	2016	2017
SC 68 Conventional	\$0.042	\$0.069	\$0.039	\$0.064	\$0.044	\$0.073	\$0.041	\$0.068
SC 69 Conventional	\$0.035	\$0.058	\$0.033	\$0.054	\$0.037	\$0.062	\$0.035	\$0.057
SC 69 TOD	\$0.048	\$0.079	\$0.046	\$0.075	\$0.051	\$0.084	\$0.049	\$0.080
SC 82 Conventional	\$0.042	\$0.069	\$0.039	\$0.064	\$0.044	\$0.073	\$0.041	\$0.068

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

to

NESTLE PURINA PETCARE COMPANY

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Nestle Purina PetCare Company (“Customer”) with offices and principal place of business at 3800 Middle Road, Dunkirk, NY 14048. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

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

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

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

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

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

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

WHEREAS, on January 31, 2017, the Authority’s Board of Trustees (“Trustees”) approved an extension of the 500 kilowatt (“kW”) allocation of EP to the Customer through June 30, 2020 (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and/or operation of the Facility as further described in this Agreement;

WHEREAS, on January 31, 2017, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

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

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

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

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

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

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

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

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

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

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

II. Electric Service

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

III. Rates, Terms and Conditions

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

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

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

IV. Expansion Power and/or Replacement Power Commitments

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

V. Rules and Service Tariff

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

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

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

related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

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

have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

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

X. Additional Allocations

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

XI. Notification

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

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Nestle Purina PetCare Company
3800 Middle Road
Dunkirk, NY 14048
Email:
Facsimile:
Attention:

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

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

XII. Applicable Law

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

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication

of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

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

XV. Previous Agreements and Communications

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

XVI. Severability and Voidability

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

XVII. Waiver

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

XVIII. Execution

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

NESTLE PURINA PETCARE COMPANY

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

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

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Nestle Purina PetCare Company				
Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Expansion Power	500	3800 Middle Road Dunkirk, NY 14048	January 31, 2017	June 30, 2020

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

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

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

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

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

B. Employment Records and Reports

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

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

II. Reductions of Contract Demand

A. Employment Levels

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

B. Power Utilization Levels

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

C. Capital Investment

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

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

D. Notice of Intent to Reduce Contract Demand

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

III. Energy Efficiency Audits; Information Requests

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

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

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 419 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

N/A

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

TAKEDOWN SCHEDULE

N/A

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

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

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

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

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

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

5. ZEC Charge

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

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

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

6. REC Charge

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

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

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



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

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

Service Tariff No. WNY-1

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Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

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

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

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

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

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

I.Billing Energy

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

J.Contract Demand

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

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

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

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

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges (“NYISO Charges”)

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

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

B. Marginal losses;

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

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

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

G. Rendition and Payment of Bills

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

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

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

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

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

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

to

UPSTATE NIAGARA COOPERATIVE, INC.

The Power Authority of the State of New York (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title 1 of Article 5 of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Preservation Power and Energy (“Agreement”) to Upstate Niagara Cooperative, Inc., having facilities at 22 County Route 52, North Lawrence, New York, 12967 (“Customer”). The Authority and the Customer are from time to time referred to in this Agreement individually as a “Party” or collectively as the “Parties” and agree as follows:

RECITALS

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

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

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

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

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

WHEREAS, on January 31, 2017, the Authority’s Board of Trustees (“Trustees”) approved an extension of the 2,250 kilowatt (“kW”) allocation of PP to the Customer through June 30, 2020 (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and/or operation of the Facility as further described in this Agreement;

WHEREAS, on January 31, 2017, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service (defined in Article I of this Agreement)

associated with the Allocation is an unbundled service separate from the transmission and delivery service necessary for the Customer to receive the Allocation which will be performed by the Customer's local utility company;

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

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

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

Article I. Definitions

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

Federal Power Act, which became effective October 22, 2003 after expiration of the Project's original license issued in 1953.

- K. **Hydro Projects** is a collective reference to the Authority's Niagara Project and St. Lawrence-FDR Project.
- L. **International Joint Commission** (or **IJC**) refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.
- M. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- N. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- O. **NYISO Charges** has the meaning set forth in the Service Tariff.
- P. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- Q. **PAL** means the New York Public Authorities Law.
- R. **Preservation Power** (or **PP**) has the meaning set forth in the Service Tariff.
- S. **Niagara Project** means the Authority's Niagara Power Project, FERC Project No. 2216.
- T. **Rules** refers to the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by Authority.
- U. **Service Tariff** means the Authority's Service Tariff No. 10, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- V. **St. Lawrence Project** means the Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.
- W. **Schedule A** refers to the Schedule A to this Agreement entitled "Preservation Power Allocations" which is attached to and made part of this Agreement.

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

Article II. Electric Service

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

ruling, order, or decision. The Authority will use reasonable efforts to provide at least thirty (30) days prior written notice to the Customer of any such modification unless such notice is inconsistent with such ruling, order or decision.

- F. The Contract Demand may not exceed the Allocation.
- G. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of PP to the Customer, the proper and efficient implementation of the PP power program, billing related to PP Power, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents the Authority determines are necessary to effectuate such exchanges of information.
- H. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer's local electric utility providing for the delivery of PP on terms and conditions that are acceptable to the Authority.
- I. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") the Authority determines is necessary for the provision of Electric Service, the delivery of PP, billing related to the PP program, the effective and proper administration of the PP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

Article III. Rates, Terms and Conditions

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

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

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

Article IV. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the local electric utility's applicable tariffs and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority shall render bills for power and energy by the tenth (10th) business day of the month for charges due for the previous month. Such bills shall include the NYISO Charges and Taxes (as such terms are defined in the Service Tariff) associated with the Allocation. NYISO Charges and Taxes billed to the Customer are subject to adjustments consistent with any subsequent NYISO re-billings to Authority.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the

Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.

- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in the Service Tariff.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

Article V. Transmission and Delivery of Power and Energy

- A. The Customer shall responsible for securing arrangements with its local utility for transmission and delivery service associated with the Allocation unless otherwise agreed to by the Parties.
- B. The Customer will pay its local utility for transmission and delivery service associated with the Allocation in accordance applicable contracts and all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the Firm Power and Firm Energy supplied by the Authority under this Agreement. To the extent the Authority incurs transmission and delivery service charges or other costs associated with the Allocation during the term of this Agreement, the Customer agrees to compensate the Authority for all such charges and costs incurred.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the

LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf as may be required under the applicable local utility company tariffs. In no event shall the Authority act as the LSE for the power and energy consumed by Customer other than Electric Service (inclusive of Substitute Energy, if any) sold by the Authority under this Agreement. The Customer understands and acknowledges that it will be responsible to the Authority for all charges and other costs incurred by the Authority associated with the provision of Electric Service to enable the Customer to receive the Allocation, including charges and costs contained in the NYISO Tariffs or other applicable tariffs (including local utility company tariffs), regardless of whether such charges and costs are transmission-related. Such charges and costs are in addition to the charges for power and energy.

Article VI. Preservation Power Commitments

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

Article VII. Rules and Service Tariff; Conflicts

The Service Tariff is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariff and the Rules, the provisions of the Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariff, the provisions of this Agreement shall govern.

Article VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.*, reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with the Service Tariff as applicable.
- B. The Authority shall provide reasonable notice to the Customer of any curtailments referenced in Article VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement.
- C. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the hydroelectricity that would otherwise have been supplied under this Agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.
- D. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- E. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

Article IX. Additional Allocations

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

Article X. Notification

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

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Telephone:
Facsimile: (914) 390-8156
Electronic mail:
Attention: Manager – Business Power Allocations and Compliance

To: Customer

Upstate Niagara Cooperative, Inc.
22 County Route 52
North Lawrence, New York 12967
Telephone:
Facsimile:
Electronic mail:
Attention:

B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing. Any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and rulings by the IJC and without regard to conflicts of law provisions.

Article XI. Venue

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

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

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

Article XIII. Previous Agreements and Communications

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

Article XIV. Waiver

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

Article XV. Severability and Voidability

- A. If any term or provision of this Agreement is invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the

entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

Article XVI. Term, Modification, Termination and Effect

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

Article XVII. Execution

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

UPSTATE NIAGARA COOPERATIVE, INC.

BY: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A

PRESERVATION POWER ALLOCATIONS

Customer: Upstate Niagara Cooperative, Inc.

Type of Allocation	Allocation (kW)	Trustee Approval Date	Expiration Date	Facility
PP	2,250	January 31, 2017	Seven (7) years from commencement of Electric Service of any portion of this Allocation	22 County Route 52, North Lawrence, NY 12967

SCHEDULE B

PRESERVATION POWER COMMITMENTS

ARTICLE I. EMPLOYMENT COMMITMENTS

A. Base Employment Level

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

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

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

B. Employment Records and Reports

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

ARTICLE II. REDUCTIONS OF CONTRACT DEMAND

A. Employment Levels

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

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the facilities receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is defined in the Service Tariff) for PP is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.C of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Notice of Intent to Reduce Contract Demand

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

ARTICLE III. CAPITAL INVESTMENT

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

ARTICLE IV. ENERGY EFFICIENCY AUDITS AND INFORMATION REQUESTS

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

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

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

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

APPENDIX TO SCHEDULE B

I. Base Employment Level

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

Base Employment Level	Facility	Miscellaneous/Notes
The Customer shall employ not less than eighty (80) persons in full-time positions at the Facility (the "Base Employment Level") and shall maintain such Base Employment Level for the term of the Allocation.	22 County Route 52 North Lawrence, New York 12967	

II. Capital Expansion Program

N/A

SCHEDULE C
TAKEDOWN SCHEDULE

N/A

SCHEDULE D

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

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

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

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

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

5. ZEC Charge

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

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

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

6. REC Charge

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

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

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

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

to

TRY-IT DISTRIBUTING CO., 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 Try-It Distributing Co., Inc. (“Customer”) with offices and principal place of business at 4155 Walden Avenue, Lancaster, NY 14086. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

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

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

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

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

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

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

WHEREAS, on January 31, 2017, the Authority’s Board of Trustees (“Trustees”) approved an extension of the 200 kilowatt (“kW”) allocation of EP to the Customer through June 30, 2020 (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and/or operation of the Facility as further described in this Agreement;

WHEREAS, on January 31, 2017, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

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

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

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

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

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

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

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

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

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

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

II. Electric Service

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

III. Rates, Terms and Conditions

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

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

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

IV. Expansion Power and/or Replacement Power Commitments

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

V. Rules and Service Tariff

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

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

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

related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

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

have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

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

X. Additional Allocations

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

XI. Notification

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

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Try-It Distributing Co., Inc.
4155 Walden Avenue
Lancaster, NY 14086
Email:
Facsimile:
Attention:

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

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

XII. Applicable Law

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

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication

of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

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

XV. Previous Agreements and Communications

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

XVI. Severability and Voidability

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

XVII. Waiver

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

XVIII. Execution

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

TRY-IT DISTRIBUTING CO., INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

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

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Try-It Distributing Co., Inc.				
Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Expansion Power	200	4155 Walden Avenue Lancaster, NY 14086	January 31, 2017	June 30, 2020

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

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

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

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

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

B. Employment Records and Reports

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

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

II. Reductions of Contract Demand

A. Employment Levels

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

B. Power Utilization Levels

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

C. Capital Investment

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

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

D. Notice of Intent to Reduce Contract Demand

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

III. Energy Efficiency Audits; Information Requests

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

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

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 265 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

N/A

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

TAKEDOWN SCHEDULE

N/A

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

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

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

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

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

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

5. ZEC Charge

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

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

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

6. REC Charge

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

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

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



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

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

Service Tariff No. WNY-1

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Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

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

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

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

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

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

I.Billing Energy

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

J.Contract Demand

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

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

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

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

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges (“NYISO Charges”)

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

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

B. Marginal losses;

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

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

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

G. Rendition and Payment of Bills

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

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

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

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

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

Line	Company Name	Program	City	County	Trustee Public Hearing Authorization Date	Allocation (kW)	New Jobs	Total Job Commitment	Capital Investment	Proposed Direct Sale Contract Term
1	Roth Industries Inc.	PP	Watertown	Jefferson	7/26/2016	600	8	22	\$6,700,000	7 Years

DEFINITIONS

Allocation Type

- Original
- Extension

Contract Type

- New
- Additional
- Amended

Status

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

to

ROTH INDUSTRIES, INC.

The Power Authority of the State of New York (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title 1 of Article 5 of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Preservation Power and Energy (“Agreement”) to Roth Industries, Inc., having facilities at 268 Bellew Avenue South, Watertown, New York, 13601 (“Customer”). The Authority and the Customer are from time to time referred to in this Agreement individually as a “Party” or collectively as the “Parties” and agree as follows:

RECITALS

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

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

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

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

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at an expanded facility at 268 Bellew Avenue South, Watertown, New York, 13601 to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on July 26, 2016, the Authority’s Board of Trustees (“Trustees”) approved a 600 kilowatt (“kW”) allocation of PP (defined in Article I of this Agreement as the “Allocation”) to the Customer for a seven year term, as further described in this Agreement;

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

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

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

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

Article I. Definitions

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

- L. **International Joint Commission** (or **IJC**) refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.
- M. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- N. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- O. **NYISO Charges** has the meaning set forth in the Service Tariff.
- P. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- Q. **PAL** means the New York Public Authorities Law.
- R. **Preservation Power** (or **PP**) has the meaning set forth in the Service Tariff.
- S. **Niagara Project** means the Authority's Niagara Power Project, FERC Project No. 2216.
- T. **Rules** refers to the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by Authority.
- U. **Service Tariff** means the Authority's Service Tariff No. 10, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- V. **St. Lawrence Project** means the Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.
- W. **Schedule A** refers to the Schedule A to this Agreement entitled "Preservation Power Allocations" which is attached to and made part of this Agreement.
- X. **Schedule B** refers to the Schedule B to this Agreement entitled "Preservation Power Commitments" which is attached to and made part of this Agreement.
- Y. **Schedule C** refers to Schedule C to this Agreement entitled "Takedown Schedule" which is attached to and made part of this Agreement.

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

Article II. Electric Service

- A. The Authority shall provide Electric Service to the Customer to enable the Customer to receive the Allocation in accordance with this Agreement, the Service Tariff and the Rules. The Customer shall not be entitled to receive Electric Service for any PP Allocation that is not specified in Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with the Service Tariff.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand and the Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as PP from the St. Lawrence Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all PP customers, as applicable, based on the terms of such ruling, order, or decision. The Authority will use reasonable efforts to provide at least thirty (30) days prior written notice to the Customer of any such modification unless such notice is inconsistent with such ruling, order or decision.
- F. The Contract Demand may not exceed the Allocation.

- G. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of PP to the Customer, the proper and efficient implementation of the PP power program, billing related to PP Power, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents the Authority determines are necessary to effectuate such exchanges of information.
- H. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer's local electric utility providing for the delivery of PP on terms and conditions that are acceptable to the Authority.
- I. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") the Authority determines is necessary for the provision of Electric Service, the delivery of PP, billing related to the PP program, the effective and proper administration of the PP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

Article III. Rates, Terms and Conditions

- A. The Authority will provide Electric Service to the Customer based on the rates, terms and conditions established in accordance with this Agreement, the Service Tariff and the Rules.
- B. The Service Tariff and the Rules may be amended from time to time by the Authority. The Authority shall provide at least thirty (30) days prior written notice to the Customer of any proposed change in the Service Tariff or the Rules. No subsequent amendment to the Service Tariff or the Rules shall affect the determination of rates for PP to the Customer during the term of the Agreement except insofar as otherwise authorized by this Agreement. This provision shall not limit the Authority's discretion to determine rates applicable to allocations of power and energy awarded to the Customer beyond or in addition to the Allocation.
- C. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates shall be subject to increase by the Authority at any time upon 30 days prior written notice to Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the St. Lawrence Project and the Authority's competitive position with respect to other suppliers, the Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to the

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

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

Article IV. Billing and Billing Methodology

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

additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in the Service Tariff.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

Article V. Transmission and Delivery of Power and Energy

- A. The Customer shall responsible for securing arrangements with its local utility for transmission and delivery service associated with the Allocation unless otherwise agreed to by the Parties.
- B. The Customer will pay its local utility for transmission and delivery service associated with the Allocation in accordance applicable contracts and all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the Firm Power and Firm Energy supplied by the Authority under this Agreement. To the extent the Authority incurs transmission and delivery service charges or other costs associated with the Allocation during the term of this Agreement, the Customer agrees to compensate the Authority for all such charges and costs incurred.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf as may be required under the applicable local utility company tariffs. In no event shall the Authority act as the LSE for the power and energy consumed by Customer other than Electric Service (inclusive of Substitute Energy, if any) sold by the Authority under this Agreement. The Customer understands and acknowledges that it will be responsible to the Authority for all charges and other costs incurred by the Authority associated with the

provision of Electric Service to enable the Customer to receive the Allocation, including charges and costs contained in the NYISO Tariffs or other applicable tariffs (including local utility company tariffs), regardless of whether such charges and costs are transmission-related. Such charges and costs are in addition to the charges for power and energy.

Article VI. Preservation Power Commitments

- A. Schedule B sets forth the Customer's specific "Preservation Power Commitments." Such commitments are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service to the Customer under this Agreement is expressly conditioned upon the Customer's performance of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility expansion which has resulted in such expansion being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility expansion, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed expansion.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility expansion. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility expansion and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service in accordance with this provision within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.
- E. In the event the Customer fails to complete the Facility expansion by July 26, 2019 (*i.e.*, within three (3) years of the Authority's award of the Allocation), (i) the Authority may, at its option and discretion, cancel the Allocation, or reduce it by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility expansion, or (ii) upon request of the Customer, such date may be extended by the Authority in its sole discretion.

Article VII. Rules and Service Tariff; Conflicts

The Service Tariff is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariff and the Rules, the provisions of the Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariff, the provisions of this Agreement shall govern.

Article VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.*, reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with the Service Tariff as applicable.
- B. The Authority shall provide reasonable notice to the Customer of any curtailments referenced in Article VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement.
- C. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the hydroelectricity that would otherwise have been supplied under this Agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.
- D. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- E. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

Article IX. Additional Allocations

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

Article X. Notification

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

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Telephone:
Facsimile: (914) 390-8156
Electronic mail:
Attention: Manager – Business Power Allocations and Compliance

To: Customer

Roth Industries, Inc.
268 Bellew Avenue South
Watertown, New York 13601
Telephone:
Facsimile:
Electronic mail:
Attention:

B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing. Any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and rulings by the IJC and without regard to conflicts of law provisions.

Article XI. Venue

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

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

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

Article XIII. Previous Agreements and Communications

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

Article XIV. Waiver

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

Article XV. Severability and Voidability

- A. If any term or provision of this Agreement is invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the

entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

Article XVI. Term, Modification, Termination and Effect

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

Article XVII. Execution

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

ROTH INDUSTRIES, INC.

BY: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A

PRESERVATION POWER ALLOCATIONS

Customer: Roth Industries, Inc.

Type of Allocation	Allocation (kW)	Trustee Approval Date	Expiration Date	Facility
PP	600	July 26, 2016	Seven (7) years from commencement of Electric Service of any portion of this Allocation	268 Bellew Avenue South, Watertown, NY 13601

SCHEDULE B

PRESERVATION POWER COMMITMENTS

ARTICLE I. EMPLOYMENT COMMITMENTS

A. Base Employment Level

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

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

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

B. Employment Records and Reports

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

ARTICLE II. REDUCTIONS OF CONTRACT DEMAND

A. Employment Levels

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

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the facilities receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is defined in the Service Tariff) for PP is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.C of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Notice of Intent to Reduce Contract Demand

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

ARTICLE III. CAPITAL INVESTMENT

The Customer agrees to make the Capital Investment set forth in the Appendix to this Schedule B.

ARTICLE IV. ENERGY EFFICIENCY AUDITS AND INFORMATION REQUESTS

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

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

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

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

APPENDIX TO SCHEDULE B

I. Base Employment Level

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

Base Employment Level	Facility	Miscellaneous/Notes
Within three (3) years of the commencement of Electric Service of any portion of the Allocation to the Facility, the Customer shall employ not less than twenty two (22) persons in full-time positions at the Facility (the "Base Employment Level") and shall maintain such Base Employment Level for the term of the Allocation.	268 Bellew Avenue South, Watertown, NY 13601	

II. Capital Investment

The Customer shall make a minimum capital investment of \$6,700,000 in connection with construction and fit out of the Facility expansion (the "Capital Investment"). The Capital Investment is expected to consist of the following approximate expenditures on the items indicated:

New Building Construction:	\$3,000,000
Blow Molding Equipment:	\$3,300,000
Miscellaneous Equipment:	<u>\$ 400,000</u>
Total Minimum Capital Investment:	\$6,700,000

The Capital Investment shall be made, and the Facility expansion shall be completed and fully operational, not later than July 26, 2019 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

SCHEDULE C
TAKEDOWN SCHEDULE

N/A

SCHEDULE D

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

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

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

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

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

5. ZEC Charge

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

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

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

6. REC Charge

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

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

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



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

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

Service Tariff No. 10

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Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

A. The following abbreviations are used:

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

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

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

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

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

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

- G. The term "Preservation Power" means Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).
- H. The term "Firm Power" means capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.
- I. The term "Firm Energy" means energy (kWh) associated with Firm Power.
- J. The term "Load Serving Entity" or "LSE" shall have the meaning set forth in the Agreement.
- K. The term "Project" means the Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.
- L. The term "Rate Year" or "RY" means the period from July 1 through June 30 of the following year.
- M. The term "Rules" means the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- N. The term "Service Tariff" means this Service Tariff No. 10.

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

III. Monthly Rates and Charges

A. Preservation Power Base Rates

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

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

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

B. Preservation Power Rates No Lower Than Rural/Domestic Rate

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Billing Period

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

F. Billing Demand

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

G. Billing Energy

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

H. Contract Demand

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

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

1. The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.
2. Billing Demand – Unless separately metered, the billing demand charged by the Authority to each Customer will be the highest 15-minute integrated demand during each billing period recorded on the Customer's meter multiplied by a percentage based on load factor sharing, as applicable.
3. Billing Energy – Unless separately metered, the kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the billing period multiplied by a percentage based on load factor sharing, as applicable.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

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

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

- A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
- B. Marginal losses;
- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

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

G. Adjustment of Charges

1. Distribution Losses

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

2. Transformer Losses

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

3. Power Factor

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

H. Conflicts

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

I. Customer Resales Prohibited

The Customer may not resell any quantity of Preservation Power.

v. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year."

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

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

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

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24

Measuring Year -1 (2011)

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

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

Apply AAF to Calculate the New Rate Year Base Rate

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

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PUBLIC HEARING
IN THE MATTER OF THE
CONTRACT FOR SALE OF PRESERVATION POWER TO ROTH
INDUSTRIES, INC.
POWER AUTHORITY OF THE STATE OF NEW YORK

DATE: January 6, 2017
TIME: 2:00 p.m. to 6:00 p.m.
LOCATION: Frank S. McCullough
Jr. Hawkins Point Visitors Center
830 Barnhart Island
Massena, New York 13662

1 APPEARANCES:

2 KAREN DELINCE, CORPORATE SECRETARY
3 Power Authority of the State of New York
4 123 Main Street
5 White Plains, New York 10601
6 (914) 390-8085

7 KEITH HAYES, VICE PRESIDENT OF ECONOMIC DEVELOPMENT
8 Power Authority of the State of New York
9 123 Main Street
10 White Plains, New York 10601
11 (914) 681-6200

12 ALSO PRESENT:
13 Lorna Johnson

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

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

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

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

20 In addition, notices appeared in the
21 following newspapers once a week for the four
22 weeks leading up to this hearing: In the
23 Albany Times Union, Massena Daily

1 Courier-Observer, Ogdensburg Journal,
2 Plattsburgh Press Republican, Syracuse Post
3 Standard, Watertown Daily Times.

4 The public was also given access to the
5 proposed contract on the Authority's website
6 and at the Authority's White Plains office
7 during the 30-day period prior to today's
8 hearing.

9 After the hearing, the public will be
10 given access to the hearing transcript, once
11 the process is completed, at www.nypa.gov and
12 at the White Plains office.

13 The next step in the process set forth in
14 Section 1009 will be for the NYPA Trustees to
15 reconsider the proposed contract in light of
16 public comments.

17 Once the Trustees have completed their
18 final review, a contract will be forwarded to
19 the Governor for his consideration and
20 approval.

21 If you plan to make an oral statement at
22 this hearing, I'd ask that you so indicate on
23 the sign-in sheet.

1 Also, if you have a written statement,
2 please give a copy to Lorna Johnson and one to
3 the reporter. Written statements may be of any
4 length and will appear in the record of the
5 hearing in addition to oral statements.

6 The record of the hearing will remain
7 open for additional comments through close of
8 business, Monday January 9th, 2017.

9 Additional comments should be mailed,
10 faxed or e-mailed to the Corporate Secretary at
11 123 Main Street, 11-P, White Plains, New York,
12 10601 or (914) 390-8040 or
13 secretarys.office@nypa.gov.

14 At this point, I would like to introduce
15 Mr. Keith Hayes, the Authority's Vice President
16 of Economic Development, who will provide
17 additional details on the proposed contract.
18 Thank you.

19 Mr. Hayes...

20 MR. HAYES: Thank you, Ms. Delince. Good
21 afternoon. My is name is Keith Hayes, and I am
22 the Vice President of Economic Development at
23 the New York Power Authority.

1 I'm here today to present an overview of
2 a proposed contract with Roth Industries in
3 Watertown for the direct sale of 600 kW of
4 Preservation Power, hydropower that is
5 generated here at the Authority's St.
6 Lawrence/FDR Power Project.

7 Preservation Power, established under
8 Public Authorities Law Section 1005, Subsection
9 13, authorizes the Authority to allocate
10 low-cost hydropower that is relinquished from
11 the block of 490 Megawatts of St. Lawrence/FDR
12 Power Project's firm and interruptible power
13 currently sold to ALCOA and formerly sold to
14 General Motors. The law authorizes the
15 allocation of power to businesses in Northern
16 New York, specifically businesses located in
17 Franklin, Jefferson and St. Lawrence counties,
18 applying the same allocation criteria as
19 pertains to the Authority's other hydropower
20 programs - Replacement Power and Expansion
21 Power.

22 Each application for an allocation of
23 Preservation Power must be evaluated in

1 consideration of the legislative criteria that
2 includes, but need not be limited to, a
3 consideration of the number of jobs created as
4 a result of the allocation; the business's
5 long-term commitment to the region as evidenced
6 by the current and/or plan capital investment
7 in the business's facilities in the region; the
8 ratio of the number of jobs to be created to
9 the amount of power requested; the types of
10 jobs created, as measured by wage and benefit
11 levels; and the type and cost of buildings,
12 equipment and facilities to be constructed,
13 enlarged or installed.

14 At its meeting on July 26, 2016, the
15 Power Authority's Board of Trustees approved an
16 allocation of 600 kW of Preservation Power to
17 Roth Industries in Watertown for a term of 7
18 years. Approval of the allocation was based on
19 an evaluation of Roth Industries' application
20 for hydropower, in which it proposed to invest
21 at least \$6.7 million to expand its existing
22 facility. Roth Industries committed to create
23 a total of at least 8 new jobs as a result of

1 this expansion.

2 To summarize some of the pertinent
3 provisions of the proposed contract:

4 1. It provides for the direct billing of
5 all hydropower supply charges, all New York
6 Independent System Operator charges and taxes.
7 To accommodate non-payment risk that could
8 result from the direct billing arrangement, the
9 contract includes commercially reasonable
10 provisions concerning the Authority's ability
11 to charge late payment fees and to require
12 deposits in the event of a customer's failure
13 to make payments for any two monthly bills;

14 The contract includes Roth Industries'
15 commitment with respect to employment and
16 capital investment and retains the Authority's
17 right to reduce or terminate the allocation if
18 employment, power utilization or capital
19 investment commitments are not met. For
20 example, the contract includes an annual job
21 reporting requirement and a job compliance
22 threshold of 90 percent. Should a company's
23 average annual employment fall below the

1 compliance threshold of 90 percent of the
2 employment commitment, the Authority has the
3 right to reduce the allocation on a pro rata
4 basis.

