



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

May 2, 2017

Table of Contents

<u>Subject</u>	<u>Page No.</u>	<u>Exhibit</u>
Introduction	2	
1. Adoption of the May 2, 2017 Proposed Meeting Agenda	3	
2. Motion to Conduct an Executive Session	4	
3. Motion to Resume Meeting in Open Session	5	
4. CONSENT AGENDA:	6	
a. Governance Matters	7	
i. Minutes of the Annual New York Power Authority Trustees' Meeting held on March 21, 2017	7	
ii. Naming of Nature Center at Robert Moses State Park	8	
b. Power Allocations	10	
i. Contracts for the Sale of Hydropower – Transmittal to the Governor	10	4b i-A; 4b i-B-1 - 4b i-B-3; 4b i-C-1 - 4b i-C-2
ii. Contract for the Sale of Replacement Power – Transmittal to the Governor	13	4b ii-A - 4b ii-C
iii. Contract for the Sale of Preservation Power – Transmittal to the Governor	16	4b iii-A - 4b iii-C
iv. Replacement Power Allocation	19	4b iv-A; 4b iv-B 4b
v. Award of Fund Benefits from the Western New York Economic Development Fund Recommended by the Western New York Power Proceeds Allocation Board	23	4b v-A - 4b v-D
c. Procurement (Services) Contracts	27	
i. Procurement (Services) Contract - Energy Efficiency Program - Energy Management Information System - Contract Award	27	
ii. Procurement Services Contract – NYPA Mobile Asset Inspection – Contract Extension	30	

<u>Subject</u>	<u>Page No.</u>	<u>Exhibit</u>
iii. Procurement (Services) Contracts – White Plains Office - Office of Fire Prevention and Control – Contract Award	32	
iv. Procurement (Services) Contract – Architectural/ Engineering and Design Services – Utica Discovery Center – Contract Award	34	
v. Procurement (Services) Contract – OSI Pi Historian Expansion – Enterprise Agreement Capital – Contract Award	37	
STL		
vi. Procurement Services Contract – St. Lawrence-FDR Power Project Operating Procedures and System Description Updates -- Contract Extension	40	
JARVIS		
vii. Procurement (Services) Contract – Gregory B. Jarvis Power Project Relicensing – Lead Relicensing Consultant - Award	42	
IT		
viii. Procurement (Services) Contract – IT Co-sourcing Services - Contract Awards	44	
ix. Procurement (Services) Contract – Information Technology - Digital Warehouse – Integrated Library System - Contract Award	47	
d. Fleet Vehicles	49	
i. NYPA Fleet Vehicles – Transfer of Ownership to Gates-Chili Central School District and Greater Amsterdam School District	49	4di - A
e. Finance	51	
i. Funding Growth in NYPA's Customer Project Business	51	
f. Real Estate	53	
i. Massena Country Club – Lease of 201 Acres – Town of Louisville, St. Lawrence County	53	
ii. Authorization to Enter into Leases with Municipalities – Village of Waddington, Town of Waddington and Town of Massena, St. Lawrence County	55	
Resolution		

<u>Subject</u>	<u>Page No.</u>	<u>Exhibit</u>
5. DISCUSSION AGENDA:	57	
a. Strategic Initiatives	57	
i. President and Chief Executive Officer Report	57	5a i-A
b. Risk Management	58	
i. Chief Risk Officer – Report	58	
• Commodity Risk Management Governance	58	5b i-A
c. Operations & Finance	59	
i. Utility Operations Report	59	5c i-A
ii. Commercial Operations Report	61	5c ii-A
iii. Financial Report	62	5c iii-A
iv. Annual Compliance Review – Recharge New York Power Program Resolution	64	5c iv-A - 5c iv-D
6. Next Meeting	70	
Closing	71	

Minutes of the Regular Meeting of the Power Authority of the State of New York held via video conference at the Frank S. McCullough, Jr. Hawkins Point Visitors Center, St. Lawrence/FDR Power Project, Massena, New York at approximately 10:56 a.m.

Members of the Boards 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
Ken Lee	Senior Vice President and Chief Information Officer
Jennifer Sutton	Senior Vice President – Internal Audit
Kimberly Harriman	Senior Vice President – Public & Regulatory Affairs
Kristine Pizzo	Senior Vice President – Human Resources
Karen Delince	Vice President and Corporate Secretary
Keith Hayes	Vice President – Economic Development
Joseph Leary	Vice President - Community & Government Relations
Patricia Lombardi	Vice President – Project Management
Ed Rider	Regional Manager - Northern New York
Steven Gosset	Manager – Media Relations
Mary Cahill	Manager – Executive Office
Michael Masuk	Real Time System Engineer I - STL
Jillian Nelson	Chief of Staff – Public and Regulatory Affairs
Lorna Johnson	Senior Associate Corporate Secretary
Sheila Baughman	Senior Assistant Corporate Secretary
Brian U. Stratton	Director – NYS Canal Corporation
John C. Callaghan	Deputy Director – NYS Canal Corporation
Jaiah Gottor	Manager – Network Services – Infrastructure
Joseph Rivera	Network Architect – Infrastructure
Glenn Martinez	Senior Network Analyst – Infrastructure
Steve O'Shaughnessy	Massena
Paul Finnegan	Visitor
Lois Nicandri	Visitor
Peter Nicandri	Visitor
Paul Nicandri	Visitor
Mark Nicandri	Visitor

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

Introduction

Chairman Koelmel began by saying that today is a very special day with the dedication and official opening of the new Nature Center and honoring Judge Nicandri. He said the Trustees are incredibly proud to honor the Judge and look forward to doing so at the ceremony after the meeting.

Chairman Koelmel continued that Trustee Picente and other NYPA staff members were participating via video conference. He welcomed the Trustees and staff members who were present and 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 May 2, 2017 Proposed Meeting Agenda

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

Conflicts of Interest

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

Vice Chairman Nicandri:

- *Naming of Nature Center (Item #4a ii);*
- *Massena Country Club, Inc. (Item #4f i)*

Trustee Kress:

- *LaBella Associates DPC (Item #4c iv)*
- *JPMorgan Chase Bank, N.A. (Item #4e i)*

Chairman Koelmel and Trustees McKibben and Picente declared no conflicts of interest.

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

I move that the Authority and Canal Boards conduct an executive session to discuss the financial history of a particular corporation (pursuant to section §105f of New York Public Officers Law). Upon motion made by Trustee McKibben and seconded by Trustee Kress, an Executive Session was held.

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

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

No votes were taken during the Executive Session.

4. CONSENT AGENDA:

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

Conflicts of Interest

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

Vice Chairman Nicandri:

- *Naming of Nature Center (Item #4a ii);*
- *Massena Country Club, Inc. (Item #4f i)*

Trustee Kress:

- *LaBella Associates DPC (Item #4c iv)*
- *JPMorgan Chase Bank, N.A. (Item #4e i)*

Chairman Koelmel and Trustees McKibben and Picente declared no conflicts of interest.

a. Governance Matters:

i. Approval of the Minutes

The Minutes of the Annual Meeting held on March 21, 2017 were unanimously adopted.

ii. **Naming of Nature Center at Robert Moses State Park**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to name the new Nature Center constructed at Robert Moses State Park ('Nature Center' or 'Center') the 'Eugene L. Nicandri Nature Center' in honor of NYPA's Trustee, Eugene L. Nicandri.

This item was originally included on the consent agenda for the March 21, 2017 Board of Trustees meeting. However, the Board lacked the minimum number of votes at this meeting to take action on this item. Therefore, the item is being resubmitted for the Board's consideration.

BACKGROUND

The Nature Center began providing a museum experience and environmental education for the public in 1990 and was operated by the New York State Office of Parks, Recreation and Historic Preservation's Thousand Islands Region. The Center had provided students and visitors with an opportunity to learn about the science and history of animal and plant life that make up the surrounding environment. The Center also features a trail system that offers snowshoes and skis for public use.

In March 2010, the Center was closed due to a fire. The blaze caused major damage to the building that housed the Center's interpretive museum and destroyed the majority of the Park's winter recreation equipment.

In 2015, the Trustees approved spending of \$12 million for the construction of a new Nature Center at the Park. The new Nature Center building is a state-of-the-art facility that will provide learning opportunities in indoor and outdoor natural science education for the public, schools and community groups. The Center's prominent spaces include the main lobby and gathering area, a classroom, and exhibits space. Construction will be completed in early 2017 and the new Center will be operational in spring 2017.

Trustee Nicandri's public service has spanned nearly three decades. He has served as a member of the NYPA Board of Trustees since 2008, and currently serves as Vice Chair of the Board of Trustees. Trustee Nicandri also serves as Chair of the Board's Audit Committee and sits on the Finance and Governance Committees. He is also a member of the New York State Economic Development Power Allocation Board.

Trustee Nicandri previously served as a St. Lawrence County Court Judge from 1985 until 2004, and served as President of the New York State County Judges Association from 1999 to 2000.

Trustee Nicandri was born and grew up in Seneca Falls, New York. He moved to Massena in 1966 to become a partner in the Massena law firm of Lavigne & Nicandri. He served at various times as the attorney for the Towns of Massena, Brasher, Louisville and Lawrence and the Village of Massena. He also served as the attorney for Massena Memorial Hospital. He represented the Town of Massena in a landmark litigation involving the establishment of the Massena Electric Department, a municipal electric system that benefits from low-cost hydropower from NYPA as a preference customer under federal law. He served as the Electric Department's attorney from 1981 to 1985.

Trustee Nicandri holds a Bachelor of Arts degree from the University of Rochester, and a J.D. from Albany Law School. Prior to attending Law School, he served on active duty with the U.S. Navy as a commissioned officer.

Along with his distinguished legal career, Judge Eugene Nicandri has remained an active member of the Massena community. He and his wife, Lois, raised their family of three sons in Massena, and have since been blessed with four grandchildren.

DISCUSSION

As per NYPA Company Policy 1-15: Naming and Dedication of Assets, an individual in whose honor a NYPA asset will be named should have an outstanding record of contribution to NYPA, New York State, or the community.

As provided for by the Policy, a naming Committee was formed at the direction of NYPA's President and Chief Executive Officer, Gil C. Quinones. It consisted of NYPA Trustee, Dr. Anne Kress; Keith Hayes, Vice President – Economic Development; and Mark Slade, Director – Licensing. The Committee provided a report to President Quinones which proposed naming the Nature Center as the 'Eugene L. Nicandri Nature Center' to honor Judge Nicandri. The Report outlines Judge Nicandri's contributions and record of service to NYPA, NYS and the North Country. It should be noted that Judge Nicandri in no way provided influence, or had involvement with this recommendation.

Based on his exemplary service as a NYPA Trustee, his judicial service, and his years of dedication and service to the North Country, the Committee has recommended to NYPA's President and CEO that the Nature Center be named the 'Eugene L. Nicandri Nature Center' in honor of Judge Nicandri.

RECOMMENDATION

In light of the foregoing, I am pleased to recommend that the new Nature Center at the Robert Moses State Park be named the 'Eugene L. Nicandri Nature Center.'

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

The following resolution, as submitted by the President and Chief Executive Officer, was adopted with Vice Chairman Nicandri recused from the vote.

RESOLVED, That the newly constructed Nature Center located at the Robert Moses State Park shall be named the "Eugene L. Nicandri Nature Center" in recognition of the decades of exemplary service of Judge Eugene L. Nicandri to NYPA, the State of New York and the Massena community; and be it further

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

b. Power Allocations:

**i. Contracts for the Sale of Hydropower –
Transmittal to the Governor**

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The Trustees are requested to:

- 1) In accordance with Public Authorities Law ('PAL') §1009, approve final contracts ('Contracts') for the sale of the following allocations which would be extended through June 30, 2020: (i) 500 kilowatts ('kW') of Expansion Power ('EP') to Nestle Purina PetCare Company ('Nestle'), (ii) 2,250 kW of Preservation Power ('PP') to Upstate Niagara Cooperative, Inc. ('Upstate Niagara'), and (iii) 200 kW of EP to Try-It Distributing Co., Inc. ('Try-It'); and
- 2) 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 Contracts pursuant to PAL §1009.

The Contracts are attached as Exhibits '4b i-B-1' through '4b i-B-3.'

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 Replacement Power ('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.

The allocations were awarded to Nestle, Upstate Niagara and Try-It (the 'Companies') on December 15, 2011, May 24, 2011 and July 26, 2011, respectively. On January 31, 2017, the Trustees authorized (i) extensions of these allocations to June 30, 2020, as further described in Exhibit '4b i-A,' and (ii) a public hearing on the Contracts 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. charges, plus taxes or any other required assessments, as set forth in the applicable Trustee approved Service Tariff.
- 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 a Company's allocation if employment, power utilization, or capital investment commitments are not met.
- The Contracts provide for the sale of additional power allocations 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 each Company has given its consent to its respective Contract. The Companies have also acknowledged application of the appropriate tariff, discussed above, to the allocations.

Public hearings were held on April 6, 2017 at the Power Vista (Visitors Center) at the Niagara Power Project in Lewiston for the Nestle and Try-It EP contracts, and April 21, 2017 at the Frank S. McCullough, Jr. Hawkins Point Visitors Center at the St. Lawrence/FDR Power Project in Massena for the Upstate Niagara PP contract. The official transcripts of the public hearings are attached as Exhibit '4b i-C-1' and '4b i-C-2.' No oral statements were given at either public hearing. Staff has not identified any substantive changes to the Contracts as a result of the public hearing process.

RECOMMENDATION

The Manager – Power Contracts recommends that the Trustees approve the Contracts for the sale of Western New York Hydropower to Nestle Purina PetCare Company and Try-It Distributing Co., Inc. and the sale of Preservation Power to Upstate Niagara Cooperative, Inc. as in the public interest, 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 500 kilowatts ("kW") of Expansion Power ("EP") to Nestle Purina PetCare Company, 2,250 kW of Preservation Power to Upstate Niagara Cooperative, Inc., and 200 kW of EP to Try-It Distributing Co., Inc. ("Contracts") are in the public interest, and in accordance with Public Authorities Law §1009 should be submitted, along with a copy of the record of the public hearing thereon, to the Governor for his review and to seek his authorization for the Authority to execute the Contracts; 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 are 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.

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

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to:

- 1) Approve the proposed final contract ('Contract') for the sale of 200 kilowatts ('kW') of Replacement Power ('RP') to Mayer Bros. Apple Products Inc. ('Mayer Bros.' or 'Company') in accordance with Public Authorities Law ('PAL') §1009 as summarized below and in Exhibit '4b ii-A'; and
- 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 '4b ii-B.'

BACKGROUND

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

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

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

DISCUSSION

At their meeting on January 31, 2017, the Trustees awarded a 200 kW RP allocation to Mayer Bros., as described in Exhibit '4b ii-A.' At this meeting, the Trustees also authorized a public hearing on the proposed contract for the sale of this allocation pursuant to PAL §1009.

In summary:

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

any other required assessments, as set forth in the Trustee approved Service Tariff No. WNY-1.

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

The Authority has discussed the Contract with Mayer Bros. 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 April 6, 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 '4b ii-C.' Staff has not identified any substantive changes to the Contract as a result of the public hearing process.

RECOMMENDATION

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

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

RESOLVED, That the contract ("Contract") for the sale of 200 kilowatts ("kW") of Replacement Power to Mayer Bros. Apple Products Inc. is in the public interest, and in accordance with Public Authorities Law §1009 should be submitted, along with a copy of the record of the public hearing thereon, to the Governor for his review and to seek his authorization for the Authority to execute the Contract;

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

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

RESOLVED, That the Executive Vice President and Chief Commercial Officer, or his or her designee, be, and hereby is, authorized, subject to the approval of the form thereof by the Executive Vice President and General Counsel, to negotiate and execute any and all documents necessary or desirable to implement the Contract with Mayer Bros. Apple Products Inc. 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.

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 400 kilowatts ('kW') of Preservation Power ('PP') to Potsdam Specialty Paper, Inc. ('PSPI' or 'Company'), in accordance with Public Authorities Law ('PAL') §1009 as summarized below and in Exhibit '4b iii-A'; and
- 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 '4b 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 January 31, 2017, the Trustees awarded an allocation of 400 kW of PP to PSPI, as described in Exhibit '4b 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. charges, plus taxes or any other required assessments, as set forth in the Trustee approved Service Tariff No. 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 that 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 PSPI and has received its consent to the Contract. The Company has also acknowledged application of the appropriate tariff to the allocation as discussed above.

A public hearing on Contract was held on April 21, 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 is attached as Exhibit '4b iii-C.'

RECOMMENDATION

The Manager – Power Contracts recommends that the Trustees approve the Contract for the sale of Preservation Power to Potsdam Specialty Paper, Inc. 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."

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

RESOLVED, That the contract ("Contract") for the sale of 400 kilowatts of Preservation Power to Potsdam Specialty Paper, Inc. ("PSPI") is in the public interest, and in accordance with Public Authorities Law §1009 should be submitted, along with the record of the public hearing thereon, to the Governor for his review and to seek his authorization for the Authority to execute the Contract, 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 PSPI 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. **Replacement Power Allocation**

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The Trustees are requested to approve an allocation of 1,500 kilowatts ('kW') of Replacement Power ('RP') to Sumitomo Rubber USA, LLC ('Sumitomo') which is proposing a large expansion at its facilities in the Town of Tonawanda in Erie County. The term of the allocation would be 7 years.

The allocation, which is described in further detail in Exhibit '4b iv-A,' would support capital investment of at least \$87 million and the creation of at least 30 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 Sumitomo, the current form of which is attached as Exhibit '4b iv-B.'

BACKGROUND

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

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

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

At this time, 33,860 kW of unallocated EP and 86,941 kW of unallocated RP is available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).

DISCUSSION

Since the early 1920s, tire manufacturing has taken place at the Town of Tonawanda (Erie County) location now operated by Sumitomo, first as Dunlop and then as Goodyear Dunlop. Today, Sumitomo operates the facility, producing tires for cars, trucks, motorcycles and buses.

Sumitomo is one of the largest tire manufacturers in the world. It has been operating the Tonawanda facility since 2015. This location is Sumitomo's only tire production facility in the USA.

When Sumitomo gained full ownership of the facility in 2015, it immediately invested \$33 million to upgrade and modernize the plant. Sumitomo has also indicated that if the currently-proposed expansion is a success, additional expansions and upgrades will likely continue in the future.

An Authority customer for decades, Sumitomo currently receives five allocations which are a mix of RP and Expansion Power totaling 12,091 kW. These allocations are tied to 1,239 jobs and a \$5.1 million annual capital investment commitment. Sumitomo is in compliance with its current contractual obligations for these allocations.

Sumitomo is looking to invest at least \$87 million toward a two-phased expansion project at the facility to support passenger tire growth from 5,000 tires per day to 10,000 tires per day during the next three years.

The project includes two new buildings: a 35,000-square-foot finishing building that would include extending the curing trench and a temporary receiving dock ('Phase 1'); and a 75,000-square-foot chemical weigh building that would include a mixer, 32 curing presses, tire building machines and curing trench rework ('Phase II').

Phase I investment totals \$33 million and Phase II investment totals \$52.9 million, with an additional \$1.1 million set aside for miscellaneous expenses. Some of the major expenses relating to the project include: \$15.3 million for the two buildings; \$12.9 million for the mixer and \$16.7 million for the purchase of 32 curing presses.

At least 30 new jobs (average \$66,666 salary/benefits) will be created within the first three years of project completion.

Aligning with the State's vision of energy reduction and efficiency measures, Sumitomo has indicated that the project will consist of the installation of energy efficient air compressors, LED lighting improvements, power factor correction banks, and the addition of variable frequency drives on process pumps.

Sumitomo expects full operations at both new facilities to begin in late 2018/early 2019, but its additional power needs are all tied to Phase II.

Sumitomo has indicated it has options to locate this project at international locations if additional hydropower cannot be secured.

Sumitomo has requested 2,000 kW of hydropower to support the project.

Staff understands that the Erie County Industrial Development Agency has awarded or will award a PILOT and sales tax incentives in support of the project.

The job creation ratio for the proposed allocation of 1,500 kW is 20 new jobs per MW. This ratio is below 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 \$87 million would result in a capital investment ratio of \$58 million per MW. This ratio is well above the six-year historic average of \$23.4 million per MW.

Staff recommends an allocation of 1,500 kW of RP with a term of 7 years be awarded to Sumitomo in support of its proposed expansion.

CONTRACT INFORMATION

Staff intends to discuss the proposed form of customer agreement with Sumitomo, and anticipates reaching agreement with Sumitomo on a contract substantially similar to the form attached as

Exhibit '4b iv-B'. Accordingly, the Trustees are requested to authorize a public hearing, pursuant to PAL §1009, on the proposed form of contract for Sumitomo attached as Exhibit '4b 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 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) 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 1,500 kW of RP to Sumitomo Rubber USA, LLC for a term of 7 years as further described herein and in Exhibit '4b iv-A.'

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 allocation of 1,500 kilowatts ("kW") of Replacement Power ("RP") to Sumitomo Rubber USA, LLC ("Sumitomo"), for a term of 7 years as detailed in the foregoing report of the President and Chief Executive Officer and Exhibit "4b iv-A" be is hereby is approved,

subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing pursuant to Public Authorities Law ("PAL") §1009 on the terms of the proposed form of the direct sale contract for the sale of RP finally negotiated with Sumitomo (the "Contract"), the current form of which is attached as Exhibit "4b 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. Award of Fund Benefits from the Western New York Economic Development Fund Recommended by the Western New York Power Proceeds Allocation Board

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

The Trustees are requested to accept the recommendations of the Western New York Power Proceeds Allocation Board (the 'Allocation Board' or 'WNYPPAB') and make an award of Fund Benefits from the Western New York Economic Development Fund to the eligible applicant listed in Exhibit '4b v-A' in the amounts indicated on Exhibit '4b v-A' as discussed in more detail below and in Exhibit '4b v-C', and authorize the other actions described herein with respect to such applicants and recommended awards.

BACKGROUND

1. Western New York Power Proceeds Allocation Act

On March 30, 2012, Governor Cuomo signed into law the Western New York Power Proceeds Allocation Act (the 'Act'). The Act provides for the creation, by the Authority, of the Western New York Economic Development Fund. The Fund consists of the aggregate excess of revenues received by the Authority from the sale of Expansion Power ('EP') and Replacement Power ('RP') produced at the Niagara Power Project that was sold in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis to an eligible EP or RP customer under the applicable tariff or contract.

Under the Act, an 'eligible applicant' is a private business, including a not-for-profit corporation. 'Eligible projects' is defined to mean 'economic development projects by eligible applicants that are physically located within the State of New York within a thirty-mile radius of the Niagara power project located in Lewiston, New York that will support the growth of business in the state and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments.' Eligible projects include, for example, capital investments in buildings, equipment, and associated infrastructure owned by an eligible applicant for fund benefits; transportation projects under state or federally approved plans; the acquisition of land needed for infrastructure; research and development where the results of such research and development will directly benefit New York state; support for tourism and marketing and advertising efforts for western New York state tourism and business; and energy-related projects.

Eligible projects do not include public interest advertising or advocacy; lobbying; the support or opposition of any candidate for public office; the support or opposition to any public issue; legal fees related to litigation of any kind; expenses related to administrative proceedings before state or local agencies; or retail businesses as defined by the board, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

Fund Benefits have been provided to successful eligible applicants in the form of grants. Generally, Fund Benefits are disbursed as reimbursement for expenses incurred by an Eligible Applicant for an Eligible Project. Occasionally, Fund Benefits are disbursed in advance for proposed eligible expenditures to be incurred by the Eligible Applicant for an Eligible Project when NYPA determines this approach is appropriate for a project, NYPA has authorized the approach in advance, and proposed expenses can be appropriately documented.

At least 15 percent of Fund Benefits must be dedicated to eligible projects which are 'energy-related projects, programs and services,' which is 'energy efficiency projects and services, clean energy technology projects and services, and high performance and sustainable building programs and services,

and the construction, installation and/or operation of facilities or equipment done in connection with any such projects, programs or services.'

Allocations of Fund Benefits may only be made on the basis of moneys that have been deposited in the Fund. No award may encumber future funds that have been received but not deposited in the Fund.

2. Western New York Power Proceeds Allocation Board

Under the Act, the Allocation Board is charged with soliciting applications for Fund Benefits, reviewing applications, making eligibility determinations, and evaluating the merits of applications for Fund Benefits. The Allocation Board uses the criteria applicable to EP, RP and PP, and for revitalization of the industry as provided in Public Authorities Law §1005. Additionally, the Allocation Board is authorized to consider the extent to which an award of Fund Benefits is consistent with the strategies and priorities of the Regional Economic Development Council having responsibility for the region in which an eligible project is proposed. A copy of these criteria (collectively, 'Program Criteria'), adapted from the Allocation Board's 'Procedures for the Review of Applications for Fund Benefits,' is attached as Exhibit '4b v-B.'

The Allocation Board met on March 4, 2013 and, in accordance with the Act, adopted by-laws, operating procedures, guidelines related to the application, and a form of application. At that time, the Allocation Board defined 'retail business' to mean a business that is primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain goods or services.

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

3. Application Process

In an effort to provide for the efficient review of applications and disbursement of Fund Benefits, the Allocation Board established a schedule of dates through the end of 2017 on which the Allocation Board would meet to consider applications. At this time, applications are being accepted on a rolling basis. In addition, the application process was promoted through a media release and with assistance from state and local entities, including the Western New York and Finger Lakes Regional Economic Development Councils, the Empire State Development Corporation and other local and regional economic development organizations within the State. A webpage was created that is hosted on WWW.NYPA.GOV/WNYPPAB with application instructions, a link to the approved application form and other program details including a contact phone number and email address staffed by the Western New York Empire State Development regional office.

DISCUSSION

At its April 4, 2017 meeting, the Allocation Board considered an application from Triad Recycling and Energy Corp. ('Triad') seeking \$300,000 in Fund Benefits.

The Allocation Board's staff analyzed the application and made a recommendation to the Allocation Board based on eligibility requirements and Program Criteria. Copies of the recommendation memoranda provided to the Allocation Board for Triad are attached as Exhibit '4b v-C.' The application itself has also been made available to the Trustees for review.

As detailed in Exhibit '4b v-C,' the Triad application seeks Fund Benefits to support its business expansion, which would include building renovations, new machinery and equipment, and other site improvements. Triad indicates that the expansion project would support the retention of 12 jobs and creation of 3 new jobs over the next seven years. Triad would spend approximately \$1,000,000 on its project. Included as part of the project, is the installation of a wind turbine to produce on-site energy. A Fund Benefits award would target the wind turbine and allow NYPA to access the component of the Fund that is reserved for energy-related projects, programs and services.

The Allocation Board has recommended that this applicant receive Fund Benefit awards in the amount indicated on Exhibit '4b v-A.' Given the nascent stage of the proposed project, it was not possible to recommend the terms and conditions that would be applicable to the award and memorialized in an Award Contract between the Authority and the successful applicant.

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

RECOMMENDATION

The Vice President – Economic Development recommends that:

- (1) the Trustees accept the recommendations of the Allocation Board and make an award of Fund Benefits to the applicant in the amount identified in Exhibit '4b v-A,' conditioned upon an agreement to be negotiated with the applicant on the final terms and conditions that would be applicable to the award to be contained in an Award Contract approved by the President and Chief Executive Officer, or his designee, and approved by the Executive Vice President and General Counsel, or his designee, as to form;
- (2) the Vice President – Economic Development, or such official's designee, be authorized to negotiate with the applicant concerning such final terms and conditions that will be applicable to the awards; and
- (3) the Vice President – Economic Development, or such official's designee, be authorized to execute on behalf of the Authority an Award Contract for the award listed on Exhibit '4b v-A' subject to the forgoing conditions.