5 The contract requires a company to
6 perform an energy audit at its facility at
7 least once within 5 years in order to ensure
8 the customer uses the hydropower efficiently.
9 The contract provision is consistent with other
10 Authority direct sale contracts, including the
11 Western New York and Recharge New York sales
12 contracts; and

13 The contract also includes new provisions
14 expressly allowing NYPA's recovery from the
15 customer of any costs incurred in connection
16 with the purchases of Zero Emission Credits and
17 Renewable Energy Credits attributable to the
18 customer's load stemming from NYPA's
19 implementation of the Clean Energy Standard,
20 also known as CES.

21 On August 1st, 2016, the Public Service
22 Commission issued the CES Order establishing a
23 clean energy standard for the State intended to

1 meet the State's Energy Plan's clean energy
2 goals by, among other things, increasing the
3 amount of the State's energy generation that
4 comes from renewable energy sources in New York
5 State, and preventing the premature closure of
6 upstate, at risk, zero emission nuclear power
7 plants.

8 NYPA supports the State Energy Plan's
9 clean energy goals and in anticipation of
10 NYPA's participation in the Public Service
11 Commission's CES program, at its September 27,
12 2016, meeting, the Trustees approved a revised
13 form of contract including provisions for the
14 pass through to customers of any costs NYPA
15 incurs in connection with the purchase of Zero
16 Emission Credits and Renewable Energy Credits
17 attributable to the customers' load.

18 Lastly, the Authority will provide firm
19 electric service from the St. Lawrence/FDR
20 plant, which is subject to pro rata curtailment
21 when there is insufficient generation at the
22 Niagara and St. Lawrence/FDR facilities to meet
23 all of its firm load requirements. The rates,

1 terms and conditions for the sale of
2 Preservation Power are contained in the
3 Authority's "Schedule of Rates for Sale of Firm
4 Power to Preservation Power Customers - Service
5 Tariff Number 10." Delivery service will be
6 provided and billed by the local utility,
7 National Grid, in accordance with its Public
8 Service Commission approved delivery service
9 tariff.

10 As Ms. Delince stated earlier, the
11 Authority will accept your comments on the
12 proposed contract until the close of business
13 on Monday, January 9th.

14 I will now turn the forum back to
15 Ms. Delince.

16 MS. DELINCE: Thank you, Mr. Hayes. We
17 will recess now and reconvene when speakers
18 arrive.

19 (In recess.)

20 MS. DELINCE: The January 6, 2017, public
21 hearing on the proposed Customer Contract to
22 Roth Industries, Inc. is now officially closed.

23 As previously stated, the record of the

1 hearing will remain open for additional
2 comments through close of business, Monday,
3 January 9th, 2017.

4 Thank you and good night.

5 (Hearing concluded.)

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1 STATE OF NEW YORK)

2 COUNTY OF ST. LAWRENCE)

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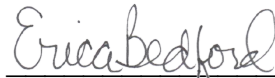
4 C E R T I F I C A T E

5

6 I, Erica Bedford, Court Reporter, do hereby certify
7 that the foregoing has been a true and correct transcript
8 of the testimony as taken by me, to the best of my
9 ability, at the time and place noted in the heading
10 hereof.

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Erica Bedford, Notary Public
State of New York
County of St. Lawrence
My commission expires: 5/11/18

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New York State Power Authority

*Public Hearing
January 10, 2017*



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New York State Power Authority
Tuesday, January 10, 2017
2:30 p.m. - 6:30 p.m.
Niagara Power Project Visitors' Center
5777 Lewiston Road
Lewiston, New York 14092

Patricia A. Schreier

1 SPEAKERS :

2 MS. DELINCE 3, 13
3 MR. SMITH 5

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1 MS. DELINCE: Good afternoon. This is a public
2 hearing required by law and authorized by the New York
3 Power Authority's Board of Trustees on the proposed
4 Customer Contracts for the sale of hydropower to several
5 Authority Customers located in Western New York.

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

8 New York State Public Authorities Law, Section
9 1009, sets forth procedures for executing certain
10 contracts negotiated by the Authority. First, prior to
11 the hearing, it requires that notice of the hearing be
12 provided.

13 Therefore, a notice was sent to the Governor, The
14 Senate's President Pro Temp, the Senate Minority Leader,
15 the Senate Finance Committee Chair, The Assembly
16 Speaker, the Assembly Minority Leader and the Assembly
17 Ways and Means Committee Chair.

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

23 The public was also given access to the proposed

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

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

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

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

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

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

20 The record of the hearing will remain open for
21 additional comments through close of business,
22 Wednesday, January 11, 2017. Additional comments should
23 be mailed, faxed or e-mailed to the Corporate Secretary

1 at 123 Main Street, 11-P, White Plains, New York 10601
2 or (914) 390-8040 or secretarys.office@nypa.gov.

3 At this time, I would like to introduce
4 Mr. Richard Smith, the Authority's Director of Business
5 and Project Development, Western New York, who will
6 provide additional details on the proposed Customer
7 Contracts.

8 Thank you. Mr. Smith.

9 MR. SMITH: Thank you, Ms. Delince.

10 Good afternoon. My name is Richard Smith and I am
11 the Business and Project Development Director within
12 NYPA's Economic Development Department. I'm here today
13 to present a summery of proposed new hydropower
14 contracts for a variety of new and current customers
15 here in Western New York.

16 Regarding the contracts, under Public Authorities
17 Law Section 1005 Subsection 13, the Authority may
18 allocate and sell directly or by sale-for-resale, 250 MW
19 of Expansion Power, known as EP, and 445 MW of
20 Replacement Power, known as RP, to businesses located
21 within 30 miles of the Niagara Power Project, provided
22 that the EP allocated to businesses in Chautauqua County
23 on January 1, 1987 shall continue to be allocated in

1 Chautauqua County.

2 Two companies were awarded hydropower allocations
3 by the Authority's Trustees on September 27, 2016, in
4 return for commitments made to create or expand their
5 businesses in Western New York.

6 Specifically, Geico, which operates call centers
7 for its insurance business, was awarded 400 kilowatts of
8 RP in support of opening a second call center near its
9 operations center in the Town of Amherst (Erie County).
10 Geico will invest at least \$6 million and create at
11 least 300 new jobs (above its base jobs of 2,600).

12 CI Filing Systems, LLC, a maker of index tabs, file
13 folders, legal dividers and other office products, is
14 proposing to move its operations from New Jersey to
15 Tonawanda (Erie County). CI Filings was awarded 1,000
16 kilowatts of RP, will invest at least 7.9 million and
17 create at least 80 new jobs.

18 Additionally, seven companies have pending
19 hydropower allocations that were previously awarded by
20 the Trustees, and whose proposed contracts are also the
21 subject of this hearing.

22 Specifically, at its July 29, 2014 meeting, the
23 Trustees approved a 150 kilowatt allocation of EP to the

1 3M Company for its commitment to invest \$1,985,000 and
2 create six new jobs at its Tonawanda facility. The
3 expansion project involves repurposing existing unused
4 production equipment and installing a new production
5 line to begin manufacturing a new product.

6 Confer Plastics was awarded 400 kilowatts of EP by
7 the Trustees on September 29, 2015 for its commitment to
8 invest \$2,600,000 and create 24 new jobs at its North
9 Tonawanda facility. The project involves expanding its
10 plastic product output through the purchase of a new,
11 large blow molding machine.

12 At its April 4, 2011 meeting, the Trustees approved
13 a 2,000 kilowatt allocation of RP to Fresenius Kabi USA
14 for its commitment to invest \$30,000,000 and create 90
15 new jobs at its Grand Island facility. The project
16 involves expanding the company's pharmaceutical
17 manufacturing capacity by installing new and used
18 production equipment in space that had been used for
19 warehousing and offices.

20 Niagara Coatings Services was awarded 100 kilowatt
21 of RP by the Trustees on July 26, 2016 for its
22 commitment to invest \$475,000 and create three new jobs
23 at its facility in the Town of Niagara. The project

1 involves expanding its industrial sandblasting, coating
2 and painting services by opening a second facility
3 across the street from its existing operations.

4 At its May 19, 2015 meeting the Trustees approved a
5 400 kilowatt allocation of EP to North American Hoganas
6 for its commitment to invest \$3,000,000 and create 10
7 new jobs at its Niagara Falls facility. The expansion
8 project involves building two 5,000-square-foot prefab
9 metal facilities to expand iron powder production,
10 copper scrap-to-copper powder operations, and other
11 metal powder production.

12 Saint-Gobain Ceramics & Plastics was awarded 300
13 kilowatts of RP by the Trustees on February 26, 2015 for
14 its commitment to invest \$4,530,000 and create seven new
15 jobs at its Niagara Falls facility. The project
16 involves capacity expansion with the installation of a
17 new ceramic materials production line and a new
18 40,000-square-foot building expansion.

19 Unifrax was awarded 1,900 kilowatts of RP by the
20 Trustees on October 15, 2014 for its commitment to
21 invest \$33,000,000 and create 50 new jobs at its
22 Tonawanda facility. The expansion project involves
23 adding a third ceramic fiber insulation production line

1 in a new 43,000-square-foot facility on its site.

2 Together, these nine companies have committed to
3 investing nearly \$89 million and to create 570 new jobs
4 at their Western New York facilities in return for the
5 low cost hydropower. All of the hydropower awards were
6 offered for seven year terms with the exception of
7 Fresenius Kabi USA which has a five year allocation
8 term.

9 The expansion projects are in various stages of
10 construction and when completed, the contracts that are
11 the subject of this hearing will be offered for the sale
12 of Authority hydropower in return for job and capital
13 commitments I just described.

14 Lastly, two companies have hydropower allocations
15 whose terms were extended by the Trustees at the
16 September 27, 2016 board meeting.

17 The Trustees approved an extension of the 1,200
18 kilowatt allocation of EP to Buffalo Shredding and
19 Recovery, LLC for its commitment to retain at least 22
20 jobs at its Buffalo facility. The new contract will
21 extend the expiration date from February 28, 2017 to
22 June 30, 2020. The Trustees also approved an extension
23 of the 120 kilowatt allocation of RP to Buffalo

1 Shredding and Recovery, LLC for its commitment to retain
2 at least 290 jobs at its Buffalo facility. The new
3 contract will extend the expiration date from
4 October 31, 2016 to June 30, 2020.

5 To summarize some of the pertinent provisions in
6 each of the proposed contracts, first, the contracts
7 provide for the direct billing of all hydropower supply
8 charges and all New York Independent System Operator,
9 Inc. ("NYISO") charges and taxes.

10 The contracts include the customers' agreed upon
11 commitments with respect to employment and capital
12 investment. The contracts retain the Authority's right
13 to reduce or terminate a customer's allocation if
14 employment, power utilization or capital investment
15 commitments are not met.

16 For example, the contracts include an annual job
17 reporting requirement and a job compliance threshold of
18 90 percent. Should a company's average annual
19 employment fall below the compliance threshold of 90
20 percent, the Authority has the right to reduce the
21 allocation on a pro rata basis.

22 The contracts compel the companies to perform an
23 energy audit at their facility at least once within five

1 years, helping to ensure the customers use the
2 hydropower efficiently.

3 Additionally, to accommodate nonpayment risk that
4 could result from the direct billing arrangement, the
5 contracts include commercially reasonable provisions
6 concerning the Authority's ability to charge late
7 payment fees and to require deposits in the event of a
8 customer's failure to make payment for any two monthly
9 bills. These contract provisions are consistent with
10 other Authority direct sale contracts, including the
11 Recharge New York sales contracts.

12 The contracts also includes new provisions
13 expressly allowing NYPA's recovery from the customer of
14 any costs incurred in connection with the purchase of
15 Zero Emission Credits and Renewable Energy Credits
16 attributable to the customer's load, stemming from
17 NYPA's implementation of the Clean Energy Standard or
18 "CES".

19 On August 1, 2016, the Public Service Commission
20 issued the "CES Order" establishing a clean energy
21 standard for the State intended to meet the State Energy
22 Plan's clean energy goals by, among other things,
23 (1) increasing the amount of the State's energy

1 generation that comes from renewable energy sources in
2 New York State and (2), preventing the premature closure
3 of upstate, at risk, zero emission nuclear power plants.

4 NYPA supports the State Energy Plan's clean energy
5 goals and in anticipation of NYPA's participation in the
6 Public Service Commission's CES program, at its
7 September 27, 2016 meeting, the Trustees approved a
8 revised form of contract including provisions for the
9 pass through to customers of any costs NYPA incurs in
10 connection with the purchase of Zero Emission Credits
11 and Renewable Energy Credits attributable to the
12 customers' load.

13 Lastly, the contracts will serve the allocations in
14 accordance with the Authority's Service Tariff WNY-1
15 which specifies rates and other terms applicable to all
16 EP and RP allocations. The Service Tariff specifies a
17 three year rate phase-in to a target rate based on the
18 rate of the Authority's other hydropower program -
19 Preservation Power - to ultimately ensure consistency
20 among the Authority's three hydropower programs.

21 Transmission and delivery service for these
22 allocations will be provided by National Grid or NYSEG,
23 in accordance with the utilities' Public Service

1 Commission approved delivery service tariffs.

2 As Ms. Delince stated earlier, the Authority will
3 accept your comments on the proposed contracts until the
4 close of business on Wednesday, January 11, 2017.

5 I will now turn the hearing back to Ms. Delince.

6 MS. DELINCE: Thank you, Mr. Smith. We will
7 recess now and reconvene when speakers arrive.

8 (recess)

9 MS. DELINCE: The January 10, 2017 public
10 hearing on the proposed Customer Contracts to the
11 Authority's Western New York Customers indicated
12 earlier, is now officially closed.

13 As I previously stated, the record of the hearing
14 will remain open for additional comments through close
15 of business, Wednesday, January 11, 2017.

16 Thank you and good night.

17

18 (Hearing closed at 6:30 p.m.)

19

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23

1 STATE OF NEW YORK
2 COUNTY OF ERIE

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

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

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

17 IN WITNESS WHEREOF, I have here unto subscribed my
18 name this 20th day of January, 2017.

19
20
21
22
23


Notary Public
State of New York

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New York Power Authority
Contracts for the Sale of Replacement and Expansion Power - Transmittal to the Governor

Exhibit "A"
January 31, 2017

Line	Company Name	Program	Town	County	Trustee Public Hearing Authorization Date	Allocation (kW)	New Jobs	Total Job Commitment	Capital Investment	Proposed Direct Sale Contract Term
1	GEICO	RP	Amherst	Erie	9/27/2016	400	300	2,600	\$6,000,000	7 Years
2	CI Filing Systems LLC	RP	Tonawanda	Erie	9/27/2016	1,000	80	80	\$ 7,900,000.00	7 Years
3	Buffalo Shredding and Recovery, LLC	EP	Buffalo	Erie	9/27/2016	400	0	22	N/A	Through June 30, 2020
4	Graphic Controls Acquisition Corp.	RP	Buffalo	Erie	9/27/2016	120	0	290	N/A	Through June 30, 2020

DEFINITIONS

Allocation Type

- Original
- Extension

Contract Type

- New
- Additional
- Amended

Status

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

to

GEICO

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with GEICO (“Customer”), having facilities at 150 Crosspoint Parkway, Getzville, NY 14068. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

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

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

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

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

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

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

WHEREAS, on September 27, 2016, the Authority’s Board of Trustees (“Trustees”) approved a 400 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on September 27, 2016, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

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

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

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

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

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

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

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

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

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

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

II. Electric Service

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

III. Rates, Terms and Conditions

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

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

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

IV. Expansion Power and/or Replacement Power Commitments

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

- E. In the event the Customer fails to complete the Facility by September 27, 2019 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

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

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

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

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

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

VII. Billing and Billing Methodology

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

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

VIII. Hydropower Curtailments and Substitute Energy

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

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

IX. Effectiveness, Term and Termination

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

X. Additional Allocations

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

XI. Notification

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

follows:

To: The Authority

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

Email:

Facsimile: _____

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

GEICO

150 Crosspoint Parkway
Getzville, NY 14068

Email:

Facsimile:

Attention:

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

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

XII. Applicable Law

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

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

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

XV. Previous Agreements and Communications

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

XVI. Severability and Voidability

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

XVII. Waiver

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

XVIII. Execution

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

GEICO

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

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

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: GEICO				
Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Replacement Power	400	1) 150 Crosspoint Parkway Getzville, NY 14068 2) 300 Crosspoint Parkway Getzville, NY 14068	September 27, 2016	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

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

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

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

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

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

B. Employment Records and Reports

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

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

II. Reductions of Contract Demand

A. Employment Levels

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

B. Power Utilization Levels

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

C. Capital Investment

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

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

D. Notice of Intent to Reduce Contract Demand

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

III. Energy Efficiency Audits; Information Requests

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

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

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service, the Customer shall employ at least 2,900 full-time employees (“Base Employment Level”) at the Customer’s Facility, provided that such Base Employment Level must be comprised of at least 300 full-time employees at 150 Crosspoint Parkway, Getzville, NY and at least 2,600 full-time employees at 300 Crosspoint Parkway, Getzville, NY. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall make a minimum capital investment of \$6,000,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following approximate expenditures on the items indicated:

General Construction -	\$4,148,500
Carpet -	\$ 191,000
Engineering & Architecture -	\$ 100,000
Furniture -	\$1,053,600
Light Fixtures & Signage -	\$ 268,700
Refrigerators & Ice Makers -	\$ 13,200
Security (Access control & Cameras) -	<u>\$ 225,000</u>

Total Minimum Capital Investment: \$6,000,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than September 27, 2019 (*i.e.*, within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

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

TAKEDOWN SCHEDULE

N/A

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

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

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

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

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

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

5. ZEC Charge

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

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

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

6. REC Charge

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

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

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



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

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

Service Tariff No. WNY-1

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Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

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

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

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

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

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

I.Billing Energy

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

J.Contract Demand

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

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

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

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

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges (“NYISO Charges”)

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

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

B. Marginal losses;

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

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

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

G. Rendition and Payment of Bills

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

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

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

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

Apply Collar of ±5.0% to Determine the Maximum/Minimum AAF.

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

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

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

to

CI FILING SYSTEMS LLC

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with CI Filing Systems LLC (“Customer”), having facilities at 1136 Military Road, Tonawanda, NY 14217. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

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

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

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

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

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

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

WHEREAS, on September 27, 2016, the Authority’s Board of Trustees (“Trustees”) approved a 1,000 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on September 27, 2016, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

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

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

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

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

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

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

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

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

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

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

II. Electric Service

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

III. Rates, Terms and Conditions

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

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

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

IV. Expansion Power and/or Replacement Power Commitments

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

- E. In the event the Customer fails to complete the Facility by September 27, 2019 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

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

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

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

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

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

VII. Billing and Billing Methodology

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

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

VIII. Hydropower Curtailments and Substitute Energy

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

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

IX. Effectiveness, Term and Termination

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

X. Additional Allocations

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

XI. Notification

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

follows:

To: The Authority

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

Email:

Facsimile: _____

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

CI Filing Systems LLC
1136 Military Road
Tonawanda, NY 14217

Email:

Facsimile:

Attention:

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

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

XII. Applicable Law

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

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

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

XV. Previous Agreements and Communications

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

XVI. Severability and Voidability

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

XVII. Waiver

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

XVIII. Execution

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

CI FILING SYSTEMS LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

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

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: CI Filing Systems LLC				
Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Replacement Power	1,000	1) Manufacturing Operations: 1136 Military Road Tonawanda, NY 14217 2) Warehousing/ Distribution: 860 Ontario St. Tonawanda, NY 14217	September 27, 2016	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

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

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

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

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

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

B. Employment Records and Reports

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

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service, the Customer shall employ at least 80 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall make a minimum capital investment of \$7,916,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following approximate expenditures on the items indicated:

Purchase/Construction/Renovation - (Warehousing/distribution at 860 Ontario St.)	\$3,150,000
Construction/Renovation/Design & Planning/Move - (Manufacturing operations at 1136 Military Rd.)	<u>\$4,766,000</u>
Total Minimum Capital Investment:	\$7,916,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than September 27, 2019 (*i.e.*, within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR
REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- b. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff

Agreement: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power and/or **Replacement Power**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-1.

Target Rate: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

1. The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
 - C. Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its sole discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.
- For Customers whose allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement.

F.Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G.Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

- 1.The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer’s local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer’s local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer’s local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer’s billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer’s billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges (“NYISO Charges”)

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
 - a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

BUFFALO SHREDDING AND RECOVERY, LLC

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Buffalo Shredding and Recovery, LLC (“Customer”) with offices and principal place of business at 3175 Lakeshore Road, Buffalo, NY 14219. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at a new and/or expanded facility to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on September 27, 2016, the Authority’s Board of Trustees (“Trustees”) approved an extension of the 1,200 kilowatt (“kW”) allocation of EP to the Customer through June 30, 2020 (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and/or operation of the Facility as further described in this Agreement;

WHEREAS, on September 27, 2016, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's performance of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing

related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall

have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Buffalo Shredding and Recovery, LLC
3175 Lakeshore Road
Buffalo, NY 14219
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication

of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- B. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

BUFFALO SHREDDING AND RECOVERY, LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Buffalo Shredding and Recovery, LLC	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Expansion Power	1,200	3175 Lakeshore Road Buffalo, NY 14219	September 27, 2016	June 30, 2020

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 22 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

N/A

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- b. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff

Agreement: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power and/or **Replacement Power**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-1.

Target Rate: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

1. The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
 - C. Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its sole discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.
- For Customers whose allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement.

F.Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G.Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

- 1.The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer's local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer's local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer's local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges ("NYISO Charges")

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
 - a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year (2013)	Measuring Year -1 (2012)
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

GRAPHIC CONTROLS ACQUISITION CORP.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Graphic Controls Acquisition Corp. (“Customer”) with offices and principal place of business at 400 Exchange Street, Buffalo, NY 14204. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at a new and/or expanded facility to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on September 27, 2016, the Authority’s Board of Trustees (“Trustees”) approved an extension of the 120 kilowatt (“kW”) allocation of RP to the Customer through June 30, 2020 (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and/or operation of the Facility as further described in this Agreement;

WHEREAS, on September 27, 2016, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's performance of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing

related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall

have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Graphic Controls Acquisition Corp.
400 Exchange Street
Buffalo, NY 14204
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication

of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- B. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

GRAPHIC CONTROLS ACQUISITION CORP.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Graphic Controls Acquisition Corp.	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Replacement Power	120	400 Exchange Street Buffalo, NY 14204	September 27, 2016	June 30, 2020

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 290 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

N/A

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- b. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff

Agreement: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power and/or **Replacement Power**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-1.

Target Rate: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

1. The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
 - C. Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its sole discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.
- For Customers whose allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement.

F.Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G.Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

- 1.The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer’s local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer’s local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer’s local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer’s billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer’s billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges (“NYISO Charges”)

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
 - a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

New York State Power Authority

*Public Hearing
January 10, 2017*



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4 New York State Power Authority

5 Tuesday, January 10, 2017

6 2:30 p.m. - 6:30 p.m.

7 Niagara Power Project Visitors' Center

8 5777 Lewiston Road

9 Lewiston, New York 14092
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23 Patricia A. Schreier

1 SPEAKERS:

2 MS. DELINCE 3, 13
3 MR. SMITH 5

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1 MS. DELINCE: Good afternoon. This is a public
2 hearing required by law and authorized by the New York
3 Power Authority's Board of Trustees on the proposed
4 Customer Contracts for the sale of hydropower to several
5 Authority Customers located in Western New York.

6 My name is Karen Delince and I'm the Authority's
7 Corporate Secretary.

8 New York State Public Authorities Law, Section
9 1009, sets forth procedures for executing certain
10 contracts negotiated by the Authority. First, prior to
11 the hearing, it requires that notice of the hearing be
12 provided.

13 Therefore, a notice was sent to the Governor, The
14 Senate's President Pro Temp, the Senate Minority Leader,
15 the Senate Finance Committee Chair, The Assembly
16 Speaker, the Assembly Minority Leader and the Assembly
17 Ways and Means Committee Chair.

18 In addition, notices appeared in the following
19 newspapers, once a week, for the four weeks leading up
20 to this hearing. Niagara Gazette, Buffalo News, Buffalo
21 Business First, Lewiston Porter Sentinel, Albany
22 Times-Union, Dunkirk Observer.

23 The public was also given access to the proposed

1 contracts on the Authority's website and at the
2 Authority's White Plains office during the 30 day period
3 prior to today's hearing.

4 After the hearing, the public will be given access
5 to the hearing transcript, once it is completed, at
6 www.nypa.gov and at the White Plains office.

7 The next step in the process set forth in Section
8 1009 will be for the NYPA Trustees to reconsider the
9 proposed contracts in light of public comments.

10 Once the Trustees have completed their final
11 review, the contracts will be forwarded to the Governor
12 for his consideration and approval.

13 If you plan to make an oral statement at this
14 hearing, I ask that you so indicate on the sign-in
15 sheet. Also, if you have a written statement, please
16 give a copy to Lorna Johnson and one to the reporter.

17 Written statements may be of any length and will
18 appear in the record of the hearing in addition to oral
19 statements.

20 The record of the hearing will remain open for
21 additional comments through close of business,
22 Wednesday, January 11, 2017. Additional comments should
23 be mailed, faxed or e-mailed to the Corporate Secretary

1 at 123 Main Street, 11-P, White Plains, New York 10601
2 or (914) 390-8040 or secretarys.office@nypa.gov.

3 At this time, I would like to introduce
4 Mr. Richard Smith, the Authority's Director of Business
5 and Project Development, Western New York, who will
6 provide additional details on the proposed Customer
7 Contracts.

8 Thank you. Mr. Smith.

9 MR. SMITH: Thank you, Ms. Delince.

10 Good afternoon. My name is Richard Smith and I am
11 the Business and Project Development Director within
12 NYPA's Economic Development Department. I'm here today
13 to present a summery of proposed new hydropower
14 contracts for a variety of new and current customers
15 here in Western New York.

16 Regarding the contracts, under Public Authorities
17 Law Section 1005 Subsection 13, the Authority may
18 allocate and sell directly or by sale-for-resale, 250 MW
19 of Expansion Power, known as EP, and 445 MW of
20 Replacement Power, known as RP, to businesses located
21 within 30 miles of the Niagara Power Project, provided
22 that the EP allocated to businesses in Chautauqua County
23 on January 1, 1987 shall continue to be allocated in

1 Chautauqua County.

2 Two companies were awarded hydropower allocations
3 by the Authority's Trustees on September 27, 2016, in
4 return for commitments made to create or expand their
5 businesses in Western New York.

6 Specifically, Geico, which operates call centers
7 for its insurance business, was awarded 400 kilowatts of
8 RP in support of opening a second call center near its
9 operations center in the Town of Amherst (Erie County).
10 Geico will invest at least \$6 million and create at
11 least 300 new jobs (above its base jobs of 2,600).

12 CI Filing Systems, LLC, a maker of index tabs, file
13 folders, legal dividers and other office products, is
14 proposing to move its operations from New Jersey to
15 Tonawanda (Erie County). CI Filings was awarded 1,000
16 kilowatts of RP, will invest at least 7.9 million and
17 create at least 80 new jobs.

18 Additionally, seven companies have pending
19 hydropower allocations that were previously awarded by
20 the Trustees, and whose proposed contracts are also the
21 subject of this hearing.

22 Specifically, at its July 29, 2014 meeting, the
23 Trustees approved a 150 kilowatt allocation of EP to the

1 3M Company for its commitment to invest \$1,985,000 and
2 create six new jobs at its Tonawanda facility. The
3 expansion project involves repurposing existing unused
4 production equipment and installing a new production
5 line to begin manufacturing a new product.