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

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

WHEREAS, The Western New York Power Proceeds Allocation Board (“Allocation Board”) has recommended that the Authority make awards of Fund Benefits from the Western New York Economic Development Fund (“Fund”) to the eligible applicant listed in Exhibit “4b v-A” in the amount indicated;

NOW THEREFORE BE IT RESOLVED, That the Authority hereby accepts the recommendation of the Allocation Board and authorizes an award of Fund Benefits to the applicant listed in Exhibit "4b v-A" in the amount indicated for the reasons set forth in the foregoing report and the exhibit and other information referred to therein, conditioned upon an agreement between the Authority and the applicant on the final terms and conditions that would be applicable to the award and set forth in a written award contract ("Award Contract") between the Authority and the applicant, approved by the President and Chief Executive Officer, or his designee, and approved by the Executive Vice President and General Counsel or his designee, as to form; and be it further

RESOLVED, That the Vice President – Economic Development, or such official's designee, is authorized to negotiate with the applicant concerning such final terms and conditions that will be applicable to the award; and be it further

RESOLVED, That the Vice President – Economic Development, or such official's designee, is authorized to execute on behalf of the Authority an Award Contract for the award listed on Exhibit "4b v-A" subject to the foregoing conditions; and be it further

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

c. Procurement (Services) Contracts:

**i. Procurement (Services) Contract –
Energy Efficiency Program - Energy
Management Information System –
Contract Award**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to award a five-year contract in the aggregate amount of up to \$20 million to GridPoint Inc., of Reston, Virginia, to provide deep sub-metering and ancillary Energy Management Information System ('EMIS') services for participants in the Authority's Governmental Customer Energy Efficiency Program ('GCEEP') and Statewide Energy Efficiency Programs ('Statewide EEP'). Projects implemented through this contract will utilize the Authority's New York Energy Manager ('NYEM') initiative. Funding for this contract will come from existing funds in the Governmental Customer Energy Efficiency Program and the Statewide Energy Efficiency Program; no additional funding is requested at this time. The funds will be recovered directly from program participants except for projects financed with monies from the Petroleum Overcharge Restitution ('POCR') program and other non-Authority grants.

BACKGROUND

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

In September 2013, the Trustees authorized the development of a centralized energy management program to provide real-time energy management services to participants in the Authority's programs. The New York Energy Manager Program serves as a virtual hub for continued monitoring, analysis, forecasting, and management of facility energy (electrical and thermal) consumption. These services help participants in the programs reduce their energy use and expenses by identifying operations and maintenance improvements and cost-effective energy efficiency measures while also reducing peak demands. The addition of this new contract will enhance the Authority's Energy Efficiency Programs, further the implementation of the New York Energy Manager initiative and support Governor Cuomo's Executive Order 88 (EO88).

DISCUSSION

On June 27, 2016, the Authority advertised the Request for Proposals ('RFP') (Inquiry Q16-6084RM) in the New York State *Contract Reporter*, soliciting firms interested in providing deep sub-metering and ancillary EMIS services to eligible participants in the Authority's Energy Efficiency Programs. One hundred fifty-two (152) firms downloaded the RFP and on August 15, 2016; 15 firms submitted bids in response to the RFP.

A committee with representatives from the New York Energy Manager Program, Commercial Operations, Power Generation, Procurement, and Information Technology evaluated the proposals. The bid proposals were evaluated based on a commercial requirements as well as 30 business and technical evaluation criteria contained in the RFP. Initially, this initiative will be focused on customers of the Long Island Power Authority as well as other selected participants.

All vendors were also required to provide a detailed cost estimate for a representative project that involved a full turnkey solution. The total cost of each bidder's solution was considered as a basis for the Authority's initial pricing evaluation and to test overall cost effectiveness for the customer. The total cost was then converted to Dollars-per-Square-Foot (\$/Sf.). Turnkey solutions that were under \$1/Sf. were considered as extremely cost-effective and bids between \$1/Sf. and \$2/Sf. were considered reasonable. Solutions that exceeded \$2/Sf. were deemed uncompetitive and not cost-effective to the end customer. Eight firms cleared the pricing evaluation and were invited to in-person interviews to further discuss their respective proposals, verify their experience and technical abilities, and to clarify any exceptions or deviations.

During the in-person interview process, the evaluation team scored each firm based on the 30 business and technical requirements noted above. A score of 0 to 5 was possible for each criterion and key criteria were given double weight; a weighted average score was derived for each bidder. An aggregate score from all 5 evaluators was used to derive a total score for each bidder. The top scoring firm (over 700 technical points) was GridPoint Inc. The firm also offers advanced features including a variety of meters and sensors and two-way control optionality. Based on thorough evaluation, pricing and technical scoring, Authority staff recommends the award of a contract to GridPoint Inc.

FISCAL INFORMATION

The funding for this contract will be provided from the Authority's operating funds and/or from the proceeds of the Authority's Commercial Paper Notes or other financing instruments, as deemed appropriate. In addition, projects may be funded, in part, with monies from POCR funds. All Authority costs, including Authority overheads and the costs of advancing funds, but excluding the POCR and other non-Authority grants as applicable, will be recovered.

RECOMMENDATION

The Vice President - New York Energy Manager, and the Vice President - Energy Efficiency recommends that one contract award be approved in the aggregate amount of up to \$20 million for a term of five years to GridPoint Inc. to provide Energy Management Information System services for the Authority's Energy Efficiency Programs.

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 authorize the President and Chief Executive Officer, the Chief Operating Officer, the Executive Vice President – Commercial Operations, the Vice President – New York Energy Manager, the Vice President – Energy Efficiency, and/or such officer designated by the President and Chief Executive Officer to execute agreements and other documents between the Authority and GridPoint Inc., these agreements, having such terms and conditions as the executing officer may approve, subject to the approval of the form thereof by the Executive President and General Counsel, to facilitate the implementation of the Governmental Customer Energy Efficiency Program and Statewide Energy Efficiency Program; and be it further

RESOLVED, That in accordance with the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, a contract to GridPoint Inc. to provide deep sub-metering and ancillary Energy Management Information System ("EMIS") services are approved as below:

<u>Commercial Paper Program/ Operating Fund/POCR</u>	<u>Award</u>	<u>Termination Date</u>
GridPoint Inc. Q16-6084RM	<u>\$20 million</u> (aggregate)	May 1, 2022

AND BE IT FURTHER RESOLVED, That the Authority's Commercial Paper Notes, Series 1, Series 2 and Series 3, and Operating Fund monies may be used to finance Governmental Customer Energy Efficiency Program and Statewide Energy Efficiency Program cost; and be it further

RESOLVED, That the Vice President – New York Energy Manager and the Vice President – Energy Efficiency are authorized to determine which projects will be deemed to be energy efficiency projects within the meaning of Section (7) of Part P of Chapter 84 of the Laws of 2002 (the 'Section (7) POCR Legislation') to be funded, in part, with Petroleum Overcharge Restitution ("POCR") Funds allocated pursuant to the Section (7) POCR Legislation; and be it further

RESOLVED, That Petroleum Overcharge Restitution ("POCR") funds allocated to the Authority by the Section (7) POCR Legislation may be used to the extent authorized by such legislation, in such amounts as may be deemed necessary or desirable by the Executive Vice President – Commercial Operations, the Vice President – New York Energy Manager, and Vice President – Energy Efficiency to finance projects within both Energy Efficiency Programs; 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 –
NYPA Mobile Asset Inspection –
Contract Extension**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to approve a six-month contract extension with DataSplice, LLC of Fort Collins, Colorado, to provide software licenses, maintenance and support, and consulting services for the implementation of the DataSplice application for the NYPA Mobile Asset Inspection. No additional funding is required for this contract.

BACKGROUND

In accordance with the Authority's Guidelines for Procurement Contracts and Expenditure Authorization Procedures, extending a service contract with an initial duration of less than 12 months beyond 12 months, requires the Trustees' approval.

The existing DataSplice contract, effective May 9, 2016 for a period not-to-exceed one year and in the amount of \$644,209.02, was awarded through a Government Services Administration contract (#4500272275). Phase I of the project – functionality for line patrols – was completed in November 2016, and Phase II is near completion with testing and end user training awaiting completion. Due to scheduling conflicts, training and testing for Phase II were delayed and the Project will not be completed in May 2017.

DISCUSSION

The DataSplice application is used to collect transmission line inspection data. Transmission line crews use DataSplice to send work orders electronically to the Maximo system and have all records (land owner communication, last vegetation activity, and more) available via hand-held devices. Once Phase II is complete, DataSplice will also be used to collect inspection results from operator rounds. This technology will improve field efficiency. The scope-of-work for this Project included software licensing, requirements gathering, design, development and configuration, testing, training, rollout, maintenance and support of DataSplice.

While the Project work for Phase I was completed, testing and training for Phase II will be delivered later this year.

FISCAL INFORMATION

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

RECOMMENDATION

The Senior Vice President - Operations Support Services and Chief Engineer, recommend that the Trustees approve a six-month extension to an existing contract with DataSplice, LLC of Fort Collins, Colorado for the NYPA Mobile Asset Inspection - DataSplice 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 Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted to extend the contract to DataSplice, LLC of Fort Collins, Colorado, by six months, for the NYPA Mobile Asset Inspection - DataSplice Project, as recommended in the foregoing report of the President and Chief Executive Officer;

Contractor

**DataSplice, LLC
Fort Collins, Colorado**

Contract Approval

**Six-month extension
(Valid until October, 2017)**

(#4500272275)

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

iii. **Procurement (Services) Contract –
White Plains Office – Office of Fire
Prevention and Control – Contract Award**

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The Trustees are requested to approve a five-year non-personal services contract, in an amount not to exceed of \$225,000, with the New York State Department of Homeland Security and Emergency Services ('DHSES') – Office of Fire Prevention and Control ('OFPC') (PO # 4500284219) to provide annual Fire Inspection Services (the 'Services') to the Authority pursuant to Executive Law 156(13) and as requested by NYPA. Interim approval for the contract was authorized pursuant to the Procurement Guidelines and EAPs, subject to the Trustees' ratification and approval.

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.

Pursuant to 19 NYCRR 1204, each state agency is charged with providing at minimum, an annual fire safety inspection for each building under its control to ensure compliance with the Uniform Fire Prevention and Building Code ('UFPBC'). OFPC, upon request of a state agency, is empowered to provide for the fire safety inspections of the state or state regulated facilities pursuant to Executive Law 156(13). With this contract, NYPA is requesting these Services.

The OFPC began conducting annual fire safety inspections of NYS office buildings, schools, and universities in 1967 and is uniquely qualified to provide the service of annual fire inspections at all NYPA-owned buildings.

DISCUSSION

Through the enforcement capabilities of OFPC, NYPA is able to achieve a high level of compliance with the UFPBC by insuring all violations are corrected in a timely fashion. Consequently, this helps create a safer working environment for all NYPA employees and the general public.

FISCAL INFORMATION

Payments associated with this project will be made from the Operations and Maintenance Fund.

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Vice President – Technical Compliance, the Vice President – Strategic Supply Management, and the Director – Quality Assurance & Code Compliance recommend that the Trustees approve a five-year contract award in the amount not to exceed of \$225,000 to the New York State Department of Homeland Security and Emergency Services – Office of Fire Prevention and Control to provide annual Fire Inspection Services at all Authority-owned buildings.

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

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted to award a five-year contract, in an amount not to exceed of \$225,000, to the New York State Department of Homeland Security and Emergency Services – Office of Fire Prevention and Control, for NYPA's Annual Fire Inspection Services, as recommended in the foregoing report of the President and Chief Executive Officer;

<u>Contractor</u>	<u>Contract Approval</u>
NYS Department of Homeland Security and Emergency Services	Five-(5) year contract (April 1, 2017 to March 31, 2022)
Office of Fire Prevention and Control	
PO# 4500284219	

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

iv. **Procurement (Services) Contract –
Procurement (Services) Contract –
Architectural/Engineering and Design
Services – Utica Discovery Center –
Contract Award**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve an award of a competitively bid contract for a term of three years to LaBella Associates DPC ('LaBella') of Rochester, NY in the amount of \$800,000 to provide architectural / engineering and design services for the proposed Discovery Center in Utica, New York.

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 is seeking to construct a Visitors Center in the greater Utica Area where the Frederick R. Clark Energy Center ('CEC') is located. The Visitors Center, with a preliminary designation of 'Discovery Center,' will be located adjacent to the Utica Zoo. The Authority has Visitor Centers at the Niagara, St. Lawrence, and Blenheim-Gilboa Power Projects that demonstrate the production of electricity, educate the public about clean energy, and for hosting community events. The proposed Discovery Center will be available to the approximately 100,000 annual visitors to the Utica Zoo and will promote the Authority's mission of educating and promoting new energy technologies.

An interim award of up to \$100,000 to LaBella, effective March 30, 2017, was approved by the President and Chief Executive Officer and is subject to the Trustees' ratification, in accordance with the Authority's Guidelines for Procurement Contracts and Expenditure Authorization Procedures ('EAPs'). The Trustees are hereby requested to ratify the interim award and award the full contract to LaBella for a term of three years.

DISCUSSION

The contract with LaBella will provide architectural / engineering and design services, as well as construction support, and other related services, as may be required, for the proposed Utica Discovery Center. Bid documents were developed by staff and were downloaded electronically from the Authority's Procurement website by 174 firms / entities, including those that may have responded to a notice in the New York State *Contract Reporter*; one additional firm obtained the bid documents from an alternate source.

Twelve proposals were received and evaluated. Seven firms were removed from consideration based upon their experience, schedule, price, responsiveness and demonstrated understanding of the requirements of the Request for Proposals ('RFP'), proposed team, and any exceptions taken to the RFP. The remaining five firms: Bernier Carr Associates ('BCA'), AJA Architecture and Planning, LaBella, Aubertine & Currier, and Foit-Albert Associate were selected for bid evaluation interviews.

As a result of the interviews, Procurement requested further breakdown of the cost of the building design and exhibit design services and additional information about the exhibit designers' experience with interactive exhibits. Based on the information provided, two of the firms, LaBella and BCA were selected for further consideration.

BCA's response did not provide the level of detail the Authority would expect in a final offer and it did not parallel the content of its original proposal. BCA also revealed that its proposed exhibit designer would only participate in the schematic design phase and did not demonstrate the level of inter-activeness on the exhibit design that the Authority is seeking.

The exhibit designer included on LaBella's team has extensive experience designing interactive exhibits and has worked on projects previously for the Authority. This team expressed knowledge of several local requirements, such as Utica being an MS4 area for storm water management. The LaBella team expressed a clear understanding that exhibit design and coordination with the Utica Zoo are important elements of the project. The proposed scope of services also included more extensive program study services, such as preparation of the Stormwater Pollution Prevention Plan ('SWPPP'), performance of a utility survey, and completion or updating, as necessary, of a Phase 1 environmental site assessment.

Staff recommends the award of a contract to LaBella, which is technically qualified and meets the bid requirements, on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerers. Furthermore, LaBella has significant experience in the completion of similar projects, demonstrated attention to details, and can meet the schedule requirement per the bid documents.

FISCAL INFORMATION

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

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Vice President – Project Management, and the Vice President – Strategic Supply Management recommend that the Trustees ratify the interim award of \$100,000 and approve the award of a three-year contract to LaBella Associates DPC of Rochester, NY in the amount of \$800,000 to provide architectural / engineering and design services for the proposed Discovery Center in Utica, New York.

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

The following resolution, as submitted by the President and Chief Executive Officer, was adopted with Trustee Kress recused from the vote.

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, the Trustees hereby ratifies the interim award of \$100,000 and approve the award a three-year contract to LaBella Associates DPC of Rochester, NY in the amount of \$800,000 to provide architectural / engineering and design services for the proposed Discovery Center in Utica, NY.

CONTRACTOR

CONTRACT APPROVAL

LaBella Associates DPC
Rochester, NY
VC# 4600003300

\$800,000

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

**v. Procurement (Services) Contract –
OSI Pi Historian Expansion –
Enterprise Agreement Capital –
Contract Award**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve the award of a ten-year non-personal services contract to OSIsoft, LLC of San Leandro, CA in the amount \$6,050,000 to provide software and support for the expansion of the Authority's existing OSI PI Historian infrastructure to all Authority generation and transmission assets.

The President and Chief Executive Officer has previously approved the award of an interim contract to OSIsoft in the amount of \$2,350,000 for the initial software procurement and installation in order to meet schedule commitments associated with implementation of the Integrated Smart Operations Center (iSOC). He also approved a Capital Expenditure and Authorization Request ('CEAR') in the amount of \$2,953,125 to fund the capital portion of the software implementation.

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. Also, in accordance with the Authority's Expenditure Authorization Procedures, the award of non-personal services contracts exceeding \$3,000,000 require the Trustees' approval.

The Authority currently utilizes an OSIsoft Pi database ('PI') network as the foundational data historian for the PI Process Book and EtaPRO thermal performance monitoring systems installed at each of the SENY fossil plants. Data from the Southeast New York ('SENY') PI database network is used by plant and headquarters personnel across the Utility and Commercial Operations business units. A PI data historian is also a key component of the distributed control systems of the 500 MW Combined Cycle Plant, the In-City Small Clean Power Plants, and the IT historian for the Flynn Plant.

This project will expand the existing PI infrastructure to all of the Authority's generation and transmission facilities, building on the success of the SENY network. Entering into an OSI PI enterprise agreement helps assure there will be sufficient server licenses and PI tags for the Authority's current and future needs.

An enterprise agreement with OSI provides an unlimited PI Server/Archive/Historian software license, PI Asset Framework, Interfaces, and applications such as: Coresight, ProcessBook, and PI Datalink, as well as disaster recovery (HA PI) High Availability PI server redundancy.

This expansion will provide the Authority's iSOC, plant operators, plant engineers, WPO Engineering, and asset management personnel with operational data for trending analysis, engineering studies, root-cause analysis, system/equipment performance assessment, and the data needed to troubleshoot system/equipment performance and operational issues. Interfacing the PI databases to existing Authority systems will facilitate the seamless flow of information between vital information systems. Additionally, implementing an enterprise agreement is more cost-effective than implementing regional agreements.

DISCUSSION

In response to the Authority's request for proposal issued on February 21, 2017 through the GSA, # GS-35F-0119Y, a proposal was received from OSIssoft, LLC on March 6, 2017. The proposal was evaluated based on adherence to the technical and schedule requirements. An enterprise solution is not offered under GSA. The proposal offered better pricing than the GSA schedule and the contract has been issued as a result of a competitive bid.

OSIssoft will provide the software and ongoing maintenance service for a 10-year period for a total contract amount of \$6,050,000 distributed as follows:

Software Implementation (Year 1)	\$2,350,000
Ongoing Maintenance (Years 2 – 10)	\$3,700,000

As the Authority expands data collection for the automated systems of the Authority's hydro and transmission facilities, it will be built on an existing and proven platform that will provide site Operations and Engineering personnel with IT network access to all of the data-points at respective sites accompanied by a class-leading suite of analytics applications.

FISCAL INFORMATION

Payment associated with this contract will be made as follows:

1. \$2,350,000 from the Authority's Capital Fund.
2. \$3,700,000 from the Authority's Operation Fund.

RECOMMENDATION

The Senior Vice President – Technology and Innovation, the Senior Vice President and Chief Engineer – Operations Support Services, the Senior Vice President – Power Supply, the Senior Vice President and Chief Information Officer, the Vice President – Strategic Operations, the Vice President – Procurement and the Sr. Director – IT Business Transformation recommend an award of a contract to OSIssoft, LLC, of San Leandro, CA as discussed 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, approval is hereby granted to award a contract to OSIssoft, LLC in the amount of \$6,050,000 to provide software and support for the expansion of the Authority's existing OSI PI Historian infrastructure to all Authority Generation and Transmission assets, as recommended in the foregoing report of the President and Chief Executive Officer:

<u>Contractor</u>	<u>Contract Approval</u>
OSIssoft, LLC San Leandro, CA GSA # GS-35F-0119Y	<u>\$6,050,000</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.

STL

**vi. Procurement (Services) Contract –
St. Lawrence-FDR Power Project
Operating Procedures and System
Description Updates – Contract Extension**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve a one-year contract extension with Innovative Automation, Inc. ('IAI') of York, Pennsylvania to update the operating procedures and system descriptions for the Northern New York Region substations and facilities. No additional funding is required for this contract.

BACKGROUND

In accordance with the Authority's Guidelines for Procurement Contracts and Expenditure Authorization Procedures, extending a multi-year personal service contract requires the Trustees' approval.

The existing Northern NY Region Operating Procedures and System Description Updates Project ('Project') contract, effective March 18, 2013 for a period of up to two years and in the amount of \$1,149,408, was awarded through a competitive bidding process. The project was deferred in 2014 and subsequently, the Trustees' approved a two-year contract extension at the December 18, 2014 meeting. The contract value has since been revised to the current amount of \$1,313,858. The project was again deferred in 2015 and 2016 and has resumed in 2017.

DISCUSSION

As part of the Life Extension and Modernization ('LEM') Program for the St. Lawrence/FDR Power Project, the Authority updated the Operating Procedures and System Descriptions for equipment that was replaced and/or upgraded in order to ensure consistency and proper operation. As a follow-up to the LEM program, services provided under the subject contract continued the process for the Northern Region to ensure region-wide consistency for all of the remote substations and facilities outside of the Robert Moses Power Dam.

FISCAL INFORMATION

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

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Vice President – Project Management, the Vice President – Strategic Supply Management, and the Project Manager recommend that the Trustees approve a one-year a contract extension to an existing contract with Innovative Automation, Inc. of York, Pennsylvania for the Northern New York Region Operating Procedures and System Descriptions 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 Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted to extend the contract to Innovative Automation, Inc. of York, Pennsylvania, by one year, for the Northern NY Region Operating Procedures and System Descriptions Project, as recommended in the foregoing report of the President and Chief Executive Officer;

Contractor

Contract Approval

Innovative Automation, Inc.
York, Pennsylvania

One-year extension
(Valid until March 17, 2018)

VC# 4600002618

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.

JARVIS

vii. **Procurement (Services) Contract – Gregory B. Jarvis Power Project Relicensing – Lead Relicensing Consultant – Award**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to approve the award of a competitively bid procurement contract to Gomez & Sullivan Engineers, D.P.C. ('Gomez & Sullivan'), of Utica, NY to provide consulting services in support of relicensing the Gregory B. Jarvis Project ('Jarvis Project'). The term of the contract will be for five years. The amount for which authorization is requested is \$714,423.00.

BACKGROUND

The Federal Energy Regulatory Commission ('FERC') issued a 40-year License for the Jarvis Project effective August 1, 1982 that will expire on July 31, 2022. The Federal Power Act states that licensees must notify FERC of their intent to seek a new license no later than five years before the expiration date, July 31, 2017. This notification immediately sets the relicensing process in motion.

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

The Jarvis Project is one of the Authority's fleet of small hydro projects that contributes renewable hydropower in support of New York State's Clean Energy Standard. It is located on the Hinckley Reservoir in Oneida and Herkimer counties and is a component of the New York State Canal System.

To assist with the FERC relicensing process, the Authority is proposing to engage a lead relicensing consultant to provide a broad range of services through either its own resources, or as appropriate, through the use of subcontractors.

Previously, a lead consultant was engaged to support the Authority in conducting the financial analysis and to begin the first phase of relicensing that requires assembling documentation and preparing the documents required to be filed with FERC upon the Authority's Notification of Intent ('NOI') to pursue obtaining a new license.

The filing of the NOI begins the formal FERC relicensing process. This is a highly structured, deadline driven process that includes issue scoping, stakeholder outreach, planning and conducting studies, presenting study findings and drafting the license application.

To address the need for a lead relicensing consultant, the Authority solicited proposals through the New York State *Contract Reporter* (Q17-6138JR) and the Authority's Strategic Supply Management system. Two bidders responded to the solicitation, however, one bid was deemed unresponsive to the solicitation. In particular, the bidder had minimal hydro relicensing experience. The remaining bid was from Gomez and Sullivan.

Gomez & Sullivan is well-known to the Authority as the firm assisted the Authority on the St. Lawrence-FDR and Niagara FERC relicensing projects and are currently assisting with the B-G relicensing project. The company has an extensive hydroelectric relicensing background and has worked with FERC, the New York State regulatory agencies and elected officials within the jurisdiction of the Jarvis Project.

The evaluation team was comprised of staff from the Authority's Procurement, Licensing, and Environmental Health & Safety groups. All concurred that Gomez & Sullivan is capable of providing a quality product within budget and will ensure an outcome that meets the Authority's interests.

The proposed contract would be a time and materials contract not to exceed the authorized award and should completely meet the Authority's needs on this effort.

FISCAL INFORMATION

Relicensing expenses will be treated as a capital expense and payments will be made from the Capital Fund.

RECOMMENDATION

The Executive Vice President - Chief Commercial Officer, Energy Solutions Commercial Operations, the Vice President – Strategic Supply Management and the Vice President – Project & Business Development recommend that the Trustees authorize the award of a 5-year contract to Gomez & Sullivan Engineers, D.P.C. for \$714,423.00 to provide consulting services in support of the Jarvis Project relicensing.

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 Guidelines for Procurement Contracts, approval is hereby granted to award a contract to Gomez & Sullivan Engineers, D.P.C. for five years in the amount of \$714,423 to provide consulting services in support of the relicensing of the Gregory B. Jarvis Power Project, as recommended in the foregoing report of the President and Chief Executive Officer.

<u>Contractor</u>	<u>Contract Approval</u>
Gomez & Sullivan Engineers, D.P.C. Utica, NY	\$ <u>714,423.00</u>
Q17-6138JR	

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.

IT
viii. Procurement (Services) Contract –
IT Co-sourcing Services – Contract Awards

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to approve the award of contracts to the following three (3) firms in the aggregate amount of \$75 million for a term of five (5) years: Ernst & Young LLP of New York, NY; Deloitte Consulting LLP of Albany, NY; and Cognizant Technology Solutions US Corporation of College Station, TX, in support of the Authority's and Canal Corporation's IT Initiatives.

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

The Authority solicited proposals for IT Co-Sourcing Services under RFP inquiry Q17-6135RM. Its stated purpose was to solicit companies to support enablement of required automation and efficiencies for business projects requested across various functional areas including, but not limited to: Cyber Security; Maximo; SharePoint; SAP; Infrastructure; Data Analytics; Enterprise and Solution Architecture; Project and Portfolio Management.

Consistent with Strategic Supply Management's ('SSM') strategy to move towards more strategic vendor relationships, IT has been working with SSM to identify 2-3 key strategic partners to source IT work. The advantages include cost savings, driving accountability with partners to meet its goals in addition to increased efficiency.

A total of thirty-nine (39) responses were received for the IT Co-sourcing RFP. All proposals were reviewed. After examining the thirty-nine (39) responses for completeness, twenty-five (25) were deemed unresponsive and vendors were not evaluated further because they did not provide all of the requested information, leaving fourteen (14) responses to be evaluated by the evaluation team.

The bids for RFP Q17-6135RM underwent an evaluation process that involved representatives from IT Application Development; IT Application Support; Project Management; Cyber Security; IT Governance; Infrastructure and Procurement. Additionally, NYPA engaged the services of New York State Technology Enterprise Corporation ('NYSTEC'), who provided assistance with developing the evaluation criteria approach and conducted the evaluation process. NYSTEC is a not-for-profit consulting company with extensive experience in assisting New York State government entities with procurement processes.

A thorough analysis was applied via the use of a common evaluation for rating firms in requirement areas that included assessing utilities/government experience, market presence, financial stability, delivery predictability and approach, proposed costs and quality of bid. The evaluation served as an overall-assessment indication of the bidders with respect to IT Co-Sourcing expertise, capabilities, skilled resources and competitive hourly billing rates.

These proposals were subject to the following evaluation process:

- Proposals were reviewed by representatives from the IT groups listed above.

- Technical Proposal Scoring: All reviewers reviewed and scored each proposal's company-specific proposal content. Select reviewers then reviewed and scored each proposal's service-specific content pertaining to their own specialism(s). Average, weighted scores across evaluators were calculated. The result was a total score out of 70 points.

Company-specific criteria included the following:

- Executive Summary
- Company Background
- Project Management Approach
- Auxiliary Services

Service-specific criteria included the following:

- Scope, Approach & Methodology
 - Proposed Project Team
 - Project Experience
 - Sample Deliverables
- Cost Proposal Scoring: Average hourly rates were calculated with 30 points awarded to the company with the lowest average rate.
 - Total scores were determined by adding the technical scores to the cost scores. The companies were ranked highest to lowest based on total scores and the three top ranked firms were, after interviews, selected for a contract award: Ernst & Young LLP, Deloitte Consulting LLP, and Cognizant Technology Solutions US Corporation.

FISCAL INFORMATION

Funds associated with these projects will be made from the Authority's Information Technology (IT) Capital and O&M budgets.

RECOMMENDATION

The Senior Vice President and Chief Information Officer and the Vice President of Strategic Supply Management recommend that the Trustees approve the award of five-year contracts to Ernst & Young LLP of New York, NY; Deloitte Consulting LLP of Albany, NY; and Cognizant Technology Solutions US Corporation of College Station, TX to provide IT Co-sourcing Services for the Information Technology Business Unit for a total amount of \$75 million.

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

In response to a question from Chairman Koelmel, President Quiniones said the IT co-sourcing services contract award is a response to the Authority's Request for Proposal to retain strategic consulting services for IT over the next five years, and asked Mr. Ken Lee, the Authority's Chief Information Officer, to provide background information to the Board regarding this request.

Mr. Lee said the request is for approval to move forward with a contract for approximately \$15 million per year across five years, totaling \$75 million. He said this is not an authorization to spend, but rather a contract vehicle for staff to leverage for a strategic relationship with vendors that understand how the Authority does business and, as a result of understanding how the Authority does business, can work more efficiently in meeting its needs. Additionally, since the request for these services was competitively bid, it will allow the Authority to achieve significant pricing advantages over what it has at present.

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 approve the award of five-year contracts to Ernst & Young LLP of New York, NY; Deloitte Consulting LLP of Albany, NY; and Cognizant Technology Solutions US Corporation of College Station, TX to provide IT Co-sourcing Services for the Information Technology Business Unit for a total amount of \$75 million;

Contractor

Contract Approval

**Ernst & Young LLP
New York, NY**

**Deloitte Consulting LLP
Albany, NY**

**Cognizant Technology Solutions
US Corporation
College Station, TX**

\$75 million (aggregate total)

(Q17-6135RM)

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.

ix. **Procurement (Services) Contract –
Information Technology – Digital
Warehouse – Integrated Library
System – Contract Award**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to approve the award of a five-year contract (Q16 6108RM) for Enterprise Search Software and Services, in the aggregate amount of \$134,859, to SirsiDynix EOS of Carlsbad CA, in support of the Digital transformation and Knowledge Management Initiatives.

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

NYPA's Corporate Library of the Digital Warehouse Group supports all business units within NYPA by providing engineering standards and technical information needed to support building and management of NYPA's assets.

The Corporate Library is undertaking a transformation by providing the bulk of sought-after information in digital format consistent with NYPA's goal of transforming into a digital utility. After research and review, it was determined that the replacement of NYPA's current library system, Voyager, for a more robust library system allowing for the expansion of on-line digital sources of information available to NYPA staff, was necessary.

The Authority solicited proposals under RFP Inquiry #Q16-6108RM in the New York State *Contract Reporter* to upgrade the Corporate Library's Integration Library System. Fifty-seven firms viewed the notice on the Authority's website. Three proposals were received from SirsiDynix EOS, ExLibris and Sapta Global and were reviewed by the Evaluation Committee for Library Services. The Evaluation Committee determined that SirsiDynix EOS offered the best priced and qualified solution to provide NYPA with the digital library system and fulfilled all of NYPA's requirements for the project.

FISCAL INFORMATION

The replacement and upgrade of the Library system has been budgeted for in 2017 in the Information Technology budget.

RECOMMENDATION

The Senior Vice President Chief Information Officer – Information Technology and Cyber Security recommends that the Trustees approve a contract award to Sirsi Dynix EOS, for a not-to-exceed amount of \$134,859 and a term of up to five years, to provide Digital Library System Services in support of the Authority's Digitization and Knowledge Management Initiatives.

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 award SirsiDynix EOS of Carlsbad CA, a five-year contract to provide Digital Library System Services in support of the Authority's Digitization and Knowledge Management Initiatives;

<u>CONTRACTOR</u>	<u>CONTRACT APPROVAL</u>
SirsiDynix EOS Carlsbad, CA (Q16-6108RM)	<u>\$134,859</u> (5 years)

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

d. Fleet Vehicles:

i. NYPA Fleet Vehicles – Transfer of Ownership to Gates-Chili Central School District and Greater Amsterdam School District

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to approve the transfer of ownership of two Authority fleet vehicles to Gates-Chili Central School District and Greater Amsterdam School District ('School Districts'), respectively, for use by the School Districts in furtherance of their strategic goal to transport students and minimize fuel expenditures.

BACKGROUND

In 2011, the School Districts participated in a demonstration project, funded by NYPA and NYSERDA, to gauge the feasibility of hybrid-electric school bus technology. Under the project NYPA purchased two hybrid-electric school buses and loaned them to the School Districts. The project included an extended field trial with fuel economy testing comparing the hybrid buses to identical buses with standard diesel drivetrains on identical routes carrying students daily.

Title 5-A of Article 9 of the Public Authorities Law (the 'Act') and the Authority's Guidelines for the Disposal of Personal Property (the 'Guidelines') allow the Authority, with the approval of the Trustees, to dispose of Authority property by negotiation and for less than fair market value if the transferee is a government or other public entity and the terms and conditions of the transfer require that the ownership and use of the Property will remain with the government or any public entity.

DISCUSSION

At the conclusion of the test period, the School Districts continued to operate the buses under a loan agreement from the Authority. The buses are used daily to transport students. Both districts have requested a no-cost transfer of ownership of the buses. They will agree to operate the buses for their intended purpose for the rest of the vehicles' useful lives. If the Authority were to dispose of the buses through other means, the School Districts would need to replace these buses with less efficient buses at considerable expense. Since the Authority has no need of school buses in its fleet, it is recommended that a no-cost transfer of ownership be pursued.

Consequently, staff has concluded that it is prudent to dispose of these vehicles which have a combined appraised fair market value of \$140,000 (Exhibit '4d i-A').

The School Districts have expressed interest in obtaining ownership of the vehicles as an addition to their vehicle pool.

The transfer is to be further conditioned upon the execution of an agreement between the School Districts and the Authority. The terms of such an agreement are to include transferring the vehicles in their 'as is' condition and such additional provisions that reasonably safeguard the Authority from future responsibility and liability.

FISCAL INFORMATION

In accordance with the foregoing, the vehicles will be transferred to the School Districts without any payment to the Authority.

RECOMMENDATION

The Senior Vice President – Corporate Support Services recommends that the Trustees approve the transfer of ownership of two Authority fleet vehicles to Gates-Chili Central School District and Greater Amsterdam School District.

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 Title 5-A of Article 9 of the Public Authorities Law, the Guidelines for the Disposal of Personal Property and the Power Authority Act, the Trustees hereby approve the transfer of ownership of the two fleet vehicles listed in Exhibit “4d i-A” to the accompanying report of the President and Chief Executive Officer to the Gates-Chili Central School District and Greater Amsterdam School District for use by the School Districts in accordance with its vehicle use policies; 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. Finance:

i. Funding Growth in NYPA's Customer Project Business

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The Trustees are requested to approve the appointment, through March 21, 2020, of JPMorgan Chase Bank, N.A. as a Pre-Qualified Lessor to directly originate, or purchase, Tax-Exempt or Taxable Municipal Leases (each, a 'Municipal Lease') from the Authority to finance eligible energy-related projects, programs and services, under Public Authorities Law §1005 paragraph 17. A detailed explanation of the recommended appointment, including the nature of the services to be provided and the basis for the award, were previously set forth in Agenda Item 5c.iii at the March 21, 2017 Trustees Meeting ('March Agenda Item 5c.iii').

BACKGROUND

The proposed appointment of JP Morgan Chase Bank N.A as a Pre-Qualified Lessor, originally included in March Agenda Item 5c.iii, was not adopted by the Trustees because they were unable to attain the required number of votes based on conflicts of interest filed by some of the Board members. Therefore, the proposed appointment of this firm is resubmitted for the Board's consideration with the intent of achieving the required quorum for approval. The other appointments recommended in March Agenda Item 5.c.iii were approved by the Trustees at the March meeting.

DISCUSSION

A detailed summary of the recommended appointment was set forth in the March Agenda Item 5c.iii; a brief synopsis follows:

At the Trustees' meeting of March 21, 2017, staff recommended the appointment, for a three-year period, of six firms as Pre-Qualified Lessors to directly originate, or purchase, Tax-Exempt or Taxable Municipal Leases from the Authority to finance eligible energy-related projects, programs and services as authorized by Public Authorities Law §1005 paragraph 17. For the reasons stated above, the Trustees approved the appointment of six of the firms. Staff now resubmits a request for approval to appoint the seventh firm, JPMorgan Chase Bank, N.A., to the pool of Pre-Qualified Lessors.

Staff will implement the Municipal Lease financing program by initially originating the leases on NYPA's balance sheet, and at a later time, competitively bid the leases into the pool of Pre-Qualified Lessors. After the lowest bidder is awarded, the NYPA-originated lease will be assigned to the winning bidder, and the Authority will be recapitalized at that point. Staff envisions this process to occur on an as-needed basis.

FISCAL INFORMATION

There is no fiscal impact associated with this action.

RECOMMENDATION

The Deputy Treasurer recommends the Trustees' approval of the appointment, through March 21, 2020, of JPMorgan Chase Bank, N.A. as a Pre-Qualified Lessor to directly originate, or purchase, Tax-Exempt or Taxable Municipal Leases from the Authority to finance eligible energy-related projects, programs and services as authorized by Public Authorities Law §1005 paragraph 17.

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

The following resolution, as submitted by the President and Chief Executive Officer, was adopted with Trustee Kress recused from the vote.

RESOLVED, That the appointment, through March 21, 2020, of JPMorgan Chase, N.A. as a Pre-Qualified Lessor to directly originate, or purchase, Tax-Exempt or Taxable Municipal Leases from the Authority to provide financing for eligible energy efficiency projects, as authorized by Public Authorities Law §1005 paragraph 17 be and hereby is approved; and be it further

RESOLVED, That the Chairman, the Vice Chair, 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.

f. Real Estate:

**i. Massena Country Club – Lease of 201 Acres –
Town of Louisville, St. Lawrence County**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to authorize entering into a 10-year lease with the Massena Country Club, Inc. ('MCC') for use of approximately 201 acres of Authority-owned real property in the Town of Louisville, County of St. Lawrence, for operation of a golf course.

BACKGROUND

Under the terms of the Recreational Plan ('Recreation Plan') appended to the 2003 renewal of the Federal Energy Regulatory Commission ('FERC') license for operation the St. Lawrence-FDR Power Project (the 'Project'), the Authority is required to 'improve, construct and maintain recreational opportunities at the Project.' The Recreational Plan specifically identifies a range of sites within the FERC Project boundary as recreational facilities maintained pursuant to this licensing obligation. Among these is the property leased to MCC.

MCC is a private corporation which has operated and maintained a golf course in St. Lawrence County for many years. MCC's original location was flooded as a result of construction of the Project. In consideration of this, and in partial fulfillment of the recreational obligations established in its license, the Authority offered the current location, directly on the St. Lawrence River, as a replacement site. MCC has leased the subject property from the Authority since 1957. The course is open to the public and, in addition, MCC also hosts many public competitions and functions at the site.

The last lease with MCC commenced in 1990 and predated the adoption of the Public Authorities Law ('PAL'). The lease expired in November 2015. The annual rental was \$2,000. During the term, MCC made major improvements to the premises, including construction of a new Club House, and undertook all grounds keeping and maintenance responsibilities. The new lease must comply with the PAL and, in particular, section 2897, which sets forth the requirements for disposal of public authority property.

DISCUSSION

An independent appraisal of the subject premises determined that the fair market rental value was \$40,000 per year, which represents a twenty-fold increase over the rent previously charged. Staff is concerned that if the rent was increased to the present fair market value the result would be severe economic hardship to MCC, quite possibly resulting in the closure of the golf course. This would be detrimental to the fragile economy of the North Country and would require the Authority to find an alternative means of meeting this FERC obligation.

As noted above, the golf course is a significant component of the Recreational Plan which the Authority entered into in furtherance of the 2003 FERC relicensing of the Project. In fulfillment of this licensing obligation, staff proposes that the Authority enter into a new lease with MCC for a 10-year term, with an additional 10-year renewal option, and maintaining the annual rental of \$2,000, subject to Trustee approval and fulfillment of the requirements set forth in the Public Authorities Law ('PAL').

Transfers of Authority property, including leases, for less than fair market value are authorized under Section 2897(7) of the PAL when the transfer is within the 'purpose, mission or governing statute of the public authority'. This transfer is in accordance with the Authority's Recreation Plan and thus meets this statutory requirement. PAL Section 2897(7)(iii) requires that when an authority seeks to transfer an

asset for less than its fair market value, the Authority notify the governor, the speaker of the assembly and the president of the senate via explanatory statements of the proposed disposal of Authority assets, which is then subject to denial by the governor, the senate or the assembly. Upon Trustee approval, the required PAL explanatory statement will be filed as required. The Authority will not execute the lease until its statutory requirements under Section 2897 are met.

The Authority's Expenditure Authorization Procedures governing real estate require the Trustees' approval for leases of Authority property where the annual value exceeds \$100,000 or the term exceeds 10 years.

FISCAL INFORMATION

Rents received will be deposited into the Authority's Operating Fund.

RECOMMENDATION

The Vice President – Enterprise Shared Services and the Director of Licensing recommend that the Trustees approve the lease of Authority-owned real property with the Massena Country Club, Inc. for operation of a golf course.

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

The following resolution, as submitted by the President and Chief Executive Officer, was adopted with Vice Chairman Nicandri recused from the vote.

RESOLVED, that the President and Chief Executive Officer and the Vice President – Enterprise Shared Services be, and hereby are, authorized to enter into a lease between the Authority and the Massena Country Club, Inc., on substantially the terms set forth in the foregoing report of the President and Chief Executive Officer and subject to the approval of the documents by the Executive Vice President and General Counsel or his designee; and be it further

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

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer 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. **Authorization to Enter into Leases with Municipalities – Village of Waddington, Town of Waddington and Town of Massena, St. Lawrence County**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to authorize entry into a 20-year lease with the Village of Waddington for the use of approximately 26 acres of Authority-owned real property for operation of a public park.

The Trustees are also requested to authorize entry into a 20-year lease with the Village of Waddington for the use of Authority-owned real property for operation of a public boat mooring facility.

The Trustees are also requested to authorize entry into a 20-year lease with the Town of Waddington for the use of approximately 13 acres of Authority-owned real property for operation of a public beach.

The Trustees are also requested to authorize entry into a 20-year lease with the Town of Massena for the use of approximately 33.2 acres of Authority-owned real property for operation of a public beach.

BACKGROUND

Under the terms of the Recreational Plan appended to the 2003 renewal of the Federal Energy Regulatory Commission ('FERC') license for operation the St. Lawrence-FDR Power Project (the 'Project'), the Authority is required to 'improve, construct and maintain recreational opportunities at the Project'. The Recreational Plan specifically identifies a range of sites within the FERC Project boundary as recreational facilities maintained pursuant to this licensing obligation. The Village of Waddington's Village Park and boat mooring facilities, the Waddington Town Park and the Massena Town Beach ('Facilities') are all located entirely within the FERC license boundary.

The Authority has leased the subject premises to the aforementioned municipalities in support of these recreational requirements since the initial construction and licensing of the Project in the late 1950's and early 1960's. The leases have been renewed or extended several times since then. The most recent leases have now expired, except for the Village of Waddington's park lease, which expires in 2019. The Village has requested that the Authority extend that lease an additional 20 years to facilitate its ability to secure grant funding.

DISCUSSION

The Facilities are all significant components of the Recreational Plan which the Authority entered into in furtherance of the 2003 FERC relicensing of the Project. The latest leases have now expired. In fulfillment of this licensing obligation, staff recommends that the Authority enter into new leases for the Facilities, each for no consideration and with 20-year terms, subject to Trustee approval and fulfillment of the requirements set forth in the Public Authorities Law ('PAL').

Transfers of Authority property, including leases, for less than fair market value are authorized under Section 2897(7) of the PAL. Section 2897(7)(i) states that such transfers are 'permissible 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 other public entity'. Further, Section 2897 (ii) authorizes such transfers when they fall within the 'purpose, mission or governing statute of the public authority.' These leases are in accordance with the Authority's Recreation Plan and thus meet the statutory requirements. Upon Trustee approval, the required PAL explanatory statements will

be filed. The Authority will not execute the leases until its statutory requirements under Section 2897 are met, including obtaining the independent appraisals required under Section 2897(3).

The Authority's Expenditure Authorization Procedures governing real estate require the Trustees' approval for leases of Authority property where the term exceeds 10 years.

FISCAL INFORMATION

The leases will be for no consideration.

RECOMMENDATION

The Vice President – Enterprise Shared Services and the Director of Licensing recommend that the Trustees approve leases of Authority-owned real property with the Village of Waddington, Town of Waddington and Town of Massena, 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 the President and Chief Executive Officer and the Vice President – Enterprise Shared Services be, and hereby are, authorized to enter into leases between the Authority and the Village of Waddington, the Town of Waddington and the Town of Massena on substantially the terms set forth in the foregoing report of the President and Chief Executive Officer and subject to the approval of the documents by the Executive Vice President and General Counsel or his designee; and be it further

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

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

5. DISCUSSION AGENDA:

a. Strategic Initiatives

i. President and Chief Executive Officer's Report

President Quiniones provided highlights of the Authority's performance to date (Exhibit "5a i-A"). He said NYPA's executives and key subject matter experts across the Authority created the NYPA 2020 Strategic Plan. In light of changes in the business environment and new state policies, the strategy team will be working in partnership with the business units to create and publish a refreshed 2020 Strategic Plan.

The team recently had an off-site meeting to assess what has changed since the creation of the Plan such as sustained low gas prices that impact the wholesale electricity markets, and increase in competition such as in the provision of customer solution services. The goal is to resubmit an improved Strategic Plan with a new set of deliverables so that the Authority can align all of its resources and inspire staff to execute and implement the end goal of the NYPA 2020 Strategic Plan.

The key themes discussed at the 2017 Strategy offsite meeting were NYPA's Competitiveness, Scenario Planning and Digitization.

Competitiveness

With utilities now operating in an increasingly competitive marketplace, the group explored ways in which NYPA can continue to create and deliver value to its customers and the State of New York, e.g. reduce costs; increase revenues from existing products and services; and identify products and services for which customers would be willing to pay.

Scenario Planning

Attendees brainstormed how NYPA's business could be impacted in the future through exploring a series of potential 2030 scenarios. Opportunities and threats to NYPA's business were identified for further discussion.

Digitization

- Digitization is a major cross-cutting theme in the Authority's Strategic Plan. NYPA is in the process of making the organization the first digital utility.
- The Authority is implementing digital technologies to digitize its power plants, substations and transmission system by building digital replicas of these systems in order to do data analytics. This will help the Authority to be better informed in managing its assets, guiding its investments, both capital and O&M, and also optimizing its operations with the integration of more renewable energy sources such as wind and solar to achieve Governor Cuomo's goal to have 50 percent of the state's electricity come from renewable energy sources by 2030.
- The Authority built the New York Energy Manager and now monitors approximately 3400 buildings.
- The Authority is also creating digital replicas or digital twins of public buildings across the state. The goal is also to help optimize the energy use of those buildings and create efficient buildings in New York State with flexible demand so that when there are grid constraints or changes in the grids, the buildings can respond to those changes.
- Digital technology is propelling the evolution of the electric utility industry and NYPA intends to be a leader in that area.

b. Risk Management

i. Chief Risk Officer's Report

- **Commodity Risk Management Governance**

Mr. Soubhagya Parija provided highlights of the Commodity Risk Management governance process to the Trustees. (Exhibit "5b i-A")

Merchant Portfolio Risk

Merchant revenue is uncertain with a range of outcomes that may affect the ability to cover operating expenses or meet financial budget.

The Authority is taking steps to contain the variability of the merchant portfolio gross margin that has a significant impact on its net income without sacrificing its ability to take advantage of market opportunities. The Authority has implemented governance processes to protect its Gross Margin Limits, Trader Volume Limits and Trading Term Limits.

Gross Margin Limits

The target is to cover the gross margin limit at 1.75 times the Fixed Charge Coverage Ratio ("FCCR"); the Authority will start reacting if the gross margin hits twice the FCCR limit.

Trader Volume Limits

Traders cannot exceed the volume limits without approval from the next level official.

Trading Term Limits

Trading term limits are based on the Trader's level in the organization.

As part of the process, Risk Management monitors the performance of the merchant portfolio on a daily basis. Risk Management has regular meetings with the Energy Resource Management teams to conduct portfolio review and to review action items. The Executive Risk Management Committee has to approve all actions taken by the ERM teams.

c. Operations & Finance

i. Utility Operations Report

Mr. Joseph Kessler provided an update of the Utility Operations' activities for the month of March to the Trustees (Exhibit "5c i-A").

Performance Measures

Utility Operations' performance for the reporting period exceeded expectations.

Generation Market Readiness

- Generation Market Readiness factor for the month of March was at 99.83%. This is above the target of 99.40%.
- Year-to-date Generation Market Readiness factor was at 99.92%, which is above the annual target of 99.40%.

Transmission Reliability

- Transmission reliability factor for the month of March was 95.54%. This is above the monthly target of 94.47%.
- Year-to-date transmission reliability is 95.46% and this is above the target of 94.02%.

Environmental Incidents

- No environmental incidents were reported for the month of March.
- Year-to-date, there was one reportable incident. The Annual Target is not to exceed 32 incidents.

Safety

- The DART (Days Away, Restricted or Transferred) Rate for the month of March was 1.25. This is above the monthly target of 0.72.
- Three injuries occurred that resulted in lost time and met the DART criteria.
- The year-to-date DART Rate is 0.72. This is below the target of 0.78.

Canal Corporation

- No significant post-Day 1 issues have been reported
- Execution continues across all functional areas in relation to post-Day 1 work
- O&M and capital spending remain in-line with the 2017 budget
- Hiring requirements for the summer season have been confirmed and recruitment is underway

- Transitional Service Agreement Exit Plans have been developed and signed-off; to date, 15 of 41 TSAs have been exited and the remaining services are on-track to exit in-line with the agreed-upon plans.

ii. Commercial Operations Report

Ms. Jill Anderson provided an update of Commercial Operations' activities to the Trustees (Exhibit "5c ii-A").

Customer

5. The collection of fees for energy services from the Authority's projects was ahead of the budget (\$500,000).
6. Operating costs was below budget (\$900,000). This was driven mainly by unfilled vacancies.

Wholesale

Electric prices are down substantially from the budget, approximately 30 percent. This is due largely to low fuel prices that led to low energy prices. However, this was offset by higher water flows through the plants, enabling the Authority to sell more megawatt hours.

iii. Financial Report

Mr. Robert Lurie provided an update of the Financial Report to the Trustees (Exhibit "5c iii-A").

Net income for the three months ended March 31, 2017 was \$62 million, which was \$40 million higher than the budget of \$22 million. The increase in net income was primarily attributable to higher net margins (\$20 million), lower operating expenses (\$12 million), and the receipt of a one-time payment from Entergy related to the transfer of the Nuclear Decommissioning Trust Fund (\$8 million). The higher net margins included better than planned results at Niagara and St. Lawrence (7% higher generation) and at the transmission facilities (\$7.8 million) due to lower HTP capacity payments resulting from a line outage. The lower than planned operating expenses reflected early year timing differences in O&M, and less than anticipated spending in several programs.

Net Income for the month of March was \$14 million, which was \$6.8 million higher than budgeted primarily due to continued higher production at the hydro facilities and lower HTP capacity payments.

The Authority's financial results for the first quarter was positive; this was driven by four factors, three of which were due to unexpected events that were largely outside of the Authority's control and are as follows:

1. Energy Price and margin

Energy prices were down. The Authority budgeted conservatively on prices, and this was offset by the fact that there was greater than budgeted flows in volumes of water through the hydro plants. The budget was about five percent below forecast in order to allow for some underrun in the amount of electricity that comes through the hydro plants. This year, because of the amount of water flowing out of the Great Lakes and through the rivers into the Authority's plants, it resulted in a positive variance through the first quarter.

2. HTP Transmission Line Outage

The Authority pays a capacity payment to the owners of the HTP transmission line for the service provided for that line. Since the line is out of service, the Authority does not have to make that capacity payment, and this resulted in a positive variance in its financials over the first quarter. This unexpected event is expected to continue for some time through the latter part of the year and will result in positive variances going forward.

3. Operating Expenses

The operating expense is largely an underrun of the O&M budget. It relates to budgeting monthly expenses versus budgeting annual expenses. The lower than planned operating expenses is reflective of timing differences in O&M and less than anticipated spending in several programs. This timing issue will eventually reverse itself by the end of the year and the Authority will be on target for its total 2017 operating forecast relating to its O&M budget.

4. Energy - Nuclear Decommissioning Trust Fund

This non-recurring payment of \$8 million from Entergy is related to the transfer of the Nuclear Decommissioning Trust fund as a result of the sale of the Fitzpatrick Power Plant; it represents the settlement of various rights and obligations under the contract governing the Nuclear Decommissioning Trust Fund.

Economic Value Added

The Authority's target in terms of the economic value added (EVA) calculation is zero at the end of the year. The year-to-date improvement in EVA was primarily attributable to the higher margins at the hydro facilities -- the extra water volume that resulted in larger electric generation -- and the underrun on the O&M budget.

iv. **Annual Compliance Review - Recharge New York Power Program**

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

Authority staff has conducted its fourth annual compliance review of customers receiving power allocations under the Recharge New York ("RNY") Power Program for the reporting period from July 1, 2015 through June 30, 2016 (the 'Reporting Period'). The compliance review examined RNY Power customer contract compliance in three areas: (1) job creation and retention (collectively, 'job retention'); (2) capital investment; and (3) power utilization. The purpose of this report is to inform the Trustees of the results of the compliance review for the specified Reporting Period, and to make recommendations regarding compliance action.

In summary:

- (1) The compliance level of the 51 RNY Power customers described in Exhibit '5c iv-A' fell below 90% of their contractual job retention commitment for the Reporting Period. Staff recommends that the RNY Power allocation and contract demand for each such customer be reduced to the amounts indicated in Exhibit '5c iv-A.' In addition, staff recommends that the Authority be authorized to adjust the job commitments of these customers as indicated in Exhibit '5c iv-A,' based on the job levels reported by each customer.
- (2) The compliance level for the 16 RNY Power customers described in Exhibit '5c iv-B' fell below 90% of the relevant contractual commitment for job retention for the Reporting Period. However, application of the methodology used to calculate demand and allocation reductions under the RNY Power contract does not yield a reduction of the allocations and contract demands for these customers. Nevertheless, staff is recommending that the Authority be authorized to adjust the job commitments for these customers as indicated in Exhibit 5c iv-'B,' based on the job levels reported by each customer.
- (3) The compliance level of the 1 RNY Power customer described in Exhibit '5c iv-C' fell below 90% of the relevant contractual commitment for power utilization for the Reporting Period. Staff recommends that the RNY Power allocation and contract demand for such customer be reduced to the amount indicated in Exhibit '5c iv-C.' In addition, staff recommends that the Authority be authorized to adjust the job retention commitment for this customer as indicated in Exhibit '5c iv-C,' based on the job levels reported by each customer.
- (4) Staff has identified 15 other RNY Power customers whose compliance data for this Reporting Period indicates noncompliance with one or more contractual commitments. However, due to special circumstances relating to each of these customers, staff is not recommending compliance action as to these specific customers at this time. These matters are discussed in Section 3 of this report and Exhibit '5c iv-D.' Staff may return to the Board for compliance recommendations regarding one or more these customers at a later time.
- (5) One RNY Power customer did not file a compliance report as required by the RNY Power contract. Staff has suspended the RNY Power allocation for this customer effective January 31, 2017. No action by the Trustees is requested for this matter.

Exhibit '5c iv-E' provides a summary all RNY Power customers discussed in Exhibits '5c iv-A' through '5c iv-D.'

DISCUSSION

1. Background

On April 14, 2011, Governor Andrew M. Cuomo signed into law Chapter 60 (Part CC) of the Laws of 2011 which, among other things, created the RNY Power program. The program makes available 910 megawatts ('MW') of 'RNY Power,' 50% of which will be provided by the Authority's hydropower resources and 50% of which will be procured by the Authority from other sources. RNY Power contracts are for a specified term corresponding to a customer's allocation.

RNY Power is made available to businesses and not-for-profit corporations for job retention and business expansion and attraction purposes. Applications for RNY Power are subject to a competitive evaluation process and are evaluated based on statutory criteria, including (1) the number of jobs created and/or retained and the extent to which the applicant will agree to commit to creating or retaining such jobs as a condition to receiving a RNY Power allocation; and (2) the extent to which a RNY Power allocation will result in new capital investment in the state by the applicant.