6 Confer Plastics was awarded 400 kilowatts of EP by
7 the Trustees on September 29, 2015 for its commitment to
8 invest \$2,600,000 and create 24 new jobs at its North
9 Tonawanda facility. The project involves expanding its
10 plastic product output through the purchase of a new,
11 large blow molding machine.

12 At its April 4, 2011 meeting, the Trustees approved
13 a 2,000 kilowatt allocation of RP to Fresenius Kabi USA
14 for its commitment to invest \$30,000,000 and create 90
15 new jobs at its Grand Island facility. The project
16 involves expanding the company's pharmaceutical
17 manufacturing capacity by installing new and used
18 production equipment in space that had been used for
19 warehousing and offices.

20 Niagara Coatings Services was awarded 100 kilowatt
21 of RP by the Trustees on July 26, 2016 for its
22 commitment to invest \$475,000 and create three new jobs
23 at its facility in the Town of Niagara. The project

1 involves expanding its industrial sandblasting, coating
2 and painting services by opening a second facility
3 across the street from its existing operations.

4 At its May 19, 2015 meeting the Trustees approved a
5 400 kilowatt allocation of EP to North American Hoganas
6 for its commitment to invest \$3,000,000 and create 10
7 new jobs at its Niagara Falls facility. The expansion
8 project involves building two 5,000-square-foot prefab
9 metal facilities to expand iron powder production,
10 copper scrap-to-copper powder operations, and other
11 metal powder production.

12 Saint-Gobain Ceramics & Plastics was awarded 300
13 kilowatts of RP by the Trustees on February 26, 2015 for
14 its commitment to invest \$4,530,000 and create seven new
15 jobs at its Niagara Falls facility. The project
16 involves capacity expansion with the installation of a
17 new ceramic materials production line and a new
18 40,000-square-foot building expansion.

19 Unifrax was awarded 1,900 kilowatts of RP by the
20 Trustees on October 15, 2014 for its commitment to
21 invest \$33,000,000 and create 50 new jobs at its
22 Tonawanda facility. The expansion project involves
23 adding a third ceramic fiber insulation production line

1 in a new 43,000-square-foot facility on its site.

2 Together, these nine companies have committed to
3 investing nearly \$89 million and to create 570 new jobs
4 at their Western New York facilities in return for the
5 low cost hydropower. All of the hydropower awards were
6 offered for seven year terms with the exception of
7 Fresenius Kabi USA which has a five year allocation
8 term.

9 The expansion projects are in various stages of
10 construction and when completed, the contracts that are
11 the subject of this hearing will be offered for the sale
12 of Authority hydropower in return for job and capital
13 commitments I just described.

14 Lastly, two companies have hydropower allocations
15 whose terms were extended by the Trustees at the
16 September 27, 2016 board meeting.

17 The Trustees approved an extension of the 1,200
18 kilowatt allocation of EP to Buffalo Shredding and
19 Recovery, LLC for its commitment to retain at least 22
20 jobs at its Buffalo facility. The new contract will
21 extend the expiration date from February 28, 2017 to
22 June 30, 2020. The Trustees also approved an extension
23 of the 120 kilowatt allocation of RP to Buffalo

1 Shredding and Recovery, LLC for its commitment to retain
2 at least 290 jobs at its Buffalo facility. The new
3 contract will extend the expiration date from
4 October 31, 2016 to June 30, 2020.

5 To summarize some of the pertinent provisions in
6 each of the proposed contracts, first, the contracts
7 provide for the direct billing of all hydropower supply
8 charges and all New York Independent System Operator,
9 Inc. ("NYISO") charges and taxes.

10 The contracts include the customers' agreed upon
11 commitments with respect to employment and capital
12 investment. The contracts retain the Authority's right
13 to reduce or terminate a customer's allocation if
14 employment, power utilization or capital investment
15 commitments are not met.

16 For example, the contracts include an annual job
17 reporting requirement and a job compliance threshold of
18 90 percent. Should a company's average annual
19 employment fall below the compliance threshold of 90
20 percent, the Authority has the right to reduce the
21 allocation on a pro rata basis.

22 The contracts compel the companies to perform an
23 energy audit at their facility at least once within five

1 years, helping to ensure the customers use the
2 hydropower efficiently.

3 Additionally, to accommodate nonpayment risk that
4 could result from the direct billing arrangement, the
5 contracts include commercially reasonable provisions
6 concerning the Authority's ability to charge late
7 payment fees and to require deposits in the event of a
8 customer's failure to make payment for any two monthly
9 bills. These contract provisions are consistent with
10 other Authority direct sale contracts, including the
11 Recharge New York sales contracts.

12 The contracts also includes new provisions
13 expressly allowing NYPA's recovery from the customer of
14 any costs incurred in connection with the purchase of
15 Zero Emission Credits and Renewable Energy Credits
16 attributable to the customer's load, stemming from
17 NYPA's implementation of the Clean Energy Standard or
18 "CES".

19 On August 1, 2016, the Public Service Commission
20 issued the "CES Order" establishing a clean energy
21 standard for the State intended to meet the State Energy
22 Plan's clean energy goals by, among other things,
23 (1) increasing the amount of the State's energy

1 generation that comes from renewable energy sources in
2 New York State and (2), preventing the premature closure
3 of upstate, at risk, zero emission nuclear power plants.

4 NYPA supports the State Energy Plan's clean energy
5 goals and in anticipation of NYPA's participation in the
6 Public Service Commission's CES program, at its
7 September 27, 2016 meeting, the Trustees approved a
8 revised form of contract including provisions for the
9 pass through to customers of any costs NYPA incurs in
10 connection with the purchase of Zero Emission Credits
11 and Renewable Energy Credits attributable to the
12 customers' load.

13 Lastly, the contracts will serve the allocations in
14 accordance with the Authority's Service Tariff WNY-1
15 which specifies rates and other terms applicable to all
16 EP and RP allocations. The Service Tariff specifies a
17 three year rate phase-in to a target rate based on the
18 rate of the Authority's other hydropower program -
19 Preservation Power - to ultimately ensure consistency
20 among the Authority's three hydropower programs.

21 Transmission and delivery service for these
22 allocations will be provided by National Grid or NYSEG,
23 in accordance with the utilities' Public Service

1 Commission approved delivery service tariffs.

2 As Ms. Delince stated earlier, the Authority will
3 accept your comments on the proposed contracts until the
4 close of business on Wednesday, January 11, 2017.

5 I will now turn the hearing back to Ms. Delince.

6 MS. DELINCE: Thank you, Mr. Smith. We will
7 recess now and reconvene when speakers arrive.

8 (recess)

9 MS. DELINCE: The January 10, 2017 public
10 hearing on the proposed Customer Contracts to the
11 Authority's Western New York Customers indicated
12 earlier, is now officially closed.

13 As I previously stated, the record of the hearing
14 will remain open for additional comments through close
15 of business, Wednesday, January 11, 2017.

16 Thank you and good night.

17

18 (Hearing closed at 6:30 p.m.)

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1 STATE OF NEW YORK
2 COUNTY OF ERIE

3 I, Patricia A. Schreier, a Notary Public in and for
4 the State of New York, do hereby certify:

5 That the witness, whose testimony appears herein
6 before, was, before the commencement of his testimony, duly
7 sworn to testify the truth, the whole truth and nothing but
8 the truth; that such testimony was taken pursuant to notice at
9 the time and place herein set forth; that said testimony was
10 taken down in shorthand by me and thereafter under my
11 supervision transcribed into the English language, and hereby
12 certify the foregoing testimony is a full, true and correct
13 transcription of the shorthand notes so taken.

14 I further certify that I am neither counsel for nor
15 related to any parties to said action, nor in anywise
16 interested in the outcome thereof.

17 IN WITNESS WHEREOF, I have here unto subscribed my
18 name this 20th day of January, 2017.

19
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21
22
23


Notary Public
State of New York

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New York Power Authority
Contracts for the Sale of WNY Hydropower - Transmittal to the Governor

Exhibit "A"
January 31, 2017

Number	Company Name	Program	City	County	Allocation Approval	Base Jobs	New Jobs	Capital Commitment	(kW)	Public Hearing Authorization	Public Hearing *	Term
B-1	3M Company	EP	Tonawanda	Erie	7/29/2014	345	6	\$1,985,000	150	9/27/2016	1/10/2017	7 Years
B-2	Confer Plastics, Inc.	EP	North Tonawanda	Niagara	9/29/2015	180	24	\$2,600,000	400	9/27/2016	1/10/2017	7 Years
B-3	Fresenius Kabi USA, LLC	RP	Grand Island	Erie	4/4/2011	575	90	\$30,000,000	2,000	9/27/2016	1/10/2017	5 Years
B-4	Niagara Coatings Services, Inc.	RP	Town of Niagara	Niagara	7/26/2016	25	3	\$475,000	100	9/27/2016	1/10/2017	7 Years
B-5	North American Hoganas, Inc.	EP	Niagara Falls	Niagara	5/19/2015	58	10	\$3,000,000	400	9/27/2016	1/10/2017	7 Years
B-6	Saint-Gobain Ceramics & Plastics, Inc.	RP	Niagara Falls	Niagara	2/26/2015	69	7	\$4,530,000	300	9/27/2016	1/10/2017	7 Years
B-7	Unifrax I LLC	RP	Tonawanda	Erie	10/15/2014	268	50	\$33,000,000	1,900	9/27/2016	1/10/2017	7 Years
TOTALS							190	\$75,590,000	5,250			

* Public Hearing held at the Niagara Project Power Vista

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

3M COMPANY

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with 3M Company (“Customer”), having facilities at 305 Sawyer Avenue, Tonawanda, NY 14150. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at a new and/or expanded facility to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on July 29, 2014, the Authority’s Board of Trustees (“Trustees”) approved a 150 kilowatt (“kW”) allocation of EP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on July 29, 2014, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's performance of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility by July 29, 2017 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the

Customer's local electric utility on terms and conditions that are acceptable to the Authority.

- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as

follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601

Email:

Facsimile: _____

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

3M Company
305 Sawyer Ave
Tonawanda, NY 14150

Email:

Facsimile:

Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- B. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

3M COMPANY

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: 3M Company				
Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Expansion Power	150	305 Sawyer Ave Tonawanda, NY 14150	July 29, 2014	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR
REPLACEMENT POWER (CES)**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled

maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service, the Customer shall employ at least 351 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall make a minimum capital investment of \$1,985,000 to construct and/or furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following approximate expenditures on the items indicated:

Infrared Heating System –	\$ 485,000
Pulp Shredder/ Conveying -	\$1,000,000
Automated Web Handling System -	<u>\$ 500,000</u>

Total Minimum Capital Investment: \$1,985,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than July 29, 2017 (*i.e.*, within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR
REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- b. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff

Agreement: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power and/or **Replacement Power**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-1.

Target Rate: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A.Expansion Power (EP) and Replacement Power (RP) Base Rates

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

- 1.The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
- 2.The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
- 3.The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

- 4.Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B.For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
 - C.Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

B.EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its sole discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.
- For Customers whose allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement.

F.Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G.Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

- 1.The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer’s local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer’s local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer’s local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer’s billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer’s billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges (“NYISO Charges”)

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
 - a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

CONFER PLASTICS, INC.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Confer Plastics, Inc. (“Customer”) with offices and principal place of business at 97 Witmer Road, North Tonawanda, NY 14120. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at a new and/or expanded facility to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on September 29, 2015, the Authority’s Board of Trustees (“Trustees”) approved a 400 kilowatt (“kW”) allocation of EP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on September 29, 2015, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's performance of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility by September 29, 2018 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the

Customer's local electric utility on terms and conditions that are acceptable to the Authority.

- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as

follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601

Email:

Facsimile: _____

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Confer Plastics, Inc.
97 Witmer Road
North Tonawanda, NY 14120

Email:

Facsimile:

Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- B. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

CONFER PLASTICS, INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Confer Plastics, Inc.	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Expansion Power	400	97 Witmer Road North Tonawanda, NY 14120	September 29, 2015	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service, the Customer shall employ at least 204 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall make a minimum capital investment of \$2,600,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following approximate expenditures on the items indicated:

New 100-pound Blow Molding Machine -	\$2,100,000
Installation & Miscellaneous Equipment -	<u>\$ 500,000</u>
Total Minimum Capital Investment:	\$2,600,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than September 29, 2018 (*i.e.*, within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR
REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- b. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff

Agreement: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power and/or **Replacement Power**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-1.

Target Rate: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

1. The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
 - C. Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its sole discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.
- For Customers whose allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement.

F.Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G.Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

- 1.The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer’s local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer’s local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer’s local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer’s billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer’s billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges (“NYISO Charges”)

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
 - a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

FRESENIUS KABI USA, LLC

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Fresenius Kabi USA, LLC (“Customer”), having facilities at 3159 Staley Road, Grand Island, NY 14072. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at a new and/or expanded facility to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on April 4, 2011, the Authority’s Board of Trustees (“Trustees”) approved a 2,000 kilowatt (“kW”) allocation of RP to the Customer for a five (5) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on April 4, 2011, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's performance of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility by December 31, 2016, the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the

Authority.

- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, “Information”) which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer’s local electric utility. The Customer’s failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a “load factor sharing” basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer’s local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as

follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Fresenius Kabi USA, LLC
3159 Staley Road
Grand Island, NY 14072
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- B. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

FRESENIUS KABI USA, LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Fresenius Kabi USA, LLC	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Replacement Power	2,000	3159 Staley Road Grand Island, NY 14072	April 4, 2011	Five (5) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service, the Customer shall employ at least 665 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall make a minimum capital investment of \$30,000,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following approximate expenditures on the items indicated:

6 (Used) Lyophilizers -	\$ 7,000,000
17 (New) Air Handlers -	\$ 4,000,000
2 (New) Chillers w/ cooling towers -	\$ 7,000,000
Facility Modifications -	<u>\$12,000,000</u>

Total Minimum Capital Investment: \$30,000,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than December 31, 2016. Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- b. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff

Agreement: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power and/or **Replacement Power**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-1.

Target Rate: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A.Expansion Power (EP) and Replacement Power (RP) Base Rates

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

- 1.The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
- 2.The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
- 3.The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

- 4.Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B.For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
 - C.Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

B.EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its sole discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.
- For Customers whose allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement.

F.Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G.Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

- 1.The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer’s local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer’s local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer’s local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer’s billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer’s billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges (“NYISO Charges”)

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
 - a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

NIAGARA COATINGS SERVICES, INC.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Niagara Coatings Services, Inc. (“Customer”) with offices and principal place of business at 8025 Quarry Road, Niagara Falls, NY 14304. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at a new and/or expanded facility to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on July 26, 2016, the Authority’s Board of Trustees (“Trustees”) approved a 100 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on July 26, 2016, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's performance of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility by July 26, 2019 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the

Customer's local electric utility on terms and conditions that are acceptable to the Authority.

- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as

follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Niagara Coatings Services, Inc.
8025 Quarry Road
Niagara Falls, NY 14304
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- B. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

NIAGARA COATINGS SERVICES, INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Niagara Coatings Services, Inc.	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Replacement Power	100	1) 8025 Quarry Road Niagara Falls, NY 14304 2) 8030 Quarry Road Niagara Falls, NY 14304	July 26, 2016	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service, the Customer shall employ at least 28 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall make a minimum capital investment of \$475,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following approximate expenditures on the items indicated:

Installation of 200 HP Air Compressor	\$100,000
Installation of Blast Booth	\$275,000
Installation of (2) Air Filter Beds	<u>\$100,000</u>
Total Minimum Capital Investment:	\$475,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than July 26, 2019 (*i.e.*, within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- b. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff

Agreement: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power and/or **Replacement Power**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-1.

Target Rate: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A.Expansion Power (EP) and Replacement Power (RP) Base Rates

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

- 1.The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
- 2.The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
- 3.The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

- 4.Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B.For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
 - C.Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

B.EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its sole discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.
- For Customers whose allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement.

F.Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G.Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

- 1.The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer's local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer's local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer's local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges ("NYISO Charges")

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
 - a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year (2013)	Measuring Year -1 (2012)
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

NORTH AMERICAN HOGANAS, INC.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with North American Hoganas, Inc. (“Customer”), having facilities at 5950 Packard Road, Niagara Falls, NY 14304. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at a new and/or expanded facility to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on May 19, 2015, the Authority’s Board of Trustees (“Trustees”) approved a 400 kilowatt (“kW”) allocation of EP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on May 19, 2015, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's performance of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility by May 19, 2018 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the

Customer's local electric utility on terms and conditions that are acceptable to the Authority.

- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as

follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

North American Hoganas, Inc.
5950 Packard Road
Niagara Falls, NY 14304-0310
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- B. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

NORTH AMERICAN HOGANAS, INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: North American Hoganas, Inc.	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Expansion Power	400	5950 Packard Road Niagara Falls, NY 14304	May 19, 2015	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR
REPLACEMENT POWER (CES)**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled

maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service, the Customer shall employ at least 68 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall make a minimum capital investment of \$3,000,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following approximate expenditures on the items indicated:

Electrolytic Copper Building and Equipment - (Heaters, oil heated dryers, pump stations, coolers and rectifiers)	\$1,500,000
R12 Wash Building and Equipment - (Oil heated dryers, pump stations, coolers, dust collection, and packaging equipment)	<u>\$1,500,000</u>
Total Minimum Capital Investment:	\$3,000,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than May 19, 2018 (*i.e.*, within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR
REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- b. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff

Agreement: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power and/or **Replacement Power**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-1.

Target Rate: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A.Expansion Power (EP) and Replacement Power (RP) Base Rates

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

- 1.The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
- 2.The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
- 3.The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

- 4.Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B.For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
 - C.Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

B.EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its sole discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.
- For Customers whose allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement.

F.Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G.Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

- 1.The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer’s local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer’s local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer’s local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer’s billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer’s billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges (“NYISO Charges”)

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
 - a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

SAINT-GOBAIN CERAMICS & PLASTICS, INC.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Saint-Gobain Ceramics & Plastics, Inc. (“Customer”) with offices and principal place of business at 6600 Walmore Road, Niagara Falls, NY 14304. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at a new and/or expanded facility to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on February 26, 2015, the Authority’s Board of Trustees (“Trustees”) approved a 300 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on February 26, 2015, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal

Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute

Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.

- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.
- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's performance of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter

commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility by February 26, 2018 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.

- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum

unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules

(Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Saint-Gobain Ceramics & Plastics, Inc.
6600 Walmore Road
Niagara Falls, NY 14304
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication

of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- B. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

SAINT-GOBAIN CERAMICS & PLASTICS, INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Saint-Gobain Ceramics & Plastics, Inc.	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Replacement Power	300	6600 Walmore Road Niagara Falls, NY 14304	February 26, 2015	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service, the Customer shall employ at least 76 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall make a minimum capital investment of \$4,530,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following approximate expenditures on the items indicated:

A. Capacity Expansion (Building & Equipment):	\$1,930,000
B. New Product Line (Equipment):	\$ 200,000
C. Building Expansion (Building & Equipment):	<u>\$2,400,000</u>

Total Minimum Capital Investment:	\$4,530,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than February 26, 2018 (*i.e.*, within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- b. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff

Agreement: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power and/or **Replacement Power**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-1.

Target Rate: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

1. The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
 - C. Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its sole discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.
- For Customers whose allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement.

F.Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G.Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

- 1.The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer's local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer's local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer's local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges ("NYISO Charges")

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
 - a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of ±5.0% to Determine the Maximum/Minimum AAF.

-5.0% < 1.6% < 5.0%; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)

to

UNIFRAX I LLC

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Unifrax I LLC (“Customer”), having facilities at 360 Firetower Drive, Tonawanda, NY 14150. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at a new and/or expanded facility to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on October 15, 2014, the Authority’s Board of Trustees (“Trustees”) approved a 1,900 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on October 15, 2014, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's performance of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility by October 15, 2017 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the

Customer's local electric utility on terms and conditions that are acceptable to the Authority.

- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as

follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601

Email:

Facsimile: _____

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Unifrax I LLC
360 Firetower Drive
Tonawanda, NY 14150-5812

Email:

Facsimile:

Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- B. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

UNIFRAX I LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Unifrax I LLC				
Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Replacement Power	1,900	360 Firetower Drive Tonawanda, NY 14150	October 15, 2014	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service, the Customer shall employ at least 318 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall make a minimum capital investment of \$33,000,000 to construct and/or furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following approximate expenditures on the items indicated:

<u>Line #3 Project</u>	<u>\$Million</u>
Stock Preparation and Forming	\$8.1
Drying	\$4.9
Inline Converting & Conveying	\$2.9
Bldg. /Grounds and Equipment Relocation	\$6.0
Infrastructure & Utilities (Lighting/ Heating)	\$1.9
Bldg. & Property Acquisition	<u>\$9.2</u>
Total Minimum Capital Investment:	\$33.0 Million

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than October 15, 2017 (*i.e.*, within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- b. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff

Agreement: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power and/or **Replacement Power**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-1.

Target Rate: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A.Expansion Power (EP) and Replacement Power (RP) Base Rates

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

- 1.The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
- 2.The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
- 3.The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

- 4.Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B.For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
 - C.Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

B.EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its sole discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.
- For Customers whose allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement.

F.Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G.Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

- 1.The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer's local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer's local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer's local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges ("NYISO Charges")

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
 - a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

New York State Power Authority

*Public Hearing
January 10, 2017*



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4 New York State Power Authority

5 Tuesday, January 10, 2017

6 2:30 p.m. - 6:30 p.m.

7 Niagara Power Project Visitors' Center

8 5777 Lewiston Road

9 Lewiston, New York 14092
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23 Patricia A. Schreier

1 SPEAKERS :

2 MS. DELINCE 3, 13
3 MR. SMITH 5

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1 MS. DELINCE: Good afternoon. This is a public
2 hearing required by law and authorized by the New York
3 Power Authority's Board of Trustees on the proposed
4 Customer Contracts for the sale of hydropower to several
5 Authority Customers located in Western New York.

6 My name is Karen Delince and I'm the Authority's
7 Corporate Secretary.

8 New York State Public Authorities Law, Section
9 1009, sets forth procedures for executing certain
10 contracts negotiated by the Authority. First, prior to
11 the hearing, it requires that notice of the hearing be
12 provided.

13 Therefore, a notice was sent to the Governor, The
14 Senate's President Pro Temp, the Senate Minority Leader,
15 the Senate Finance Committee Chair, The Assembly
16 Speaker, the Assembly Minority Leader and the Assembly
17 Ways and Means Committee Chair.

18 In addition, notices appeared in the following
19 newspapers, once a week, for the four weeks leading up
20 to this hearing. Niagara Gazette, Buffalo News, Buffalo
21 Business First, Lewiston Porter Sentinel, Albany
22 Times-Union, Dunkirk Observer.

23 The public was also given access to the proposed

1 contracts on the Authority's website and at the
2 Authority's White Plains office during the 30 day period
3 prior to today's hearing.

4 After the hearing, the public will be given access
5 to the hearing transcript, once it is completed, at
6 www.nypa.gov and at the White Plains office.

7 The next step in the process set forth in Section
8 1009 will be for the NYPA Trustees to reconsider the
9 proposed contracts in light of public comments.

10 Once the Trustees have completed their final
11 review, the contracts will be forwarded to the Governor
12 for his consideration and approval.

13 If you plan to make an oral statement at this
14 hearing, I ask that you so indicate on the sign-in
15 sheet. Also, if you have a written statement, please
16 give a copy to Lorna Johnson and one to the reporter.

17 Written statements may be of any length and will
18 appear in the record of the hearing in addition to oral
19 statements.

20 The record of the hearing will remain open for
21 additional comments through close of business,
22 Wednesday, January 11, 2017. Additional comments should
23 be mailed, faxed or e-mailed to the Corporate Secretary

1 at 123 Main Street, 11-P, White Plains, New York 10601
2 or (914) 390-8040 or secretarys.office@nypa.gov.

3 At this time, I would like to introduce
4 Mr. Richard Smith, the Authority's Director of Business
5 and Project Development, Western New York, who will
6 provide additional details on the proposed Customer
7 Contracts.

8 Thank you. Mr. Smith.

9 MR. SMITH: Thank you, Ms. Delince.

10 Good afternoon. My name is Richard Smith and I am
11 the Business and Project Development Director within
12 NYPA's Economic Development Department. I'm here today
13 to present a summery of proposed new hydropower
14 contracts for a variety of new and current customers
15 here in Western New York.

16 Regarding the contracts, under Public Authorities
17 Law Section 1005 Subsection 13, the Authority may
18 allocate and sell directly or by sale-for-resale, 250 MW
19 of Expansion Power, known as EP, and 445 MW of
20 Replacement Power, known as RP, to businesses located
21 within 30 miles of the Niagara Power Project, provided
22 that the EP allocated to businesses in Chautauqua County
23 on January 1, 1987 shall continue to be allocated in

1 Chautauqua County.

2 Two companies were awarded hydropower allocations
3 by the Authority's Trustees on September 27, 2016, in
4 return for commitments made to create or expand their
5 businesses in Western New York.

6 Specifically, Geico, which operates call centers
7 for its insurance business, was awarded 400 kilowatts of
8 RP in support of opening a second call center near its
9 operations center in the Town of Amherst (Erie County).
10 Geico will invest at least \$6 million and create at
11 least 300 new jobs (above its base jobs of 2,600).

12 CI Filing Systems, LLC, a maker of index tabs, file
13 folders, legal dividers and other office products, is
14 proposing to move its operations from New Jersey to
15 Tonawanda (Erie County). CI Filings was awarded 1,000
16 kilowatts of RP, will invest at least 7.9 million and
17 create at least 80 new jobs.

18 Additionally, seven companies have pending
19 hydropower allocations that were previously awarded by
20 the Trustees, and whose proposed contracts are also the
21 subject of this hearing.

22 Specifically, at its July 29, 2014 meeting, the
23 Trustees approved a 150 kilowatt allocation of EP to the

1 3M Company for its commitment to invest \$1,985,000 and
2 create six new jobs at its Tonawanda facility. The
3 expansion project involves repurposing existing unused
4 production equipment and installing a new production
5 line to begin manufacturing a new product.

6 Confer Plastics was awarded 400 kilowatts of EP by
7 the Trustees on September 29, 2015 for its commitment to
8 invest \$2,600,000 and create 24 new jobs at its North
9 Tonawanda facility. The project involves expanding its
10 plastic product output through the purchase of a new,
11 large blow molding machine.

12 At its April 4, 2011 meeting, the Trustees approved
13 a 2,000 kilowatt allocation of RP to Fresenius Kabi USA
14 for its commitment to invest \$30,000,000 and create 90
15 new jobs at its Grand Island facility. The project
16 involves expanding the company's pharmaceutical
17 manufacturing capacity by installing new and used
18 production equipment in space that had been used for
19 warehousing and offices.

20 Niagara Coatings Services was awarded 100 kilowatt
21 of RP by the Trustees on July 26, 2016 for its
22 commitment to invest \$475,000 and create three new jobs
23 at its facility in the Town of Niagara. The project

1 involves expanding its industrial sandblasting, coating
2 and painting services by opening a second facility
3 across the street from its existing operations.

4 At its May 19, 2015 meeting the Trustees approved a
5 400 kilowatt allocation of EP to North American Hoganas
6 for its commitment to invest \$3,000,000 and create 10
7 new jobs at its Niagara Falls facility. The expansion
8 project involves building two 5,000-square-foot prefab
9 metal facilities to expand iron powder production,
10 copper scrap-to-copper powder operations, and other
11 metal powder production.

12 Saint-Gobain Ceramics & Plastics was awarded 300
13 kilowatts of RP by the Trustees on February 26, 2015 for
14 its commitment to invest \$4,530,000 and create seven new
15 jobs at its Niagara Falls facility. The project
16 involves capacity expansion with the installation of a
17 new ceramic materials production line and a new
18 40,000-square-foot building expansion.

19 Unifrax was awarded 1,900 kilowatts of RP by the
20 Trustees on October 15, 2014 for its commitment to
21 invest \$33,000,000 and create 50 new jobs at its
22 Tonawanda facility. The expansion project involves
23 adding a third ceramic fiber insulation production line

1 in a new 43,000-square-foot facility on its site.

2 Together, these nine companies have committed to
3 investing nearly \$89 million and to create 570 new jobs
4 at their Western New York facilities in return for the
5 low cost hydropower. All of the hydropower awards were
6 offered for seven year terms with the exception of
7 Fresenius Kabi USA which has a five year allocation
8 term.

9 The expansion projects are in various stages of
10 construction and when completed, the contracts that are
11 the subject of this hearing will be offered for the sale
12 of Authority hydropower in return for job and capital
13 commitments I just described.

14 Lastly, two companies have hydropower allocations
15 whose terms were extended by the Trustees at the
16 September 27, 2016 board meeting.

17 The Trustees approved an extension of the 1,200
18 kilowatt allocation of EP to Buffalo Shredding and
19 Recovery, LLC for its commitment to retain at least 22
20 jobs at its Buffalo facility. The new contract will
21 extend the expiration date from February 28, 2017 to
22 June 30, 2020. The Trustees also approved an extension
23 of the 120 kilowatt allocation of RP to Buffalo

1 Shredding and Recovery, LLC for its commitment to retain
2 at least 290 jobs at its Buffalo facility. The new
3 contract will extend the expiration date from
4 October 31, 2016 to June 30, 2020.

5 To summarize some of the pertinent provisions in
6 each of the proposed contracts, first, the contracts
7 provide for the direct billing of all hydropower supply
8 charges and all New York Independent System Operator,
9 Inc. ("NYISO") charges and taxes.

10 The contracts include the customers' agreed upon
11 commitments with respect to employment and capital
12 investment. The contracts retain the Authority's right
13 to reduce or terminate a customer's allocation if
14 employment, power utilization or capital investment
15 commitments are not met.

16 For example, the contracts include an annual job
17 reporting requirement and a job compliance threshold of
18 90 percent. Should a company's average annual
19 employment fall below the compliance threshold of 90
20 percent, the Authority has the right to reduce the
21 allocation on a pro rata basis.

22 The contracts compel the companies to perform an
23 energy audit at their facility at least once within five

1 years, helping to ensure the customers use the
2 hydropower efficiently.

3 Additionally, to accommodate nonpayment risk that
4 could result from the direct billing arrangement, the
5 contracts include commercially reasonable provisions
6 concerning the Authority's ability to charge late
7 payment fees and to require deposits in the event of a
8 customer's failure to make payment for any two monthly
9 bills. These contract provisions are consistent with
10 other Authority direct sale contracts, including the
11 Recharge New York sales contracts.

12 The contracts also includes new provisions
13 expressly allowing NYPA's recovery from the customer of
14 any costs incurred in connection with the purchase of
15 Zero Emission Credits and Renewable Energy Credits
16 attributable to the customer's load, stemming from
17 NYPA's implementation of the Clean Energy Standard or
18 "CES".

19 On August 1, 2016, the Public Service Commission
20 issued the "CES Order" establishing a clean energy
21 standard for the State intended to meet the State Energy
22 Plan's clean energy goals by, among other things,
23 (1) increasing the amount of the State's energy

1 generation that comes from renewable energy sources in
2 New York State and (2), preventing the premature closure
3 of upstate, at risk, zero emission nuclear power plants.

4 NYPA supports the State Energy Plan's clean energy
5 goals and in anticipation of NYPA's participation in the
6 Public Service Commission's CES program, at its
7 September 27, 2016 meeting, the Trustees approved a
8 revised form of contract including provisions for the
9 pass through to customers of any costs NYPA incurs in
10 connection with the purchase of Zero Emission Credits
11 and Renewable Energy Credits attributable to the
12 customers' load.

13 Lastly, the contracts will serve the allocations in
14 accordance with the Authority's Service Tariff WNY-1
15 which specifies rates and other terms applicable to all
16 EP and RP allocations. The Service Tariff specifies a
17 three year rate phase-in to a target rate based on the
18 rate of the Authority's other hydropower program -
19 Preservation Power - to ultimately ensure consistency
20 among the Authority's three hydropower programs.

21 Transmission and delivery service for these
22 allocations will be provided by National Grid or NYSEG,
23 in accordance with the utilities' Public Service

1 Commission approved delivery service tariffs.

2 As Ms. Delince stated earlier, the Authority will
3 accept your comments on the proposed contracts until the
4 close of business on Wednesday, January 11, 2017.

5 I will now turn the hearing back to Ms. Delince.

6 MS. DELINCE: Thank you, Mr. Smith. We will
7 recess now and reconvene when speakers arrive.

8 (recess)

9 MS. DELINCE: The January 10, 2017 public
10 hearing on the proposed Customer Contracts to the
11 Authority's Western New York Customers indicated
12 earlier, is now officially closed.

13 As I previously stated, the record of the hearing
14 will remain open for additional comments through close
15 of business, Wednesday, January 11, 2017.

16 Thank you and good night.

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18 (Hearing closed at 6:30 p.m.)

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STATE OF NEW YORK
COUNTY OF ERIE

I, Patricia A. Schreier, a Notary Public in and for the State of New York, do hereby certify:

That the witness, whose testimony appears herein before, was, before the commencement of his testimony, duly sworn to testify the truth, the whole truth and nothing but the truth; that such testimony was taken pursuant to notice at the time and place herein set forth; that said testimony was taken down in shorthand by me and thereafter under my supervision transcribed into the English language, and hereby certify the foregoing testimony is a full, true and correct transcription of the shorthand notes so taken.

I further certify that I am neither counsel for nor related to any parties to said action, nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have here unto subscribed my name this 20th day of January, 2017.



Notary Public
State of New York

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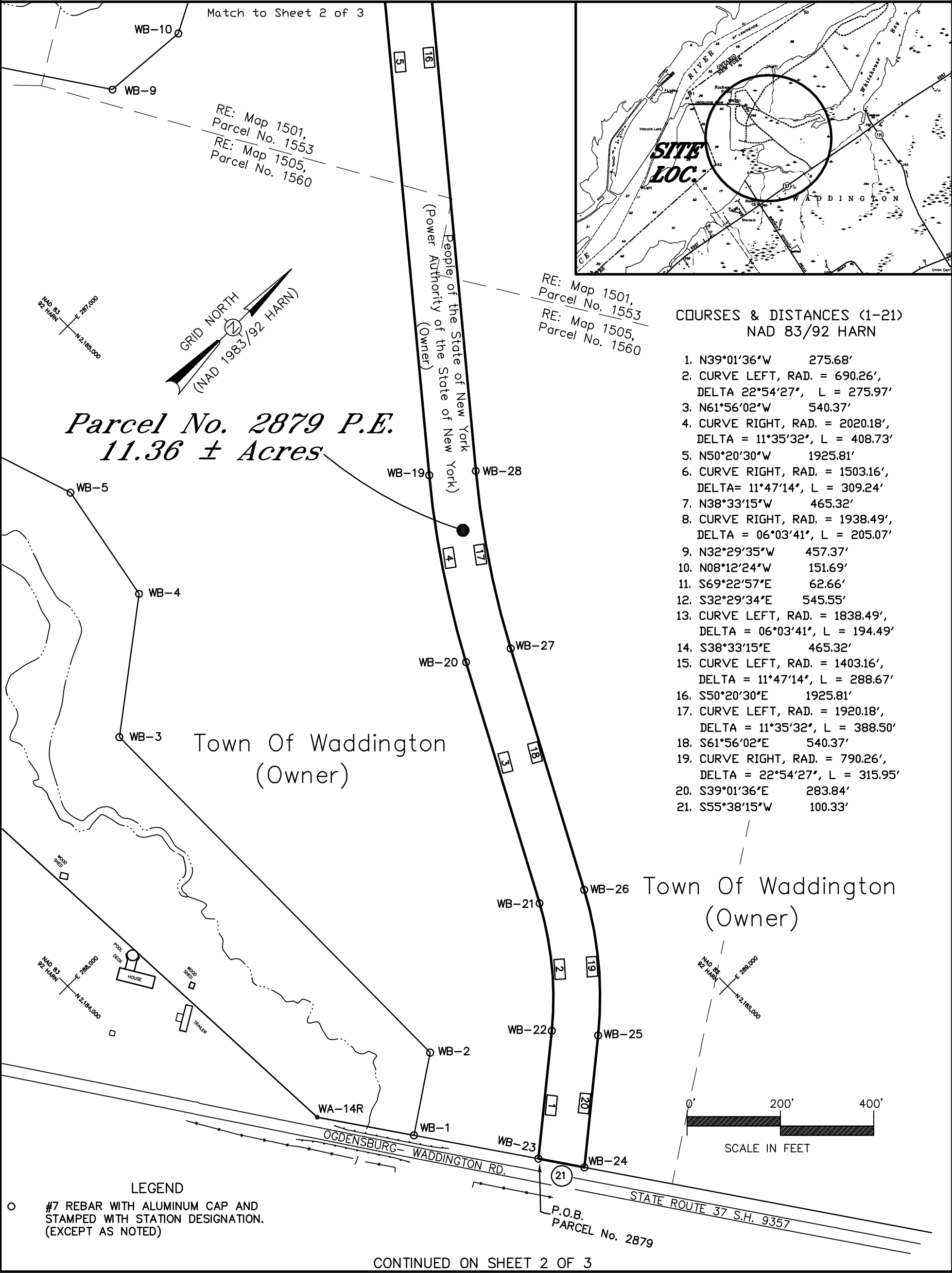
SURVEY AND DESCRIPTION PREPARED UNDER THE DIRECTION OF
THE POWER AUTHORITY OF THE STATE OF NEW YORK.

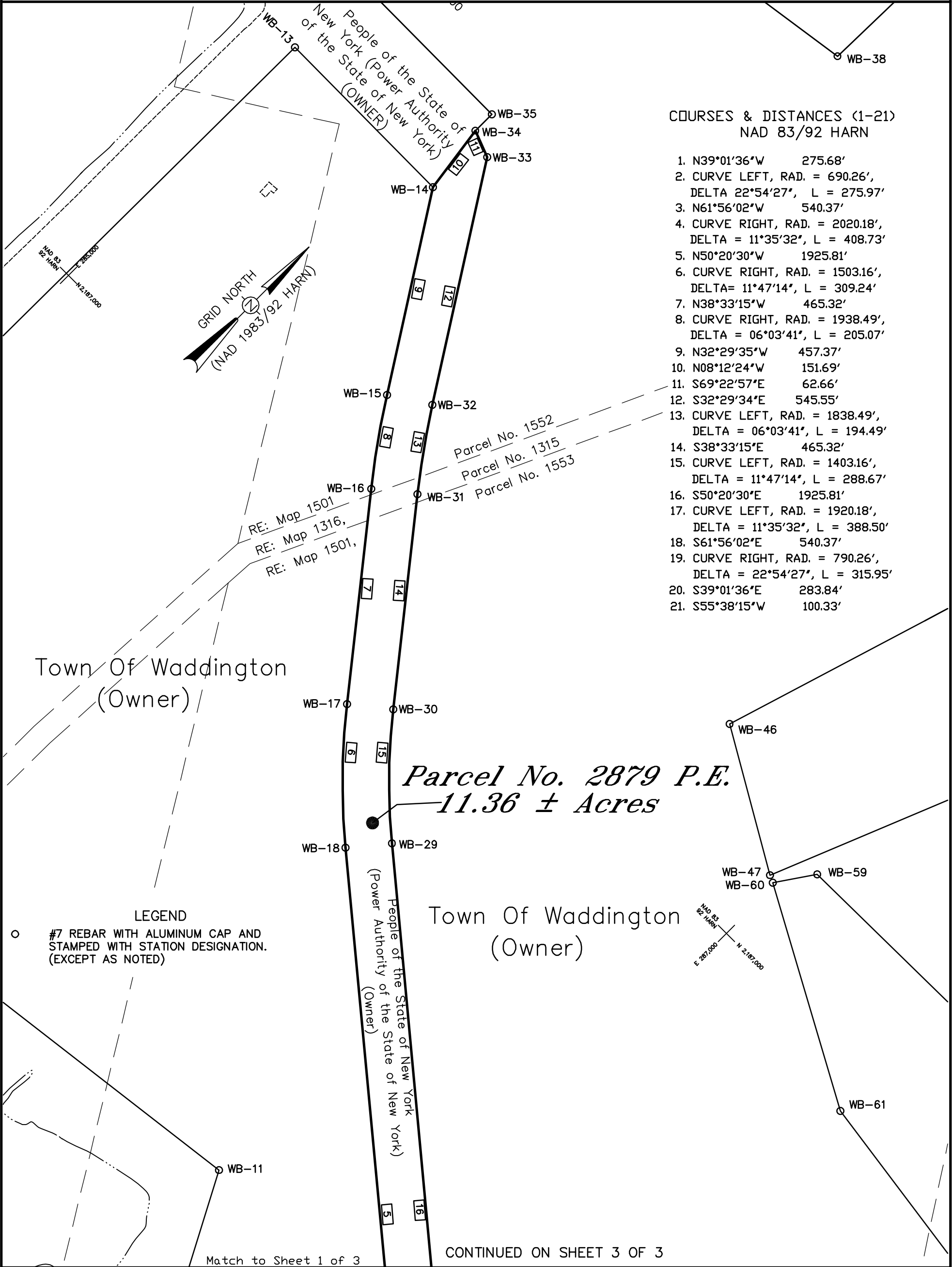
ALTERATION OR ADDITION TO A SURVEY MAP BEARING THE SEAL OF A LICENSED LAND SURVEYOR IS A VIOLATION OF SECTION 7209,
SUBDIVISION 2 OF THE NEW YORK STATE EDUCATION LAW.

CC-D Power Authority of the State of New York, St. Lawrence River Project Map 1316, Parcel No. 1315, Map 1501, Parcel No's. 1552 & 1553 and
Map 1505 Parcel No. 1560, Filed Map #1999-00002182 in the St. Lawrence County Clerk's Office.

NOTES

BEARINGS AND COORDINATES REFER TO THE NEW YORK STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM OF 1983 AS REVISED TO REFLECT THE HIGH ACCURACY REFERENCE NETWORK IN 1992.
THIS MAP IS BASED ON A MAP ENTITLED "BOUNDARY RETRACEMENT SURVEY OF THE ST. LAWRENCE - F.D.R. POWER PROJECT NEW YORK POWER AUTHORITY ST. LAWRENCE COUNTY, NEW YORK BY MCINTOSH & MCINTOSH, P.C.
CONSULTING ENGINEERS, LAND SURVEYORS, PLANNERS", LAST REVISED 1-18-99.





COURSES & DISTANCES (1-21)
NAD 83/92 HARN

1. N39°01'36"W 275.68'
2. CURVE LEFT, RAD. = 690.26',
DELTA 22°54'27", L = 275.97'
3. N61°56'02"W 540.37'
4. CURVE RIGHT, RAD. = 2020.18',
DELTA = 11°35'32", L = 408.73'
5. N50°20'30"W 1925.81'
6. CURVE RIGHT, RAD. = 1503.16',
DELTA= 11°47'14", L = 309.24'
7. N38°33'15"W 465.32'
8. CURVE RIGHT, RAD. = 1938.49',
DELTA = 06°03'41", L = 205.07'
9. N32°29'35"W 457.37'
10. N08°12'24"W 151.69'
11. S69°22'57"E 62.66'
12. S32°29'34"E 545.55'
13. CURVE LEFT, RAD. = 1838.49',
DELTA = 06°03'41", L = 194.49'
14. S38°33'15"E 465.32'
15. CURVE LEFT, RAD. = 1403.16',
DELTA = 11°47'14", L = 288.67'
16. S50°20'30"E 1925.81'
17. CURVE LEFT, RAD. = 1920.18',
DELTA = 11°35'32", L = 388.50'
18. S61°56'02"E 540.37'
19. CURVE RIGHT, RAD. = 790.26',
DELTA = 22°54'27", L = 315.95'
20. S39°01'36"E 283.84'
21. S55°38'15"W 100.33'

LEGEND

○ #7 REBAR WITH ALUMINUM CAP AND
STAMPED WITH STATION DESIGNATION.
(EXCEPT AS NOTED)

*Parcel No. 2879 P.E.
11.36 ± Acres*

Town Of Waddington
(Owner)

Match to Sheet 1 of 3

CONTINUED ON SHEET 3 OF 3

PERMANENT EASEMENT FOR ACCESS ROAD
TO BE GRANTED TO
TOWN OF WADDINGTON

A non-exclusive permanent easement for the purpose of ingress, egress and regress over and across an existing road, together with the right to construct, reconstruct, repair, maintain and use said road jointly with the Authority, its successors and assigns.

Such permanent easement is to be exercised in, on, along, over, under, through and across the Property as more particularly described as follows:

PARCEL No. 2879

AREA = 11.36 ± ACRES

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Waddington, County of St. Lawrence, and State of New York, bounded and described as follows:

Beginning at a point on the boundary between lands of the People of the State of New York (Power Authority of the State of New York) on the northeast and lands of the Town of Waddington on the southwest, being also on the northwesterly boundary of New York State Route 37, said point being St. Lawrence Power Project (SLPP) monument WB-23; Thence along the northeasterly line of said Town of Waddington the following nine (9) courses and distances;

1. N 39°01'36" W, 275.68' to SLPP monument WB-22,
2. on a curve to the left, having a radius of 690.26' and a central angle of 22°54'27", for a distance of 275.97' to SLPP monument WB-21,
3. N 61°56'02" W, 540.37' to SLPP monument WB-20,
4. on a curve to the right, having a radius of 2020.18' and a central angle of 11°35'32", for a distance of 408.73' to SLPP monument WB-19,
5. N 50°20'30" W, 1925.81' to SLPP monument WB-18,
6. on a curve to the right, having a radius of 1503.16' and a central angle of 11°47'14", for a distance of 309.24' to SLPP monument WB-17,
7. N 38°33'15" W, 465.32', to SLPP monument WB-16,
8. on a curve to the right, having a radius of 1938.49' and a central angle of 06°03'41", for a distance of 205.07' to SLPP monument WB-15, and
9. N 32°29'35" W, 457.37' to SLPP monument WB-14 at a northeasterly corner of the lands of said Town of Waddington; thence leaving said monument;

N 08°12'24" W, 151.69', through lands of said People of the State of New York (Power Authority of the State of New York) to SLPP monument WB-34 at the most northerly corner of the lands herein described, thence leaving said monument on the following ten (10) courses and distances along the northeasterly line of the lands herein described and the southwesterly line of other lands of the Town of Waddington;

1. S 69°22'57" E, 62.66' to SLPP monument WB-33,
 2. S 32°29'34" E, 545.55' to SLPP monument WB-32,
 3. on a curve to the left, having a radius of 1838.49' and a central angle of 06°03'41", for a distance of 194.49' to SLPP monument WB-31,
 4. S 38°33'15" E, 465.32' to SLPP monument WB-30,
 5. on a curve to the left, having a radius of 1403.16' and a central angle of 11°47'14", for a distance of 288.67' to SLPP monument WB-29,
 6. S 50°20'30" E, 1925.81' to SLPP monument WB-28,
 7. on a curve to the left, having a radius of 1920.18' and a central angle of 11°35'32", for a distance of 388.50' to SLPP monument WB-27,
 8. S 61°56'02" E, 540.37' to SLPP monument WB-26,
 9. on a curve to the right, having a radius of 790.26' and a central angle of 22°54'27", for a distance of 315.95' to SLPP monument WB-25, and;
 10. S 39°01'36" E, 283.84' to SLPP monument WB-24 situate on the northwesterly bounds of said State Route 37. Thence leaving said monument;
- S 55°38'15" W, 100.33' along said State Route 37 to the point or place of beginning, containing 11.36 acres of land, more or less.

All bearings and coordinates shown refer to the New York State Plane Coordinate System, East Zone, North American Datum of 1983, as revised to reflect the High Accuracy Reference Network in 1992. This map is based on a map entitled Boundary Retracement Survey of the St. Lawrence — F.D.R. Power Project, New York Power Authority, St. Lawrence County, New York by McIntosh & McIntosh, P.C. Consulting Engineers, Land Surveyors, Planners, last revised 1/18/99, which map is filed in the St. Lawrence County Clerk's Office as Instrument No. 1999-00002182.

All bearings referred to true north at 7430' west longitude.

Such easement shall not limit or restrict the right and privilege of the Authority, its successors or assigns, from using such property including the right and privilege of ingress, egress, and regress on, over and across such property provided the exercise of such rights and privileges does not interfere with or prevent the use and exercise of the permanent easement and rights hereinabove described.

Also reserving to the Authority, its successors and assigns, the right to move, remove, or demolish any and all structures, trees, brush, debris, or other obstructions placed on the Authority's property which, in the opinion of the Authority or its successors and assigns, may be detrimental to the exercise of the aforesaid rights and/or the operation and maintenance of FERC Project No. 2000-036.

I hereby certify that this is an accurate description and map made from accurate surveys and records in the files of the Power Authority of the State of New York.

By:

Date

JOHN G. WINGFIELD N.Y.S.L.S. NO. 49842
MANAGER, SURVEYING, MAPPING, AND GIS
POWER AUTHORITY OF THE STATE OF NEW YORK

POWER AUTHORITY OF THE STATE OF NEW YORK
PRATTSVILLE PUMPED STORAGE POWER PROJECT

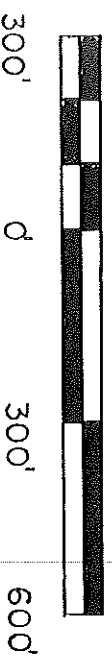
(Sheet 1 of 2 Sheets)

COUNTY OF GREENE
TOWN OF PRATTSVILLE
MAP NO. 2
PARCEL(S) NO. 2

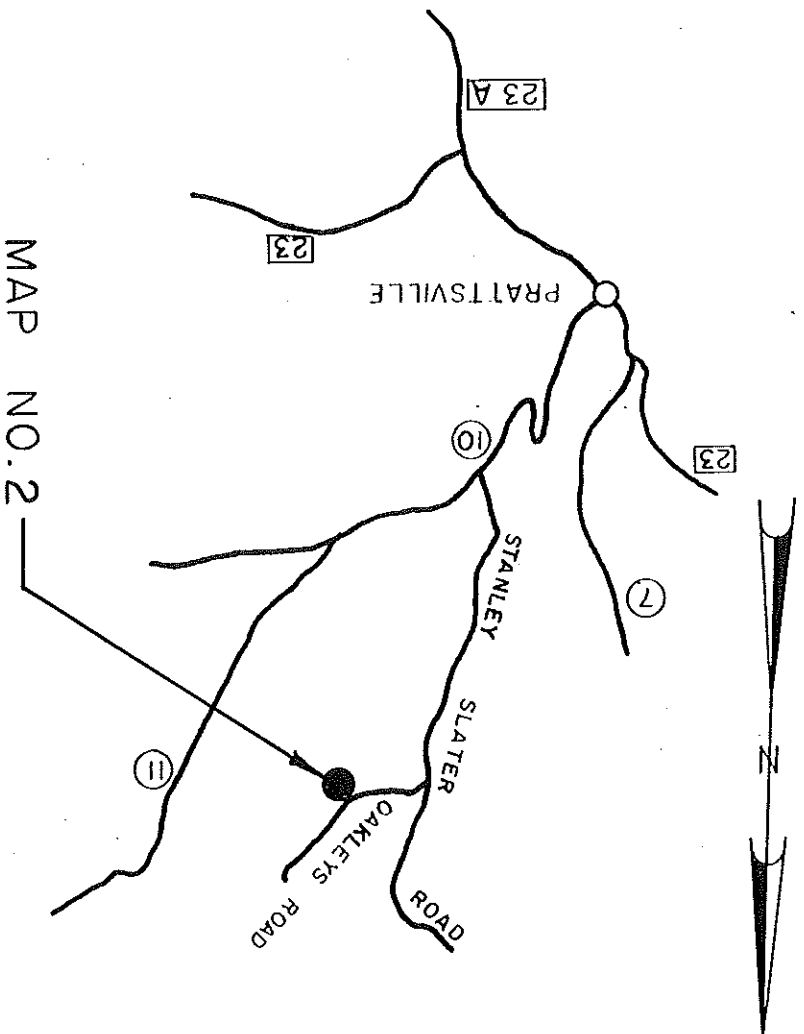
Survey and description prepared
under direction of the Power
Authority of the State of New
York.

Survey notes on file in the
office of such Authority.

CC-D L 449 P 847



SCALE 1" = 300'



INSERT SKETCH not to scale, shown for general information
only the accuracy of which is not certified below.

FRED B. & EMMI H. FISCHL
AND
CARLO J. BRIGIDA
(REPUTED OWNERS)

JOSEPH D. MARSICO
(REPUTED OWNER)

POINT OF BEGINNING

STAKE (FND.)

N 29°-52'-29"E, 88.69'

S 62°-25'-00"E, 715.16'

N 84°-42'-17"E, 179.11'

N 83°-01'-35"E, 577.96'

N 79°-04'-47"E, 140.69'

OAKLEY'S
ROAD

STAKE (FND.)

N 41°-01'-38"E, 145.23'

N 34°-00'-10"E, 99.05'

N 48°-43'-05", 61.17'

N 71°-57'-02"E, 46.54'

S 62°-28'-24"E, 625.63'

IRON PIPE (FND.)

S 60°-24'-09"E, 892.19'

STONE PILES (FND.)

N 28°-52'-00"E, 127.09'

N 29°-15'-29"E, 153.09'

PARCEL NO.

AREA = 117.09 ± ACRES

W. BRADFORD RYLAND, JR.
(REPUTED OWNER)

CAPPED PIN (FND.)

85.3' SE.

N 67°-51'-48"W, 253.89'

N 70°-50'-40"W, 296.94'

N 46°-19'-59"W, 65.96'

N 67°-36'-48"W, 910.21'

CAPPED PIN (FND.)

21.6' NW.

ANTHONY & NANCY ARTECA
AND

JAMES JOSEPH & ELSIE ARTECA
(REPUTED OWNERS)

IRON PIN (FND.)

STANLEY SLATER, JR.
(REPUTED OWNER)

LOT 11
LOT 10

LOT 10
LOT 9

LOT 9
LOT 8

**AGREEMENT FOR THE SALE OF
ZERO-EMISSIONS ENERGY CERTIFICATES**

This Agreement (the “Agreement”) is made as of December 19, 2016 (“Effective Date”) by and between the New York State Energy Research and Development Authority, a public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203 (“NYSERDA” or “Seller”), and the New York Power Authority (“NYPA” or “Buyer”), a corporate municipal instrumentality of the State of New York, which entered this Agreement using the unique Confirmation ID number provided by NYSERDA. NYSERDA and Buyer are each referred to herein as a “Party” and are collectively referred to herein as the “Parties.”