Successful applicants are awarded RNY Power allocations and offered a contract with the Authority for the purchase of the RNY Power. In addition to the basic requirement to pay for electric service, the contract provides for several 'supplemental' customer commitments relating to such matters as (1) job creation or retention, (2) capital investment, and (3) power utilization (the 'Supplemental Commitments'). With respect to jobs, the RNY Power contract may contain commitments to create and retain jobs, or simply to retain jobs. On capital investment, the contract may provide for a one-year capital investment commitment, or, as is more often the case, an aggregate capital investment commitment over a five-year period.

To facilitate compliance review and contract enforcement, the RNY contract requires customers to report on performance of the Supplemental Commitments. Customers are required to report pertinent information on the first three Supplemental Commitments (the 'Compliance Report') no later than August 31 of each year for the prior 12-month reporting period from July through June.

2. Compliance Review

Staff has completed its fourth annual compliance review of all in-service RNY Power allocation contracts for compliance with Supplemental Commitments.*

A total of 617 customers received at least one month of RNY Power during the Reporting Period (July 1, 2015 through June 30, 2016), of which 600 filed a Compliance Report. Staff reviewed the data reported by all 600 customers for this Reporting Period. Of those requested to report, a total of 578 customers have been receiving RNY Power for the entire 12-month period beginning on or before July 2015 and are in a position to be evaluated for compliance with their Supplemental Commitments.

In total, 577 of the 578 customers receiving RNY Power for the entire 12-month period filed a Compliance Report as required by the Program, representing power allocations totaling 608 MW and existing employment commitments totaling 337,809 jobs. One RNY Power customer failed to file a Compliance Report and its allocation has since been terminated. In aggregate, these customers reported

* In addition to this compliance review, each year an independent auditor, along with the Authority's Internal Audit group, randomly selects customers whose annual compliance report is reviewed for accuracy. This year, a job reporting audit and a capital investment spending audit was performed by an independent auditing firm retained by the Authority. The audits are designed to help staff validate reported information. Audited customers will receive feedback on the audit results, including guidance for future submittals. Where a discrepancy exists between the customer's job reported and the independent auditing firm, NYPA staff used the auditing firm's job reported to calculate compliance recommendations.

actual employment of 337,665 jobs. This represents 99% of the total job commitments for all RNY customers reporting for the full year. Since completion of compliance review by staff, 7 customers have since terminated their RNY Power allocations. No action by the Trustees is requested as to these former RNY Power customers. In total, for this Reporting Period, staff determined that 83 current RNY Power customers did not meet a 90% compliance threshold for one or more of the Supplemental Commitments.

Regarding capital investment commitments, RNY Power customers can be divided into two groups: (1) customers with an aggregate capital investment commitment over a five-year period; and (2) customers with a one-year capital investment commitment.[†]

It is not possible to evaluate capital investment compliance for the first group of RNY Power customers at this time because the RNY Power allocations for such customers have not yet been in service for five years. Nevertheless, the annual compliance review process yielded the following information about capital investment. The 600 RNY customers that submitted compliance data have reported cumulative spending totaling \$10.2 billion during this reporting period, out of an aggregate commitment of \$24.04 billion. To date, two hundred and seventy-eight RNY Power Customers out of 600 in this first customer group have already met or exceeded the 90% compliance threshold as of the current Reporting Period.

A total of 32 RNY Power customers have one-year capital investment commitments. The aggregate commitment level for these thirty-two customers totals \$70.8 million. All thirty-two customers in the second group met or exceeded a 90% compliance rate in previous reporting periods.

3. Compliance Approach

Based on the RNY Power Contract terms, the applicable tariff and the Authority's regulations, the Authority has a number of options available to respond to a customer that is in breach of contractual obligations, including, for example, termination of the contract, suspension of electric service, and reduction of the amount of a customer's RNY Power allocation.

As more specifically detailed in the RNY contract, if a customer's compliance report indicates that (i) its annual average monthly employment for the reporting period is below 90% of the customer's job retention commitment, (ii) its reported average monthly kW utilization is below 90% of the allocation amount for the highest six months, or (iii) its capital investment spending is below 90% of the customer's capital investment commitment, the Authority may take action against the customer which includes reducing the customer's power allocation on a pro rata basis pursuant to a methodology provided for in the contract.

Although the Authority has the right to enforce a customer to comply with Supplemental Commitments at a 100% level, it has the discretion to enforce Supplemental Commitments at a discounted performance level, and has done so in the past.

At this time, Authority staff is recommending that the reductions to the allocations and contract demands for these customers be calculated based on a 90% performance standard.

Staff is also recommending that the job commitments of customers that have not satisfied a 90% compliance rate be adjusted downward to establish a revised job retention commitment based on the customer's reported employment levels. This approach yields a more realistic job retention commitment, as it reflects the apparent ability of affected customers to retain jobs. It also minimizes the chances that such customers, particularly customers who have been subject to compliance action in previous years, will be subject to compliance action under the contract in the near future.

[†] Twenty-six RNY Power customers do not have a Supplemental Commitment for capital investment.

4. Failure to Meet Supplemental Commitments – Action Requested

- a) Job Retention Commitments (reductions in RNY Power allocation and contract demands; adjustments to job retention commitment)

A total of 494 of the 577 RNY Power customers reviewed were found to be compliant with their Supplemental Commitment for job retention. A total of 79 of the 577 RNY Power customers were found to be below a 90% compliance rate for this Supplemental Commitment.

Staff recommends that the Trustees approve reductions in the RNY Power allocations and contract demands for the 51 customers identified in Exhibit '5c iv-A' who fell below a 90% compliance rate for their job retention commitments to the amounts indicated in Exhibit '5c iv-A.' In addition, staff recommends that the Trustees authorize the Authority to adjust the job commitments for these 51 customers to the amounts indicated in Exhibit '5c iv-A' based on the job levels reported by such customers.

- b) Job Retention Commitments (adjustments to job retention commitment)

The 16 customers identified in Exhibit '5c iv-B' fell below a 90% compliance rate for their job retention commitments, however, because the shortfall is relatively minor, the methodology used to calculate reduction of allocation and contract demand does not yield a reduction for these customers. Nevertheless, staff recommends that the Trustees authorize the Authority to adjust/reset the job retention commitments for these customers for the reasons stated above to the amounts indicated in Exhibit '5c iv-B' based on the job levels reported by such customers.

- c) Power Utilization Commitment (reductions in RNY Power allocation and contract demand)

A total of 4 of the 577 RNY Power customers reviewed fell below a 90% compliance rate for their Supplemental Commitment for utilization of their RNY Power allocation.

Staff recommends that the Trustees approve a reduction in the RNY Power allocation and contract demand for one customer identified in Exhibit '5c iv-C' who fell below a 90% compliance rate for the power utilization commitment to the amount indicated in Exhibit '5c iv-C.'

5. Other Compliance Issues – No Compliance-Related Action Recommended

The 15 customers described in Exhibit '5c iv-D' reported data indicating a failure to achieve a 90% compliance rate for one or more Supplemental Commitments. For the reasons discussed below and in Exhibit '5c iv-D', staff is not recommending compliance action with respect to these fifteen customers at this time.

- a) Job Commitments

Compliance reporting indicated that the 10 customers listed in Exhibit '5c iv-D,' Section 1, fell below the 90% compliance threshold for job retention. Seven of the 10 customers recently submitted supplemental information on their current employment levels for the eight-month period from July 2016 to February 2017. In these cases, this information indicates an employment level trending upward, and if this level is sustained each customer would be at or above a 90% compliance rate. Three of the 10 customers are currently in the final stages of contract modifications due to either an allocation transfer and/or consolidations, which could impact their Supplemental Commitment for job retention. All of these customers have indicated that the contract modifications are not expected to result in a net loss of jobs between the facilities involved in the transfer and/or consolidation. Staff anticipates returning to the Board at a later date to make recommendations for Trustee action regarding one or more of these customers. Accordingly, staff is not recommending compliance action with respect to these customers at this time.

b) Power Utilization Commitments

Compliance reporting indicated the one customer listed in Exhibit '5c iv-D,' Section 2, was underutilizing its RNY Power allocation on average over the Reporting Period, and, as a result, fell below a 90% compliance rate. The underutilization of the allocation was attributed to a lighting efficiency upgrade project, replacing existing lighting to LED energy efficient lighting which utilizes less power. The company recently made account modifications and redistributed its RNY allocation to additional electric meter accounts to better utilize its full allocation. Accordingly, staff is not recommending compliance action with respect to this customer at this time.

c) No Contract Demand/RNY Power Allocation Reduction Calculated/Required

The 4 customers identified in Exhibit '5c iv-D,' Section 3, reported data indicating that they either failed to meet job commitments or fully utilize their RNY Power allocation during the Reporting Period. However, because the shortfall is relatively minor, the methodology used to calculate a reduction of the allocation and contract demand allocation in each case did not yield a reduction. Accordingly, staff is not recommending compliance action with respect to these customers at this time. In addition, staff is not recommending that the job retention commitments of these customers be adjusted, because circumstances do not indicate these customers are likely to face repeated compliance action in the future based on their current Supplemental Commitment for job retention.

d) Other Compliance Matters

One RNY Power customer did not file a Compliance Report for the current Compliance Period as required by the RNY Power contract. Staff has suspended the RNY Power allocation for this customer effective January 31, 2017. No action by the Trustees is requested for this matter.

RECOMMENDATION

The Vice President – Economic Development recommends that the Trustees:

- (1) Authorize a reduction of the RNY Power allocations and contract demands for each of the RNY Power Customers identified in Exhibit '5c iv-A' to the amounts indicated in Exhibit 'A,' and authorize the Authority to adjust job retention commitments for these Customers to the amounts indicated in Exhibit '5c iv-A.'
- (2) Authorize the Authority to adjust job commitments for each of the RNY Power Customers identified in Exhibit '5c iv-B.'
- (3) Authorize a reduction of the RNY Power allocation and contract demand for the RNY Power Customer identified in Exhibit '5c iv-C' to the amount indicated in Exhibit '5c iv-C,' and authorize the Authority to adjust the job commitment for this Customer to the amount indicated in Exhibit '5c iv-C.'

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

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

RESOLVED, That the Trustees hereby approve the reduction of Recharge New York ("RNY") Power allocations and contract demands for each of the customers identified in Exhibit "5c iv-A" to the amounts indicated therein, and authorize the Authority to adjust

job commitments for these customers, as indicated in Exhibit “5c iv-A,” as described in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the Trustees hereby authorize the Authority to adjust job commitments for each of the customers identified in Exhibit “5c iv-B” to the amounts indicated therein, as described in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the Trustees hereby approve the reduction of RNY Power allocation and contract demand for the customer identified in Exhibit “5c iv-C” to the amount indicated therein, and authorize the Authority to adjust job commitment for this customer, as indicated in Exhibit “5c iv-C,” 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 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.

6. **Next Meeting**

The Regular meeting of the Trustees will be held on July 25, 2017 **at the Clarence D. Rappleyea Building, White Plains, New York, at a time to be determined**, unless otherwise designated by the Chairman with the concurrence of the Trustees.

Closing

Upon motion made by Vice Chairman Nicandri and seconded by Trustee McKibben, the meeting was adjourned at approximately 12:27 p.m.

Karen Delince

Karen Delince
Corporate Secretary

New York Power Authority
Contracts for the Sale of Hydropower - Transmittal to the Governor

Exhibit "4b i-A"
May 2, 2017

	Company Name	Program	City	County	Job Retention Commitment	Power Allocation (kW)	Original Contract Expiration Date	New Contract Expiration Date
1	Nestle Purina PetCare Company	Expansion Power	Dunkirk	Chautauqua	419	500	April 30, 2017	June 30, 2020
2	Upstate Niagara Cooperative, Inc.	Preservation Power	No. Lawrence	St. Lawrence	80	2,250	April 30, 2017	June 30, 2020
3	Try-It Distributors Co., Inc.	Expansion Power	Lancaster	Erie	265	200	June 30, 2017	June 30, 2020
Totals					764	2,950		

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

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

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

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

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

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

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

I.Billing Energy

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

J.Contract Demand

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

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

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

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

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

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

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

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

B. Marginal losses;

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

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

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

G. Rendition and Payment of Bills

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

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

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

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

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

Exhibit 4b i-B-2
May 2, 2107

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	June 30, 2020	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
ALBANY, NY 12207

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

Service Tariff No. 10

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

A. The following abbreviations are used:

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

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

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

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

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

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

- G. The term "Preservation Power" means Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).
- H. The term "Firm Power" means capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.
- I. The term "Firm Energy" means energy (kWh) associated with Firm Power.
- J. The term "Load Serving Entity" or "LSE" shall have the meaning set forth in the Agreement.
- K. The term "Project" means the Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.
- L. The term "Rate Year" or "RY" means the period from July 1 through June 30 of the following year.
- M. The term "Rules" means the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- N. The term "Service Tariff" means this Service Tariff No. 10.

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

III. Monthly Rates and Charges

A. Preservation Power Base Rates

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

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

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

B. Preservation Power Rates No Lower Than Rural/Domestic Rate

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Billing Period

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

F. Billing Demand

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

G. Billing Energy

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

H. Contract Demand

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

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

1. The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.
2. Billing Demand – Unless separately metered, the billing demand charged by the Authority to each Customer will be the highest 15-minute integrated demand during each billing period recorded on the Customer's meter multiplied by a percentage based on load factor sharing, as applicable.
3. Billing Energy – Unless separately metered, the kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the billing period multiplied by a percentage based on load factor sharing, as applicable.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

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

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

- A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
- B. Marginal losses;
- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

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

G. Adjustment of Charges

1. Distribution Losses

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

2. Transformer Losses

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

3. Power Factor

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

H. Conflicts

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

I. Customer Resales Prohibited

The Customer may not resell any quantity of Preservation Power.

v. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year."

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

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

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

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24

Measuring Year -1 (2011)

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

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

Apply AAF to Calculate the New Rate Year Base Rate

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

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

to

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

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

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

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

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

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

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

I.Billing Energy

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

J.Contract Demand

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

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

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

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

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

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

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

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

B. Marginal losses;

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

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

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

G. Rendition and Payment of Bills

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

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

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

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

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

Exhibit 4b i-C-1

NEW YORK STATE POWER AUTHORITY

Public Hearing
April 6, 2017



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NEW YORK STATE POWER AUTHORITY

Thursday, April 6, 2017

2:30 P.M. - 6:30 P.M.

Niagara Power Project Visitors' Center

5777 Lewiston Road

Lewiston, New York 14092

APPEARANCES:

LOU PAONESSA,
Senior Director, Community Relations

LORNA JOHNSON,
NYPA Senior Associate Corporate Secretary

KAREN DELINCE,
NYPA Corporate Secretary

RICHARD SMITH,
Business and Project Development Director

PRESENT:

BARBARA BUYERS, CSR, RPR,
Notary Public.

1 MR. PAONESSA: Good afternoon. This is a
2 public hearing required by law and authorized by the
3 New York Power Authority's Board of Trustees on the
4 proposed customer contracts for the sale of
5 hydropower to Nestle Purina PetCare Company, Try-It
6 Distributing Company, Incorporated and Mayer
7 Brothers Apple Products, Incorporated.

8 My name is Lou Paonessa, and I am the senior
9 director of community relations for Western New
10 York. New York State Public Authorities Law Section
11 1009 sets forth procedures for executing certain
12 contracts negotiated by the authority. First, prior
13 to the hearing, it requires that notice of the
14 hearing be provided. Therefore, a notice was sent
15 to the governor, the senate's president pro temp,
16 the senate minority leader and the senate finance
17 committee chair, the assembly speaker, the assembly
18 minority leader and the assembly ways and means
19 committee chair.

20 In addition, notices appeared in the
21 following newspapers once a week for the four weeks
22 leading up to this hearing: The Niagara Gazette,
23 Buffalo News, Buffalo Business First, Lewiston

1 Porter Sentinel, Albany Times-Union, Dunkirk
2 Observer. The public was also given access to the
3 proposed contracts on the authority's Web site and
4 at the authority's White Plains office during the
5 thirty-day period prior to today's hearing.

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

10 The next step in the process set forth in
11 Section 1009 will be for the NYPA trustees to
12 reconsider the proposed contracts in light of public
13 comments. Once the trustees have completed their
14 final review, the contracts will be forwarded to the
15 governor for his consideration and approval.

16 If you plan to make an oral statement at this
17 hearing, I ask that you so indicate on the sign-in
18 sheet. Also, if you have a written statement please
19 give a copy to Lorna Johnson and one to the
20 reporter. Written statements may be of any length
21 and will appear in the order of the hearing in
22 addition to oral statements.

23 The record of the hearing will remain open

1 for additional comments through the close of
2 business Friday, April 7th, 2017. Additional
3 comments should be mailed, faxed or e-mailed to the
4 corporate secretary at 123 Main Street, 11 dash P,
5 White Plains, New York 10601 or area code
6 914-390-8040 or secretarys.office@nypa.gov.

7 At this point, I would like to present a
8 summary of proposed new contracts for several new
9 and current customers here in Western New York for
10 the sale of hydropower generated here at the Niagara
11 Project.

12 Regarding the contracts, under Public
13 Authorities Law Section 1005, Subsection 13, the
14 authority may allocate and sell, directly or by
15 sale-for-resale, two hundred fifty megawatts of
16 expansion power, known as EP, and four hundred
17 forty-five megawatts of replacement power, known as
18 RP, to businesses located within thirty miles of the
19 Niagara Power Project, provided that the amount of
20 EP allocated to businesses in Chautauqua County on
21 January 1st, 1987 shall continue to be allocated in
22 Chautauqua County.

23 One company was awarded a new hydropower

1 allocation by the authority's trustees on January
2 31st, 2017 in return for commitments made to create
3 or expand its business in Western New York.

4 Specifically, Mayer Brothers Apple Products,
5 Incorporated, a manufacturer of bottled beverages,
6 was awarded two hundred kilowatts of RP in support
7 of plans to construct a forty thousand square foot
8 addition and hot-fill production line at its
9 facility in the town of Somerset, Niagara County.
10 Mayer Brothers will invest at least three point two
11 million and create at least nineteen new jobs above
12 its base level jobs level of ninety-two.

13 Also on January 31st, 2017, the authority's
14 trustees approved an extension to the terms of two
15 existing hydropower allocations to two current
16 customers with facilities in Western New York.
17 Specifically, the trustees approved an extension of
18 the five hundred kilowatt allocation of EP to Nestle
19 Purina PetCare Company for its commitment to retain
20 at least four hundred nineteen jobs at its pet food
21 manufacturing facility in Dunkirk, Chautauqua
22 County. The new contract will extend the term of
23 the allocation from April 30, 2017 to June 30th,

1 2020.

2 The trustees also approved an extension of
3 the two hundred kilowatt allocation of EP to Try-It
4 Distributing Company, Incorporated for its
5 commitment to retain at least two hundred sixty-five
6 jobs at its beverage wholesaling operations in
7 Lancaster, Erie County. The new contract will
8 extend the term of the allocation from June 30th,
9 2017 to June 30th, 2020.

10 To summarize some of the pertinent provisions
11 in each of the proposed contracts, first the
12 contracts provide for the direct billing of all
13 hydropower supply charges and all New York
14 Independent System Operator, Incorporated, NYISO,
15 charges and taxes.

16 The contracts include the customers'
17 agreed-upon commitment with respect to employment
18 and capital investment. The contracts retain the
19 authority's right to reduce or terminate a
20 customer's allocation if employment, power
21 utilization or capital investment commitments are
22 not met.

23 For example, the contracts include an annual

1 job reporting requirement and a job compliance
2 threshold of ninety percent. Should a company's
3 average annual employment fall below the compliance
4 threshold of ninety percent of the employment
5 commitment, the authority has the right to reduce
6 the allocation on a prorated basis.

7 The contracts compel the companies to perform
8 an energy audit at their facility at least once
9 within five years, helping to ensure the customers
10 use the hydropower efficiently. Additionally, to
11 accommodate nonpayment risk that could result from
12 the direct billing arrangement, the contracts
13 include commercially-reasonable provisions
14 concerning the authority's ability to charge late
15 payment fees and to require deposits in the event of
16 a customer's failure to make payment for any two
17 monthly bills. These contract provisions are
18 consistent with other authority direct-sale
19 contracts, including the Recharge New York sales
20 contracts.

21 The contracts also include new provisions
22 expressly allowing NYPA's recovery from the customer
23 of any costs incurred in connection with the

1 purchase of zero emission credits and renewable
2 energy credits attributable to the customer's load
3 stemming from NYPA's implementation of the clean
4 energy standard, or CES.

5 On August 1st, 2016, the Public Service
6 Commission issued the CES order establishing a clean
7 energy standard for the state intended to meet the
8 state's energy plan's clean energy goals by, among
9 other things, one, increasing the amount of the
10 state's energy generation that comes from renewable
11 energy sources in New York State and two, preventing
12 the premature closure of upstate at risk zero
13 emission nuclear power plants.

14 NYPA supports the clean energy plan's clean
15 energy goals and in anticipation of NYPA's
16 participation in the Public Service Commission's CES
17 program at its September 27th, 2016 meeting, the
18 trustees approved a revised form of contract
19 including provisions for the pass-through to
20 customers of any costs NYPA incurs in connection
21 with the purchase of zero emission credits and
22 renewable energy credits attributable to the
23 customers' load.

1 Lastly, the contracts will serve the
2 allocations in accordance with the authority's
3 service tariff Western New York dash 1, which
4 specifies rates and other terms applicable to all EP
5 and RP allocations. The service tariff specifies a
6 three-year rate phase-in to a target rate based on
7 the rate of the authority's other hydropower
8 program, Preservation Power, to ultimately insure
9 consistency among the authority's three hydropower
10 programs. Transmission and delivery service for
11 these allocations will be provided by National Grid
12 or NYSEG in accordance with the utilities' Public
13 Service Commission approved delivery service
14 tariffs.

15 As I stated earlier, the authority will
16 accept comments on the proposed contracts until the
17 close of business on Friday, April 7th, 2017. At
18 this point, we will now recess and reconvene when
19 speakers arrive.

20 (A recess was then taken.)

21 MS. DELINCE: The April 6th, 2017 public
22 hearing on proposed customer contracts for Nestle
23 Purina PetCare Company, Try-It Distributing Company,

1 Inc. and Mayer Brothers Apple Products, Inc. is now
2 officially closed.

3 As previously stated, the record of the
4 hearing will remain open for additional comments
5 through close of business Friday, April 7th, 2017.

6 Thank you, and good night.

7

8 ***** (6:31 P.M.) *****

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1 STATE OF NEW YORK
2 COUNTY OF ERIE

3 I, Barbara Buyers, 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
7 deposition, duly sworn to testify the truth, the
8 whole truth and nothing but the truth; that such
9 testimony was taken pursuant to notice at the time
10 and place herein set forth; that said testimony was
11 taken down in shorthand by me and thereafter under
12 my supervision transcribed into the English
13 language, and I hereby certify the foregoing
14 testimony is a full, true and correct transcription
15 of the shorthand notes so taken.

16 I further certify that I am neither counsel for
17 nor related to any parties to said action, nor in
18 anywise interested in the outcome thereof.

19 IN WITNESS WHEREOF, I have hereunto subscribed
20 my name this 18th day of April, 2017.

21
22
23


Notary Public
State of New York

	9:13	4:18,20	3:15	
*	April (5) 4:2;5:23;9:17,21; 10:5	C	consistency (1) 9:9	E
**** (2) 10:8,8	area (1) 4:5	capital (2) 6:18,21	consistent (1) 7:18	earlier (1) 9:15
A	arrangement (1) 7:12	certain (1) 2:11	construct (1) 5:7	efficiently (1) 7:10
ability (1) 7:14	arrive (1) 9:19	CES (3) 8:4,6,16	continue (1) 4:21	e-mailed (1) 4:3
above (1) 5:11	assembly (3) 2:17,17,18	chair (2) 2:17,19	contract (4) 5:22;6:7;7:17;8:18	emission (3) 8:1,13,21
accept (1) 9:16	attributable (2) 8:2,22	charge (1) 7:14	contracts (20) 2:4,12;3:3,12,14; 4:8,12;6:11,12,16,18, 23;7:7,12,19,20,21; 9:1,16,22	employment (4) 6:17,20;7:3,4
access (2) 3:2,7	audit (1) 7:8	charges (2) 6:13,15	copy (1) 3:19	energy (11) 7:8;8:2,4,7,8,8,10, 11,14,15,22
accommodate (1) 7:11	August (1) 8:5	Chautauqua (3) 4:20,22;5:21	corporate (1) 4:4	ensure (1) 7:9
accordance (2) 9:2,12	Authorities (2) 2:10;4:13	clean (5) 8:3,6,8,14,14	costs (2) 7:23;8:20	EP (5) 4:16,20;5:18;6:3; 9:4
addition (3) 2:20;3:22;5:8	authority (5) 2:12;4:14;7:5,18; 9:15	close (3) 4:1;9:17;10:5	County (5) 4:20,22;5:9,22;6:7	Erie (1) 6:7
additional (3) 4:1,2;10:4	Authority's (10) 2:3;3:3,4;5:1,13; 6:19;7:14;9:2,7,9	closed (1) 10:2	create (2) 5:2,11	establishing (1) 8:6
Additionally (1) 7:10	authorized (1) 2:2	closure (1) 8:12	credits (4) 8:1,2,21,22	event (1) 7:15
afternoon (1) 2:1	average (1) 7:3	code (1) 4:5	current (2) 4:9;5:15	example (1) 6:23
agreed-upon (1) 6:17	awarded (2) 4:23;5:6	comments (5) 3:13;4:1,3;9:16; 10:4	customer (3) 2:4;7:22;9:22	executing (1) 2:11
Albany (1) 3:1	B	commercially-reasonable (1) 7:13	customers (4) 4:9;5:16;7:9;8:20	existing (1) 5:15
allocate (1) 4:14	base (1) 5:12	Commission (2) 8:6;9:13	customers' (2) 6:16;8:23	expand (1) 5:3
allocated (2) 4:20,21	based (1) 9:6	Commission's (1) 8:16	customer's (3) 6:20;7:16;8:2	expansion (1) 4:16
allocation (7) 5:1,18,23;6:3,8,20; 7:6	basis (1) 7:6	commitment (4) 5:19;6:5,17;7:5	D	expressly (1) 7:22
allocations (4) 5:15;9:2,5,11	below (1) 7:3	commitments (2) 5:2;6:21	dash (2) 4:4;9:3	extend (2) 5:22;6:8
allowing (1) 7:22	beverage (1) 6:6	committee (2) 2:17,19	DELINCE (1) 9:21	extension (3) 5:14,17;6:2
among (2) 8:8;9:9	beverages (1) 5:5	community (1) 2:9	delivery (2) 9:10,13	F
amount (2) 4:19;8:9	billing (2) 6:12;7:12	companies (1) 7:7	deposits (1) 7:15	facilities (1) 5:16
annual (2) 6:23;7:3	bills (1) 7:17	Company (7) 2:5,6;4:23;5:19; 6:4;9:23,23	direct (2) 6:12;7:12	facility (3) 5:9,21;7:8
anticipation (1) 8:15	Board (1) 2:3	company's (1) 7:2	directly (1) 4:14	failure (1) 7:16
appear (1) 3:21	bottled (1) 5:5	compel (1) 7:7	director (1) 2:9	fall (1) 7:3
appeared (1) 2:20	Brothers (4) 2:7;5:4,10;10:1	completed (2) 3:8,13	direct-sale (1) 7:18	faxed (1) 4:3
Apple (3) 2:7;5:4;10:1	Buffalo (2) 2:23,23	compliance (2) 7:1,3	Distributing (3) 2:6;6:4;9:23	fees (1) 7:15
applicable (1) 9:4	Business (5) 2:23;4:2;5:3;9:17; 10:5	concerning (1) 7:14	Dunkirk (2) 3:1;5:21	fifty (1) 4:15
approval (1) 3:15	businesses (2)	connection (2) 7:23;8:20	during (1) 3:4	final (1) 3:14
approved (5) 5:14,17;6:2;8:18;		consideration (1)		finance (1)