RECITALS:

WHEREAS, the 2015 New York State Energy Plan set the goal of 40% reduction in greenhouse gas emissions from the energy sector from 1990 levels; and

WHEREAS, by its August 1, 2016 “Order Adopting a Clean Energy Standard” (“CES Order”) in Case 15-E-0302, PSC established the Zero-Emissions Credit Requirement Program (“ZECR”); and

WHEREAS, the ZECR directs NYSERDA to offer long-term contracts for the purchase of zero-emissions credits, in the form of ZEC Certificates (“ZEC s”) from the FitzPatrick, Ginna and Nine Mile Point generating facilities, in accordance with the price, contract period and other terms specified in the CES Order; and

WHEREAS, NYSERDA has entered contracts for the purchase of ZECs from the FitzPatrick, Ginna and Nine Mile Point generating facilities; and

WHEREAS, the CES Order established a cap of 27,618,000 ZECs to be purchased from the FitzPatrick, Ginna and Nine Mile Point generating facilities, on an annual basis, by NYSERDA; and

WHEREAS, the CES Order requires each ZECR participant to procure from NYSERDA, on behalf of its customers, beginning on April 1, 2017, qualifying ZECs in the amount equal to the percentage of ZECs purchased by NYSERDA in a year that represents the portion of the Applicable Electric Energy Load (defined *infra*) served by the participant in relation to the total Applicable Electric Energy Load served by all participants; and

WHEREAS, Buyer is not an entity subject to the jurisdiction of the PSC; and

WHEREAS, the CES Order establishes the ZECR compliance period as April 1 to March 31 of each year, beginning in 2017, and divides the ZECR purchase obligation into six two-year tranches, the last ending on March 31, 2029; and

WHEREAS, the CES Order establishes, for Tranche 1 the ZEC price, including the amount approved by the Commission as an administrative adder, of \$17.5394 per ZEC (the “ZEC Price”); and

WHEREAS, NYSERDA will inform the Buyer as to the number of ZECs the Buyer should purchase in accordance with the terms of the ZECR for the compliance period beginning April 1, 2017 (the “ZEC Quantity”); and

WHEREAS, Buyer wishes to purchase ZECs from NYSERDA under the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1: DEFINITIONS

1.1 Definitions. In addition to any other terms defined herein, the following terms shall have the meaning ascribed to them below:

- (a) “Actual ZEC Quantity” means the number of ZECs actually purchased by NYSERDA for compliance year 2017.
- (b) “Applicable Electric Energy Load” means the electric energy load that is considered subject to the ZECR (load that has not received any waiver, exemption or similar mechanism that would exempt such load from the ZECR).
- (c) “Delivery” or “Deliver” means NYSERDA’s electronic delivery of ZEC Certificates via the NYGATS to the Buyer’s account within the NYGATS, in accordance with the NYGATS Operating Rules, or such other form or matter of crediting ZEC Certificates to an LSE account as may be approved or directed by the PSC.
- (d) “Energy Services Company” or “ESCO” means any eligible competitive energy services company operating in New York State pursuant to the Uniform Business Practices approved by the PSC.
- (e) “Load Serving Entity” or “LSE” means any entity or individual that sells retail commodity electricity supply to an end-use customer located in New York State, including any ESCO and each electric distribution company regulated by the PSC, serving in their roles as electric commodity supplier of last resort, jurisdictional municipal utilities, community choice aggregators not otherwise served by an ESCO, customers purchasing power directly from NYISO, and NYPA to the extent NYPA voluntarily agrees to act and be treated as LSEs solely for the purposes of this Agreement.
- (f) “NYGATS” means the New York Generation Attribute Tracking System, the tracking system that records electricity generation attribute information within New York State, and processes generation attribute information from energy imported and consumed within New York State, as a basis for creating tradable generation attribute certificates, including ZEC Certificates.
- (g) “NYGATS Operating Rules” means the rules governing the operation of the NYGATS by NYSERDA and its designated NYGATS Administrator, and the participation in and use of the

NYGATS by users. The Operating Rules describe how the system is operated and delineate the roles, requirements and responsibilities of all parties.¹

- (h) “NYISO” means the New York Independent System Operator.
- (i) “New York State Public Service Commission” or “PSC” means the commission duly authorized to operate in New York State pursuant to Articles 1 and 2 of the Public Service Law.
- (j) “ZEC Cap” means 27,618,000, the maximum number of ZECs that NYSERDA is obligated to purchase for the year 2017 compliance period.
- (k) “ZEC Certificate” means certain NYGATS certificates evidencing ZECs derived from the energy production of megawatt hours by ZECR-eligible electric generation sources. Each ZEC, as reflected in a ZEC Certificate, represents the energy production of one (1) megawatt-hour.

ARTICLE 2: PURCHASE AND SALE OF ZECs

2.1 Purchase. Subject to the terms and conditions of this Agreement, NYSERDA agrees to sell and Deliver to Buyer, and Buyer agrees to purchase and accept from NYSERDA, ZECs in a quantity equal to the ZEC Quantity. The total projected purchase price due to NYSERDA shall equal the ZEC Price multiplied by the ZEC Quantity (“Total Projected Purchase Price”). The amount of ZEC Certificates ultimately acquired by Buyer from NYSERDA shall be determined in accordance with the reconciliation procedure set forth in Section 2.7 below.

2.2 Deliver/Delivery. Subject to Section 2.7, Seller will Deliver, on a quarterly basis via NYGATS, the ZEC Certificates, in a proportionate share of the ZECs actually owned by NYSERDA at the conclusion of such quarter, the proportion being equal to the ZEC Cap divided by Buyer’s ZEC Quantity. Upon notification of Delivery by Seller, Buyer shall be obligated to accept Delivery within 10 days. NYSERDA shall transfer full title to the ZEC Certificates to Buyer free and clear of any lien or other encumbrance at the time of Delivery. Notwithstanding the foregoing, this Agreement and the CES Order restrict Buyer from reselling ZEC Certificates.

2.3 Payment. Payments by Buyer shall be due to NYSERDA in uniform monthly amounts equaling in the aggregate the Total Projected Purchase Price as set forth in Section 2.1, above, in accordance with the payment schedule to be provided to Buyer by NYSERDA. NYSERDA will not Deliver ZEC Certificates prior to receipt of payment. Any and all payments due to NYSERDA shall be made by check or by wire/ACH payment as follows:

¹ . <https://www.nyserda.ny.gov/All-Programs/Programs/NYGATS/Registration-Documents>

By Check:

NYSERDA
Attn: Finance
17 Columbia Circle
Albany, New York 12203

By Wire/ACH:

Bank:	Bank of America
Account No.:	601-0316543
ABA:	021000322 if by ACH; 026009593 if by wire
Account Name:	NYSERDA Mac30

When making payment, Buyer shall include the Customer ID provided on the ZEC Confirmation that NYSERDA previously sent to Buyer by e-mail.

2.4 [RESERVED]

2.5 Taxes/Fees. NYSERDA shall pay any taxes or other fees, if any, imposed on the creation, or ownership of the ZEC Certificates up to the date of Delivery. Buyer will pay any taxes or other fees, if any, imposed on the receipt or ownership of the ZEC Certificates on and after the date of Delivery.

2.6 Term. (a) This Agreement shall be effective on and as of December 19, 2016 and shall terminate on March 31, 2019, unless terminated earlier pursuant to Article 5 of this Agreement or extended by mutual agreement of the Parties. Termination shall not affect provisions hereof that expressly or by their nature and intent should survive termination of the Agreement.

(b) This Agreement will conform to the terms of the CES Order and any subsequent orders only to the extent necessary for NYPA's participation to allow for success of the ZECR. Further, this Agreement will conform to the order of any court of competent jurisdiction regarding the ZECR.

2.7. Settlement and Reconciliation. (a) In the event the Actual ZEC Quantity is less than 27,618,000 (the ZEC Cap), NYSERDA shall notify Buyer in writing on or before June 1, 2018 of the Actual ZEC Quantity to be Delivered. NYSERDA shall calculate Buyer's proportional share of ZECs to be purchased for the 2017 Compliance Year based on NYPA's actual Applicable Electric Energy Load ZEC Quantity, and should the amount paid by Buyer exceed the amount so calculated, NYSERDA shall promptly refund the excess to Buyer.

(b) Regardless of the Actual ZEC Quantity, Buyer and Seller agree that, on a timely basis, the ZEC Quantity and the total amount paid by Buyer hereunder shall be reconciled pursuant to the CES Order, reflecting the actual Applicable Electric Energy Load served by Buyer during the applicable compliance period.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES

3.1 NYSERDA representations and warranties. NYSERDA hereby represents and warrants to Buyer as follows:

- (a) NYSERDA has and, at all times during the Term will have, all necessary power and authority to execute, deliver and perform its obligations hereunder.
- (b) The execution, Delivery and performance of this Agreement by NYSERDA has been duly authorized by all necessary action and does not violate any of the terms or conditions of NYSERDA governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to NYSERDA. This Agreement constitutes the valid and binding obligation of NYSERDA enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting enforcement of creditors' rights and remedies generally and to general principles of equity.
- (c) The ZEC Certificates delivered to Buyer hereunder shall be eligible for compliance under the ZECR.
- (d) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NYSERDA EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, AND WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

3.2 Buyer representations and warranties. Buyer hereby represents and warrants to NYSERDA as follows:

- (a) Buyer is duly organized, validly existing and in good standing and has the requisite power and authority to own, lease and operate its properties and to carry on its business as being conducted on the Effective Date. Buyer has, and at all times during the Term will have, all necessary power and authority to execute, deliver and perform its obligations hereunder.
- (b) The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action and does not violate any of the terms or conditions of Buyer's governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to Buyer. This Agreement constitutes the valid and binding obligation of the Buyer enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting enforcement of creditors' rights and remedies generally and to general principles of equity.
- (c) Buyer has, and at all times during the Term, will have the financial capability to perform its obligations hereunder.
- (d) Buyer is an Account Holder as defined in the NYGATS Operating Rules.

ARTICLE 4: EVENTS OF DEFAULT

4.1 Events of Default. For purposes of and during the Term, each of the following shall constitute an event of default (“Event of Default”) by a Party:

- (a) if a Party materially breaches any or all of its obligations as described in this Agreement and such breach is not cured within five (5) Business Days of written notice of such breach from the other Party;
- (b) if any representation or warranty made by a Party in Article 3 of this Agreement proves to have been misleading or false in any material respect when made; and/or
- (c) if a Party:
 - (i) makes an assignment or any general arrangement for the benefit of its creditors;
 - (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it;
 - (iii) otherwise becomes bankrupt or insolvent (however evidenced); or
 - (iv) becomes unable to pay its debts as they fall due.

ARTICLE 5: REMEDIES UPON DEFAULT

5.1 Remedies. Upon an Event of Default, the non-defaulting Party may (a) terminate this Agreement upon written notice to the defaulting Party, (b) withhold any payments due in respect of this Agreement, (c) set off any payments due against any other credits or payments under other agreements between the Parties, and/or (d) withhold any ZEC Certificate Delivery.

5.2 Exclusive Remedy. The remedies set forth in this article 5 shall be the sole and exclusive remedies of the respective parties in the event of a default, and a Party's liability shall be limited as set forth in this section. All other remedies or damages at law are hereby waived.

5.5 Limitation of Liability. In the event of a default, the defaulting Party's liability shall be limited as set forth herein. In no event shall any other liability be incurred by either Party for any obligations that arise under this agreement, including (but not limited to) liability for consequential, incidental, punitive, exemplary, or indirect damages in tort, contract, or otherwise.

ARTICLE 6: NOTICES

6.1 Notices.

- (a) All notices, requests, consents, approvals and other communications which may or are required to be given by either Party to the other under this Agreement shall be in writing and shall be transmitted either:
- (1) via certified or registered United States mail, return receipt requested;
 - (2) by personal delivery;
 - (3) by expedited delivery service; or
 - (4) by e-mail, return receipt requested.

Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

To Buyer:	New York Power Authority Attn: Office of the General Counsel 123 Main Street, 11 th Floor White Plains, NY 10601 Email address: Justin.Driscoll@nypa.gov
<u>With a copy to:</u>	New York Power Authority Attn: Office of Energy Resource Management 123 Main Street, 11 th Floor White Plains, NY 10601 Email address: Jenny.Liu@nypa.gov
To NYSERDA:	NYSERDA Attn: Office of the General Counsel 17 Columbia Circle Albany, New York 12203-6399 Email address: pete.keane@nyserda.ny.gov
<u>With a copy to:</u>	NYSERDA Attn: Doreen Harris 17 Columbia Circle Albany, New York 12203-6399 Email address: doreen.harris@nyserda.ny.gov

- (b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt of an email acknowledgement of receipt.
- (c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other Party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional

individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

6.2 The addresses for notice and payment specified in Sections 6.1 may be changed from time to time by written notice by either Party to the other Party without amendment of this Agreement.

ARTICLE 7: MISCELLANEOUS

7.1 Force Majeure. Neither Party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such Party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, or strikes. In the event that such failure or delay occurs, the claiming Party shall notify the other Party of the occurrence thereof as soon as possible, shall use reasonable efforts to resume performance as soon as possible, and shall regularly consult with the other Party during the pendency of the force majeure event. In the event that the force majeure event lasts more than forty-five (45) days, NYSERDA may terminate this Agreement with no further obligation or liability to Buyer other than to Deliver any ZEC Certificates for which Buyer has made payment prior to termination that have not been Delivered to Buyer as of the termination date.

7.2 Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect. If any provision of this Agreement is so broad as to be unenforceable, that provision shall be interpreted to be only so broad as will enable it to be enforced.

7.3 Waiver. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions hereof are breached and thereafter waived by a Party, such waiver shall be limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

7.4 Forward Contract. Each Party represents and warrants to the other that it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code, that this Agreement is a “forward contract” within the meaning of the United States Bankruptcy Code, and that the remedies identified in this Agreement shall be “contractual rights” as provided for in 11 U.S.C. § 556 as that provision may be amended from time to time.

7.5 Assignment. Except as specifically provided otherwise in this Section 7.5, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Buyer’s rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA. Such consent shall not be unreasonably withheld.

Either Party may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity with which or into which such Party shall merge or consolidate or to which such Party shall transfer all or substantially all of its assets, provided that such other entity agrees to be bound by the terms hereof and provided further, that such other entity’s creditworthiness is comparable to or higher

than that of such Party at the time this Agreement was executed and such Party is not relieved of any obligation or liability hereunder as a result of such assignment.

7.6 Entire Agreement; Amendment. This Agreement, including Exhibits A (Standard Terms for all NYSERDA Contracts), and B (NYSERDA's Prompt Payment Policy) embodies the entire agreement and understanding between NYSERDA and the Buyer, and all prior agreements and understandings relating to the subject matter hereof. For the avoidance of doubt, no action or omission by a Party in using NYGATS may constitute or be construed an instrument in writing for the purposes amendment, modification, change, waiver, or discharge of this Agreement.

7.7 All Legal Provisions Deemed Included. It is the intent and understanding of the Seller and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Seller, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

7.8 Governing Law/Venue. This Agreement shall be governed by, and construed in accordance with the laws of the State of New York applicable to contracts executed and to be performed in New York State without regard to its conflicts of laws principles. The parties irrevocably acknowledge and accept that all actions arising under or relating to this Agreement, and the transactions contemplated hereby and thereby shall be brought exclusively in a United States District Court or New York State Court located in Albany, New York having subject matter jurisdiction over such matters, and each of the Parties hereby consents to and accepts such personal jurisdiction of, and waives any objection as to the laying of venue in, such courts for purposes of such action.

7.9 Headings. The Article and Section titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain or affect any provision thereof.

7.10 No Third Party Beneficiaries. Nothing herein is intended to or should be construed to create any rights of any kind whatsoever in third persons not parties to this Agreement.

7.11 Freedom of Information Law. The Parties acknowledge that each of the parties is subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL;" see Public Officers' Law Article 6); 21 NYCRR Part 501.

7.12 Claim of Confidentiality. Information of any tangible form including any document that Buyer wishes to be protected from disclosure to third parties, including this Agreement must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA. Notwithstanding the foregoing, NYSERDA, in accordance with the provisions of the CES Order, shall be permitted to report to the New York State Department of Public Service, as to the amounts received from Buyer.

7.13 Trade Secrets/Commercial Information. The FOIL Law (Public Officers Law § 87(d)(2)) provides an exception to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." If either Party receives a request from a third party for information or a document received from the other Party and which has been marked "Confidential" or "Proprietary," the receiving Party will process such request under the procedures provided by its FOIL regulations under NYCRR.

7.14 Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[signatures on next page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

**NEW YORK STATE ENERGY
RESEARCH AND DEVELOPMENT
AUTHORITY**

NEW YORK POWER AUTHORITY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



**NY Power
Authority**

**Canal
Corporation**

President & Chief Executive Officer Report

Gil Quiniones

21 key milestones delivered on time

Key ● On track ● Some risk of missed deadline / will not be delivered in full
● Milestone will not be delivered this year ● Completed

Customer Solutions	100% complete New York Energy Manager - 1200 Buildings 100% Net Income Target of (\$37M) 100% Solar Advisory Services Launched – Parks Pilot Project 100%

Customer Empowerment: NYEM



NY Power Authority ✓
@NYPAAenergy

#NYPATop10: Earlier this year, we launched New York Energy Manager, a #NY public building #energy monitoring center.

Customer Empowerment: Economic Development



NY Power Authority ✓
@NYPAenergy



#NYPATop10: @NYGovCuomo

announced this year that ReCharge NY, has supported 400K #jobs over past 5 years. governor.ny.gov/news/governor-

...

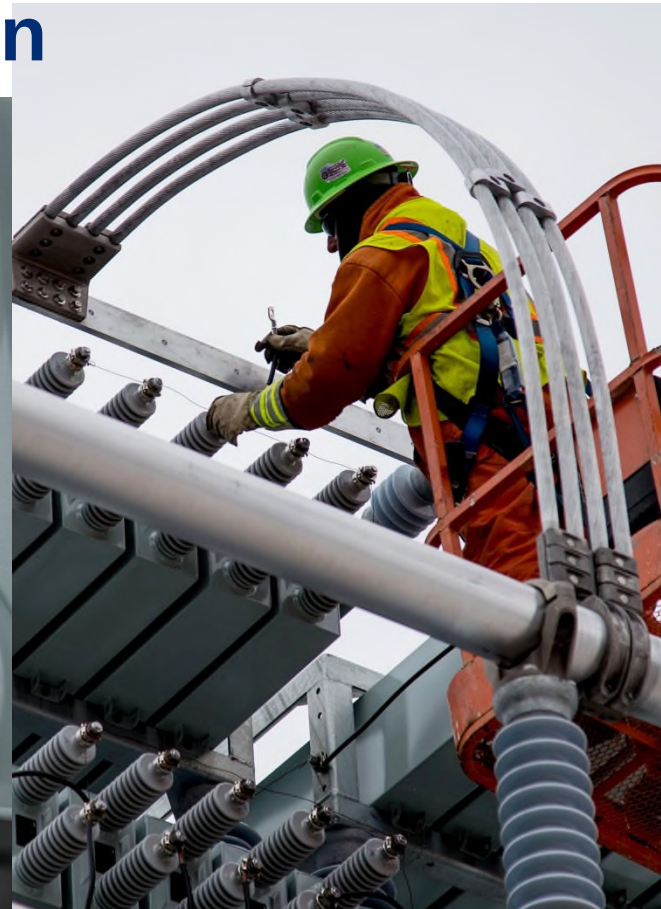


Infrastructure Modernization: Marcy South Series Compensation



NY Power Authority 
@NYPaenergy

[#NYPATop10](#): Marcy South Series
Compensation Project allows upstate
[#NY](#) [#electricity](#) to reach more people
downstate.



Infrastructure Modernization: GE Predix

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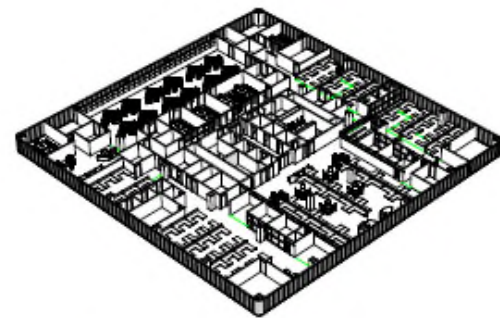
Trump Looks to Mend Fences With Detroit Car Makers



Alibaba Raises Outlook as Revenue Surges



Swedish Air-Bag Maker Says Auction of Takata Was Unfair



2 AERIAL VIEW



3 INTERIOR / SOC VIEW

BUSINESS

New York Utility to Roll Out GE Software

Electricity provider says \$1.1 billion investment will yield \$2.25 billion in efficiencies over years

By **TED MANN**

Oct. 6, 2016 7:42 a.m. ET

The New York Power Authority has signed up General Electric Co. to provide software for a new operations center that will enable the sprawling electricity provider to conduct deep analysis of the health

Recommended Videos

1. Trump Pushes Carmakers to Stay



Resource Alignment



Mosaic



2016 Accomplishments: Financial Strength



For Immediate Release: 12/15/16

Contact:

Steven Gosset | Steven.Gosset@nypa.gov | (914) 390-8192

MOODY'S AFFIRMS N.Y. POWER AUTHORITY'S CREDIT RATING

WHITE PLAINS -- Moody's Investors Service on Wednesday affirmed the New York Power Authority's Aa1 bond rating on approximately \$855 million of outstanding senior revenue bonds. The report specifically addressed "NYPA's strong management of its financial operations, limited leverage and favorable cost position, including a favorable current above average long-term hydro volume."

"This rating enables the New York Power Authority to maintain its lower-cost borrowing capability," said **John R. Koelmel, NYPA chairman**. "Because of our acknowledged financial strength, we are able to make the investments needed to pursue cutting-edge energy and economic development initiatives across New York State."

Moody's bond rating "is driven by its unique position as the provider of reliable, low-cost, primarily hydro-electric power in the State of New York and its role as an engine for business development. The rating reflects prudent financial management policies that have consistently resulted in financial metrics that are among the strongest of all U.S. public power electric utilities with generation ownership in our rated universe."

Moody's also affirmed the P-1 short-term rating on the \$528 million outstanding commercial paper and the P-1 rating on the \$5 million of outstanding extendible municipal commercial paper program.

"The Power Authority appreciates these strong ratings," said **Gil C. Quiniones, NYPA president and CEO**. "It underscores the long-term commitment of its senior management and its board of trustees for strong fiscal discipline, operational excellence and a close adherence to its public power mission."

About NYPA:



NY Power Authority ✓

@NYPAAenergy

.@MoodyInvSvc affirms our Aa1 bond rating, citing our financial management & favorable above average #hydro volume: nypa.gov/Press/2016/121...

12/15/16, 14:36

2016 Accomplishments: Power Vista



#NYPATop10: Our #NewNiagara Power Vista was unveiled this summer after a complete renovation, bringing more family-fun to the #Nlagara area.



12/28/16, 10:18



2016 Accomplishments: Canals



NY Power Authority 
@NYPaenergy

NYPA is proud to announce that [@NYSCanalCorp](#) is part of our family, and excited about this partnership's potential. [nypa.gov/Press/2016/123...](#)

1/3/17, 08:58



2017 Look Ahead

Digitization

Enhancing productivity

Enhancing competitiveness

Reimagining canals

Expanding revenue opportunities

2017 Key Strategic Initiative Milestones

Key ● On track ● Some risk of missed deadline / will not be delivered in full
● Milestone will not be delivered ● Completed

Customer Solutions	0/4 complete Net Income Target (\$20.7mm) NYEM Subscriptions (\$1.9mm) LED Lighting Revenue (\$11.0mm) Resiliency Project Revenue (\$0.75mm)	Process Excellence	0/2 complete Process Improvement Benefits To NYPA - \$20mm Process Management Program
Smart G&T	0/3 complete Communications Backbone - 1st Path Continuous Protection System Monitoring - BG Phasor Measurement Units 60% Rolled Out - Additional Sites * BG: Blenheim-Gilboa	Knowledge Management	0/5 complete Enterprise Search 3 Knowledge Improvement Programs 3 Communities Of Practice "Find an Expert" search module Knowledge Continuity for Transitioning Employees 50%
Asset Management	0/4 complete SAMP and Regional Asset Management Plans Asset Health Center - Flynn Asset Data Analytics: 5 Use Cases iSOC Engineering Complete * iSOC: Information Security Operations Center	Workforce Planning	0/5 complete 3 Mosaic Modules Implemented Transformed Workforce Processes HR Metrics & Dashboard Employee Value Proposition New Career Website



**NY Power
Authority**



**NY Power
Authority**

**Canal
Corporation**

Board of Trustees Meeting

Chief Operating Officer Report

Presented By:

Joseph F. Kessler PE

EVP & Chief Operating Officer

Performance Measures – Year-End December 2016

Operations



Generation Market Readiness

99.78 v. 99.40
(actual v. target YTD)



Transmission Reliability

94.56 v. 94.89
(actual v. target YTD)

NYPA Overall



Environmental Incidents

19 v. 32
(actual v. target YTD)

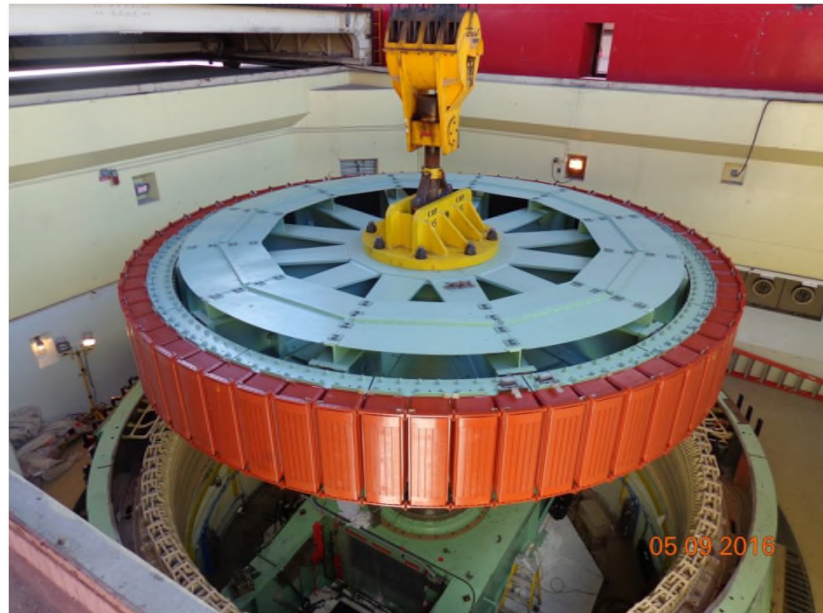


Dart Rate

0.95 v. 0.78
(actual v. target YTD)

Key Issues

- Continuation of LEM work:
 - Transmission
 - LPGP



Look Ahead

- Next Steps - Technical Compliance
 - RSC, QA/QC & Code Compliance
 - Drills, Drills, Drills
- PV-20 Installation





**NY Power
Authority**

**Canal
Corporation**

Commercial Operations Report

Jill C. Anderson, Chief Commercial Officer

Commercial Ops: Wholesale



11%

Contract & Market Revenue

\$2,416 MM v. \$2,708 MM

(actual v. budget 2016 - year end)



22%

Market Context

\$34.28/MWh 2016 v. \$44.10/MWh 2015

(average annual energy price)



Fuel Costs

\$69.7 MM savings

(actual v. budget 2016 - year end)

Commercial Ops: **Economic Development**



Business Development

Business plan for large-scale renewables, new transmission infrastructure, and interconnection services in development



Economic Development

Recharge NY: 741 MW out of 910 MW allocated

All programs: over 403,000 jobs, \$33 Billion capital committed

Commercial Ops: Customer

Energy Efficiency

- \$148 MM 2016 achieved vs. \$141 MM target
- \$206 MM 2017 target for implementation
- \$270 MM 2018 target
- Combined heat & power project with NY State Office of General Services at Empire State Plaza in progress
- MTA bridge lighting project in progress



Grants & Initiatives

- **NY Energy Manager:** 1,200 buildings connected in 2016
- **K-Solar:** 48 contracts signed; 8 permitted and 1 constructed totaling 4.9 MW in construction, progress in Long Island market, and new solar developer awards



NY Power
Authority

Canal
Corporation



Chief Financial Officer Report

January 31, 2016

CONFIDENTIAL

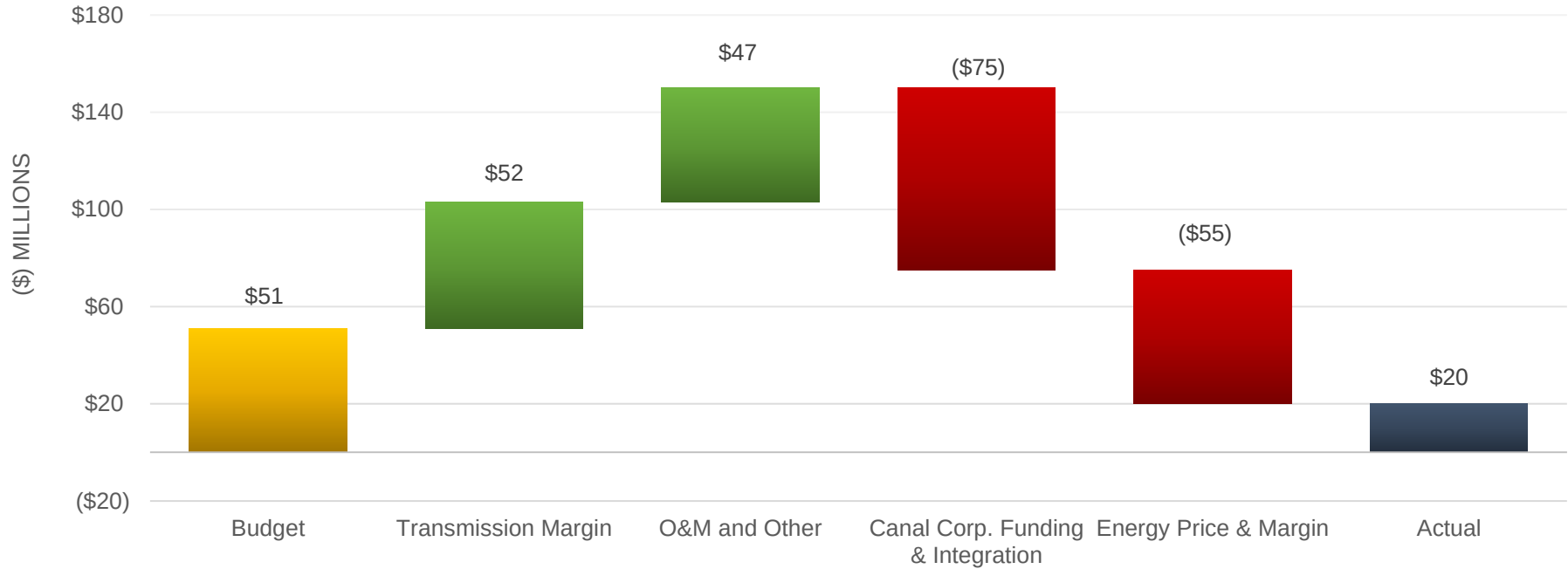
Recent Authority Highlights

- **Affirmation of bond ratings**
 - Moody's Investor Services affirmed the Authority's Aa1 long-term rating on outstanding revenue bonds and P-1 short-term rating on outstanding commercial paper on December 14th
 - Standard & Poors (S&P Global Ratings) affirmed the Authority's AA long-term rating on outstanding revenue bonds and A-1+ short-term rating on outstanding commercial paper on January 12th
 - Fitch Ratings affirmed the Authority's F1+ short-term rating on outstanding commercial paper on January 6th. Fitch did not opine on NYPA's long-term rating.
- **FERC Approves NYPA's Transmission Revenue Requirement settlement**
 - On January 19th, FERC approved the uncontested settlement for NYPA's Formula Rate Recovery case, allowing for an annual update to NYPA's Transmission Revenue Requirement which will result in the timely recovery of our Transmission Life Extension and Modernization spending.
- **Bond Issuance**
 - We continue to monitor market conditions for an appropriate time to move forward with our bond issuance contemplated in the 4th quarter of 2016. The Trustees will be kept apprised of the financing's status in the 1st quarter of 2017. Employ risk-based (i.e. conservative) financial planning methods

2016 Net Income – Variances from December Trustee Meeting

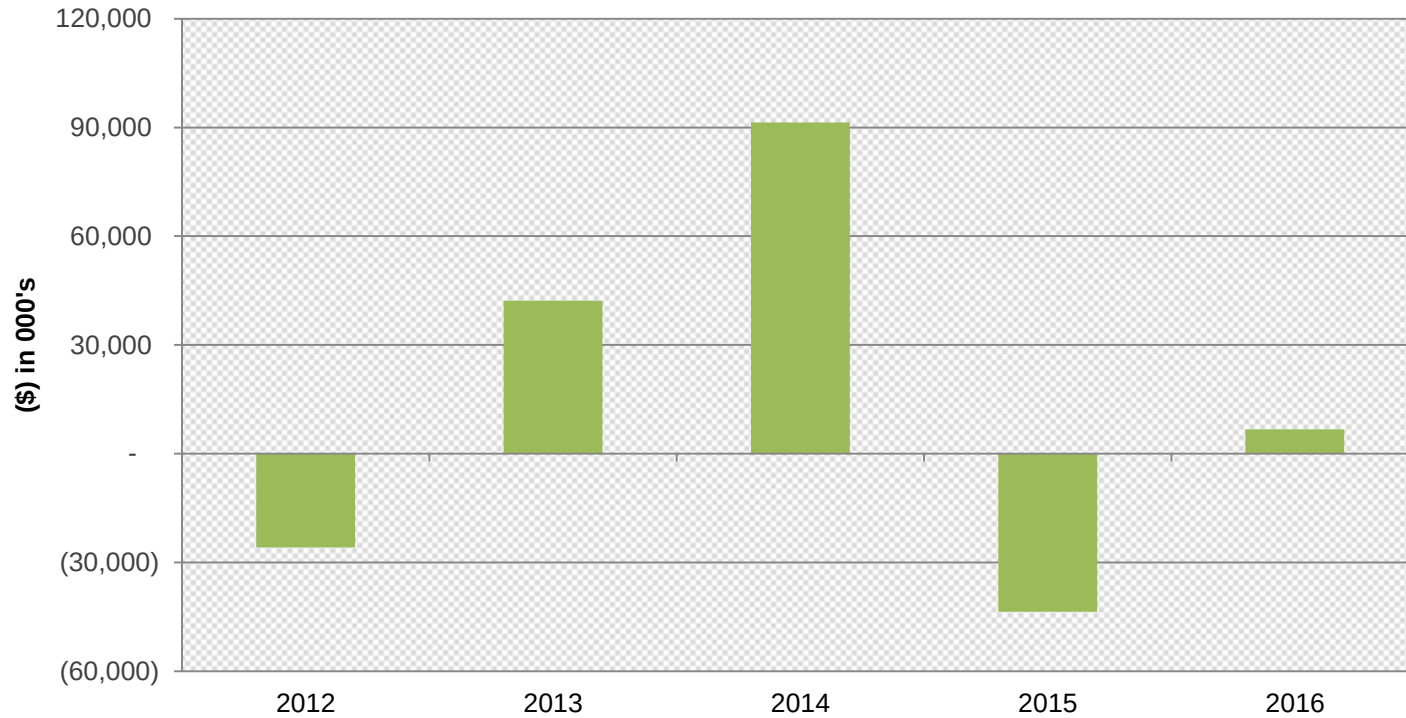
[amounts in millions]	Year-End Projection	Actual	Difference
Transmission Gross Margin	\$130	\$152	\$22
O&M and A&G			
Generation	(\$202)	(\$194)	\$8
Transmission	(\$65)	(\$62)	\$3
Operations HQ	(\$30)	(\$35)	(\$5)
Corporate Support and R&D	(\$136)	(\$119)	\$16
Customer Energy Solutions	(\$15)	(\$9)	\$6
Other Expenses			
Energy Projects	(\$50)	(\$46)	\$4
Economic Development	(\$91)	(\$79)	\$12
Other	\$408	\$412	\$4
Net Income (unaudited):	(\$51)	\$20	\$71

Net Income Year Ended December 2016*



*Preliminary amounts subject to adjustment based on the true-up of estimated sales and accruals.

Economic Value Added (2012-2016)



New York Power Authority
Recommendation for Preservation Power Allocation

Exhibit "A"
January 31, 2017

	Company Name	Program	City	County	Base Jobs	New Jobs	Estimated Capital Investment	New Jobs Avg. Wage Benefits	Power Requested (kW)	Power Recommended (kW)	Contract Term
A-1	Potsdam Specialty Paper, Inc.	PP	Potsdam	St. Lawrence	67	22	\$2,000,000	\$60,091	500	400	7 Years
	Totals					22	\$2,000,000			400	

APPLICATION SUMMARY
Preservation Power ("PP")

Company:	Potsdam Specialty Paper, Inc. ("PSPI")
Location:	Potsdam
County:	St. Lawrence County
IOU:	National Grid
Business Activity:	Producer of specialized latex saturation base papers that go into several different products in the building and construction, automotive, home décor and medical industries.
Project Description:	Addition of a paper and film coating production line that will lead to production efficiencies, the ability to produce new products and an increase in capacity.
Existing Allocation(s):	Recharge New York Power 2.1 MW, tied to 67 jobs, \$14 million investment. PSPI is in compliance with its contractual obligations for these supplemental commitments.
Power Request:	500 kW of PP
Power Recommended:	400 kW of PP
Job Commitment:	
Base:	67
New:	At least 22 jobs
New Jobs/Power Ratio:	55 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$60,091
Capital Investment:	At least \$2 million
Capital Investment/MW:	\$5 million/MW
Other ED Incentives:	None
Summary:	A PP allocation in support of its expansion plans would help PSPI better compete, increase its business and strengthen its long-term commitment to the North Country and New York State. The creation of at least 22 new, high-paying jobs within three years would also be a boost to the Potsdam regional economy.

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE OF
PRESERVATION POWER AND ENERGY
(CES)

to

POTSDAM SPECIALTY PAPER, INC.

The Power Authority of the State of New York (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title 1 of Article 5 of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Preservation Power and Energy (“Agreement”) to Potsdam Specialty Paper, Inc., having facilities at 547a Sissonville Road, Potsdam, New York, 13676 (“Customer”). The Authority and the Customer are from time to time referred to in this Agreement individually as a “Party” or collectively as the “Parties” and agree as follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the St. Lawrence-FDR Power Project known as Preservation Power (or “PP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, PP consists of 490 megawatts (“MW”) of firm hydroelectric power and associated energy produced by the St. Lawrence-FDR Power Project;

WHEREAS, St. Lawrence-FDR Power Project hydroelectric power plays an important role in providing competitively priced power for sale to attract and retain business investment and to promote economic development in New York State;

WHEREAS, the Authority has the authority under PAL § 1005(13)(a) to award allocations of PP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer has applied for an allocation of PP for use at facilities located at 547a Sissonville Road, Potsdam, New York, 13676 (defined in Article I of this Agreement as the “Facility”) to be received upon completion of an expansion of the Facility as provided for in the Capital Expansion Program described in this Agreement;

WHEREAS, on January 31, 2017, the Authority’s Board of Trustees (“Trustees”) approved a 400 kilowatt (“kW”) allocation of PP (defined in Article I of this Agreement as the “Allocation”) to the Customer for a seven year term, as further described in this Agreement;

WHEREAS, the provision of Electric Service (defined in Article I of this Agreement) associated with the Allocation is an unbundled service separate from the transmission and delivery service necessary for the Customer to receive the Allocation which will be performed by the Customer’s local utility company;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

Article I. Definitions

- A. **Agreement** means this Agreement as further described in the preamble, including all documents and other matters attached to and incorporated into the Agreement.
- B. **Allocation** refers to the total amount of PP and associated energy set forth in Schedule A to this Agreement awarded to the Customer.
- C. **Contract Demand** has the meaning set forth in the Service Tariff.
- D. **Electric Service** is Firm Power and Firm Energy associated with the Allocation and sold to the Customer in accordance with the provisions of this Agreement, the Service Tariff, and the Rules.
- E. **Energy Efficiency Audit** means a physical inspection of a building in a manner approved by the Authority that should include the following elements: (1) an assessment of a building's energy use, cost and efficiency which produces an energy utilization index for the building (such as an Energy Use Intensity or Energy Performance Indicator); (2) a comparison of the building's index to indices for similar buildings; (3) an analysis of low-cost/no-cost measures for improving energy efficiency; (4) a listing of potential capital improvements for improving energy consumption; and (5) an initial assessment of potential costs and savings from such measures and improvements.
- F. **Facility** means the Customer's facility identified in Schedule A.
- G. **Firm Energy** has the meaning set forth in the Service Tariff.
- H. **Firm Power** has the meaning set forth in the Service Tariff.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the license issued by FERC to the Authority for the continued operation and maintenance of the St. Lawrence Project, pursuant to Section 15 of the Federal Power Act, which became effective October 22, 2003 after expiration of the Project's original license issued in 1953.
- K. **Hydro Projects** is a collective reference to the Authority's Niagara Project and St. Lawrence-FDR Project.

- L. **International Joint Commission** (or **IJC**) refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.
- M. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- N. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- O. **NYISO Charges** has the meaning set forth in the Service Tariff.
- P. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- Q. **PAL** means the New York Public Authorities Law.
- R. **Preservation Power** (or **PP**) has the meaning set forth in the Service Tariff.
- S. **Niagara Project** means the Authority's Niagara Power Project, FERC Project No. 2216.
- T. **Rules** refers to the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by Authority.
- U. **Service Tariff** means the Authority's Service Tariff No. 10, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- V. **St. Lawrence Project** means the Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.
- W. **Schedule A** refers to the Schedule A to this Agreement entitled "Preservation Power Allocations" which is attached to and made part of this Agreement.
- X. **Schedule B** refers to the Schedule B to this Agreement entitled "Preservation Power Commitments" which is attached to and made part of this Agreement.
- Y. **Schedule C** refers to Schedule C to this Agreement entitled "Takedown Schedule" which is attached to and made part of this Agreement.

- Z. **Schedule D** refers to the Schedule D entitled “Clean Energy Standard Cost Recovery Charges” which is attached to and made part of this Agreement.
- AA. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectric power that would otherwise have been supplied to the Customer under this Agreement.
- BB. **Taxes** have the meaning set forth in the Service Tariff.
- CC. **Unforced Capacity** (or **UCAP**) is the electric capacity required to be provided by Load Serving Entities to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

Article II. Electric Service

- A. The Authority shall provide Electric Service to the Customer to enable the Customer to receive the Allocation in accordance with this Agreement, the Service Tariff and the Rules. The Customer shall not be entitled to receive Electric Service for any PP Allocation that is not specified in Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with the Service Tariff.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand and the Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as PP from the St. Lawrence Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all PP customers, as applicable, based on the terms of such ruling, order, or decision. The Authority will use reasonable efforts to provide at least thirty (30) days prior written notice to the Customer of any such modification unless such notice is inconsistent with such ruling, order or decision.
- F. The Contract Demand may not exceed the Allocation.

- G. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of PP to the Customer, the proper and efficient implementation of the PP power program, billing related to PP Power, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents the Authority determines are necessary to effectuate such exchanges of information.
- H. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer's local electric utility providing for the delivery of PP on terms and conditions that are acceptable to the Authority.
- I. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") the Authority determines is necessary for the provision of Electric Service, the delivery of PP, billing related to the PP program, the effective and proper administration of the PP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

Article III. Rates, Terms and Conditions

- A. The Authority will provide Electric Service to the Customer based on the rates, terms and conditions established in accordance with this Agreement, the Service Tariff and the Rules.
- B. The Service Tariff and the Rules may be amended from time to time by the Authority. The Authority shall provide at least thirty (30) days prior written notice to the Customer of any proposed change in the Service Tariff or the Rules. No subsequent amendment to the Service Tariff or the Rules shall affect the determination of rates for PP to the Customer during the term of the Agreement except insofar as otherwise authorized by this Agreement. This provision shall not limit the Authority's discretion to determine rates applicable to allocations of power and energy awarded to the Customer beyond or in addition to the Allocation.
- C. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates shall be subject to increase by the Authority at any time upon 30 days prior written notice to Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the St. Lawrence Project and the Authority's competitive position with respect to other suppliers, the Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to the

Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers that are subject to the Service Tariff after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, the Authority shall forward to the Customer with the notice of the increase, an explanation of all reasons for the increase, and shall also identify the sources from which the Authority will obtain the total of increased revenues and the bases upon which the Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as the Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- D. In addition to all other fees, assessments and charges provided for in the Agreement, the Service Tariff and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

Article IV. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a “load factor sharing” basis in a manner consistent with the local electric utility’s applicable tariffs and any agreement between the Authority and the Customer’s local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority shall render bills for power and energy by the tenth (10th) business day of the month for charges due for the previous month. Such bills shall include the NYISO Charges and Taxes (as such terms are defined in the Service Tariff) associated with the Allocation. NYISO Charges and Taxes billed to the Customer are subject to adjustments consistent with any subsequent NYISO re-billings to Authority.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an

additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in the Service Tariff.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

Article V. Transmission and Delivery of Power and Energy

- A. The Customer shall responsible for securing arrangements with its local utility for transmission and delivery service associated with the Allocation unless otherwise agreed to by the Parties.
- B. The Customer will pay its local utility for transmission and delivery service associated with the Allocation in accordance applicable contracts and all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the Firm Power and Firm Energy supplied by the Authority under this Agreement. To the extent the Authority incurs transmission and delivery service charges or other costs associated with the Allocation during the term of this Agreement, the Customer agrees to compensate the Authority for all such charges and costs incurred.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf as may be required under the applicable local utility company tariffs. In no event shall the Authority act as the LSE for the power and energy consumed by Customer other than Electric Service (inclusive of Substitute Energy, if any) sold by the Authority under this Agreement. The Customer understands and acknowledges that it will be responsible to the Authority for all charges and other costs incurred by the Authority associated with the

provision of Electric Service to enable the Customer to receive the Allocation, including charges and costs contained in the NYISO Tariffs or other applicable tariffs (including local utility company tariffs), regardless of whether such charges and costs are transmission-related. Such charges and costs are in addition to the charges for power and energy.

Article VI. Preservation Power Commitments

- A. Schedule B sets forth the Customer's specific "Preservation Power Commitments." Such commitments are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service to the Customer under this Agreement is expressly conditioned upon the Customer's performance of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility expansion which results in the Facility expansion being partially completed, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility expansion, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support operations thereat.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility expansion. The Authority will inspect the Facility expansion for the purpose of verifying the completion status of the Facility expansion and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service in accordance with this provision within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.
- E. In the event the Customer fails to complete the Facility expansion by January 31, 2020 (*i.e.*, within three (3) years of the Authority's award of the Allocation), (i) the Authority may, at its option and discretion, cancel the Allocation, or reduce it by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility expansion, or (ii) upon request of the Customer, such date may be extended by the Authority in its sole discretion.

Article VII. Rules and Service Tariff; Conflicts

The Service Tariff is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariff and the Rules, the provisions of the Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariff, the provisions of this Agreement shall govern.

Article VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.*, reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with the Service Tariff as applicable.
- B. The Authority shall provide reasonable notice to the Customer of any curtailments referenced in Article VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement.
- C. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the hydroelectricity that would otherwise have been supplied under this Agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.
- D. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- E. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

Article IX. Additional Allocations

- A. Upon application by the Customer, the Authority may award additional allocations of PP to the Customer at such rates and on such terms and conditions as set forth in the Service Tariff. Once the Customer agrees to purchase Electric Service associated with such additional allocations, the Authority will produce modified or supplemental Schedules A and B which will reflect any such additional allocations and other pertinent terms as appropriate. The Authority will furnish the Customer with any such modified or supplemental Schedules within thirty (30) days of the commencement of Electric Service for any such additional allocation.
- B. The Customer shall furnish such documentation and other information as the Authority requests to enable the Authority to evaluate (i) whether any additional allocations should be made to the Customer, and (ii) the terms relating to any additional allocation.

Article X. Notification

A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Telephone:
Facsimile: (914) 390-8156
Electronic mail:
Attention: Manager – Business Power Allocations and Compliance

To: Customer

Potsdam Specialty Paper, Inc.
547a Sissonville Road
Potsdam, New York, 13676
Telephone:
Facsimile:
Electronic mail:
Attention:

B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing. Any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and rulings by the IJC and without regard to conflicts of law provisions.

Article XI. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

Article XII. Successors and Assigns; Transfers; Resale of PP

- A. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained.
- B. The transfer of any portion of the Allocation, or any benefits relating the Allocation, by the Customer to any person, to a different owner or operator of the Facility, or to a different facility, is prohibited unless (i) specifically approved by the Authority, and, (ii) all other legal requirements applicable to such a transfer are complied with. Any transfer that occurs without such approval and compliance shall be invalid and transfer may in the Authority's sole discretion subject the transferor to revocation or modification of the Allocation and/or this Agreement.
- C. The Customer may not resell any portion of the Allocation to any person. If such a sale occurs, the Authority may, in its sole discretion, terminate the Allocation and/or this Agreement.

Article XIII. Previous Agreements and Communications

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of PP, and supersedes all previous communications between the Parties hereto, either oral or written, with respect to the sale of PP. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

Article XIV. Waiver

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- B. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

Article XV. Severability and Voidability

- A. If any term or provision of this Agreement is invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the

entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

Article XVI. Term, Modification, Termination and Effect

- A. Electric Service under this Agreement shall continue with respect to an Allocation until the earliest of: (1) termination by the Customer with respect to all of the Allocation upon at least ninety (90) days prior written notice to the Authority; (2) termination by Authority pursuant to the Rules upon required notice; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- B. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days prior written notice to the Authority. The termination shall be effective commencing with the first "Billing Period" as defined in the Service Tariff following the required notice.
- C. The Authority may modify or terminate Electric Service hereunder or modify the quantities of power and energy associated with an Allocation: (1) if such termination or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement or in the Rules.
- D. This Agreement shall become legally binding and effective only upon satisfaction of the following conditions precedent: (1) receipt of approval of this Agreement by the Authority Board of Trustees; (2) receipt of approval of this Agreement by the Governor of the State of New York pursuant to PAL § 1009; and (3) execution of this Agreement by the Authority and the Customer.

Article XVII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

POTSDAM SPECIALTY PAPER, INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A

PRESERVATION POWER ALLOCATIONS

Customer: Potsdam Specialty Paper, Inc.

Type of Allocation	Allocation (kW)	Trustee Approval Date	Expiration Date	Facility
PP	400	January 31, 2017	Seven (7) years from commencement of Electric Service of any portion of this Allocation	547a Sissonville Road, Potsdam, New York, 13676

SCHEDULE B

PRESERVATION POWER COMMITMENTS

ARTICLE I. EMPLOYMENT COMMITMENTS

A. Base Employment Level

The Customer shall establish and maintain the employment level as provided for in the Appendix to this Schedule B (the “Base Employment Level”). Unless otherwise provided for in Schedule B, such Base Employment Level shall be the total number of full-time positions held by: (1) individuals employed by the Customer at the Facility identified in the Appendix to this Schedule B; and (2) individuals who are contractors or are employed by contractors of the Customer and who are assigned to such Facility (collectively, “Base Level Employees”). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working at least 20 hours but not more than 35 hours per week shall be counted as one Base Level Employee.

The Customer shall not establish or maintain the Base Employment Level by transfers of employees from previously held positions with the Customer or its affiliates located within New York State, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for bona fide economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency, or adoption of new technologies or for other appropriate reasons as determined by the Authority. The Authority shall have the sole discretion to make any such change.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Customer employees and contractor employees at the Facility, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify Customer employees and contractor employees and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

ARTICLE II. REDUCTIONS OF CONTRACT DEMAND

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.C of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the facilities receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is defined in the Service Tariff) for PP is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.C of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or facilities upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

ARTICLE III. CAPITAL INVESTMENT

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule B.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

ARTICLE IV. ENERGY EFFICIENCY AUDITS AND INFORMATION REQUESTS

The Customer shall undergo an Energy Efficiency Audit of its facilities and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the facilities.

The Customer agrees to cooperate to make its facilities available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

I. Base Employment Level

In accordance with Article I of Schedule B, the Customer agrees to a Base Employment Level at the Customer's Facility as indicated below.

Base Employment Level	Facility	Miscellaneous/Notes
Within three (3) years of the commencement of Electric Service of any portion of the Allocation to the Facility, the Customer shall employ not less than eighty nine (89) persons in full-time positions at the Facility (the "Base Employment Level") and shall maintain such Base Employment Level for the term of the Allocation.	547a Sissonville Road Potsdam, New York 13676	

II. Capital Investment

The Customer shall make a total capital investment of at least \$2,000,000 in connection with an expansion of the Facility (the "Capital Investment"). The Capital Investment is expected to consist of the following approximate expenditures on the items indicated:

Building and Utility Improvements:	\$320,000
Coating Line and Slitting Equipment Procurement:	\$220,000
Flotation Dryer Equipment Procurement:	\$600,000
Install Coating Line, Slitter and Ancillary Equipment:	\$800,000
Miscellaneous/ Contingency:	<u>\$ 60,000</u>
 Total Minimum Capital Investment:	 \$2,000,000

The Capital Investment shall be made, and the expansion of the Facility shall be completed and fully operational, not later than January 31, 2020 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

SCHEDULE C
TAKEDOWN SCHEDULE

N/A

SCHEDULE D

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of the Service Tariff or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff and Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff, or Rules.

REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under the PP Program, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the PP Program (the “PP Program ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the PP Program to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the PP Program based on the proportion of the actual annual kilowatt-hours load served under such

Program to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the PP Program ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the PP purchased by the Customer to total kilowatt-hours load served by the Authority under the PP Program (PP Program level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the PP Program by the Authority (PP Program level load).
- b. The ZEC Charge shall apply to the sale of PP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of PP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to procure RECs for the Customer's load, and pay the Authority the REC Charge; (b) secure the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will

either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- b. The REC Charge shall apply to the sale of PP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of PP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article IV of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of the Service Tariff or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

**Schedule of Rates for Sale of Firm Power to
Preservation Power Customers**

Service Tariff No. 10

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Preservation Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

A. The following abbreviations are used:

kW	kilowatt(s)
kW-mo.	kilowatt-month
kWh	kilowatt-hour(s)
MWh	megawatt-hour(s)
NYISO	New York Independent System Operator, Inc. or any successor organization
PAL	New York Public Authorities Law
OATT	Open Access Transmission Tariff

B. The term "Agreement" means an executed Agreement for the Sale of Preservation Power and Energy between the Authority and the Customer (each as defined below).

C. The term "Annual Adjustment Factor" or "AAF" shall have the meaning set forth in Section V herein.

D. The term "Authority" means the Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the "New York Power Authority."

E. The term "Customer" means a business customer who has received an allocation for Preservation Power from the Authority and who purchases Preservation Power directly from the Authority.

F. The term "Electric Service" means the power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

- G. The term "Preservation Power" means Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).
- H. The term "Firm Power" means capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.
- I. The term "Firm Energy" means energy (kWh) associated with Firm Power.
- J. The term "Load Serving Entity" or "LSE" shall have the meaning set forth in the Agreement.
- K. The term "Project" means the Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.
- L. The term "Rate Year" or "RY" means the period from July 1 through June 30 of the following year.
- M. The term "Rules" means the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- N. The term "Service Tariff" means this Service Tariff No. 10.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A. Preservation Power Base Rates

The monthly base rates for demand and energy charges paid by Customer to Authority shall be:

<u>Rate Year</u>	<u>Demand Charge</u> \$/kW-mo.	<u>Energy Charge</u> \$/MWh
2010	6.15	10.52
2011	6.71	11.48
2012	7.32	12.52
2013	7.99	13.66

Beginning with the 2014 Rate Year (July 1, 2014), and for each Rate Year thereafter, such rates shall be subject to an Annual Adjustment Factor set forth in Section V herein.