2:16 First (3) 2:12,23;6:11 five (2) 5:18;7:9 following (1) 2:21 food (1) 5:20 foot (1) 5:7 form (1) 8:18 forth (2) 2:11;3:10 forty (1) 5:7 forty-five (1) 4:17 forwarded (1) 3:14 four (3) 2:21;4:16;5:20 Friday (3) 4:2;9:17;10:5	implementation (1) 8:3 Inc (2) 10:1,1 include (4) 6:16,23;7:13,21 including (2) 7:19;8:19 Incorporated (5) 2:6,7;5:5;6:4,14 increasing (1) 8:9 incurred (1) 7:23 incurs (1) 8:20 Independent (1) 6:14 indicate (1) 3:17 insure (1) 9:8 intended (1) 8:7 invest (1) 5:10 investment (2) 6:18,21 issued (1) 8:6	leader (2) 2:16,18 leading (1) 2:22 least (5) 5:10,11,20;6:5;7:8 length (1) 3:20 level (2) 5:12,12 Lewiston (1) 2:23 light (1) 3:12 line (1) 5:8 load (2) 8:2,23 located (1) 4:18 Lorna (1) 3:19 Lou (1) 2:8	9:11 negotiated (1) 2:12 Nestle (3) 2:5;5:18;9:22 New (18) 2:3,9,10;4:5,8,8,9, 23;5:3,11,16,22;6:7, 13;7:19,21;8:11;9:3 News (1) 2:23 newspapers (1) 2:21 next (1) 3:10 Niagara (4) 2:22;4:10,19;5:9 night (1) 10:6 nineteen (2) 5:11,20 ninety (2) 7:2,4 ninety-two (1) 5:12 nonpayment (1) 7:11 notice (2) 2:13,14 notices (1) 2:20 nuclear (1) 8:13 NYISO (1) 6:14 NYPA (3) 3:11;8:14,20 NYPA's (3) 7:22;8:3,15 NYSEG (1) 9:12	3:21;8:6
G	J	M	O	P
Gazette (1) 2:22 generated (1) 4:10 generation (1) 8:10 given (2) 3:2,6 goals (2) 8:8,15 Good (2) 2:1;10:6 governor (2) 2:15;3:15 Grid (1) 9:11	January (3) 4:21;5:1,13 job (2) 7:1,1 jobs (4) 5:11,12,20;6:6 Johnson (1) 3:19 June (3) 5:23;6:8,9	mailed (1) 4:3 Main (1) 4:4 manufacturer (1) 5:5 manufacturing (1) 5:21 may (2) 3:20;4:14 Mayer (4) 2:6;5:4,10;10:1 means (1) 2:18 meet (1) 8:7 meeting (1) 8:17 megawatts (2) 4:15,17 met (1) 6:22 miles (1) 4:18 million (1) 5:11 minority (2) 2:16,18 monthly (1) 7:17	Observer (1) 3:2 office (2) 3:4,9 officially (1) 10:2 once (4) 2:21;3:7,13;7:8 one (3) 3:19;4:23;8:9 open (2) 3:23;10:4 operations (1) 6:6 Operator (1) 6:14 oral (2) 3:16,22 order (2)	PAONESSA (2) 2:1,8 participation (1) 8:16 pass-through (1) 8:19 payment (2) 7:15,16 percent (2) 7:2,4 perform (1) 7:7 period (1) 3:5 pertinent (1) 6:10 pet (1) 5:20 PetCare (3) 2:5;5:19;9:23 phase-in (1) 9:6 Plains (3) 3:4,8;4:5 plan (1) 3:16 plans (1) 5:7 plan's (2) 8:8,14 plants (1) 8:13 please (1) 3:18 PM (1) 10:8 point (3) 4:7;5:10;9:18 Porter (1) 3:1 Power (7) 2:3;4:16,17,19; 6:20;8:13;9:8 premature (1) 8:12 present (1) 4:7 Preservation (1) 9:8 president (1) 2:15 preventing (1) 8:11 previously (1) 10:3 prior (2) 2:12;3:5 pro (1) 2:15
H	K	N		
hearing (12) 2:2,13,14,22;3:5,6, 7,17,21,23;9:22;10:4 helping (1) 7:9 hot-fill (1) 5:8 hundred (7) 4:15,16;5:6,18,20; 6:3,5 hydropower (8) 2:5;4:10,23;5:15; 6:13;7:10;9:7,9	kilowatt (2) 5:18;6:3 kilowatts (1) 5:6 known (2) 4:16,17	name (1) 2:8 National (1)		
I	L			
	Lancaster (1) 6:7 Lastly (1) 9:1 late (1) 7:14 law (3) 2:2,10;4:13			

procedures (1) 2:11	4:17	8:5,16;9:3,5,10,13, 13	6:14	use (1) 7:10
process (1) 3:10	reporter (1) 3:20	set (1) 3:10	T	utilities' (1) 9:12
production (1) 5:8	reporting (1) 7:1	sets (1) 2:11	target (1) 9:6	utilization (1) 6:21
Products (3) 2:7;5:4;10:1	require (1) 7:15	several (1) 4:8	tariff (2) 9:3,5	W
program (2) 8:17;9:8	required (1) 2:2	shall (1) 4:21	tariffs (1) 9:14	ways (1) 2:18
programs (1) 9:10	requirement (1) 7:1	sheet (1) 3:18	taxes (1) 6:15	Web (1) 3:3
Project (2) 4:11,19	requires (1) 2:13	sign-in (1) 3:17	temp (1) 2:15	week (1) 2:21
proposed (7) 2:4;3:3,12;4:8; 6:11;9:16,22	respect (1) 6:17	site (1) 3:3	term (2) 5:22;6:8	weeks (1) 2:21
prorated (1) 7:6	result (1) 7:11	sixty-five (1) 6:5	terminate (1) 6:19	Western (5) 2:9;4:9;5:3,16;9:3
provide (1) 6:12	retain (3) 5:19;6:5,18	Somerset (1) 5:9	terms (2) 5:14;9:4	White (3) 3:4,8;4:5
provided (3) 2:14;4:19;9:11	return (1) 5:2	sources (1) 8:11	Therefore (1) 2:14	wholesaling (1) 6:6
provisions (5) 6:10;7:13,17,21; 8:19	review (1) 3:14	speaker (1) 2:17	thirty (1) 4:18	within (2) 4:18;7:9
public (10) 2:2,10;3:2,6,12; 4:12;8:5,16;9:12,21	revised (1) 8:18	speakers (1) 9:19	thirty-day (1) 3:5	written (2) 3:18,20
purchase (2) 8:1,21	right (2) 6:19;7:5	Specifically (2) 5:4,17	thousand (1) 5:7	www.nypagov (1) 3:8
Purina (3) 2:5;5:19;9:23	risk (2) 7:11;8:12	specifies (2) 9:4,5	three (2) 5:10;9:9	Y
	RP (3) 4:18;5:6;9:5	square (1) 5:7	three-year (1) 9:6	years (1) 7:9
R	S	standard (2) 8:4,7	threshold (2) 7:2,4	York (11) 2:3,10,10;4:5,9; 5:3,16;6:13;7:19; 8:11;9:3
rate (3) 9:6,6,7	sale (2) 2:4;4:10	State (3) 2:10;8:7,11	Times-Union (1) 3:1	Z
rates (1) 9:4	sale-for-resale (1) 4:15	stated (2) 9:15;10:3	today's (1) 3:5	zero (3) 8:1,12,21
recess (2) 9:18,20	sales (1) 7:19	statement (2) 3:16,18	town (1) 5:9	1
Recharge (1) 7:19	secretary (1) 4:4	statements (2) 3:20,22	transcript (1) 3:7	1 (1) 9:3
reconsider (1) 3:12	secretarysoffice@nypagov (1)	state's (2) 8:8,10	Transmission (1) 9:10	1005 (1) 4:13
reconvene (1) 9:18	Section (3) 2:10;3:11;4:13	stemming (1) 8:3	Trustees (8) 2:3;3:11,13;5:1,14, 17;6:2;8:18	1009 (2) 2:11;3:11
record (2) 3:23;10:3	sell (1) 4:14	step (1) 3:10	Try-It (3) 2:5;6:3;9:23	10601 (1) 4:5
recovery (1) 7:22	senate (2) 2:16,16	Street (1) 4:4	two (9) 4:15;5:6,10,14,15; 6:3,5;7:16;8:11	11 (1) 4:4
reduce (2) 6:19;7:5	senate's (1) 2:15	Subsection (1) 4:13	U	123 (1) 4:4
Regarding (1) 4:12	senior (1) 2:8	summarize (1) 6:10	ultimately (1) 9:8	13 (1) 4:13
relations (1) 2:9	sent (1) 2:14	summary (1) 4:8	under (1) 4:12	1987 (1) 4:21
remain (2) 3:23;10:4	Sentinel (1) 3:1	supply (1) 6:13	up (1) 2:22	1st (2)
renewable (3) 8:1,10,22	September (1) 8:17	support (1) 5:6	upstate (1) 8:12	
replacement (1)	serve (1) 9:1	supports (1) 8:14		
	Service (7)	System (1)		

4:21;8:5				
2				
2016 (2) 8:5,17 2017 (8) 4:2;5:2,13,23;6:9; 9:17,21;10:5 2020 (2) 6:1,9 27th (1) 8:17				
3				
30 (1) 5:23 30th (3) 5:23;6:8,9 31st (2) 5:2,13				
6				
6:31 (1) 10:8 6th (1) 9:21				
7				
7th (3) 4:2;9:17;10:5				
9				
914-390-8040 (1) 4:6				

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PUBLIC HEARING

Contracts for Sale of Hydropower to Potsdam Specialty
Paper, Inc., and Upstate Niagara Cooperative, Inc.

April 21, 2017

2:00 p.m to 6:00 p.m.

Frank S. McCullough, Jr. Hawkins Point Visitors Center

St. Lawrence/FDR Power Project

830 Barnhart Island

Massena, New York 13662

APPEARANCES

Patricia Wilson,
Northern New York Project Manager
New York Power Authority
Massena, New York 13662

Karen Delince,
Corporate Secretary
New York Power Authority
White Plains, New York 10601

Lorna Johnson,
Assistant Corporate Secretary
New York Power Authority
White Plains, New York 10601

1 April 21, 2017, 2:00 p.m.

2 MS. DELINCE: Good afternoon. This is a public
3 hearing required by law and authorized by the New York
4 Power Authority's Board of Trustees on the proposed
5 customer contracts for the sale of hydropower to
6 Potsdam Specialty Paper, Inc. and Upstate Niagara
7 Cooperative, Inc.

8 My name is Karen Delince and I'm the Authority's
9 Corporate Secretary. New York State Public
10 Authorities Law, Section 1009, sets forth procedures
11 for executing certain contracts negotiated by the
12 Authority. First, prior to the hearing, it requires
13 that notice of the hearing be provided. Therefore, a
14 notice was sent to the Governor, the Senate's
15 President Pro Temp, the Senate Minority Leader, the
16 Senate Finance Committee Chair, the Assembly Speaker,
17 the Assembly Minority Leader and the Assembly Ways and
18 Means Committee Chair.

19 In addition, notices appeared in the following
20 newspapers once a week for the four weeks leading up
21 to this hearing: Albany Times Union, Massena Daily
22 Courier-Observer, Ogdensburg Journal, Plattsburgh
23 Press Republican, Syracuse Post-Standard and Watertown

1 Daily Times. The public was also given access to the
2 proposed contracts on the Authority's website and at
3 the Authority's White Plains office during the 30-day
4 period prior to today's hearing. After the hearing,
5 the public will be given access to the hearing
6 transcript, once it is completed, at www.nypa.gov and
7 at the White Plains office.

8 The next step in the process set forth in section
9 1009 will be for the NYPA Trustees to reconsider the
10 proposed contracts in light of public comments. Once
11 the Trustees have completed their final review, the
12 contracts will be forwarded to the Governor for his
13 consideration and approval.

14 If you plan to make an oral statement at this
15 hearing, I ask that you so indicate on the sign-in
16 sheet. Also, if you have a written statement, please
17 give a copy to Lorna Johnson and one to the reporter.
18 Written statements may be of any length and will
19 appear in the record of the hearing in addition to
20 oral statements. The record of the hearing will
21 remain open for additional comments through close of
22 business Monday, April 24th, 2017. Additional
23 comments should be mailed, Faxed or e-mailed to the

1 Corporate Secretary at 123 Main Street, 11-P, White
2 Plains, New York 10601 or (914) 390-8040 or
3 secretarys.office@nypa.gov.

4 At this point I would like to introduce
5 Ms. Patricia Wilson, the Authority's Northern New York
6 Project Manager, who will provide additional details
7 on the proposed contracts.

8 MS. WILSON: Thank you. Good afternoon. My name
9 is Patricia Wilson and I am the Northern New York
10 Project Manager at the New York Power Authority. I am
11 here today to present an overview of a proposed
12 contract with Potsdam Specialty Paper, Inc., or PSPI,
13 located in Potsdam, St. Lawrence County, for the
14 direct sale of 400 kilowatts of Preservation Power;
15 hydropower that is generated here at the Authority's
16 St. Lawrence/FDR Power Project. In addition, I am
17 presenting a contract for Upstate Niagara Cooperative,
18 Inc., extending the term of the sale of 2,250
19 kilowatts of Preservation Power for use at Upstate
20 Niagara's North Lawrence facility also in St. Lawrence
21 County.

22 Preservation Power, established under Public
23 Authorities Law Section 1005, Subsection 13,

1 authorizes the Authority to allocate low-cost
2 hydropower that is relinquished from the block of 490
3 megawatts of St. Lawrence/FDR Power Project firm and
4 interruptible power currently sold to Alcoa and
5 formerly sold to General Motors. The law authorizes
6 the allocation of power to businesses in Northern New
7 York, specifically businesses located in Franklin,
8 Jefferson and St. Lawrence Counties, applying the same
9 allocation criteria as pertains to the Authority's
10 other hydropower programs, Replacement Power and
11 Expansion Power.

12 Each application for an allocation of
13 Preservation Power must be evaluated in consideration
14 of the legislative criteria that includes, but need
15 not be limited to, a consideration of the number of
16 jobs created as a result of the allocation; the
17 business' long-term commitment to the region as
18 evidenced by the current and/or planned capital
19 investment in the business' facilities in the region;
20 the ratio of the number of jobs to be created to the
21 amount of power requested; the types of jobs created,
22 as measured by wage and benefit levels; and the type
23 and cost of buildings, equipment and facilities to be

1 constructed, enlarged or installed.

2 At its meeting of January 31st, 2017, the Power
3 Authority's Board of Trustees approved an allocation
4 of 400 kilowatts of Preservation Power to PSPI for a
5 term of seven years. Approval of the allocation was
6 based on an evaluation of PSPI's application for
7 hydropower, in which it proposed to invest at least \$2
8 million to expand its existing facility. PSPI
9 committed to create a total of at least 22 new jobs as
10 a result of this expansion, above its current 67 base
11 jobs.

12 In addition, at its January 31st, 2017 meeting,
13 the Trustees approved an extension of the 2,250
14 kilowatt allocation of Preservation Power to Upstate
15 Niagara Cooperative for its commitment to retain at
16 least 80 jobs at its North Lawrence facility. The
17 allocation, originally awarded in May 2011, helped
18 Upstate Niagara invest in and re-open the dairy
19 processing plant that had been shuttered in January
20 2011. The new contract will extend the term of the
21 allocation from April 30th, 2017 to June 30th, 2020.

22 To summarize some of the pertinent provisions of
23 the proposed contracts, first, they provide for the

1 direct billing of all hydropower supply charges, all
2 New York Independent System Operator, Inc. charges and
3 taxes. To accommodate non-payment risk that could
4 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 payments for any two
9 monthly bills.

10 The contracts include the companies' commitments
11 with respect to employment and capital investment and
12 retain the Authority's right to reduce or terminate
13 the allocation if employment, power utilization or
14 capital investment commitments are not met. For
15 example, the contracts include an annual job reporting
16 requirement and a job compliance threshold of 90
17 percent. Should a company's average annual employment
18 fall below the compliance threshold of 90 percent of
19 the employment commitment, the Authority has the right
20 to reduce the allocation on a pro rata basis. The
21 contracts also require a company to perform an energy
22 audit at its facility at least once within five years,
23 helping to ensure the customer uses the hydropower

1 efficiently. This contract provision is consistent
2 with other Authority direct sale contracts, including
3 the Western New York and Recharge New York sales
4 contracts.

5 The contracts also include new provisions
6 expressly allowing NYPA's recovery from the customer
7 of any costs incurred in connection with the purchase
8 of Zero Emission Credits and Renewable Energy Credits
9 attributable to the customer's load, stemming from
10 NYPA's implementation of the Clean Energy Standard, or
11 CES.

12 On August 1st, 2016 the Public Service Commission
13 issued the 'CES Order' establishing a clean energy
14 standard for the State, intended to meet the State
15 Energy Plan's clean energy goals by, among other
16 things: One, increasing the amount of the State's
17 energy generation that comes from renewable energy
18 sources in New York State; and two, preventing the
19 premature closure of Upstate, at risk, zero emission
20 nuclear power plants.

21 NYPA supports the State Energy Plan's clean
22 energy goals, and in anticipation of NYPA's
23 participation in the Public Service Commission's CES

1 program, at its September 27th, 2016 meeting the
2 Trustees approved a revised form of contract,
3 including provisions for the pass through to customers
4 of any costs NYPA incurs in connection with the
5 purchase of Zero Emission Credits and Renewable Energy
6 Credits attributable to the customers' load.

7 Lastly, the Authority will provide firm electric
8 service from the St. Lawrence/FDR plant, which is
9 subject to pro rata curtailment when there is
10 insufficient generation at the Niagara and St.
11 Lawrence/FDR facilities to meet all its firm load
12 requirements. The rates, terms and conditions for the
13 sale of Preservation Power are contained in the
14 Authority's "Schedule of Rates For Sale of Firm Power
15 to Preservation Power Customers - Service Tariff No.
16 10." Delivery service will be provided and billed by
17 the local utility, National Grid, in accordance with
18 its Public Service Commission approved delivery
19 service tariff.

20 As Ms. Delince stated earlier, the Authority will
21 accept your comments on the proposed contracts until
22 the close of business Monday. I will now turn the
23 forum back to Ms. Delince.

1 MS. DELINCE: Thank you, Ms. Wilson. We will
2 recess now and reconvene when speakers arrive.

3 (Recess from 2:13 p.m. to 6:00 p.m.)

4 MS. DELINCE: The April 21st, 2017 public hearing
5 of the Proposed Customer Contract for Potsdam
6 Specialty Paper, Inc. and Upstate Niagara Cooperative,
7 Inc. is now officially closed. As previously stated,
8 the record of the hearing will remain open for
9 additional comments through close of business Monday
10 April 24th, 2017. Thank you and good night.

11

12 (End of Public Hearing at 6:01 p.m.)

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1 STATE OF NEW YORK)
2 COUNTY OF ST. LAWRENCE)

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4

5 I, Heidi C. Simmons, a Notary Public in the state of
6 New York, do hereby certify that the foregoing public
7 hearing was taken before me at the place as stated in the
8 caption hereto, at Page 1 hereof; that the foregoing
9 typewritten transcription, consisting of pages numbered 3
10 to 11, inclusive, was produced to the best of my ability of
11 said hearing.

12 IN WITNESS WHEREOF, I have hereunto subscribed my name
13 this, the 23rd day of April, 2017.

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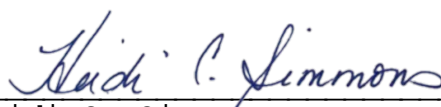
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Heidi C. Simmons, Notary Public
State of New York
County of St. Lawrence
My commission expires: 08/27/17

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
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	

Exhibit 4b ii-B
May 2, 2017

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

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

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

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

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

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

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

I.Billing Energy

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

J.Contract Demand

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

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

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

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

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges (“NYISO Charges”)

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

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

B. Marginal losses;

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

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

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

G. Rendition and Payment of Bills

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

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

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

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

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

Exhibit 4b ii-C

NEW YORK STATE POWER AUTHORITY

Public Hearing
April 6, 2017



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NEW YORK STATE POWER AUTHORITY

Thursday, April 6, 2017

2:30 P.M. - 6:30 P.M.

Niagara Power Project Visitors' Center

5777 Lewiston Road

Lewiston, New York 14092

APPEARANCES:

LOU PAONESSA,
Senior Director, Community Relations

LORNA JOHNSON,
NYPA Senior Associate Corporate Secretary

KAREN DELINCE,
NYPA Corporate Secretary

RICHARD SMITH,
Business and Project Development Director

PRESENT:

BARBARA BUYERS, CSR, RPR,
Notary Public.

1 MR. PAONESSA: Good afternoon. This is a
2 public hearing required by law and authorized by the
3 New York Power Authority's Board of Trustees on the
4 proposed customer contracts for the sale of
5 hydropower to Nestle Purina PetCare Company, Try-It
6 Distributing Company, Incorporated and Mayer
7 Brothers Apple Products, Incorporated.

8 My name is Lou Paonessa, and I am the senior
9 director of community relations for Western New
10 York. New York State Public Authorities Law Section
11 1009 sets forth procedures for executing certain
12 contracts negotiated by the authority. First, prior
13 to the hearing, it requires that notice of the
14 hearing be provided. Therefore, a notice was sent
15 to the governor, the senate's president pro temp,
16 the senate minority leader and the senate finance
17 committee chair, the assembly speaker, the assembly
18 minority leader and the assembly ways and means
19 committee chair.

20 In addition, notices appeared in the
21 following newspapers once a week for the four weeks
22 leading up to this hearing: The Niagara Gazette,
23 Buffalo News, Buffalo Business First, Lewiston

1 Porter Sentinel, Albany Times-Union, Dunkirk
2 Observer. The public was also given access to the
3 proposed contracts on the authority's Web site and
4 at the authority's White Plains office during the
5 thirty-day period prior to today's hearing.

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

10 The next step in the process set forth in
11 Section 1009 will be for the NYPA trustees to
12 reconsider the proposed contracts in light of public
13 comments. Once the trustees have completed their
14 final review, the contracts will be forwarded to the
15 governor for his consideration and approval.

16 If you plan to make an oral statement at this
17 hearing, I ask that you so indicate on the sign-in
18 sheet. Also, if you have a written statement please
19 give a copy to Lorna Johnson and one to the
20 reporter. Written statements may be of any length
21 and will appear in the order of the hearing in
22 addition to oral statements.

23 The record of the hearing will remain open

1 for additional comments through the close of
2 business Friday, April 7th, 2017. Additional
3 comments should be mailed, faxed or e-mailed to the
4 corporate secretary at 123 Main Street, 11 dash P,
5 White Plains, New York 10601 or area code
6 914-390-8040 or secretarys.office@nypa.gov.

7 At this point, I would like to present a
8 summary of proposed new contracts for several new
9 and current customers here in Western New York for
10 the sale of hydropower generated here at the Niagara
11 Project.

12 Regarding the contracts, under Public
13 Authorities Law Section 1005, Subsection 13, the
14 authority may allocate and sell, directly or by
15 sale-for-resale, two hundred fifty megawatts of
16 expansion power, known as EP, and four hundred
17 forty-five megawatts of replacement power, known as
18 RP, to businesses located within thirty miles of the
19 Niagara Power Project, provided that the amount of
20 EP allocated to businesses in Chautauqua County on
21 January 1st, 1987 shall continue to be allocated in
22 Chautauqua County.

23 One company was awarded a new hydropower

1 allocation by the authority's trustees on January
2 31st, 2017 in return for commitments made to create
3 or expand its business in Western New York.

4 Specifically, Mayer Brothers Apple Products,
5 Incorporated, a manufacturer of bottled beverages,
6 was awarded two hundred kilowatts of RP in support
7 of plans to construct a forty thousand square foot
8 addition and hot-fill production line at its
9 facility in the town of Somerset, Niagara County.
10 Mayer Brothers will invest at least three point two
11 million and create at least nineteen new jobs above
12 its base level jobs level of ninety-two.

13 Also on January 31st, 2017, the authority's
14 trustees approved an extension to the terms of two
15 existing hydropower allocations to two current
16 customers with facilities in Western New York.
17 Specifically, the trustees approved an extension of
18 the five hundred kilowatt allocation of EP to Nestle
19 Purina PetCare Company for its commitment to retain
20 at least four hundred nineteen jobs at its pet food
21 manufacturing facility in Dunkirk, Chautauqua
22 County. The new contract will extend the term of
23 the allocation from April 30, 2017 to June 30th,

1 2020.

2 The trustees also approved an extension of
3 the two hundred kilowatt allocation of EP to Try-It
4 Distributing Company, Incorporated for its
5 commitment to retain at least two hundred sixty-five
6 jobs at its beverage wholesaling operations in
7 Lancaster, Erie County. The new contract will
8 extend the term of the allocation from June 30th,
9 2017 to June 30th, 2020.

10 To summarize some of the pertinent provisions
11 in each of the proposed contracts, first the
12 contracts provide for the direct billing of all
13 hydropower supply charges and all New York
14 Independent System Operator, Incorporated, NYISO,
15 charges and taxes.

16 The contracts include the customers'
17 agreed-upon commitment with respect to employment
18 and capital investment. The contracts retain the
19 authority's right to reduce or terminate a
20 customer's allocation if employment, power
21 utilization or capital investment commitments are
22 not met.

23 For example, the contracts include an annual

1 job reporting requirement and a job compliance
2 threshold of ninety percent. Should a company's
3 average annual employment fall below the compliance
4 threshold of ninety percent of the employment
5 commitment, the authority has the right to reduce
6 the allocation on a prorated basis.

7 The contracts compel the companies to perform
8 an energy audit at their facility at least once
9 within five years, helping to ensure the customers
10 use the hydropower efficiently. Additionally, to
11 accommodate nonpayment risk that could result from
12 the direct billing arrangement, the contracts
13 include commercially-reasonable provisions
14 concerning the authority's ability to charge late
15 payment fees and to require deposits in the event of
16 a customer's failure to make payment for any two
17 monthly bills. These contract provisions are
18 consistent with other authority direct-sale
19 contracts, including the Recharge New York sales
20 contracts.

21 The contracts also include new provisions
22 expressly allowing NYPA's recovery from the customer
23 of any costs incurred in connection with the

1 purchase of zero emission credits and renewable
2 energy credits attributable to the customer's load
3 stemming from NYPA's implementation of the clean
4 energy standard, or CES.

5 On August 1st, 2016, the Public Service
6 Commission issued the CES order establishing a clean
7 energy standard for the state intended to meet the
8 state's energy plan's clean energy goals by, among
9 other things, one, increasing the amount of the
10 state's energy generation that comes from renewable
11 energy sources in New York State and two, preventing
12 the premature closure of upstate at risk zero
13 emission nuclear power plants.

14 NYPA supports the clean energy plan's clean
15 energy goals and in anticipation of NYPA's
16 participation in the Public Service Commission's CES
17 program at its September 27th, 2016 meeting, the
18 trustees approved a revised form of contract
19 including provisions for the pass-through to
20 customers of any costs NYPA incurs in connection
21 with the purchase of zero emission credits and
22 renewable energy credits attributable to the
23 customers' load.

1 Lastly, the contracts will serve the
2 allocations in accordance with the authority's
3 service tariff Western New York dash 1, which
4 specifies rates and other terms applicable to all EP
5 and RP allocations. The service tariff specifies a
6 three-year rate phase-in to a target rate based on
7 the rate of the authority's other hydropower
8 program, Preservation Power, to ultimately insure
9 consistency among the authority's three hydropower
10 programs. Transmission and delivery service for
11 these allocations will be provided by National Grid
12 or NYSEG in accordance with the utilities' Public
13 Service Commission approved delivery service
14 tariffs.

15 As I stated earlier, the authority will
16 accept comments on the proposed contracts until the
17 close of business on Friday, April 7th, 2017. At
18 this point, we will now recess and reconvene when
19 speakers arrive.

20 (A recess was then taken.)

21 MS. DELINCE: The April 6th, 2017 public
22 hearing on proposed customer contracts for Nestle
23 Purina PetCare Company, Try-It Distributing Company,

1 Inc. and Mayer Brothers Apple Products, Inc. is now
2 officially closed.

3 As previously stated, the record of the
4 hearing will remain open for additional comments
5 through close of business Friday, April 7th, 2017.

6 Thank you, and good night.

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8 ***** (6:31 P.M.) *****

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1 STATE OF NEW YORK
2 COUNTY OF ERIE

3 I, Barbara Buyers, 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
7 deposition, duly sworn to testify the truth, the
8 whole truth and nothing but the truth; that such
9 testimony was taken pursuant to notice at the time
10 and place herein set forth; that said testimony was
11 taken down in shorthand by me and thereafter under
12 my supervision transcribed into the English
13 language, and I hereby certify the foregoing
14 testimony is a full, true and correct transcription
15 of the shorthand notes so taken.