B. Preservation Power Rates No Lower Than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for Preservation Power Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

F. Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

G. Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

H. Contract Demand

The contract demand of each Customer will be the amount of Preservation Power, not to exceed the Customer's Allocation, provided to such Customer by the Authority in accordance with the Agreement. The minimum Contract Demand for any Preservation Power Allocation is 100 kW.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
2. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Firm Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Firm Energy sales will be the same for all Firm Power and Firm Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

1. The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.
2. Billing Demand – Unless separately metered, the billing demand charged by the Authority to each Customer will be the highest 15-minute integrated demand during each billing period recorded on the Customer's meter multiplied by a percentage based on load factor sharing, as applicable.
3. Billing Energy – Unless separately metered, the kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the billing period multiplied by a percentage based on load factor sharing, as applicable.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Firm Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Preservation Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges ("NYISO Charges")

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

- A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
- B. Marginal losses;
- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

2. Transformer Losses

If delivery is made at transmission voltage but metered on the low-voltage side of the Customer's substation, the meter readings will be increased two percent to compensate for transformer losses.

3. Power Factor

Power factor is the ratio of real power (kW) to apparent power (kVa) for any given load and time. The Authority may require the Customer to maintain a power factor of not less than 90%, lagging or leading, at the point of delivery, or as may otherwise be imposed upon the Authority by the local electric utility providing delivery and/or NYISO.

H. Conflicts

In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of the Agreement and this Service Tariff, the provisions of the Agreement shall govern.

I. Customer Resales Prohibited

The Customer may not resell any quantity of Preservation Power.

v. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year (<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 <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.99	13.66
New Rate Year Base Rate	8.12	13.88

Exhibit Number	Company Name	Program	City	County	Base Jobs	New Jobs	Estimated Capital Investment	New Jobs Avg. Wage & Benefits	Power Requested (kW)	Power Recommended (kW)	Contract Term
A-1	Mayer Bros. Apple Products Inc.	RP	Town of Somerset	Niagara	92	19	\$3,200,000	\$44,700	250	200	7 Years
TOTALS						19	\$3,200,000			200	

APPLICATION SUMMARY**Replacement Power**

Company:	Mayer Bros. Apple Products Inc. ("Mayer Bros.")
Project Location:	Town of Somerset
County:	Niagara County
IOU:	National Grid
Business Activity:	Manufacturer of bottled beverages
Project Description:	With a recent expansion of its customer base, Mayer Bros. has proposed to construct a 40,000-square-foot addition and add a second hot fill production line.
Existing Allocation(s):	Recharge New York ("RNY") 220 kW tied to 92 jobs, \$1.5 million investment (in compliance)
Power Request:	250 kW
Power Recommended:	200 kW Replacement Power
Job Commitment:	
Base:	92 jobs
New:	At least 19 jobs
New Jobs/Power Ratio:	95 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$44,700
Capital Investment:	At least \$3.2 million
Capital Investment/MW:	\$16 million/MW
Other ED Incentives:	Empire State Development Excelsior Jobs Program Grant of \$500,000 and 15-year PILOT from Niagara County Industrial Development Agency.
Summary:	A family-owned business in Western New York since 1852, Mayer Bros. has been operating its facility in Somerset since 1987. Its commitment to New York State is evident by its ongoing investment, averaging \$2.3 million in capital expenditures and upgrades at its Somerset and West Seneca facilities during the last five years. The expansion at Somerset will allow for an increase in bottling operations and opportunity to increase business and jobs 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
(CES)

to

MAYER BROS. APPLE PRODUCTS 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 Mayer Bros. Apple Products Inc. (“Customer”), having facilities at 7389 Lake Road Somerset, NY 14012. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at a new and/or expanded facility to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on January 31, 2017, the Authority’s Board of Trustees (“Trustees”) approved a 200 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on January 31, 2017, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's performance of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility by January 31, 2020 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the

Customer's local electric utility on terms and conditions that are acceptable to the Authority.

- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as

follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601

Email:

Facsimile: _____

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Mayer Bros. Apple Products Inc.
7389 Lake Road
Somerset, NY 14012

Email:

Facsimile:

Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- B. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

MAYER BROS. APPLE PRODUCTS INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Mayer Bros. Apple Products Inc.				
Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Replacement Power	200	7389 Lake Road Somerset, NY 14012	January 31, 2017	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service, the Customer shall employ at least 111 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall make a minimum capital investment of \$3,200,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following approximate expenditures on the items indicated:

Building Construction -	\$1,200,000
Bottle Inverter/Washer/Filler/Capper -	\$ 500,000
Cooling Tunnel & Tower -	\$ 400,000
Boiler, Pasteurizer & Batch Tanks/Blenders -	\$ 400,000
Packaging Machines (Labeler/Box Maker/Palletizer) -	\$ 400,000
Other (conveyors, table sorters, scanners/printers) -	<u>\$ 300,000</u>

Total Minimum Capital Investment:	\$3,200,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than January 31, 2020 (*i.e.*, within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR
REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

adjustment after a 3-year look-back, and the PSC indicates it will adopt increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year (“REC Program Year”).

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP’s clean energy goals. The Authority’s participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the “EP and RP Programs ZEC Cost”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP

and RP Programs based on the proportion of the actual annual kilowatt-hours load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the

REC Charge. Depending on the availability of the Customer's kilowatt-hour load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- b. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff

Agreement: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power and/or **Replacement Power**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-1.

Target Rate: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A.Expansion Power (EP) and Replacement Power (RP) Base Rates

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

- 1.The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
- 2.The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
- 3.The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

- 4.Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B.For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
 - C.Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

B.EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its sole discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.
- For Customers whose allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement.

F.Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G.Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

- 1.The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer’s local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer’s local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer’s local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer’s billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer’s billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges (“NYISO Charges”)

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
 - a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

O&M 2017 - Budget by Organization

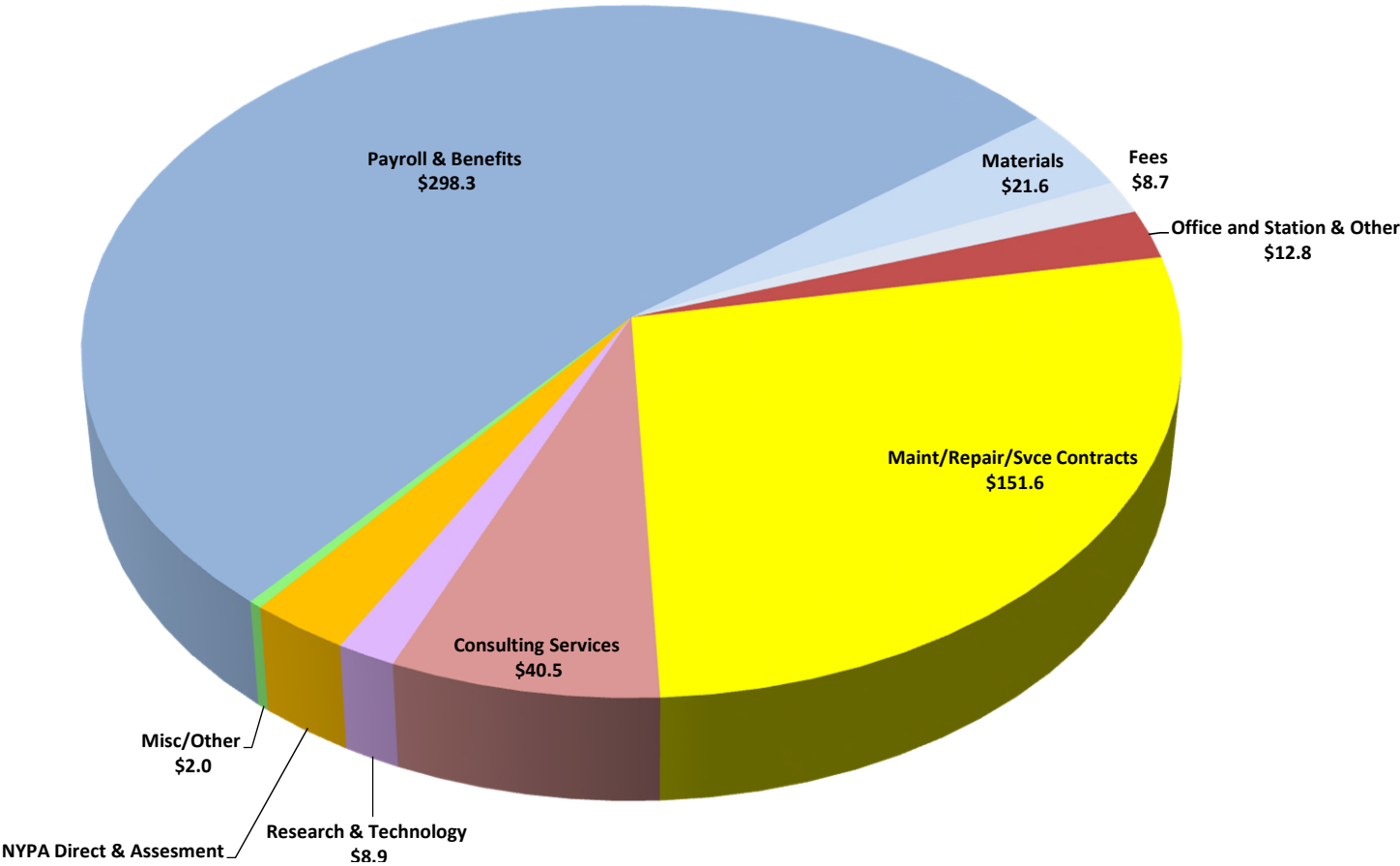
Exhibit A: 1 of 4

(\$000's)

	2017 <u>Budget</u>		2017 <u>Budget</u>
EXECUTIVE OFFICE		ENERGY MARKETING & BUSINESS DEVELOPMENT	
Executive	1,557.9	Energy Efficiency	500.0
Law	9,091.3	Economic Development	464.6
Internal Audit	4,504.8	Market Analysis & Administration	15.0
Corporate Affairs	11,960.4	NY Energy Manager	0.0
Risk Management	<u>5,043.5</u>	Integrated Grid	0.0
Office Total	32,157.8	Customer Energy Solutions	<u>0.0</u>
		Office Total	979.6
COMMERCIAL OPERATIONS		OPERATIONS	
SVP Commercial Operations	1,249.9	Operations Headquarters	33,371.1
Project & Business Development	3,614.4	Blenheim-Gilboa	22,440.2
Energy Resource Management	<u>1,744.9</u>	500 MW	34,468.8
Office Total	6,609.3	Flynn	7,987.7
		SENY	6,856.9
BUSINESS SERVICES		SCPP	18,905.5
EVP & CFO Business Services	622.0	Niagara	62,834.7
Budgets & Business Controls	2,562.4	St. Lawrence	37,386.6
Controller	5,910.2	Small Hydros	13,721.1
Finance	694.9	Transmission Lines	65,994.2
Financial Planning	985.5	Astoria Energy II O&M	<u>967.3</u>
Treasury	1,388.4	Office Total	304,934.2
Procurement	9,913.7	Recharge New York	2,553.8
Strategic Management	1,815.0	Research & Development	8,924.0
Enterprise Excellence	<u>2,676.1</u>		
Office Total	26,568.2	Total before Lease/Invest.	440,958.3
		Eliminations & Adjustments	34,251.5
INFORMATION TECHNOLOGY			
Cyber Security	902.9	Astoria Energy II Lease	28,206.0
Information Technology	<u>29,301.3</u>	Canals	84,300.2
Office Total	30,204.2	Grand Total	587,715.9
ENTERPRISE SHARED SERVICES			
SVP Enterprise Shared Services	1,201.4		
VP Enterprise Shared Services	373.3		
Human Resources	11,894.0		
Knowledge Management	1,619.0		
Corporate Support Services	10,206.7		
Fleet Management	1,458.5		
Real Estate	607.8		
Chief Diversity Officer	<u>666.5</u>		
Office Total	28,027.2		

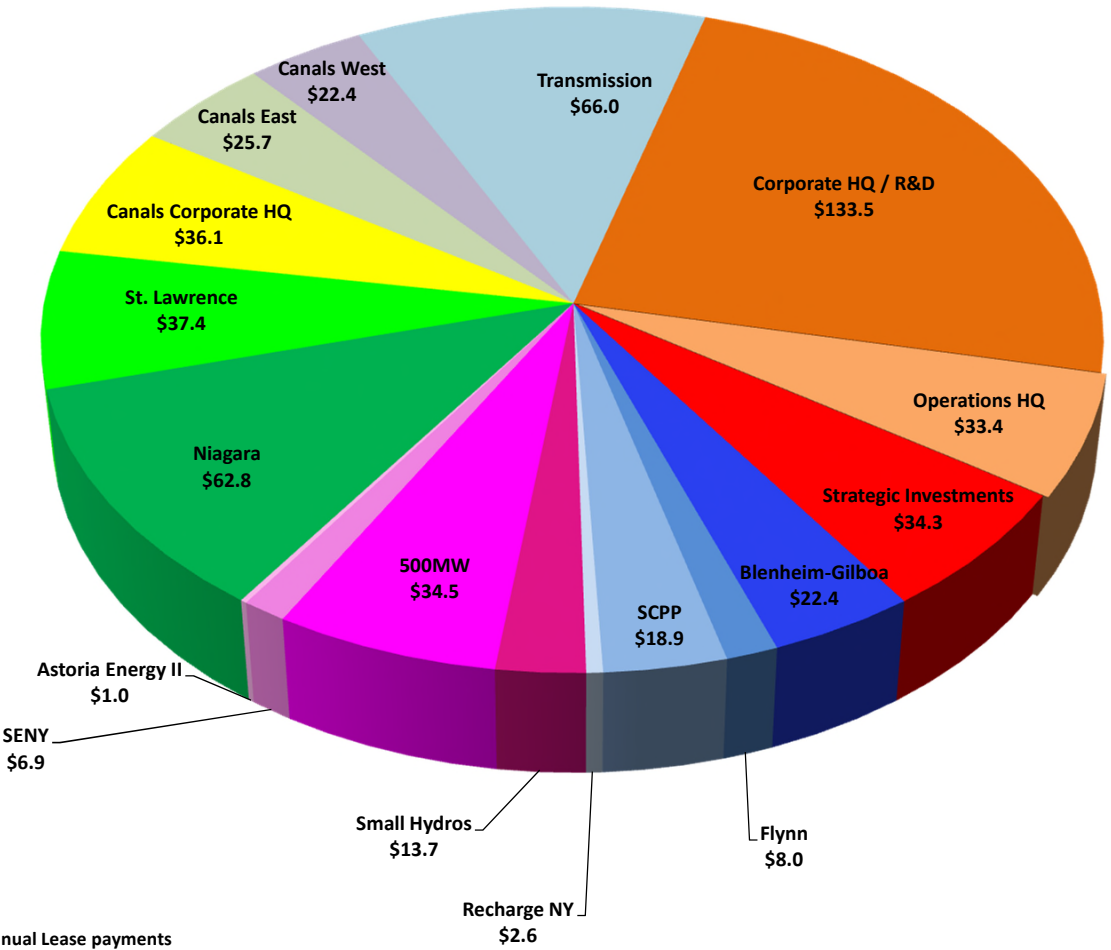
O&M: 2017 Budget By Cost Element (\$millions)

\$559.5 M
(excludes AE II Lease)



O&M: 2017 Budget By Facility (\$millions)

\$559.5 M
(excludes AEII Lease)



O & M: Headcount 2017

Headquarters	<u>2017 Request</u>
* Executive Offices	170
Commercial Operations	55
Business Services	197
Human Resources & Enterprise Shared Services	109
Information Technology	130
Economic Development & Energy Efficiency	<u>179</u>
Headquarters Total	840
Operations	
Operations HQ	333
Transmission/Clark	131
Blenheim-Gilboa	108
500MW	64
R.M. Flynn	24
Niagara	246
St. Lawrence	<u>197</u>
Operations Total	1,103
NYPA Total	1,943
Canals Total	482
Grand Total	2,425

NYPA Reflects 25 new position requests, funded and embedded in departments

* Includes 20 funded and 15 unfunded new position requests

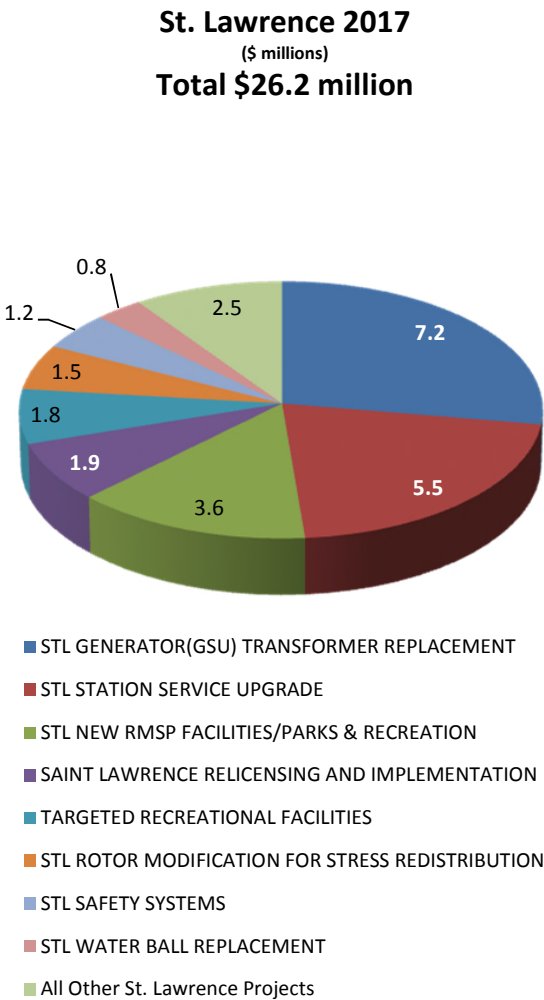
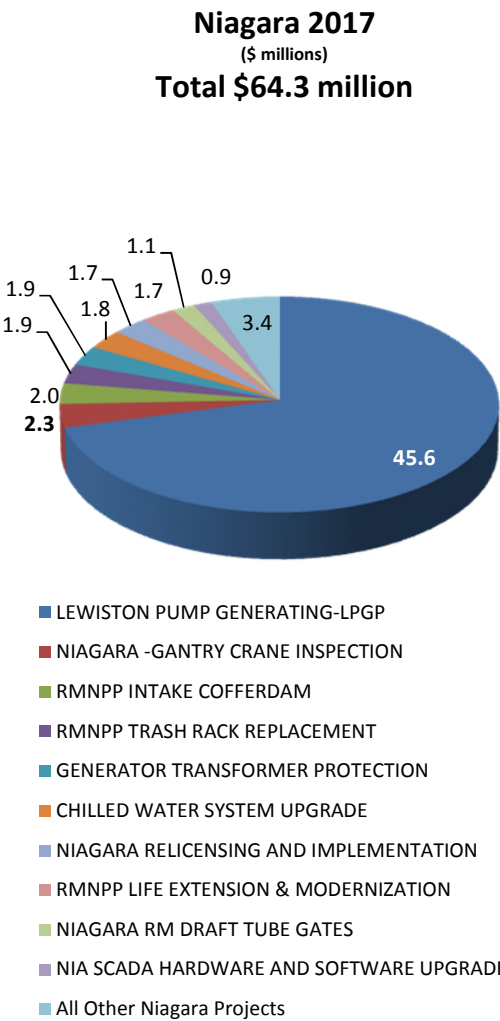
2017 Capital Budget Request (\$000's)

Exhibit B: 1 of 3

	2017 CAPITAL BUDGET
TRANSMISSION	88,317
OPERATIONS	
NIAGARA*	64,271
ST. LAWRENCE*	26,225
BLLENHEIM- GILBOA*	8,171
500 MW	11,105
SCPP	2,717
FLYNN	0
SMALL HYDRO PLANTS	66
SUB-TOTAL OPERATIONS	200,874
OPERATIONS HEADQUARTERS	58,026
CANALS	60,500
TOTAL CAPITAL	319,400

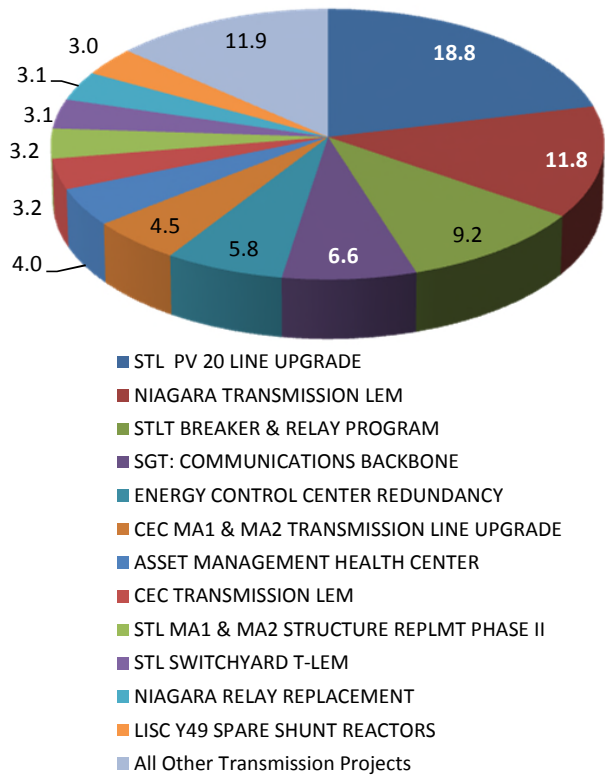
* Includes Relicensing and Compliance / Implementation Expense

Capital Plan: 2017 Major Initiatives

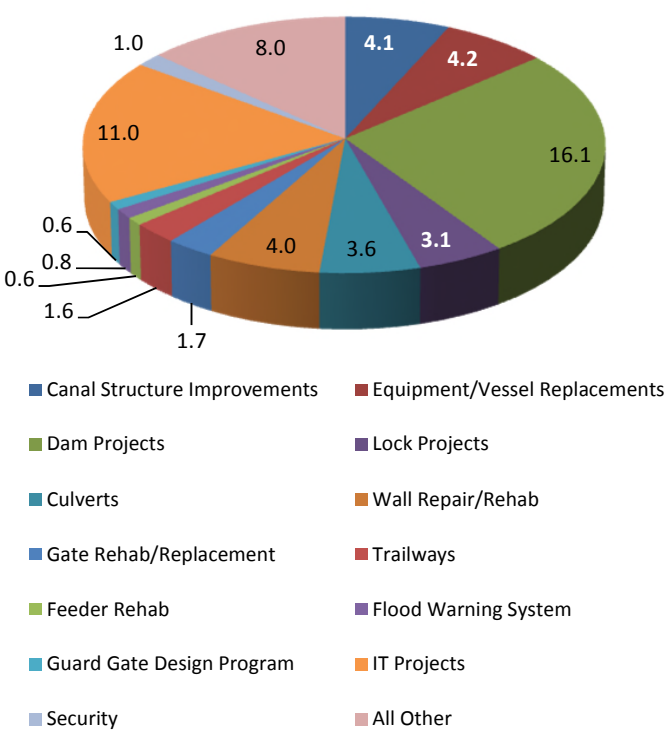


Capital Plan: 2017 Major Initiatives

Transmission 2017
(\$ millions)
Total \$88.3 million



Canals 2017
(\$ millions)
Total \$60.5 million



**NEW YORK POWER AUTHORITY
FIVE YEAR PLAN
ENERGY EFFICIENCY**

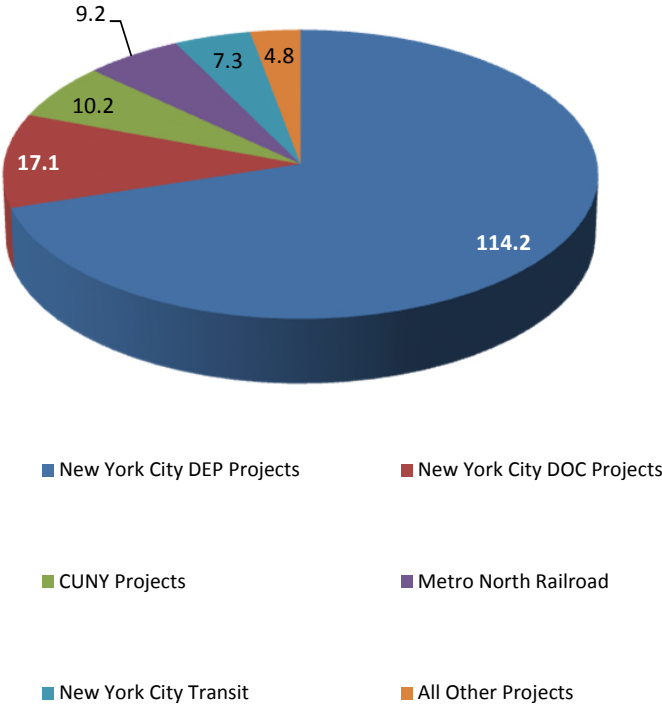
Energy Services 2017 Budget (\$000's)

Exhibit C: 1 of 2

<i>ENERGY EFFICIENCY & TECHNOLOGY</i>	2017
<u>LONG TERM AGREEMENTS</u>	
SENY GOVERNMENTAL SERVICES PROGRAM	162,823
SUB-TOTAL LONG TERM AGREEMENTS	162,823
<u>OTHER NYPA FUNDED PROGRAMS</u>	
ENERGY EFFICIENCY PROGRAM	44,175
MEUA VEHICLES PROGRAM	500
SUB-TOTAL OTHER NYPA FUNDED PROGRAMS	44,675
<u>POCR PROGRAMS</u>	
POCR REBATE PROGRAM	500
POCR - OTHER	509
SUB-TOTAL POCR	1,009
TOTAL ENERGY EFFICIENCY:	208,507

2017 Energy Services Programs

Long Term Agreement Program
(\$ millions)
Total \$162.8 million



Other Energy Services Programs
(\$ millions)
Total \$45.7 million

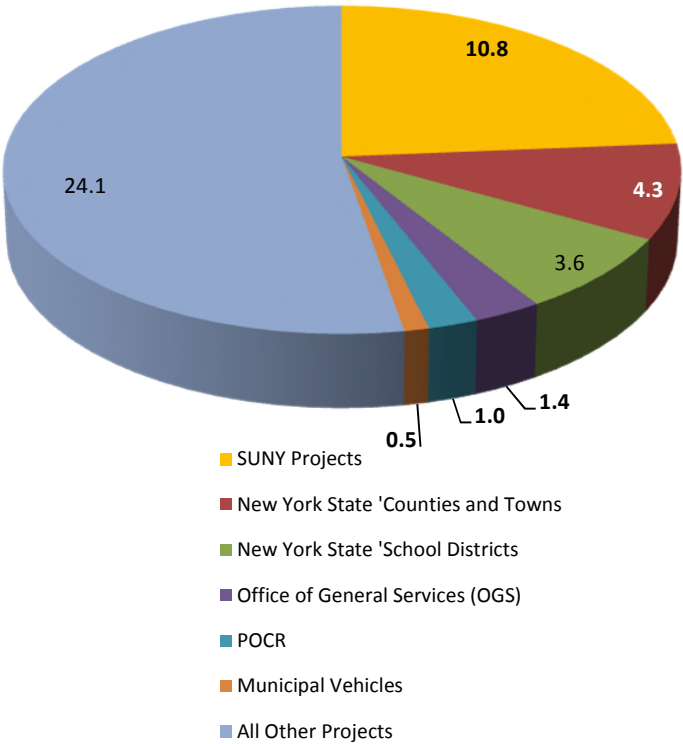


EXHIBIT D

Date: December 15, 2016

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: **2017 Budget and Filing of the 2017-2020 Approved Budget and Four-Year Financial Plan Pursuant to Regulations of the Office of the State Comptroller**

SUMMARY

The Trustees are requested to approve the 2017 Budget for the Power Authority, specifically including the expenditures for the (i) 2017 Operations and Maintenance (“O&M”) Budget (attached as Exhibit “A”), (ii) 2017 Capital Budget (attached as Exhibit “B”), and (iii) 2017 Energy Services Budget (attached as Exhibit “C”) (collectively, the “2017 Power Authority Budgets”). The 2017 Power Authority Budgets set forth the expected revenues and expenses of the Authority and include the recommended expenditures in the following amounts:

<u>2017 Power Authority Budgets</u>	<u>(\$ million)</u>
O&M	\$ 475.2
Capital	\$ 258.9
Energy Services	\$ 208.5

In accordance with regulations of the Office of the State Comptroller (“OSC”), the Trustees are requested to approve the 2017-2020 Four-Year Budget and Financial Plan attached as Exhibit “D” (in the form approved, the “Approved 2017-2020 Four-Year Budget and Financial Plan”) and authorize: (i) submitting the Approved 2017-2020 Four-Year Budget and Financial Plan to OSC, (ii) posting the Approved 2017-2020 Four-Year Budget and Financial Plan on the Authority’s website, and (iii) making the Approved 2017-2020 Four-Year Budget and Financial Plan available for public inspection at not less than five convenient public places throughout New York State.