16 I further certify that I am neither counsel for
17 nor related to any parties to said action, nor in
18 anywise interested in the outcome thereof.

19 IN WITNESS WHEREOF, I have hereunto subscribed
20 my name this 18th day of April, 2017.

21
22
23


Notary Public
State of New York

	9:13	4:18,20	3:15	
*	April (5) 4:2;5:23;9:17,21; 10:5	C	consistency (1) 9:9	E
**** (2) 10:8,8	area (1) 4:5	capital (2) 6:18,21	consistent (1) 7:18	earlier (1) 9:15
A	arrangement (1) 7:12	certain (1) 2:11	construct (1) 5:7	efficiently (1) 7:10
ability (1) 7:14	arrive (1) 9:19	CES (3) 8:4,6,16	continue (1) 4:21	e-mailed (1) 4:3
above (1) 5:11	assembly (3) 2:17,17,18	chair (2) 2:17,19	contract (4) 5:22;6:7;7:17;8:18	emission (3) 8:1,13,21
accept (1) 9:16	attributable (2) 8:2,22	charge (1) 7:14	contracts (20) 2:4,12;3:3,12,14; 4:8,12;6:11,12,16,18, 23;7:7,12,19,20,21; 9:1,16,22	employment (4) 6:17,20;7:3,4
access (2) 3:2,7	audit (1) 7:8	charges (2) 6:13,15	copy (1) 3:19	energy (11) 7:8;8:2,4,7,8,8,10, 11,14,15,22
accommodate (1) 7:11	August (1) 8:5	Chautauqua (3) 4:20,22;5:21	corporate (1) 4:4	ensure (1) 7:9
accordance (2) 9:2,12	Authorities (2) 2:10;4:13	clean (5) 8:3,6,8,14,14	costs (2) 7:23;8:20	EP (5) 4:16,20;5:18;6:3; 9:4
addition (3) 2:20;3:22;5:8	authority (5) 2:12;4:14;7:5,18; 9:15	close (3) 4:1;9:17;10:5	County (5) 4:20,22;5:9,22;6:7	Erie (1) 6:7
additional (3) 4:1,2;10:4	Authority's (10) 2:3;3:3,4;5:1,13; 6:19;7:14;9:2,7,9	closed (1) 10:2	create (2) 5:2,11	establishing (1) 8:6
Additionally (1) 7:10	authorized (1) 2:2	closure (1) 8:12	credits (4) 8:1,2,21,22	event (1) 7:15
afternoon (1) 2:1	average (1) 7:3	code (1) 4:5	current (2) 4:9;5:15	example (1) 6:23
agreed-upon (1) 6:17	awarded (2) 4:23;5:6	comments (5) 3:13;4:1,3;9:16; 10:4	customer (3) 2:4;7:22;9:22	executing (1) 2:11
Albany (1) 3:1	B	commercially-reasonable (1) 7:13	customers (4) 4:9;5:16;7:9;8:20	existing (1) 5:15
allocate (1) 4:14	base (1) 5:12	Commission (2) 8:6;9:13	customers' (2) 6:16;8:23	expand (1) 5:3
allocated (2) 4:20,21	based (1) 9:6	Commission's (1) 8:16	customer's (3) 6:20;7:16;8:2	expansion (1) 4:16
allocation (7) 5:1,18,23;6:3,8,20; 7:6	basis (1) 7:6	commitment (4) 5:19;6:5,17;7:5	D	expressly (1) 7:22
allocations (4) 5:15;9:2,5,11	below (1) 7:3	commitments (2) 5:2;6:21	dash (2) 4:4;9:3	extend (2) 5:22;6:8
allowing (1) 7:22	beverage (1) 6:6	committee (2) 2:17,19	DELINCE (1) 9:21	extension (3) 5:14,17;6:2
among (2) 8:8;9:9	beverages (1) 5:5	community (1) 2:9	delivery (2) 9:10,13	F
amount (2) 4:19;8:9	billing (2) 6:12;7:12	companies (1) 7:7	deposits (1) 7:15	facilities (1) 5:16
annual (2) 6:23;7:3	bills (1) 7:17	Company (7) 2:5,6;4:23;5:19; 6:4;9:23,23	direct (2) 6:12;7:12	facility (3) 5:9,21;7:8
anticipation (1) 8:15	Board (1) 2:3	company's (1) 7:2	directly (1) 4:14	failure (1) 7:16
appear (1) 3:21	bottled (1) 5:5	compel (1) 7:7	director (1) 2:9	fall (1) 7:3
appeared (1) 2:20	Brothers (4) 2:7;5:4,10;10:1	completed (2) 3:8,13	direct-sale (1) 7:18	faxed (1) 4:3
Apple (3) 2:7;5:4;10:1	Buffalo (2) 2:23,23	compliance (2) 7:1,3	Distributing (3) 2:6;6:4;9:23	fees (1) 7:15
applicable (1) 9:4	Business (5) 2:23;4:2;5:3;9:17; 10:5	concerning (1) 7:14	Dunkirk (2) 3:1;5:21	fifty (1) 4:15
approval (1) 3:15	businesses (2)	connection (2) 7:23;8:20	during (1) 3:4	final (1) 3:14
approved (5) 5:14,17;6:2;8:18;		consideration (1)		finance (1)

2:16 First (3) 2:12,23;6:11 five (2) 5:18;7:9 following (1) 2:21 food (1) 5:20 foot (1) 5:7 form (1) 8:18 forth (2) 2:11;3:10 forty (1) 5:7 forty-five (1) 4:17 forwarded (1) 3:14 four (3) 2:21;4:16;5:20 Friday (3) 4:2;9:17;10:5	implementation (1) 8:3 Inc (2) 10:1,1 include (4) 6:16,23;7:13,21 including (2) 7:19;8:19 Incorporated (5) 2:6,7;5:5;6:4,14 increasing (1) 8:9 incurred (1) 7:23 incurs (1) 8:20 Independent (1) 6:14 indicate (1) 3:17 insure (1) 9:8 intended (1) 8:7 invest (1) 5:10 investment (2) 6:18,21 issued (1) 8:6	leader (2) 2:16,18 leading (1) 2:22 least (5) 5:10,11,20;6:5;7:8 length (1) 3:20 level (2) 5:12,12 Lewiston (1) 2:23 light (1) 3:12 line (1) 5:8 load (2) 8:2,23 located (1) 4:18 Lorna (1) 3:19 Lou (1) 2:8	9:11 negotiated (1) 2:12 Nestle (3) 2:5;5:18;9:22 New (18) 2:3,9,10;4:5,8,8,9, 23;5:3,11,16,22;6:7, 13;7:19,21;8:11;9:3 News (1) 2:23 newspapers (1) 2:21 next (1) 3:10 Niagara (4) 2:22;4:10,19;5:9 night (1) 10:6 nineteen (2) 5:11,20 ninety (2) 7:2,4 ninety-two (1) 5:12 nonpayment (1) 7:11 notice (2) 2:13,14 notices (1) 2:20 nuclear (1) 8:13 NYISO (1) 6:14 NYPA (3) 3:11;8:14,20 NYPA's (3) 7:22;8:3,15 NYSEG (1) 9:12	3:21;8:6
G	J	M	O	P
Gazette (1) 2:22 generated (1) 4:10 generation (1) 8:10 given (2) 3:2,6 goals (2) 8:8,15 Good (2) 2:1;10:6 governor (2) 2:15;3:15 Grid (1) 9:11	January (3) 4:21;5:1,13 job (2) 7:1,1 jobs (4) 5:11,12,20;6:6 Johnson (1) 3:19 June (3) 5:23;6:8,9	mailed (1) 4:3 Main (1) 4:4 manufacturer (1) 5:5 manufacturing (1) 5:21 may (2) 3:20;4:14 Mayer (4) 2:6;5:4,10;10:1 means (1) 2:18 meet (1) 8:7 meeting (1) 8:17 megawatts (2) 4:15,17 met (1) 6:22 miles (1) 4:18 million (1) 5:11 minority (2) 2:16,18 monthly (1) 7:17	Observer (1) 3:2 office (2) 3:4,9 officially (1) 10:2 once (4) 2:21;3:7,13;7:8 one (3) 3:19;4:23;8:9 open (2) 3:23;10:4 operations (1) 6:6 Operator (1) 6:14 oral (2) 3:16,22 order (2)	PAONESSA (2) 2:1,8 participation (1) 8:16 pass-through (1) 8:19 payment (2) 7:15,16 percent (2) 7:2,4 perform (1) 7:7 period (1) 3:5 pertinent (1) 6:10 pet (1) 5:20 PetCare (3) 2:5;5:19;9:23 phase-in (1) 9:6 Plains (3) 3:4,8;4:5 plan (1) 3:16 plans (1) 5:7 plan's (2) 8:8,14 plants (1) 8:13 please (1) 3:18 PM (1) 10:8 point (3) 4:7;5:10;9:18 Porter (1) 3:1 Power (7) 2:3;4:16,17,19; 6:20;8:13;9:8 premature (1) 8:12 present (1) 4:7 Preservation (1) 9:8 president (1) 2:15 preventing (1) 8:11 previously (1) 10:3 prior (2) 2:12;3:5 pro (1) 2:15
H	K	N		
hearing (12) 2:2,13,14,22;3:5,6, 7,17,21,23;9:22;10:4 helping (1) 7:9 hot-fill (1) 5:8 hundred (7) 4:15,16;5:6,18,20; 6:3,5 hydropower (8) 2:5;4:10,23;5:15; 6:13;7:10;9:7,9	kilowatt (2) 5:18;6:3 kilowatts (1) 5:6 known (2) 4:16,17	name (1) 2:8 National (1)		
I	L			
	Lancaster (1) 6:7 Lastly (1) 9:1 late (1) 7:14 law (3) 2:2,10;4:13			

procedures (1) 2:11	4:17	8:5,16;9:3,5,10,13, 13	6:14	use (1) 7:10
process (1) 3:10	reporter (1) 3:20	set (1) 3:10	T	utilities' (1) 9:12
production (1) 5:8	reporting (1) 7:1	sets (1) 2:11	target (1) 9:6	utilization (1) 6:21
Products (3) 2:7;5:4;10:1	require (1) 7:15	several (1) 4:8	tariff (2) 9:3,5	W
program (2) 8:17;9:8	required (1) 2:2	shall (1) 4:21	tariffs (1) 9:14	ways (1) 2:18
programs (1) 9:10	requirement (1) 7:1	sheet (1) 3:18	taxes (1) 6:15	Web (1) 3:3
Project (2) 4:11,19	requires (1) 2:13	sign-in (1) 3:17	temp (1) 2:15	week (1) 2:21
proposed (7) 2:4;3:3,12;4:8; 6:11;9:16,22	respect (1) 6:17	site (1) 3:3	term (2) 5:22;6:8	weeks (1) 2:21
prorated (1) 7:6	result (1) 7:11	sixty-five (1) 6:5	terminate (1) 6:19	Western (5) 2:9;4:9;5:3,16;9:3
provide (1) 6:12	retain (3) 5:19;6:5,18	Somerset (1) 5:9	terms (2) 5:14;9:4	White (3) 3:4,8;4:5
provided (3) 2:14;4:19;9:11	return (1) 5:2	sources (1) 8:11	Therefore (1) 2:14	wholesaling (1) 6:6
provisions (5) 6:10;7:13,17,21; 8:19	review (1) 3:14	speaker (1) 2:17	thirty (1) 4:18	within (2) 4:18;7:9
public (10) 2:2,10;3:2,6,12; 4:12;8:5,16;9:12,21	revised (1) 8:18	speakers (1) 9:19	thirty-day (1) 3:5	written (2) 3:18,20
purchase (2) 8:1,21	right (2) 6:19;7:5	Specifically (2) 5:4,17	thousand (1) 5:7	wwwnypagov (1) 3:8
Purina (3) 2:5;5:19;9:23	risk (2) 7:11;8:12	specifies (2) 9:4,5	three (2) 5:10;9:9	Y
R	RP (3) 4:18;5:6;9:5	square (1) 5:7	three-year (1) 9:6	years (1) 7:9
rate (3) 9:6,6,7	S	standard (2) 8:4,7	threshold (2) 7:2,4	York (11) 2:3,10,10;4:5,9; 5:3,16;6:13;7:19; 8:11;9:3
rates (1) 9:4	sale (2) 2:4;4:10	State (3) 2:10;8:7,11	Times-Union (1) 3:1	Z
recess (2) 9:18,20	sale-for-resale (1) 4:15	stated (2) 9:15;10:3	today's (1) 3:5	zero (3) 8:1,12,21
Recharge (1) 7:19	sales (1) 7:19	statement (2) 3:16,18	town (1) 5:9	1
reconsider (1) 3:12	secretary (1) 4:4	statements (2) 3:20,22	transcript (1) 3:7	1 (1) 9:3
reconvene (1) 9:18	secretarysoffice@nypagov (1)	state's (2) 8:8,10	Transmission (1) 9:10	1005 (1) 4:13
record (2) 3:23;10:3	Section (3) 2:10;3:11;4:13	stemming (1) 8:3	Trustees (8) 2:3;3:11,13;5:1,14, 17;6:2;8:18	1009 (2) 2:11;3:11
recovery (1) 7:22	sell (1) 4:14	step (1) 3:10	Try-It (3) 2:5;6:3;9:23	10601 (1) 4:5
reduce (2) 6:19;7:5	senate (2) 2:16,16	Street (1) 4:4	two (9) 4:15;5:6,10,14,15; 6:3,5;7:16;8:11	11 (1) 4:4
Regarding (1) 4:12	senate's (1) 2:15	Subsection (1) 4:13	U	123 (1) 4:4
relations (1) 2:9	senior (1) 2:8	summarize (1) 6:10	ultimately (1) 9:8	13 (1) 4:13
remain (2) 3:23;10:4	sent (1) 2:14	summary (1) 4:8	under (1) 4:12	1987 (1) 4:21
renewable (3) 8:1,10,22	Sentinel (1) 3:1	supply (1) 6:13	up (1) 2:22	1st (2)
replacement (1)	September (1) 8:17	support (1) 5:6	upstate (1) 8:12	
	serve (1) 9:1	supports (1) 8:14		
	Service (7)	System (1)		

4:21;8:5				
2				
2016 (2) 8:5,17 2017 (8) 4:2;5:2,13,23;6:9; 9:17,21;10:5 2020 (2) 6:1,9 27th (1) 8:17				
3				
30 (1) 5:23 30th (3) 5:23;6:8,9 31st (2) 5:2,13				
6				
6:31 (1) 10:8 6th (1) 9:21				
7				
7th (3) 4:2;9:17;10:5				
9				
914-390-8040 (1) 4:6				

New York Power Authority
Contract for the Sale of Preservation Power - Transmittal to the Governor

Exhibit "4b iii-A"
May 2, 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
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	

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

Table of Contents

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

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

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PUBLIC HEARING

Contracts for Sale of Hydropower to Potsdam Specialty
Paper, Inc., and Upstate Niagara Cooperative, Inc.

April 21, 2017

2:00 p.m to 6:00 p.m.

Frank S. McCullough, Jr. Hawkins Point Visitors Center

St. Lawrence/FDR Power Project

830 Barnhart Island

Massena, New York 13662

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APPEARANCES

Patricia Wilson,
Northern New York Project Manager
New York Power Authority
Massena, New York 13662

Karen Delince,
Corporate Secretary
New York Power Authority
White Plains, New York 10601

Lorna Johnson,
Assistant Corporate Secretary
New York Power Authority
White Plains, New York 10601

1 April 21, 2017, 2:00 p.m.

2 MS. DELINCE: Good afternoon. This is a public
3 hearing required by law and authorized by the New York
4 Power Authority's Board of Trustees on the proposed
5 customer contracts for the sale of hydropower to
6 Potsdam Specialty Paper, Inc. and Upstate Niagara
7 Cooperative, Inc.

8 My name is Karen Delince and I'm the Authority's
9 Corporate Secretary. New York State Public
10 Authorities Law, Section 1009, sets forth procedures
11 for executing certain contracts negotiated by the
12 Authority. First, prior to the hearing, it requires
13 that notice of the hearing be provided. Therefore, a
14 notice was sent to the Governor, the Senate's
15 President Pro Temp, the Senate Minority Leader, the
16 Senate Finance Committee Chair, the Assembly Speaker,
17 the Assembly Minority Leader and the Assembly Ways and
18 Means Committee Chair.

19 In addition, notices appeared in the following
20 newspapers once a week for the four weeks leading up
21 to this hearing: Albany Times Union, Massena Daily
22 Courier-Observer, Ogdensburg Journal, Plattsburgh
23 Press Republican, Syracuse Post-Standard and Watertown

1 Daily Times. The public was also given access to the
2 proposed contracts on the Authority's website and at
3 the Authority's White Plains office during the 30-day
4 period prior to today's hearing. After the hearing,
5 the public will be given access to the hearing
6 transcript, once it is completed, at www.nypa.gov and
7 at the White Plains office.

8 The next step in the process set forth in section
9 1009 will be for the NYPA Trustees to reconsider the
10 proposed contracts in light of public comments. Once
11 the Trustees have completed their final review, the
12 contracts will be forwarded to the Governor for his
13 consideration and approval.

14 If you plan to make an oral statement at this
15 hearing, I ask that you so indicate on the sign-in
16 sheet. Also, if you have a written statement, please
17 give a copy to Lorna Johnson and one to the reporter.
18 Written statements may be of any length and will
19 appear in the record of the hearing in addition to
20 oral statements. The record of the hearing will
21 remain open for additional comments through close of
22 business Monday, April 24th, 2017. Additional
23 comments should be mailed, Faxed or e-mailed to the

1 Corporate Secretary at 123 Main Street, 11-P, White
2 Plains, New York 10601 or (914) 390-8040 or
3 secretarys.office@nypa.gov.

4 At this point I would like to introduce
5 Ms. Patricia Wilson, the Authority's Northern New York
6 Project Manager, who will provide additional details
7 on the proposed contracts.

8 MS. WILSON: Thank you. Good afternoon. My name
9 is Patricia Wilson and I am the Northern New York
10 Project Manager at the New York Power Authority. I am
11 here today to present an overview of a proposed
12 contract with Potsdam Specialty Paper, Inc., or PSPI,
13 located in Potsdam, St. Lawrence County, for the
14 direct sale of 400 kilowatts of Preservation Power;
15 hydropower that is generated here at the Authority's
16 St. Lawrence/FDR Power Project. In addition, I am
17 presenting a contract for Upstate Niagara Cooperative,
18 Inc., extending the term of the sale of 2,250
19 kilowatts of Preservation Power for use at Upstate
20 Niagara's North Lawrence facility also in St. Lawrence
21 County.

22 Preservation Power, established under Public
23 Authorities Law Section 1005, Subsection 13,

1 authorizes the Authority to allocate low-cost
2 hydropower that is relinquished from the block of 490
3 megawatts of St. Lawrence/FDR Power Project firm and
4 interruptible power currently sold to Alcoa and
5 formerly sold to General Motors. The law authorizes
6 the allocation of power to businesses in Northern New
7 York, specifically businesses located in Franklin,
8 Jefferson and St. Lawrence Counties, applying the same
9 allocation criteria as pertains to the Authority's
10 other hydropower programs, Replacement Power and
11 Expansion Power.

12 Each application for an allocation of
13 Preservation Power must be evaluated in consideration
14 of the legislative criteria that includes, but need
15 not be limited to, a consideration of the number of
16 jobs created as a result of the allocation; the
17 business' long-term commitment to the region as
18 evidenced by the current and/or planned capital
19 investment in the business' facilities in the region;
20 the ratio of the number of jobs to be created to the
21 amount of power requested; the types of jobs created,
22 as measured by wage and benefit levels; and the type
23 and cost of buildings, equipment and facilities to be

1 constructed, enlarged or installed.

2 At its meeting of January 31st, 2017, the Power
3 Authority's Board of Trustees approved an allocation
4 of 400 kilowatts of Preservation Power to PSPI for a
5 term of seven years. Approval of the allocation was
6 based on an evaluation of PSPI's application for
7 hydropower, in which it proposed to invest at least \$2
8 million to expand its existing facility. PSPI
9 committed to create a total of at least 22 new jobs as
10 a result of this expansion, above its current 67 base
11 jobs.

12 In addition, at its January 31st, 2017 meeting,
13 the Trustees approved an extension of the 2,250
14 kilowatt allocation of Preservation Power to Upstate
15 Niagara Cooperative for its commitment to retain at
16 least 80 jobs at its North Lawrence facility. The
17 allocation, originally awarded in May 2011, helped
18 Upstate Niagara invest in and re-open the dairy
19 processing plant that had been shuttered in January
20 2011. The new contract will extend the term of the
21 allocation from April 30th, 2017 to June 30th, 2020.

22 To summarize some of the pertinent provisions of
23 the proposed contracts, first, they provide for the

1 direct billing of all hydropower supply charges, all
2 New York Independent System Operator, Inc. charges and
3 taxes. To accommodate non-payment risk that could
4 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 payments for any two
9 monthly bills.

10 The contracts include the companies' commitments
11 with respect to employment and capital investment and
12 retain the Authority's right to reduce or terminate
13 the allocation if employment, power utilization or
14 capital investment commitments are not met. For
15 example, the contracts include an annual job reporting
16 requirement and a job compliance threshold of 90
17 percent. Should a company's average annual employment
18 fall below the compliance threshold of 90 percent of
19 the employment commitment, the Authority has the right
20 to reduce the allocation on a pro rata basis. The
21 contracts also require a company to perform an energy
22 audit at its facility at least once within five years,
23 helping to ensure the customer uses the hydropower

1 efficiently. This contract provision is consistent
2 with other Authority direct sale contracts, including
3 the Western New York and Recharge New York sales
4 contracts.

5 The contracts also include new provisions
6 expressly allowing NYPA's recovery from the customer
7 of any costs incurred in connection with the purchase
8 of Zero Emission Credits and Renewable Energy Credits
9 attributable to the customer's load, stemming from
10 NYPA's implementation of the Clean Energy Standard, or
11 CES.

12 On August 1st, 2016 the Public Service Commission
13 issued the 'CES Order' establishing a clean energy
14 standard for the State, intended to meet the State
15 Energy Plan's clean energy goals by, among other
16 things: One, increasing the amount of the State's
17 energy generation that comes from renewable energy
18 sources in New York State; and two, preventing the
19 premature closure of Upstate, at risk, zero emission
20 nuclear power plants.

21 NYPA supports the State Energy Plan's clean
22 energy goals, and in anticipation of NYPA's
23 participation in the Public Service Commission's CES

1 program, at its September 27th, 2016 meeting the
2 Trustees approved a revised form of contract,
3 including provisions for the pass through to customers
4 of any costs NYPA incurs in connection with the
5 purchase of Zero Emission Credits and Renewable Energy
6 Credits attributable to the customers' load.

7 Lastly, the Authority will provide firm electric
8 service from the St. Lawrence/FDR plant, which is
9 subject to pro rata curtailment when there is
10 insufficient generation at the Niagara and St.
11 Lawrence/FDR facilities to meet all its firm load
12 requirements. The rates, terms and conditions for the
13 sale of Preservation Power are contained in the
14 Authority's "Schedule of Rates For Sale of Firm Power
15 to Preservation Power Customers - Service Tariff No.
16 10." Delivery service will be provided and billed by
17 the local utility, National Grid, in accordance with
18 its Public Service Commission approved delivery
19 service tariff.

20 As Ms. Delince stated earlier, the Authority will
21 accept your comments on the proposed contracts until
22 the close of business Monday. I will now turn the
23 forum back to Ms. Delince.

1 MS. DELINCE: Thank you, Ms. Wilson. We will
2 recess now and reconvene when speakers arrive.

3 (Recess from 2:13 p.m. to 6:00 p.m.)

4 MS. DELINCE: The April 21st, 2017 public hearing
5 of the Proposed Customer Contract for Potsdam
6 Specialty Paper, Inc. and Upstate Niagara Cooperative,
7 Inc. is now officially closed. As previously stated,
8 the record of the hearing will remain open for
9 additional comments through close of business Monday
10 April 24th, 2017. Thank you and good night.

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12 (End of Public Hearing at 6:01 p.m.)

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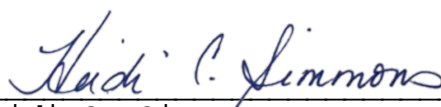
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1 STATE OF NEW YORK)
2 COUNTY OF ST. LAWRENCE)
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5 I, Heidi C. Simmons, a Notary Public in the state of
6 New York, do hereby certify that the foregoing public
7 hearing was taken before me at the place as stated in the
8 caption hereto, at Page 1 hereof; that the foregoing
9 typewritten transcription, consisting of pages numbered 3
10 to 11, inclusive, was produced to the best of my ability of
11 said hearing.

12 IN WITNESS WHEREOF, I have hereunto subscribed my name
13 this, the 23rd day of April, 2017.
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17 
18 Heidi C. Simmons, Notary Public
19 State of New York
20 County of St. Lawrence
21 My commission expires: 08/27/17
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23

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

Sumitomo Rubber USA, LLC

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

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

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

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

II. Electric Service

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

III. Rates, Terms and Conditions

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

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

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

IV. Expansion Power and/or Replacement Power Commitments

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

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

V. Rules and Service Tariff

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

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

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

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

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

VII. Billing and Billing Methodology

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

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

VIII. Hydropower Curtailments and Substitute Energy

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

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

IX. Effectiveness, Term and Termination

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

X. Additional Allocations

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

XI. Notification

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

follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Sumitomo Rubber USA, LLC
10 Sheridan Drive
Tonawanda, NY 14150
Email:
Facsimile:
Attention:

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

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

XII. Applicable Law

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

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

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

XV. Previous Agreements and Communications

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

XVI. Severability and Voidability

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

XVII. Waiver

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

XVIII. Execution

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

SUMITOMO RUBBER USA, LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

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

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

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

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

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

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

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

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

B. Employment Records and Reports

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

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

II. Reductions of Contract Demand

A. Employment Levels

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

B. Power Utilization Levels

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

C. Capital Investment

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

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

D. Notice of Intent to Reduce Contract Demand

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

III. Energy Efficiency Audits; Information Requests

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

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

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

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

CAPITAL INVESTMENT

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

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

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

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

TAKEDOWN SCHEDULE

N/A

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

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

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

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

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

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

5. ZEC Charge

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

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

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

6. REC Charge

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

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

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



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

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

Service Tariff No. WNY-1

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

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

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

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

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

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

I.Billing Energy

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

J.Contract Demand

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

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

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

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

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges (“NYISO Charges”)

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

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

B. Marginal losses;

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

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

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

G. Rendition and Payment of Bills

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

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

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

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

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

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

	Measuring Year <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

APPLICATION SUMMARY
Replacement Power ("RP")

Company:	Sumitomo Rubber USA, LLC ("Sumitomo")
Project Location:	Town of Tonawanda
County:	Erie County
IOU:	National Grid
Business Activity:	Manufacturer of tires for a variety of vehicle types.
Project Description:	Sumitomo is planning a two-phased expansion project during the next three years to support passenger car tire growth from 5,000 to 10,000 tires per day at the Tonawanda facility
Existing Allocation(s):	Five allocations of a mixture of RP and Expansion Power totaling 12,091 kilowatts ("kW") tied to 1,239 jobs and \$5.1 million annual capital investment. Sumitomo is in compliance with its contractual obligations for these allocations.
Power Request:	2,000 kilowatts ("kW")
Power Recommended:	1,500 kW RP
Job Commitment:	
Base:	1,241 jobs
New:	At least 30 jobs
New Jobs/Power Ratio:	20 jobs/megawatts ("MW")
New Jobs - Avg. Wage and Benefits:	\$66,666
Capital Investment:	At least \$87 million
Capital Investment/MW:	\$58 million/MW
Other ED Incentives:	Erie County Industrial Development Agency standard PILOT incentive and sales tax package.
Summary:	Various companies have been manufacturing tires at the Tonawanda facility since the 1920s. During the past several decades, tire manufacturing at the facility has relied heavily on hydropower allocations to remain competitive in a worldwide market. Without an allocation supporting this major expansion project and new job creation, the company could look at locations in other countries to pursue expanded tire manufacturing.