BACKGROUND

The Authority is committed to providing clean, low-cost and reliable energy consistent with its commitment to the environment and safety, while promoting economic development and job development, energy efficiency, renewables and innovation, for the benefit of our customers and all New Yorkers. The mission statement of the Authority is to power the economic growth and competitiveness of New York State by providing customers with low-cost, clean, reliable power and the innovative energy infrastructure and services they value.

Legislation was enacted on April 4, 2016 which provides for the transfer of the New York State Canal Corporation (the “Canal Corporation”), and responsibility for certain management responsibilities regarding the New York State Canal System, from the New York State Thruway Authority to the Authority, effective January 1, 2017. The 2017 Power Authority Budgets do not include budget information for the Canal Corporation. Staff of the Authority and the New York State Thruway Authority have prepared a separate 2017 Canal Corporation budget (the “Preliminary 2017 Canal Corporation Budget”). The Preliminary 2017 Canal Corporation Budget will be submitted to the Canal Corporation’s Board of Trustees in January 2017 for review and approval. The 2017 Power Authority Budget will be presented to the Trustees in January 2017 to be amended to include the approved budget for the Canal Corporation.

Assumptions that were used by staff to prepare the 2017 Preliminary Canal Corporation Budget, and for forward periods, have been incorporated in the 2017-2020 Four-Year Budget and Financial Plan.

The 2017 Power Authority Budgets are intended to provide the Authority’s operating facilities with, and support organizations by providing, the resources needed to meet the Authority’s overall mission and the Authority’s strategic objectives.

In approving the 2017 Power Authority Budgets, the Trustees will be authorizing spending for 2017 operations, spending for capital projects, and spending for general plant purchases of \$750,000 or less. The 2017 Power Authority Budgets includes requests for 60 new positions (20 positions pooled and funded in a cost center under the Executive Office, 15 positions with no funding and 25 positions embedded in specific departments and funded accordingly).

In accordance with the Authority’s Expenditure Authorization Procedures, the President and Chief Executive Officer may, during the course of the year, authorize an additional 1.0% in the O&M Budget, up to 15 new positions, capital projects of \$3 million or less, or an increase in spending of no more than \$1 million to a capital project previously approved by the Trustees. All other spending authorizations must be approved by the Trustees.

The OSC implemented regulations in March 2006 addressing the preparation of annual budgets and four-year financial plans by “covered” public authorities, including the Authority. (See 2 NYCRR Part 203 (“Part 203”). These regulations, which are discussed below, establish various procedural and substantive requirements relating to the budgets and financial plans of public authorities. The 2017-2020 Four-Year Budget and Financial Plan has been prepared in accordance with these regulations.

DISCUSSION

2017 Power Authority O&M Budget

The 2017 O&M Budget of \$475.2 million reflects a continued concentration on the effective operation and maintenance of the Authority’s critical investments in New York State’s electric infrastructure in addition to the continued support of other strategic investments.

The 2017 O&M Budget for Operations provides \$240.5 million for baseline, or recurring, work. In addition to the baseline work, scheduled maintenance outages at the 500 MW plant and the Small Clean Power Plants (totaling \$14.0 million), and planned enhancements in non-recurring maintenance work at the operating facilities (totaling \$51.4 million), are designed to support high reliability goals. Some of the major non-recurring projects include: Marcy Auto Transformer Reactor Refurbishment (\$4.9 Million), Niagara Region Tower Painting (\$4.8 Million), Massena Reactors Refurbishment (\$4.7 million), Crescent Tainter Gate Painting &

Concrete Repair (\$2.8 million), St. Lawrence Ice Sluice Gate Repairs (\$2.5 Million), Robert Moses Headgate Refurbishment (\$2.4 Million), and Robert Moses Assembly Bay Floor Repair (\$3.1 Million).

The Astoria Energy II Budget totals \$28.2 million and represents the contractual O&M costs for the plant, which was placed in commercial operation in New York City in July 2011. These costs are being recovered from the Authority's New York City governmental customers, who are beneficiaries of the outputs of these projects under a long-term contract with the Authority.

2017 Power Authority Capital Budget

The 2017 Capital Budget totals \$258.9 million, a decrease of \$36.6 million from the 2016 Budget. Of this amount, \$178.8 million – or 69.1% of the total – represents planned investments in the Authority's Upstate New York facilities at Niagara and St. Lawrence, as well as in the Authority's statewide Transmission network. Significant capital projects for 2017 include the Lewiston Pump Generation Plant Life Extension and Modernization ("LEM") (\$45.6 million); the PV-20 Submarine Cable Replacement (\$18.8 million); the IT Cyber Security Initiative (\$12.4 million); the Niagara Transmission Life Extension and Modernization ("LEM") (\$11.8 million); the Information and Technology Initiatives project (\$11.5 million); and the St. Lawrence Breaker and Relay Program (\$9.3 million). Other significant capital projects include the Implementation of CIP Version 5 standard requirements (\$8.5 million); the St. Lawrence GSU Transformer Replacement (\$7.3 million); and the Smart G&T Communications Backbone (\$6.6 million).

2017 Energy Services Budget

The 2017 Energy Services Budget totals \$208.5 million, an increase of \$25.4 million from the 2016 Energy Services Budget. These expenditures will be subsequently recovered over time from the benefiting customers. The 2017 Energy Services Budget includes funding for energy efficiency projects for Authority customers and other eligible entities as the Authority strives to support the State's improved energy efficiency and clean, renewable energy goals.

2017-2020 Four-Year Budget and Financial Plan

Under Part 203 of the OSC Regulations, the Trustees are required to adopt a Four-Year Budget and Financial Plan. The approved Four-Year Budget and Financial Plan must be available for public inspection not less than seven days before the commencement of the next fiscal year for a period of not less than 45 days and in not less than five convenient public places throughout the State. The approved Four-Year Budget and Financial Plan must also be submitted to OSC, via electronic filing through the Public Authorities Reporting Information System, within seven days of approval by the Trustees. The regulations also require the Authority to post the approved Four-Year Budget and Financial Plan on its Web site.

Under Part 203, each Four-Year Budget and Financial Plan must be shown on both an accrual and cash basis and be prepared in accordance with generally accepted accounting principles; be based on reasonable assumptions and methods of estimation; be organized in a manner consistent with the public authority's programmatic and functional activities; include detailed estimates of projected operating revenues and sources of funding; contain detailed estimates of personal service expenses related to employees and outside contractors; list detailed estimates of non-personal service operating expenses and include estimates of projected debt service and capital project expenditures.

Other key elements that must be incorporated in each Four-Year Budget and Financial Plan are a description of the budget process and the principal assumptions, as well as a self-assessment of risks to the budget and financial plan. Additionally, each Four-Year Budget and Financial Plan must include a certification by the Chief Operating Officer.

The first year of the 2017-2020 Four-Year Budget and Financial Plan is based on (a) the 2017 Power Authority Budgets being brought to the Board for approval at this time and (b) staff's assumptions from the Preliminary 2017 Canal Corporation Budget. The remaining three years are indicative forecasts.

FISCAL INFORMATION

Payment of O&M expenses will be made from the Operating Fund. Payment for Capital and Energy Services expenditures will be made from the Capital Fund and the Energy Conservation Construction and Effectuation Fund, respectively. Monies of up to \$258.9 million from the Operating Fund will be transferred to the Capital Fund for capital expenditures, subject to compliance with the General Resolution Authorizing Revenue Obligations, as amended and supplemented. The 2017 Operating Budget shows adequate earnings levels so that the Authority may maintain its financial goals for cash flow and reserve requirements.

The 2017-2020 Four-Year Budget and Financial Plan's net income estimates for each of the years 2018 through 2020 are indicative forecasts. The Trustees are not being asked to approve any revenue and expenditure amounts for those years at this time.

RECOMMENDATION

The Chief Financial Officer recommends the Trustees approve the 2017 Budget for the Power Authority, specifically including the expenditures for the (i) 2017 Operations and Maintenance Budget, (ii) 2017 Capital Budget, and (iii) 2017 Energy Services Budget, each as discussed herein.

In connection with the 2017 Capital Budget, the Chief Financial Officer recommends the Trustees authorize the transfer of up to \$258.9 million from the Operating Fund to the Capital Fund, subject to compliance with the General Resolution Authorizing Revenue Obligations, as amended and supplemented.

The Chief Financial Officer further recommends the Trustees (1) approve the 2017-2020 Four-Year Budget and Financial Plan, and (2) authorize (i) submitting the Approved 2017-2020 Four-Year Budget and Financial Plan to the OSC in the prescribed format, (ii) posting the Approved 2017-2020 Four-Year Budget and Financial Plan on the Authority's Web site, and (iii) making the Approved 2017-2020 Four-Year Budget and Financial Plan available for public inspection at not less than five convenient public locations throughout New York State.

For the reasons stated, I recommend the approval of the above-requested actions by adoption of a resolution in the form of the attached draft resolution.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the 2017 Budget for the Power Authority, specifically including the expenditures for the (i) 2017 Power Authority Operations and Maintenance Budget, (ii) 2017 Capital Budget, and (iii) 2017 Energy Services Budget, each as discussed in the attached memorandum of the President and Chief Executive Officer, are hereby approved; and be it further

RESOLVED, That up to \$258.9 million of monies in the Operating Fund are hereby authorized to be withdrawn from such Fund and deposited in the Capital Fund, provided that at the time of withdrawal of such amount or portions of such amount, the monies withdrawn are not then needed for any of the purposes specified in Sections 503(1)(a)-(c) of the General Resolution Authorizing Revenue Obligations as amended and supplemented, with the satisfaction of such condition being evidenced by a certificate of the Treasurer or the Deputy Treasurer; and be it further

RESOLVED, That pursuant to 2 NYCRR Part 203, the attached 2017-2020 Four-Year Budget and Financial Plan, including its certification by the Chief Operating Officer, is approved in accordance with the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to 2 NYCRR Part 203, the Corporate Secretary be, and hereby is, authorized to submit the Approved 2017-2020 Four-Year Budget and Financial Plan to the Office of the State Comptroller in the prescribed format, post the Approved 2017-2020 Four-Year Budget and Financial Plan on the Authority's website and make the Approved 2017-

2020 Four-Year Budget and Financial Plan available for public inspection at not less than five convenient public places throughout New York State; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all 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: January 31, 2017

To: THE CANAL CORPORATION BOARD OF DIRECTORS

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Adoption of 2017 Budget
for the New York State Canal Corporation

SUMMARY

The Canal Corporation Board of Directors ("Canal Board") is requested to approve the 2017 Budget for the Canal Corporation, specifically including expenditures for the (i) 2017 Operations and Maintenance ("O&M") Budget (attached as Exhibit "A"), (ii) 2017 Capital Budget (attached as Exhibit "B"), and (iii) 2017 Canal Development Fund Budget (collectively, the "2017 Canal Corporation Budgets"). The 2017 Canal Corporation Budgets set forth the expected expenses of the Canal Corporation and include the recommended expenditures in the following amounts:

<u>2017 Canal Corporation Budgets</u>	<u>(\$ million)</u>
O&M	\$ 85.0
Capital	\$ 60.0
Canal Development Fund	\$ 3.1

BACKGROUND

The Canal Corporation is authorized to operate, maintain, construct, reconstruct, improve, develop, finance, and promote the New York State canal system (the "Canal System").

The 2017 Canal Corporation Budgets are intended to provide the Canal Corporation with the resources needed to meet the Canal Corporation's overall mission and objectives.

DISCUSSION

2017 Canal Corporation O&M Budget

The 2017 O&M Budget of \$85.0 million reflects a concentration on the effective operation and maintenance of the Canal Corporation's critical investments in New York State's Canal System.

The 2017 O&M Budget for Operations provides appropriations for baseline, or recurring, work, along with new programs which have been created to more safely and effectively manage on-going operations. These programs include, but are not limited to, vegetation management (\$2.8 million), culvert cleaning and inspections (\$1.3 million), embankment inspections (\$1.0 million) and dam safety and bridge inspections ((\$0.9 million).

2017 Canal Corporation Capital Budget

The 2017 Capital Budget totals \$60.0 million, representing on-going and new capital projects. The significant projects for 2017 are: dam rehabilitation and repairs (\$16.1 million), IT projects (\$11.0 million), canal structure improvements (\$4.1 million), equipment and vessel replacement (\$4.2 million), wall repair/rehabilitation projects (\$4.0 million), lock rehab/rehabilitation (\$3.1 million).

2017 Canal Development Fund Budget

The 2017 Canal Development Fund Budget totals \$3.1 million, representing on-going costs associated with the New York State Canal System Development Fund ("Canal Development Fund").

The Canal Development Fund, created by State Finance Law §92-u, is a fund established in the joint custody of the State Comptroller and the Commissioner of Taxation and Finance. The Canal Development Fund consists largely of revenues received from the operation of the Canal System. Moneys of the Canal Development Fund, following appropriation by the legislature, is made available to the Power Authority, and may be expended by the Power Authority or the Canal Corporation for the maintenance, construction, reconstruction, development or promotion of the Canal System. In addition, moneys of the Canal Development Fund may be used for the purposes of interpretive signage and promotion for appropriate historically significant Erie Canal lands and related sites. Moneys from the Canal Development Fund are paid out by the State Comptroller on certificates issued by the Director of the Budget.

FISCAL INFORMATION

The Canal Corporation's O&M, Capital and Canal Development Fund expenses are expected to be funded by transfers of funds from the Power Authority. Any transfers of funds from the Power Authority to the Canal Corporation would be subject to approval by the Power Authority's Board of Trustees and compliance with the Power Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented.

Canal Development Fund expenses are expected to be reimbursed to the Power Authority by the State Comptroller with moneys held in the Canal Development Fund as discussed above.

RECOMMENDATION

The Chief Financial Officer recommends that the Canal Board approve the 2017 Budgets for the Canal Corporation, specifically including the expenditures for (i) 2017 Operations and Maintenance ("O&M") Budget (attached as Exhibit "A"), (ii) 2017 Capital Budget (attached as Exhibit "B"), and (iii) the 2017 Canal Development Fund Budget.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the 2017 Budget for the Canal Corporation, specifically including the expenditures for (i) 2017 Operations and Maintenance Budget, (ii) 2017 Capital Budget, and (iii) 2017 Canal Development Fund Budget, each as discussed in the foregoing memorandum of the President and Chief Executive Officer, are hereby approved; and be it further

RESOLVED, That the Canal Corporation Board of Directors acknowledges that any transfers of funds from the Power Authority to the Canal Corporation would be subject to approval by the Power Authority's Board of Trustees and compliance with the Power Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer and all other officers of the Canal Corporation are, and each of them hereby is, authorized on behalf of the Canal Corporation to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.



Energy Hedging Overview

Jill Anderson, Chief Commercial Officer

Soubhagya Parija, Chief Risk Officer

January 31, 2017

Agenda

	<u>Slide</u>
What is the Merchant Portfolio	3 - 4
What are the challenges of Merchant Portfolio	5 - 6
How NYPA is managing the challenges / risks	7 - 9
Summary	10

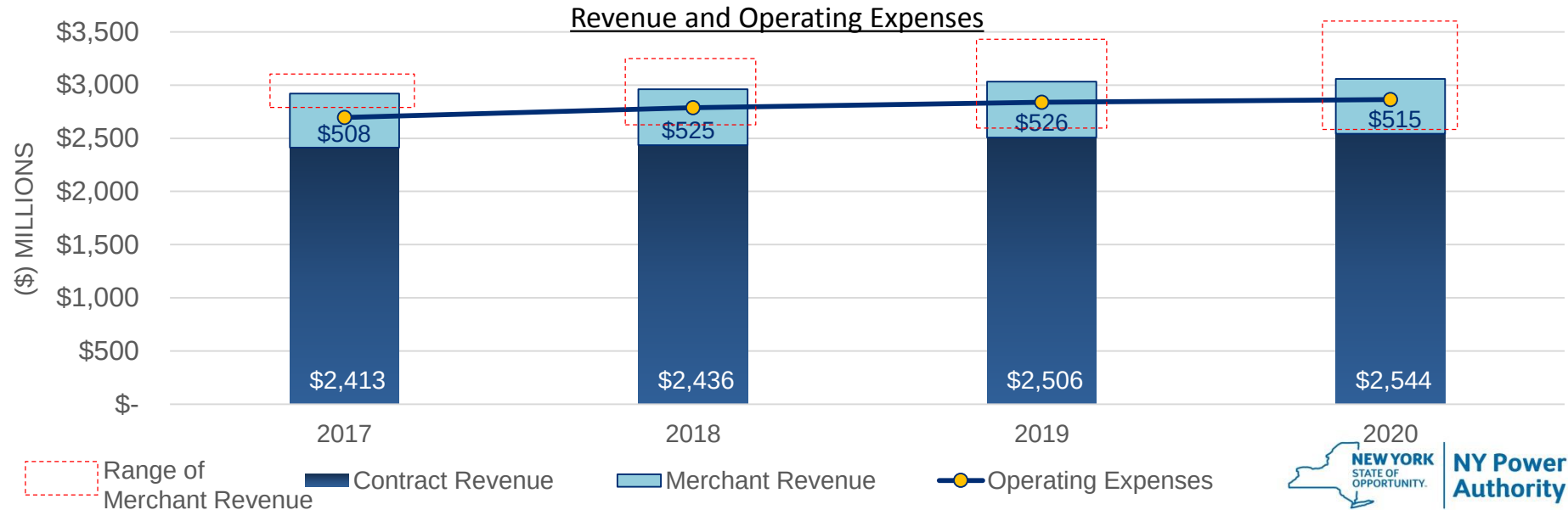
NYPA Portfolio Composition

1. Bi-lateral contracts (70% of power output), such as:
 - Low-cost power programs for economic development
 - Power to municipal and co-op utilities
 - Sales to neighboring states

2. Merchant sales (30% of power output), such as:
 - Energy, capacity, and other services sold directly to the markets controlled by the New York Independent System Operator
 - Hedges through physical and financial swaps

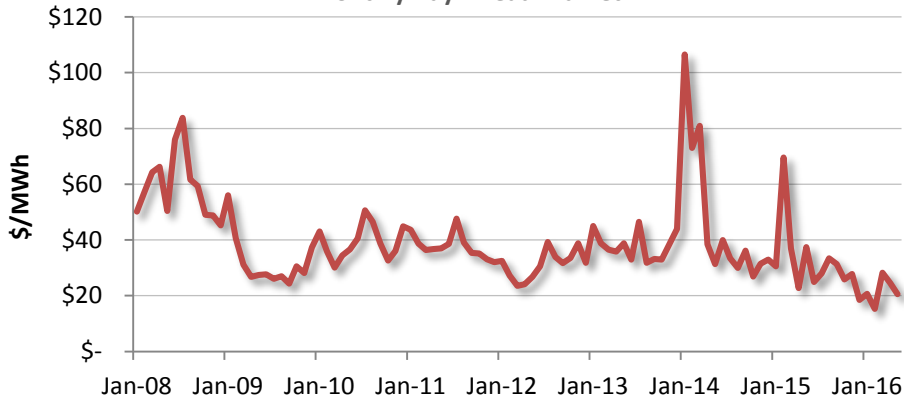
NYPA Portfolio Composition

- Merchant revenue is needed to cover operating expenses.
- Merchant revenue is uncertain with range of outcomes that may affect ability to cover operating expenses or meet financial budget.



Energy Price & Hydro Volumetric Risks

Zone A Energy
Monthly Day-Ahead Market



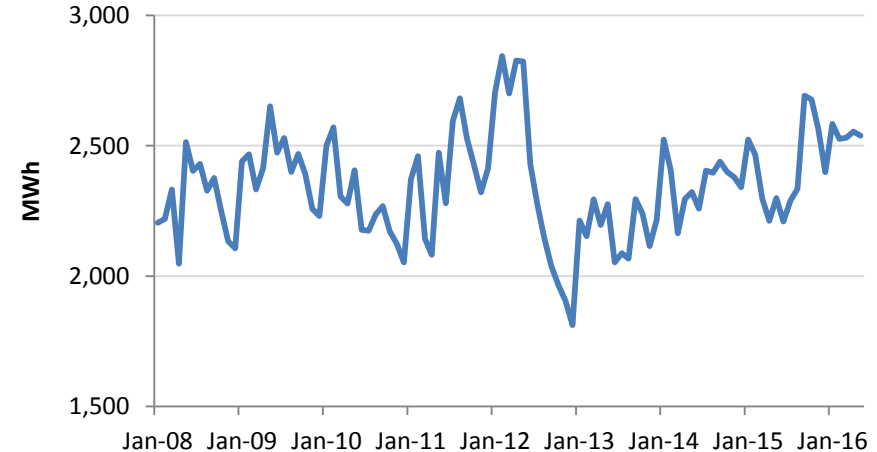
Price uncertainty driven by:

- Weather (*drives demand*)
- Load variability
- Asset Composition

Hydro uncertainty driven by:

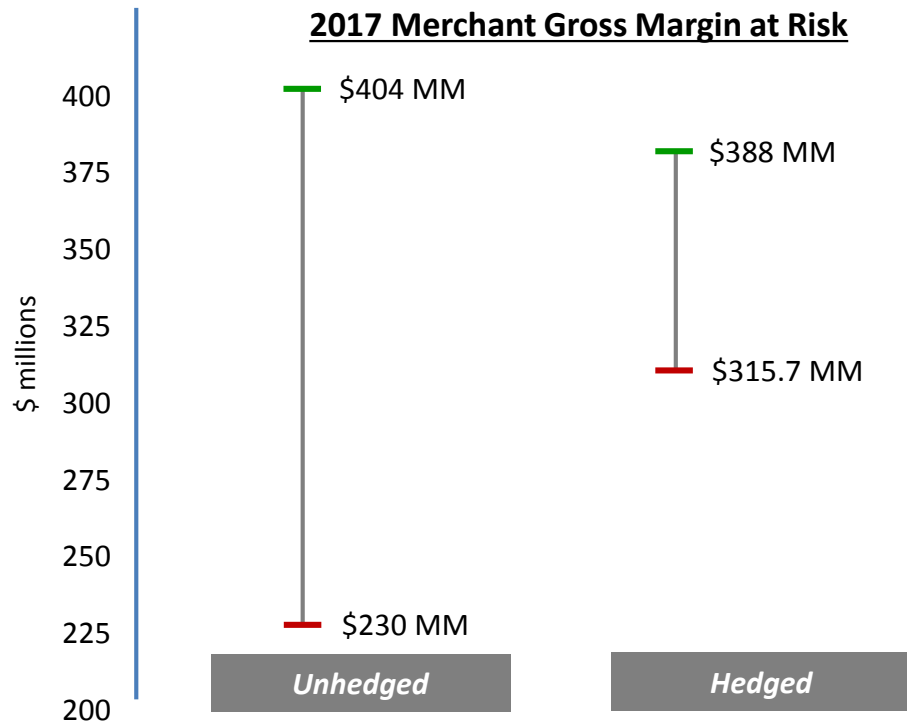
- Rainfall
- Snow pack
- Evaporation

Hydro Generation
Monthly Niagara & St. Lawrence Output



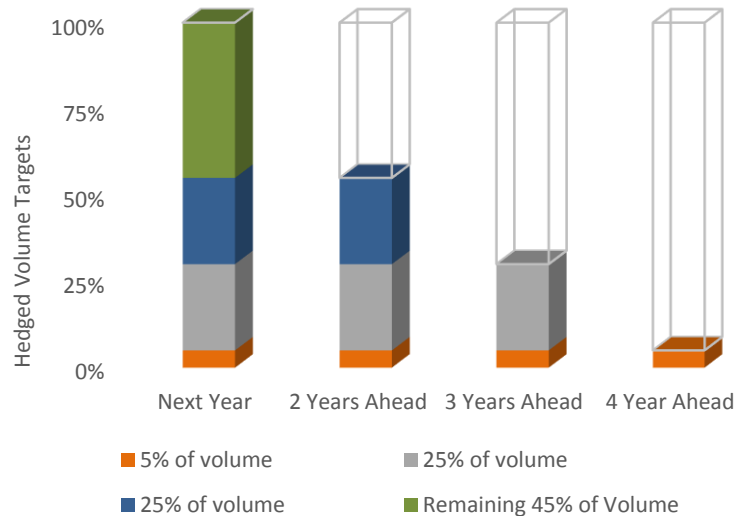
Merchant Portfolio Risk

Hedging had reduced unfavorable exposure by 40% compared to an unhedged portfolio



Protecting Gross Margin

Execution of Layered Multi-Year Hedging Strategy



Advantages of Multi-Year Hedging Strategy:

- Akin to Dollar-Cost-Averaging approach
 - Programmatic, disciplined yet flexible
- Reduces variability in Gross Margin results while taking advantages of the upside
- Leads to budget certainty
 - As the budget year approaches, hedge levels incrementally approach 100% of target

Portfolio Management Framework

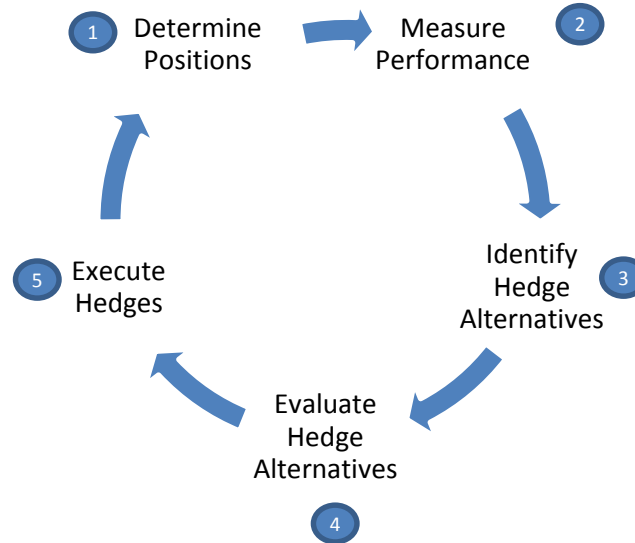
Set Performance Targets

- Focus on the controllable component: Gross Margin
- The Gross Margin target in relation to budget
- Assign accountability to Head of ERM

Set Risk Appetite vs. Targets

- Limit Structure ensure:
 - Risks within guardrails
 - Targets are on track

Analyze & Execute Portfolio Strategies



Governance Structure

- Daily monitor and reporting of limits (Risk Management and ERM)
- Monthly reporting to ERM*
- ERM annual Approval of hedging strategy

* ERM Charter description listed in the Appendix



NY Power Authority

Implementation Timeline



Summary

- Merchant Portfolio contributes significantly to the financial health of NYPA.
- Paramount to manage the volatility.
- Multi-year hedging strategy provides more budget certainty.
 - Managing risks produce less surprises
 - Provides opportunities to better harvest the upside

Appendix

ERMC Charter

- The Executive Risk Management Committee (ERMC) shall meet monthly.
- Voting Members consists of:
 - Chief Financial Officer
 - Chief Commercial Officer
 - Chief Operating Officer
 - General Counsel
 - Chief Information Officer
- ERMC Responsibilities include, but not limited to:
 - Establish the Authority's Risk Profile and Risk Appetite
 - Review and monitor the Authority's top Enterprise Risks
 - Authorize a program for energy commodity risk management