Applicants Recommended for an Award of Fund Benefits by the Western NY Proceeds Allocation Board

Line	Business	City	County	Economic Development Region	Project Description	Project Type	Recommended Award Amount	Total Project Cost	Jobs Retained	Jobs Created
1	Triad Recycling and Energy Corp.	Tonawanda	Erie	Western NY	Business Expansion	Business Investment	\$150,000	\$1,017,750	12	3
Total:							\$150,000	\$1,017,750	12	3

Total Jobs Created & Retained: 15

Western NY Power Proceeds Allocation Board

Criteria adapted from the Western NY Power Proceeds Allocation Board’s
“Procedures for the Review of Applications for Fund Benefits”

1. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council (“REDC”) having responsibility for the region in which an Eligible Project is located.¹ The Western New York Regional Economic Development Council which is responsible for Eligible Projects in Erie and Niagara Counties Strategies & Priorities are:
 - Promote “Smart Growth” by investing in areas that infrastructure already exists and achieves certain goals, such as: preserving historic buildings; reviving downtowns; reviving main streets; investing in existing neighborhoods; and investing in former industrial sites. A project consistent with Smart Growth will also focus on: enhancing walkability; enhancing multiple modes of transportation; connecting disadvantaged communities to employment clusters; spurring mixed-use private investment in existing communities and preserving/enhancing natural lands and or resources.
 - Promote workforce development by increasing diversity in the labor force, developing and cultivating that includes workers with advancement potential, underemployed, unemployed and special population; align education and skills training to job market for current and future industry needs.
 - Foster entrepreneurship and new business formation and growth. Designing a plan that brings new technologies and/or products to the marketplace, increases new start ups in strategic industries and facilitates the commercialization of products that can lead to job growth in the Region.
 - Increase the industry profile of agriculture in WNY by: creating better access to markets; creating new products; creating new more efficient processes; creating strong regional brands; creating programs that promote careers in agriculture.
 - Utilize Western New York’s proximity to Canadian and U.S. population centers to advance economic development in WNY. Bi-national projects will: utilize cross-border planning to create transportation and logistical infrastructure; improve

¹ As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, “revitalization” projects.

operational relationships; promote the attractiveness of WNY as a hub for global trade.

- Position the WNY region as a global energy hub through new sources of clean energy, energy efficiency and energy efficient transportation.
- Support growth of advanced manufacturing by making research more available to manufacturers to help them innovate.
- Spur growth in the health and life sciences industry through improved commercialization, recruit high profile research talent and reducing the cost burden of healthcare while improving health outcomes.
- Expand the scope of higher education by increasing accessibility to Higher Education for communities that currently have limited access to educational opportunities; better aligning education with the industry needs and creating support structures for start-ups which will assist start-ups with commercialization, business planning, workforce preparation, facilities, etc.
- Grow visitors and visitor spending by raising the profile of WNY as a national and international destination; connect multiple tourist destinations in WNY; improve the profile of the WNY Gateway to the United States.

For more information on the Western New York Regional Economic Development Council please go to <http://regionalcouncils.ny.gov/content/western-new-york>.

2. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council ("REDC") having responsibility for the region in which an Eligible Project is located.² The Finger Lakes Regional Economic Development Council which is responsible for Eligible Projects in Orleans and Genesee Counties Strategies & Priorities can be found at: <http://regionalcouncils.ny.gov/content/finger-lakes>.
3. The number of jobs that would be created as a result of an award of Fund Benefits.
4. The applicant's long term commitment to the region as evidenced the current and/or planned capital investment in applicant's facilities in the region.
5. The ratio of the number of jobs to be created to the amount of Fund Benefits requested.
6. The types of jobs that would be created, as measured by wage and benefit levels, security and stability of employment.
7. The amount of capital investment, including the type and cost of buildings, equipment and facilities, proposed to be constructed, enlarged or installed.
8. The extent to which an award of Fund Benefits would affect the overall productivity or competitiveness of the applicant and its existing employment.

² As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, "revitalization" projects.

9. The extent to which an award of Fund Benefits may result in a competitive disadvantage for other business in the State.
 10. The growth potential of the applicant's facilities and the contribution of economic strength to the area in which the applicant's facilities are or would be located.
 11. The extent of the applicant's willingness to satisfy affirmative action goals.
 12. The extent to which an award of Fund Benefits is consistent with state, regional and local economic development strategies and priorities and supported by local units of government in the area in which the business is located.
 13. The impact of an award of Fund Benefits on the operation of any other facilities of the applicant, and on other businesses within the region.
 14. That the business is likely to close, partially close or relocate resulting in the loss of a substantial number of jobs.
 15. That the applicant is an important employer in the community and efforts to revitalize the business are in long-term interests of both employers and the community.
 16. That a reasonable prospect exists that the proposed award of Fund Benefits will enable the applicant to remain competitive and become profitable and preserve jobs for a substantial period of time.
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Western NY Power Proceeds Allocation Board

Western New York Economic Development Fund Recommendation Memo

EXHIBIT 4b v-C

Applicant Name:	Triad Recycling and Energy Corp. ("Triad")	REDC Region:	Western New York
Project Type:	Business Investment	County:	Erie
Industry:	Solid Waste Services and Recycling	Locality:	Tonawanda
Amount Requested:	\$300,000	Start Date:	June 2017
		Finish Date:	June 2018
RECOMMENDED OFFER			
Recommended Total Award:		\$150,000	
Total Project Cost:		\$1,017,750	
% of Project Cost Recommended:		15%	
PROJECT BUDGET (Proposed by Applicant)			
Use of funds	Amount	Source of Funds	Amount
Site/Building Improvements	\$150,000	WNY EDF	\$300,000
Plastics Grinder/Wood Grinder	\$175,000	Cash Equity	\$278,450
Air Dryer	\$50,000	NYSERDA	\$166,800
Wind Turbine Found + 15% Cont.	\$142,750	Debt Financing	\$272,500
Wind Turbine	\$500,000		
Total:	\$1,017,750	Total:	\$1,017,750
REGIONAL IMPACT MEASUREMENTS			
Job Commitments:		Applicant will retain 12 full time equivalents ("FTE") and create 3 FTE positions over seven years.	
Average Salary of Jobs:		\$35,000	
Indirect Jobs Created			
Other Impact			



Western NY Power Proceeds Allocation Board

Western New York Economic Development Fund Recommendation Memo

EXHIBIT 4b v-C

PROJECT DESCRIPTION (Adapted from Application)

Triad plans to renovate a vacant building and expand its operations to undertake the processing of scrap plastics and wood. Triad would market the processed materials for reuse in new products such as biomass pellet fuel and garden mulch, thereby diverting these wastes from landfilling. The project would allow Triad to undertake this processing work in-house thereby reducing the cost of trucking processed materials from Allentown, PA. As part of the project, Triad will add truck docks, material handling and related equipment, new building lighting, 800 amp/460 volt electric service, perform other site work, and add three full time positions. In addition to these building and operation-focused improvements, Triad proposes to add a 100kW wind turbine at the site to generate electricity to support the project.

OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED

ESD:	Start-Up NY	NYS Office of Community Renewal:	N/A
Economic Dev. Loan:	N/A	Other:	

PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED

TYPE	AMOUNT	STATUS
N/A	\$	

BASIS FOR RECOMMENDATION

By bringing business to WNY that is currently conducted in PA, the project would reduce Triad's costs, enhance its profitability, and create jobs in New York. Triad will further reduce its costs by using on site-generated renewable wind energy to support operations. The use of wind power will also provide environmental benefits such as reduced carbon emissions.

Triad has traditionally hired from an ethnically diverse employment pool. To support this project, it will make additional hires from underserved populations, thereby allowing the new hires to make a decent salary while learning a skill.

Triad provides an important service to the WNY community by diverting landfill waste streams and processing waste materials so they can be reused in new products. The project aligns well with REDC strategies and priorities, NYPA clean energy strategies, and other state objectives.



NEW YORK
STATE OF
OPPORTUNITY.

Western NY Power Proceeds Allocation Board

Western New York Economic Development Fund Recommendation Memo

EXHIBIT 4b v-C

ANTICIPATED DISBURSEMENT TERMS
Fund Benefits would be used to reimburse the applicant for a portion of costs associated with purchasing and installing the wind turbine. It is anticipated that funds will be disbursed in arrears in a manner that is proportionate to the total for eligible expenses. Payment will be made upon presentation to NYPA of invoices and such other documentation acceptable to NYPA verifying the applicant has incurred eligible expenses of approximately \$1MM and is compliant with yearly job commitments.

Western New York Economic Development Fund Update¹

The Fund		
<i>this</i>	Total Deposits to the Fund to Date:	\$41,031,000
<i>plus</i>	Total Interest Earned on Deposits to Date:	\$189,183
=	Total Funds Deposited:	\$41,220,183
Expenditures		
<i>this</i>	Total Funds Deposited:	\$41,220,183
	Total Administrative Expenses Withdrawn:	\$0
	Disbursements to Grantees:	<u>(\$21,373,927)</u>
<i>plus</i>	Total Expenditures:	(\$21,373,927)
=	Current Fund Balance:	\$19,846,256
Awards		
<i>this</i>	Total Funds Deposited:	\$41,220,183
	Standard Projects:	\$31,954,998
	Energy Related Projects ² :	<u>\$3,128,320</u>
<i>minus</i>	Total Fund Benefits Approved by the Trustees³:	\$35,083,318
=	Total Fund Benefits Available to be Awarded by the Trustees⁴:	\$6,136,865
Energy-Related Projects		
<i>this</i>	Minimum Amount (15%) of the Fund Dedicated to Energy-Related Projects:	\$6,154,650
<i>minus</i>	Total Awards (8%) Made for Energy-Related Projects to Date (not including today):	\$3,128,320
=	Fund Benefits Currently Available to be Awarded for Energy-Related Projects Only:	\$3,026,330
Today's Recommendations		
<i>this</i>	Standard Projects:	\$0
<i>plus</i>	Energy-Related Projects or Project Components:	\$150,000
=	1 Total Recommendations Before the Board Today:	\$150,000
Expansion Power ("EP") and Replacement Power ("RP") Summary		
<i>this</i>	Estimated Unallocated EP and RP to Date (MW):	121
<i>plus</i>	Estimated Allocated but Unused Hydropower to Date (MW) ⁵ :	<u>33</u>
=	Total Estimated Unutilized EP and RP to Date (MW)⁶:	154

¹ The "Fund", known as the "Western New York Economic Development Fund", is created and administered by the New York Power Authority ("NYPA"). It is funded with the aggregate excess of revenues ("Net Earnings") received by NYPA from the sale of Expansion Power ("EP") and Replacement Power ("RP") produced at NYPA's Niagara Power Project that is sold in the wholesale energy market over what revenues would have been received had such Power been sold on a firm basis to an eligible EP or RP customer.

² As defined by the Western New York Power Proceeds Allocation Act, a minimum of 15% of Fund Benefits shall be dedicated to "energy-related projects, programs and services". In accordance with EDL § 189-a(6), "energy-related projects, programs and services" means: (1) energy efficiency projects and services; (2) clean energy technology projects and services; (3) high performance and sustainable building programs and services; and (4) the construction, installation and/or operation of facilities or equipment done in connection with any such projects, programs or services.

³ Funds awarded to applicants to the Fund who are recommended for an award by the WNYPPAB and approved by the NYPA Trustees are known as "Fund Benefits." Disbursement of Fund Benefits is subject to satisfaction of certain terms and conditions.

⁴ Total Fund Benefits Available to Be Awarded is calculated as Total Funds minus the sum of Total Fund Benefits Awarded and Total Administrative Expenses Withdrawn.

⁵ The NYPA Trustees may allocate EP or RP to eligible companies. Such customers may use the entire allocation, or such customers may "take down" only a portion of the allocation based on their needs at the time. EP and RP that is unallocated, or that is allocated but not taken down, is eligible to be used for WNYEDF "Net Earnings".

⁶ Unutilized EP and RP consists of an estimate of both unallocated hydropower and allocated hydropower that has not been taken down by customers.

WNYEDF Awards by County ⁷

Trustee Date	(All)	
County	Company	Trustees Approvals (\$)
Erie	425 Michigan Ave, LLC	\$500,000
	Coolture	\$300,000
	Eden Valley Growers	\$80,000
	Field & Fork Network	\$166,912
	Ford Motor Company	\$1,000,000
	Forest Lawn Heritage Foundation	\$150,000
	Innomotive Solutions Group LLC	\$150,000
	Launch NY	\$5,418,000
	Living Green Insulation Products and Services, LLC	\$165,570
	Michigan Street African American Heritage Corridor Commission, Inc.	\$250,000
	Nexus Natural Gas LLC	\$570,000
	OSC Manufacturing & Equipment Services, Inc.	\$750,000
	PLS III LLC dba We Care Transportation Services	\$1,000,000
	Visit Buffalo Niagara	\$250,000
	43North LLC	\$6,000,000
	Explore and More...A Childrens Museum	\$1,700,000
	Buffalo Niagara Enterprise	\$65,836
	Amos Zittel & Sons	\$380,000
	D'Youville College	\$400,000
	Martin House Restoration Corporation	\$700,000
	General Mills	\$500,000
	Buffalo Arts and Technology Center	\$380,000
	43 North LLC (II)	\$6,000,000
	43North LLC (II)	\$2,000,000
	Post Process Technologies, LLC	\$90,000
	CL New Co., Inc. dba Campus Labs	\$400,000
Erie Total		\$29,366,318
Genesee	Yancy's Fancy, Inc.	\$500,000
Genesee Total		\$500,000
Niagara	Aquarium of Niagara	\$1,750,000
	Diversified Manufacturing, Inc.	\$450,000
	Global Outreach Mission, Inc.	\$154,500
	Niagara University	\$250,000
	Washington Mills	\$140,000
	NFIA Stakeholders Group, Inc.	\$24,750
	The WNY Women's Foundation, Inc.	\$100,000
	Cambria Asphalt Products	\$72,750
	Borderworx Logistics, LLC	\$285,000
	Tulip Manufacturing	\$1,000,000
	Niagara University (II)	\$500,000
	NFIA Stakeholders Group, Inc. (II)	\$90,000
	Platters Chocolates	\$200,000
	Niagara Falls National Heritage Area	\$200,000
Niagara Total		\$5,217,000
Grand Total		\$35,083,318

Appraisal Report

Date of Inspection: 2-27-17

My Notes: "There is little to no comparative market data for this hybrid, in the summer of 2013 Thomas removed the C2e product literature from their website; it is uncertain if the C2e remains an offered product, replacement batteries cost around \$12,000.00"

Location Gates Chili CSD, 910 Wegman Rd., Rochester NY 14624

Contact at location Matthew Helmbold 585-247-4774, Matthew.Helmbold@gateschili.org

For: John Markowitz New York Power Authority, 123 Main St., White Plains NY 10601, 914-310-8209, John.Markowitz@nypa.gov

Manufacturer Thomas Built/Freightliner

Model Year 2013

Model Saf-T-Liner® C2e Hybrid

VIN# 4UZADADT8DCBX5702

Fleet #520

GVWR 31,000LBS

Class Class 7 (GVW 26,001-33,000 lbs)

Body Number of Passengers 66

Engine & Drivetrain Engine Type 6.7 I, 6-cylinder in-line

Engine Make Cummins® ISB Horsepower 200 hp, 520 ft. lbs. torque @ 1,600 rpm

Fuel Type Diesel/Electric Drive

Transmission Eaton automated manual transmission

Condition Very good, little to no rust

Miles 65,658

Hours 2,423

Tires Dual wheel, 10R-22.5 good condition

To Be Removed - 2-Way Radio, Hard-drive from DVR

E-Drive System: GENERAL SPECS.

Electric Drive

Electric Motor: Output 44 kW

Generator Output: 44 kW

Drive System

Eaton parallel hybrid drive system / diesel-electric

Battery Pack

Lithium-ion batteries, capacity 1.9 kW/h

Hybrid Features Customer Benefits

Electric Motor Launch and Acceleration Assist:

Increases fuel economy

Reduces emissions

Regenerative Braking:

Aids in braking

Reduces brake wear

Charge-Sustaining Battery System (vs. Depleting System):

Charges without plug or electrical outlet

Requires smaller battery system

Less vehicle weight due to lighter batteries

Parallel System:

Engine-only operation if hybrid goes offline

Increases reliability as both electric-diesel or diesel-only operation are available

Engine Start from Electric Motor:

Starts more quickly

Reduces engine starter wear

Increases reliability

My Opinion of Value:

Fair Market \$65-75,000.00

Orderly Liquidation \$40,000.00

Forced Liquidation (online \$) \$20-25,000.00

Marketing Hybrid Info:

Thomas Built has a role to play when it comes to taking care of the earth. That role is helping reduce emissions and lower dependence on fossil fuels through alternative powered buses. The idea of a greener future is nothing new at our company. Daimler developed its first hybrid bus, the Mercedes OE302, back in 1969, and Daimler remains the world leader in green technology today. That extensive research and experience uniquely positions Thomas Built to provide innovative hybrid solutions, like our first hybrid electric vehicle, the Saf-T-Liner C2e. Introduced to the market in 2007, the C2e is based on Eaton's hybrid electric parallel system, which is powered by both a diesel engine and an electric motor / generator. The forward-thinking design and engineering is carried over from our innovative Saf-T-Liner® C2.

RJ Klisiewicz, AMM

Operations Manager/ Assistant Auctioneer

Auctions International, Inc.

11167 Big Tree Rd

East Aurora, NY 14052

Office: 800-536-1401 x 110

Cell: (716) 870-8506

rich@auctionsinternational.com

VEHICLE & EQUIPMENT CONDITION REPORT

PHOTOCOPY THIS REPORT AS NEEDED - WHEN COMPLETE FAX TO: 1-866-718-7577

SELLER INFORMATION - Please type or print all information clearly (if your info is same for all just fill out top of first report)			
Name of Seller: NY Power Authority		Dept:	FLEET #
Item Location Address:		LOT #	
City:	State:	Zipcode:	
Contact Name:	Phone: ()	Fax: ()	
Approval E-Mail:			
Board Approval: ☐ Yes For Final Price		/	Meeting Date
ITEM INFORMATION - Please type or print the item or vehicle information clearly - Fill out only the parts appropriate for this item			
Year: 2009	Make: International	Model: CE	Body Style: School Bus
VIN / Serial: 4 D R B U S K N 3 9 A 0 6 0 0 9 7		Miles: 0 8 5 0 7 9	Hours:
Engine Make/Model:		Cyl:	Gas ☐ Diesel ☐ Hybrid ☒ Electric ☐
Horsepower:	Transmission:	AUTO ☒ MANU ☐	Single Axle ☒ Dual Axle ☐
Tire Type/Size: 295/75R22.5		Good ☒ Fair ☐ Poor ☐	Plow or Attachment Type: Dump Box Size:
Features: 2WD ☒ 4WD ☐ A/C ☐		Does Unit Operate/Drive: YES ☒ NO ☐	
OVERALL CONDITION OF ITEM AND ADDITIONAL OWNERSHIP INFORMATION			
Body:	Good ☒ Fair ☐ Poor ☐	Does Vehicle Start: YES ☒ NO ☐ UNKNOWN ☐	
Interior:	Good ☒ Fair ☐ Poor ☐	Keys Available: YES ☐ NO ☐ N/A ☐	
Mechanical:	Good ☒ Fair ☐ Poor ☐	Bill of Sale Only (No Title): ☐ Certificate of Origin Only: ☐	
		Clean Title Available: ☒ Transferable Registration: ☐	

Please describe any overhauls or maintenance for your item in the box below. Items that have more complete descriptions receive higher bid prices. You should pressure wash your equipment, broom-clean vehicles, and wash the windows before taking digital photographs of your online auction merchandise

Mechanical

Body

Interior

☐ **ADDITIONAL INFO** Check the box if you provided more info on back of report or on attached sheets

PLEASE FAX COMPLETED CONDITION REPORTS TO: 1-866-718-7577 Please upload photos to: www.wetransfer.com (2 GB per upload) Mail printed photos, photo CD & other info to: Auctions International c/o Marc Smith P.O. Box 215 Yorkville, N.Y. 13495 315-794-4660

Last Revised: 3-27-15



GEORGE A. ENGLISH
Director of Facilities and Transportation
George_English@gateschili.org

FACILITIES AND TRANSPORTATION

TEL: 585.247.4774
FAX: 585.340.5596

April 4, 2017

Mr. Gil Quiniones
President and CEO
New York Power Authority
123 Main Street
White Plains, NY 10601

Dear Mr. Quiniones:

The Gates-Chili Central School District has been pleased to participate in a demonstration project, funded by NYPA and NYSERDA, to gauge the feasibility of hybrid-electric school bus technology. The Gates-Chili Central School District is participating in a field test program under an agreement with the New York Power Authority, signed on April 9th, 2012. Under the field test program, fuel economy testing was conducted on one hybrid-electric and one standard diesel school bus which included a one-year in-service evaluation of the buses in the school district over the 2012–2013 school year.

The Gates-Chili Central School District contains four elementary schools (Armstrong, Brasser, Disney and Paul Road), a Middle School and the High School serving Gates Chili's student population of just over 4,100.

We have been operating one of these hybrid buses, transporting students and cooperating with the demonstration programs data collection efforts. It is our understanding your data collection phase of the program is completed, but we want to continue our evaluation of the hybrid bus. We would like to continue using this bus to transport our students and it is our understanding that the bus is currently owned by NYPA and is under loan to our district.

We further understand your board is considering the possibility of transferring ownership to our district, and we have been asked to express why losing the bus will have a negative impact on our district.

The bus is used in our daily routes and removal of this bus from our fleet would result in an immediate expense as we would need to purchase a replacement bus. It is the intention of the district to own and continue operating the hybrid-electric school bus for transporting our students for the rest of the vehicle's useful life.

In addition to the hybrid bus demonstration, our district has invested in several initiatives to benefit our students and community including a safety bus program and a free meals program.

We greatly appreciate the opportunity to participate in the demonstration project and being part of the State's program to reduce the use of fossil fuels and greenhouse gas emissions in transportation.

Thank you,

George A. English

Cc:
Superintendent Kimberle Ward

"Together we teach and inspire excellence for all learners."

Facilities and Transportation Building • 4 Spartan Way • Rochester, NY 14624 • www.gateschili.org

The Greater Amsterdam School District

Facilities Service Unit
LMS Annex
P.O. Box 309
Amsterdam, New York 12010



www.gasd.org
Telephone: 518-843-3186
Fax: 518-843-0939

March 15, 2017

Mr. Gil Quiniones
President and CEO
New York Power Authority
123 Main Street
White Plains, NY 10601

Dear Mr. Quiniones:

The Greater Amsterdam School District has been pleased to participate in a demonstration project, funded by NYPA and NYSERDA, to gauge the feasibility of hybrid-electric school bus technology. NYPA and the Greater Amsterdam school District entered into this Hybrid-Electric School Bus Demonstration Agreement on December 30, 2010 whereby NYPA agreed to provide one plug-in charge depleting hybrid electric school bus and one charge-sustaining hybrid-electric school bus. The school district agreed to provide NYPA with performance data for the duration of the demonstration project.

Approximately 3,700 students attend the six schools in the Greater Amsterdam School District, located in the city of Amsterdam, New York. The district serves residents in the city and town of Amsterdam, as well as those in the nearby towns of Florida, Duaneburg, Glenville, Perth and Haganan. The student population of Greater Amsterdam is diverse, with about 50 percent being of Hispanic descent.

We have been operating one of these hybrid buses since 2011, transporting students and cooperating with the demonstration programs data collection efforts. It is our understanding that the data collection phase of the program is completed. We would like to continue using this bus to transport our students and it is our understanding that the bus is currently owned by NYPA and is under loan to our district.

Where students succeed and community cares.

We would like to request a transfer in ownership for this hybrid-electric school bus to our school district. The bus is used in our daily routes and removal of this bus from our fleet would result in an immediate expense as we would need to purchase a replacement bus. It is the intention of the district to own and continue operating the hybrid-electric school bus for transporting our students for the rest of the vehicle's useful life.

We greatly appreciate the opportunity to participate in the demonstration project and being part of the State's program to reduce the use of fossil fuels and greenhouse gas emissions in transportation.

Thank you,

A handwritten signature in black ink, consisting of a stylized 'S' followed by a large, sweeping 'C' shape.



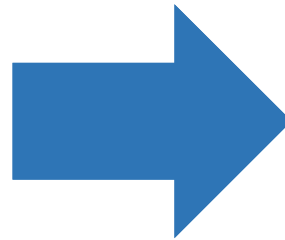
President and CEO Report

Gil Quiniones, President & Chief Executive Officer

We are in the third year of our six year 2020 strategic plan. Our focus in 2017 is making necessary mid-game adjustments.

Much has changed since the creation of our strategic plan

- Sustained low gas prices
- New State clean energy policy (REV and the Clean Energy Standard)
- Increased competition (particularly in generation and energy efficiency services)



2017 Off-site objectives

1. A refreshed NYPA 2020 Strategic Plan to be launched in Q3 2017
2. Practical actions that will allow us prioritize and focus strategic investments more effectively moving forward

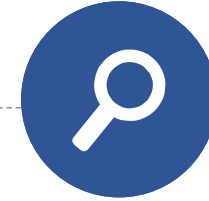
2017 Strategy Offsite: Day one key themes



NYPA's Competitiveness



Scenario Planning



Digitization





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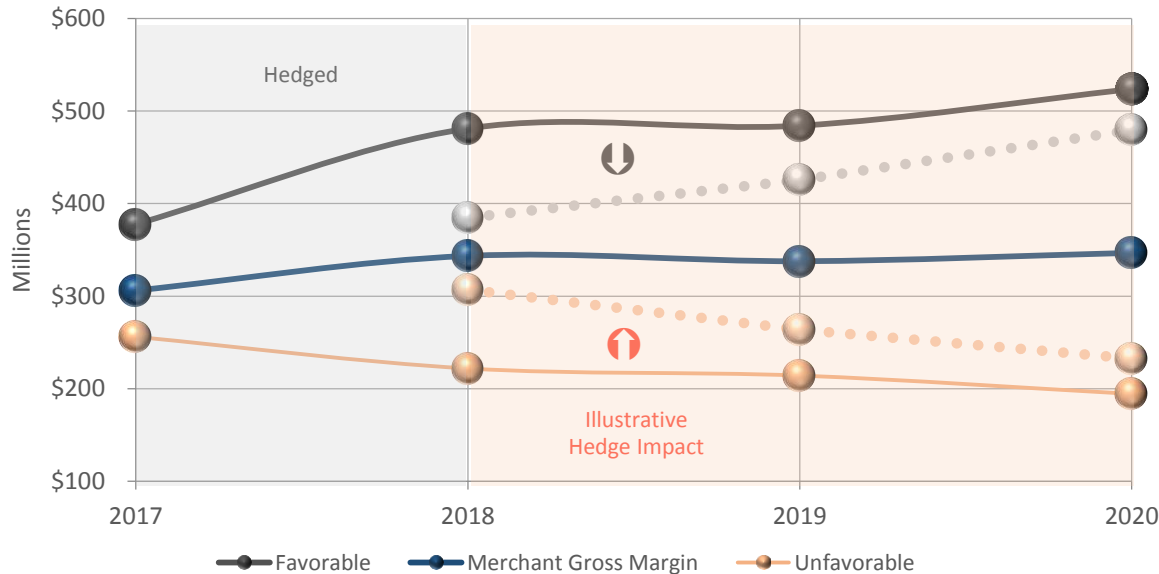
Commodity Risk Management Governance

Soubhagya Parija

Chief Risk Officer, Senior Vice President

May 2, 2017

Merchant Portfolio Risk



- Merchant revenue is uncertain with range of outcomes that may affect ability to cover operating expenses or meet financial budget
- Hedging strategy leads to more certain financial budget

Supportive processes

Week	1	2	3	4
Risk Management Limits and Target Reporting (Daily)				
ERM Morning Meeting (Daily)				
ERM Portfolio Review Meeting (Weekly)				
Risk Management and ERM Meeting				
ERMC Meeting				

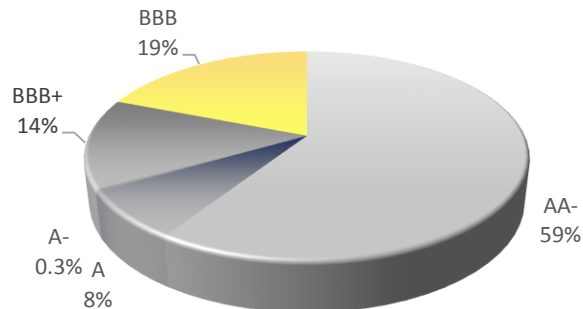


- Gross Margin Limits:
 - 3 Tiers corresponding to levels of FCCR
- Trader Volume Limits (ERM):
 - 6 levels progressive with Seniority
- Trading Term Limits (ERM):
 - 6 levels progressive with Seniority
- ERMC voting members (rotating Chairperson):
 - Chief Commercial Officer
 - Chief Financial Officer
 - Chief Operating Officer
 - General Counsel
 - Chief Information Officer

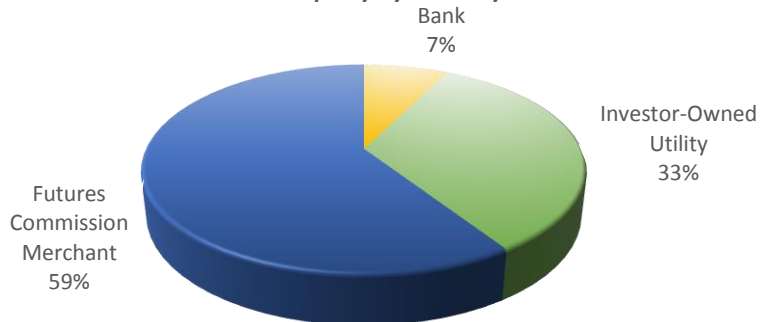
Merchant Portfolio Performance

Credit Exposure (Outstanding Notional Swaps)

Counterparty by Credit Rating



Counterparty by Industry



Collateral Requirements (in millions)



- Transactions with highly rated counterparties
- Industry diversification prevents systemic risks
- Monitor potential cash posting needs



**NY Power
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**Canal
Corporation**

Board of Trustees Meeting

Chief Operating Officer Report

Presented By:

Joseph F. Kessler PE

EVP & Chief Operating Officer

Performance Measures – YTD March 2017

Utility Operations



Generation Market Readiness

99.92% vs 99.40%
(actual vs target YTD)



Transmission Reliability

95.46% vs 94.02%
(actual vs target YTD)

NYPA Overall



Environmental Incidents

1 vs 8
(actual vs target YTD)



Dart Rate

0.72 vs 0.78
(actual vs target YTD)



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Canal Transfer Effort – Update

Post-Day 1 (operation transfer) work is progressing to plan

- No significant post-Day 1 issues have been reported
- Execution continues across all functional areas in relation to post-Day 1 work
- O&M and capital spend remains in-line with the 2017 budget
- Hiring requirements for the summer season have been confirmed and recruitment is underway
- Transitional Service Agreement Exit Plans have been developed and signed-off; 15 of 41 have been exited to date and the remaining services are on-track to exit in-line with agreed plans



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Commercial Operations Report

Jill C. Anderson, Chief Commercial Officer

Commercial Ops: Summary

Year to Date - Mar

in millions

**Customer Fees
for Energy
Services**

Actual

3.1

Budget

2.6



19%

in millions

**Customer
Operating
Costs**

6.6

7.5



12%

in \$/mwh

Electric Prices

Year to Date - Mar

Actual

\$ 38.50

Budget

\$ 54.98



30%

in \$/mmbtu

Fuel Prices

(unit cost of fuel)

\$ 3.97

\$ 6.46



39%



Chief Financial Officer Report

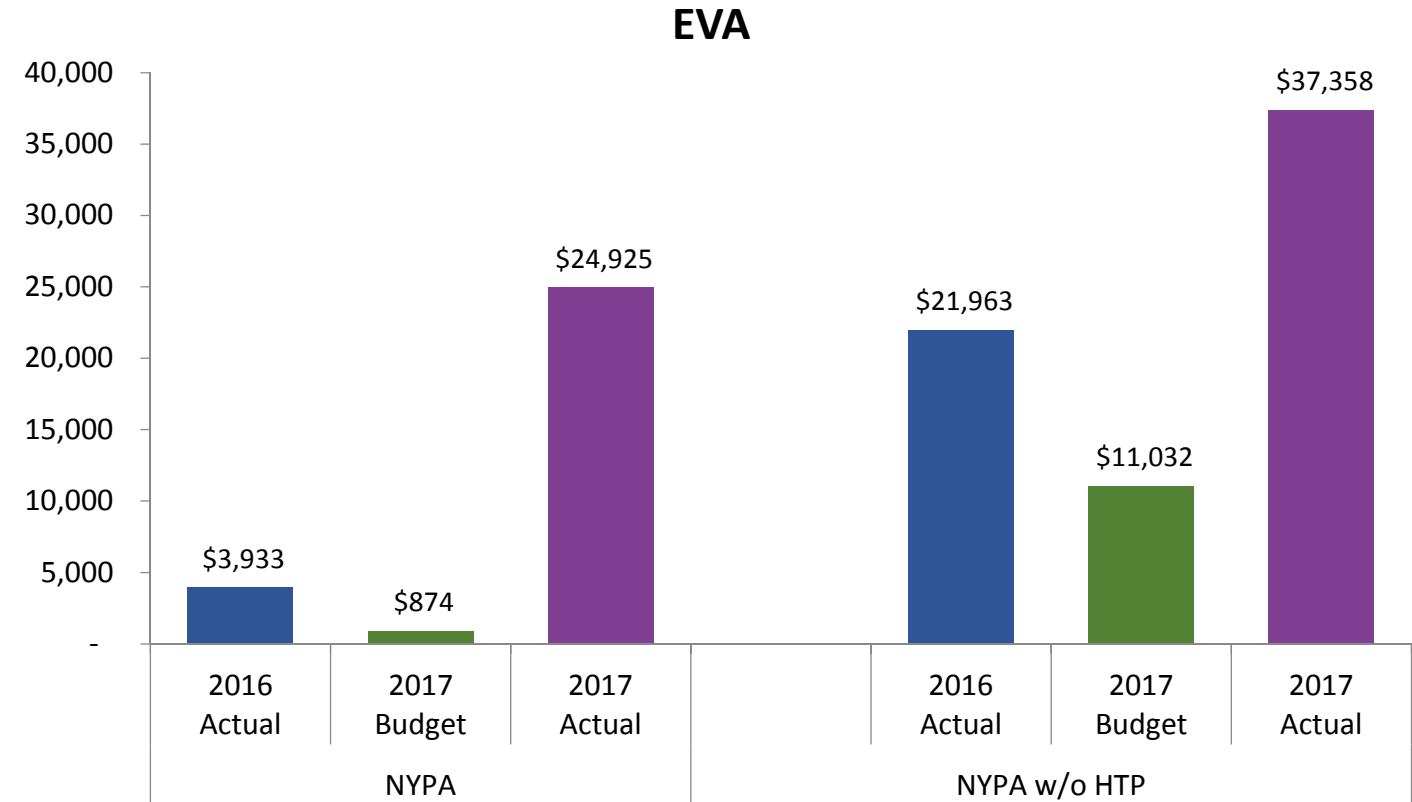
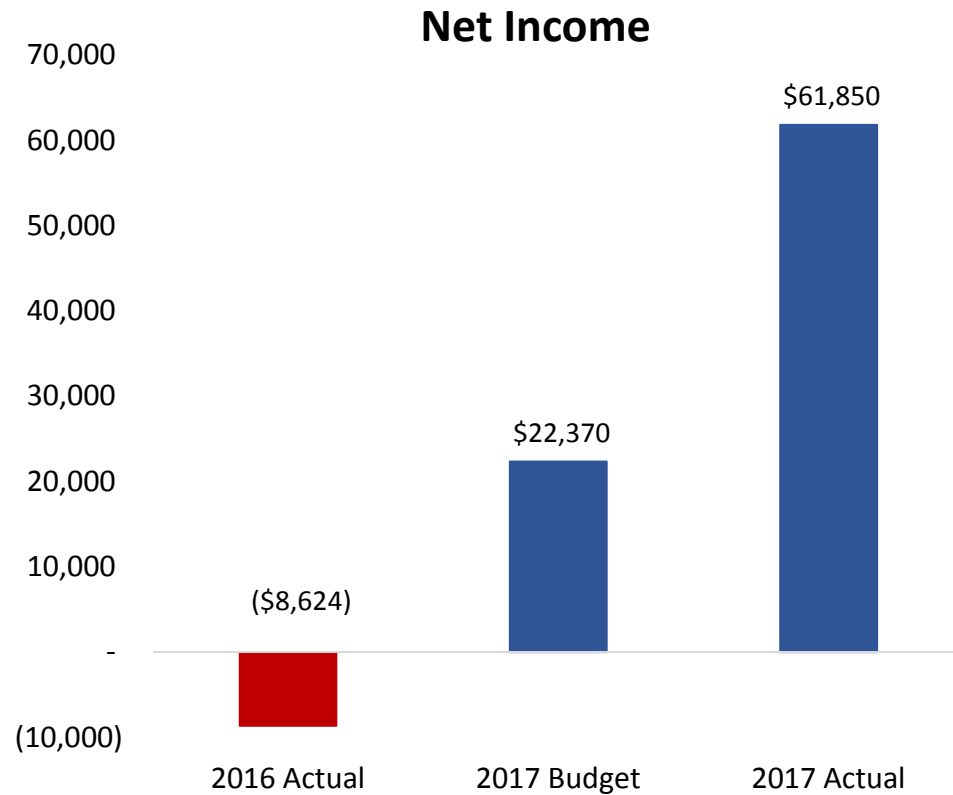
Robert Lurie, Chief Financial Officer

2017- Year to Date March

Variances from Budget (\$000's)

2016 Budget	\$	22,374
Energy Price & Margin		11,708
Transmission		7,804
Operating Expenses		11,964
Energy - NDTF Transfer		8,000
YTD Net Income	\$	61,850

YTD March 2017 Vs 2016 (in \$000's)





**NY Power
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**Canal
Corporation**

EXHIBIT 5c iv-A

NONCOMPLIANCE WITH JOB COMMITMENTS; RECOMMENDED (1) REDUCTIONS IN ALLOCATIONS/CONTRACT DEMANDS, AND (2) ADJUSTMENTS TO JOB COMMITMENTS

Aeroflex International Inc. (Plainview, Nassau County) AppID 10071

Allocation: 660 kW
Contract Demand: 660 kW
Power Utilization: 90%
Cumulative Capital Spending: \$16,000,122 or 80% of 5 year commitment
Job Commitment: 320 jobs
Jobs Reported: 257 jobs, or 80% based on audit results.

Background: Aeroflex manufactures electronics. The company did not provide any explanation regarding its job shortfall. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs.

Recommendation: Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 600 kW, and authorize an adjustment of the job commitment to not less than 257 jobs.

Airsep Corporation (Amherst, Erie County) AppID 4077

Allocation: 326 kW
Contract Demand: 326 kW
Power Utilization: 90%
Cumulative Capital Spending: \$2,905,833 or 65% of 5 year commitment
Job Commitment: 300 jobs
Jobs Reported: 236 jobs, or 79%

Background: Airsep Corporation manufactures medical air separation equipment and is under new ownership as of 2015. Airsep states its job shortfall is due to an unexpected decrease in sales due to energy sector declines and its cutting back in all areas. Employment levels are not expected to increase in the near future.

Recommendation: Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 296 kW, and authorize an adjustment of the job commitment to not less than 236 jobs.

Air Techniques, Inc. (Melville, Suffolk County) AppID 9947

Allocation: 350 kW (effective 8-1-2016)
Contract Demand: 350 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$2,905,833 or 65% of 5 year commitment
Job Commitment: 252 jobs (effective 8-1-2016)
Jobs Reported: 212 jobs, or 84%

Background: Air Techniques manufactures dental and medical products. This is the third year Air Techniques reported below the compliance threshold and employment levels have continued to decline. This is attributed in part to a soft market for the company's dental equipment. Employment agencies were brought in to assist affected employees and some have been employed by the companies that are now supplying the parts that were produced in-house.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 330 kW, and authorize an adjustment of the job commitment to not less than 212 jobs.*

Albert Einstein College of Medicine, Inc. (Bronx, Bronx County) AppID 3651

Allocation: 1,390 kW (effective 8-1-2016)
Contract Demand: 1,390 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$58,281,000 or 89% of 5 year commitment
Job Commitment: 2,572 jobs (effective 8-1-2016)
Jobs Reported: 2,175 jobs or 85%

Background: Albert Einstein College of Medicine at Yeshiva University is a higher education teaching medical hospital. This is the second year Albert Einstein College reported below the compliance threshold. In 2015, Albert Einstein reached an operating joint venture with Montefiore Medical Academic Health systems which resulted in a transfer of staffing positions. Employment data is expected to remain similar to current employment levels.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 1,320 kW, and authorize an adjustment of the job commitment to not less than 2,175 jobs.*

Angion Biomedica Corp. (Uniondale, Nassau County) AppID 9894

Allocation: 240 kW (effective 8-1-2016)
Contract Demand: 240 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$118,697 or 12% of 5 year commitment
Job Commitment: 49 jobs (effective 8-1-2016)
Jobs Reported: 21 jobs or 43%

Background: Angion Biomedica is a research and development laboratory. This is the second year Angion reported below the compliance threshold. The company states it plans to recruit 10 additional staff in the future.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 130 kW, and authorize an adjustment of the job commitment to not less than 21 jobs.*

Arkwin Industries, Inc. (Westbury, Nassau County) AppID 9283

Allocation: 620 kW (effective 8-1-2016)
Contract Demand: 620 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$4,422,900 or 43% of 5 year commitment
Job Commitment: 325 jobs (effective 8-1-2016)
Jobs Reported: 214 jobs, or 66%

Background: Arkwin Industries manufactures aerospace components. This is the third year the company reported employment levels below the compliance threshold. According to Arkwin Industries, much of its success was predicated on its ability to participate in Lockheed Martin's F-35 Joint Strike Fighter program. Arkwin estimates it will be 2 years until the program is fully certified and full scale production will begin. In addition, the recent drop in oil prices has caused the helicopter segment of Arkwin's business base to decline drastically, resulting in cut backs and cancellation of helicopter orders used for off-shore oil exploration.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 480 kW, and authorize an adjustment of the job commitment to not less than 214 jobs.*

AVA Pork Products, Inc. (Hicksville, Nassau County) AppID 11682

Allocation: 180 kW
Contract Demand: 180 kW
Power Utilization: 100%
Job Commitment: 300 jobs
Jobs Reported: 251 jobs, or 84%

Background: AVA Pork Products, Inc. produces pork products. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 170 kW, and authorize an adjustment of the job commitment to not less than 251 jobs.*

Avon Products, Inc. (Rye, Westchester County) AppID 3555

Allocation: 1,020 kW
Contract Demand: 1,020 kW
Power Utilization: 100%
Cumulative Capital Spending: \$3,397,495 or 19% of 5 year commitment
Job Commitment: 510 jobs
Jobs Reported: 440 jobs, or 86%

Background: Avon Products is a distributor of beauty products. The company did not provide any explanation regarding its job shortfall.

Recommendation: Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 980 kW, and authorize an adjustment of the job commitment to not less than 440 jobs.

Blasch Precision Ceramics, Inc. (Albany, Albany County) AppID 9667

Allocation: 276 kW
Contract Demand: 276 kW
Power Utilization: 100%
Cumulative Capital Spending: \$3,347,748 or 67% of 5 year commitment
Job Commitment: 136 jobs
Jobs Reported: 105 jobs, or 77%

Background: Blasch Precision Ceramics manufactures ceramic products. This is the first year Blasch Precision fell below the compliance threshold. The company attributes a downturn in the chemical/petrochemical market to its job shortfall. Blasch Precision also reported it had difficulties finding employees with the qualifications required. Since reporting, it has had fluctuating head counts and has hired up to 9 employees through a temp job service company. The company is working diligently to recruit new staff by participating in job fairs and recruiting agencies.

Recommendation: Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 246 kW, and authorize an adjustment of the job commitment to not less than 105 jobs.

Burton Industries, Incorporated (North Babylon, Suffolk County) AppID 5250

Allocation: 300 kW (effective 8-1-2016)
Contract Demand: 300 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$1,030,280 or 137% of 5 year commitment
Job Commitment: 39 jobs (effective 8-1-2016)
Jobs Reported: 30 jobs or 77%

Background: Burton Industries Inc. provides metal heat-treating services. This is the third year the company reported below the compliance threshold. During the first half of 2013, a division of Burton Industries, the North East Finishing Company (NEFCO) was separated from Burton Industries. NEFCO is no longer part of Burton Industries and separately employs approximately 20 people. Burton Industries no longer has financial interest in this division and no longer controls employment at NEFCO.

Recommendation: Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 260 kW, and authorize an adjustment of the job commitment to not less than 30 jobs.

Cambridge Valley Machining, Inc. (Cambridge, Washington County) AppID 9496

Allocation: 180 kW (effective 8-1-2016)
Contract Demand: 180 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$5,415,049 or 67% of 5 year commitment
Job Commitment: 110 jobs (effective 8-1-2016)
Jobs Reported: 83 jobs, or 75%, *based on current job numbers obtained.*

Background: Cambridge Valley Machining manufactures machine components. This is the second year the company reported employment levels below the compliance threshold, reporting 79 jobs or 72%. Cambridge Valley has been actively seeking to hire 20 full time employees. The labor pool is limited. Two staffing agencies are working with Cambridge Valley to recruit new talent. During the year 2016, Cambridge Valley has interviewed applicants on a constant basis for positions. Due to its government contracts, employees must pass a very strict and stringent background check. In addition, the company has recently implemented wage increases and other employee benefits to attract new candidates. Cambridge Valley recently provided job counts for the period October 2016 through Dec 2016, averaging 83 jobs, or 75% of its commitment level.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 160 kW, and authorize an adjustment of the job commitment to not less than 83 jobs.*

Computer Associates International, Inc. (Islandia, Suffolk County) AppID 8549

Allocation: 2,460 kW (effective 8-1-2016)
Contract Demand: 2,460 kW (effective 8-1-2016)
Power Utilization: 100%
Job Commitment: 1,728 jobs
Cumulative Capital Spending: \$3,478,494 or 39% of 5 year commitment
Jobs Reported: 1,500 jobs or 87% *based on audit results*

Background: Computer Associates International is an I.T. data center. This is the second year CA Technologies reported employment levels below the compliance threshold and the second year the company did not provide any information explaining its job shortfall. The company was selected for an audit of its employment records and confirmed to be below the job compliance threshold.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 2,390 kW, and authorize an adjustment of the job commitment to not less than 1,500 jobs.*

Cannon Industries, Inc. (Rochester, Monroe County) AppID 9266

Allocation: 316 kW
Contract Demand: 316 kW
Power Utilization: 100%
Cumulative Capital Spending: \$3,235,547 or 65% of 5 year commitment
Job Commitment: 145 jobs
Jobs Reported: 103 jobs or 71% *based on audit results*

Background: Cannon Industries provides fabrication and powder coating services. This is the second year the company reported below the compliance threshold. The company states headcount has not changed much since the reporting period. It has added a QA Manager, Tool Maker and Shipping Clerk but has lost several other staff positions. The company was selected for an audit of its employment records and confirmed to be not compliant through third party auditor findings.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 256 kW, and authorize an adjustment of the job commitment to not less than 103 jobs.*

Cooper Power Systems, LLC (Olean, Cattaraugus County) AppID 9988

Allocation: 810 kW (effective 8-1-2016)
Contract Demand: 810 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$4,719,836 or 59 of 5 year commitment
Job Commitment: 199 jobs (effective 8-1-2016)
Jobs Reported: 131 jobs, or 66%

Background: Cooper Power Systems produces surge-arrester products. This is the fourth year the company reported employment levels below the compliance threshold. The company states it has gone through product line transitions resulting in lost production at its facility. The company states its headcount decline is due to an overall decline in sales. Cooper Power Systems can not specify when conditions will improve.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 620 kW, and authorize an adjustment of the job commitment to not less than 131 jobs.*

Derrick Corporation (Cheektowaga, Erie County) AppID 7530

Allocation: 1,170 kW
Contract Demand: 1,170 kW
Power Utilization: 100%
Cumulative Capital Spending: \$21,965,000 or 34% of 5 year commitment
Job Commitment: 570 jobs
Jobs Reported: 412 jobs or 72%

Background: Derrick Corp manufactures separation technology for oil drilling. This is the first year the company fell below the compliance threshold. The total number of jobs dropped below commitment levels due to its sales being closely tied to the oil industry. The sharp drop in oil prices has led to a decline in capital expenditures throughout the industry, and in turn, a decline in sales. The company cannot estimate a timeframe for this recovery.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 960 kW, and authorize an adjustment of the job commitment to not less than 412 jobs.*

Flagpoles, Incorporated (East Setauket, Suffolk County) AppID 11414

Allocation: 110 kW (effective 8-1-2016)
Contract demand: 110 kW (effective 8-1-2016)
Power Utilization: 100% of commitment
Cumulative Capital Spending: \$1,253,439 or 57% of 5 year commitment
Job Commitment: 100 jobs (effective 8-1-2016)
Jobs Reported: 80 jobs, or 80%

Background: Flag Poles manufactures poles for tented structures and flags. This is the fourth year the company has reported below the compliance threshold. A large portion of its sales are associated with government contracts. The company reported that due to the decline in government spending, Flagpoles' sales have decreased. The company is aggressively marketing in its commercial sector and has experienced an improved year in commercial sales to try to make up for the reduced Department of Defense sales.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 100 kW, and authorize an adjustment of the job commitment to not less than 80 jobs.*

The Jesuits of Fordham, Inc. (Fordham University) (Bronx, Bronx County) AppID 8616

Allocation: 1,910 kW
Contract Demand: 1,910 kW
Power Utilization: 100%
Cumulative Capital Spending: \$486,355,287 or 122% of 5 year commitment
Job Commitment: 3,821 jobs
Jobs Reported: 2,365 jobs or 62% based on audit results.

Background: Fordham University is an institution of higher education. The company was selected for an audit of its employment records by NYPA's third party auditing firm and found to be non-compliant for the reporting year.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 1,380 kW, and authorize an adjustment of the job commitment to not less than 2,365 jobs.*

Geneva General Hospital (Geneva, Ontario County) AppID 5482

Allocation: 546 kW
Contract Demand: 546 kW
Power Utilization: 100%
Cumulative Capital Spending: \$60,360,826 or 77% of 5 year commitment
Job Commitment: 1,117 jobs
Jobs Reported: 901 jobs or 81%

Background: This is the fourth year Geneva General reported employment levels below the compliance threshold. The hospital employs over 1,900 employees between various other hospitals, nursing homes, surgical centers, and multiple lab/physician centers encompassing several counties. The hospital states the movement of employees between multiple work locations as the reason for its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 496 kW, and authorize an adjustment of the job commitment to not less than 901 jobs.*

Greek Mountain Dairy, LLC (Goshen, Orange County) AppID 8202

Allocation: 86 kW
Contract Demand: 86 kW
Power Utilization: 100%
Cumulative Capital Spending: \$959,583 or 10% of 5 year commitment
Job Commitment: 67 jobs
Jobs Reported: 11 jobs or 16%

Background: Greek Mountain Dairy manufactures cheese and dairy products. This is the third year the company reported employment levels below the compliance threshold. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 26 kW, and authorize an adjustment of the job commitment to not less than 11 jobs.*

HealthAlliance Hospital Broadway Campus (Kingston, Ulster County) AppID 9998

Allocation: 280 kW
Contract Demand: 280 kW
Power Utilization: 100% of commitment
Cumulative Capital Spending: \$13,597,628 or 82% of 5 year commitment
Job Commitment: 761 jobs
Jobs Reported: 618 jobs, or 81%

Background: HealthAlliance Hospital is a medical facility. This is the fourth year the hospital reported employment levels below the compliance threshold. HealthAlliance Hospital states the consolidation of HealthAlliance campuses and movement of employees between facility locations as the reason for its jobs shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 260 kW, and authorize an adjustment of the job commitment to not less than 618 jobs.*

HP Hood LLC (LaFargeville, Jefferson County) AppID 10075

Allocation: 956 kW
Contract Demand: 956 kW
Power Utilization: 100%
Cumulative Capital Spending: \$6,587,000 or 132% of 5 year commitment
Job Commitment: 150 jobs
Jobs Reported: 123 jobs, or 82%

Background: HP Hood LLC manufactures cultured dairy projects. This is the second year the company reported employment levels below the compliance threshold. HP Hood states it has lost a significant

portion of business to a competitor and has had to combine a few staff positions and move other staff out of this facility. The company hopes to gain some sales volume during 2017.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 886 kW, and authorize an adjustment of the job commitment to not less than 123 jobs.*

Huhtamaki, Inc. (Fulton, Oswego County) AppID 7127

Allocation: 2,100 kW
Contract Demand: 2,100 kW
Power Utilization: 100%
Cumulative Capital Spending: \$11,464,811 or 43% of 5 year commitment
Job Commitment: 555 jobs
Jobs Reported: 489 jobs, or 88%

Background: Huhtamaki, Inc. is a paper printing and package conversion operation. This is the first year the company fell below the compliance threshold. In the past few years, Huhtamaki has moved some of its business to other facilities to align technologies and reduce production costs. Any future employment losses due to automation will be documented to detail the number of work hours reduced and productivity gains in order to avoid compliance action if possible.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 2,060 kW, and authorize an adjustment of the job commitment to not less than 489 jobs.*

Intertek Testing Services NA, Inc. (Cortland, Cortland County) AppID 10157

Allocation: 570 kW (effective 8-1-2016)
Contract Demand: 570 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$5,755,644 or 48% of 5 year commitment
Job Commitment: 393 jobs (effective 8-1-2016)
Jobs Reported: 290 jobs, or 74% based on audit results

Background: Intertek Testing Services provides testing, inspecting and product certification services. This is the fourth year the company reported employment levels below the compliance threshold. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 480 kW, and authorize an adjustment of the job commitment to not less than 290 jobs.*

ITT Corporation (Bohemia, Suffolk County) AppID 3954

Allocation: 270 kW (effective 8-1-2016)
Contract Demand: 270 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$1,518,968 or 61% of 5 year commitment
Job Commitment: 186 jobs (effective 8-1-2016)
Jobs Reported: 147 jobs or 79%

Background: ITT Corp. (EDO) manufactures antennas. This is the fourth year the company reported below the compliance threshold at this facility. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 240 kW, and authorize an adjustment of the job commitment to not less than 147 jobs.*

ITT Corporation (North Amityville, Suffolk County) AppID 4010

Allocation: 310 kW
Contract Demand: 310 kW
Power Utilization: 100%
Cumulative Capital Spending: \$8,160,768 or 544% of 5 year commitment
Job Commitment: 270 jobs
Jobs Reported: 231 jobs or 86%

Background: ITT Corporation (Exelis) is a government contractor. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 300 kW, and authorize an adjustment of the job commitment to not less than 231 jobs.*

ITT Corporation (North Amityville, Suffolk County) AppID 4094

Allocation: 406 kW
Contract Demand: 406 kW
Power Utilization: 100%
Cumulative Capital Spending: \$3,218,667 or 54% of 5 year commitment
Job Commitment: 142 jobs
Jobs Reported: 122 jobs or 86%

Background: ITT Corporation (Exelis) is a government contractor. This is the second year the company reported employment levels below the compliance threshold at this facility. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 396 kW, and authorize an adjustment of the job commitment to not less than 122 jobs.*

Kerry Biofunctional Ingredients, Inc. (Norwich, Chenango County) AppID 32622

Allocation: 540 kW (effective 8-1-2016)
Contract Demand: 540 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$2,711,656 or 45% of 5 year commitment
Job Commitment: 109 jobs (effective 8-1-2016)
Jobs Reported: 96 jobs or 88%

Background: Kerry Biofunctional Ingredients, Inc. produces pharmaceutical lactose/excipients, casein hydrolysates, flavors and tablet coatings. The headcount reduction has stabilized since the relocation of an existing production line in 2015. Although the business is consistently evaluating options to replace that line, there are currently no approved projects that would increase the headcount over the next 12 months. Kerry Biofunctional anticipates that headcount will not increase over the next year.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 530 kW, and authorize an adjustment of the job commitment to not less than 96 jobs.*

Kionix, Inc. (Ithaca, Tompkins County) AppID 14404

Allocation: 560 kW
Contract Demand: 560 kW
Power Utilization: 100%
Cumulative Capital Spending: \$22,773,971 or 202% of 5 year commitment
Job Commitment: 199 jobs
Jobs Reported: 150 jobs or 75%

Background: Kionix, Inc. is a manufacturer of MEMS inertial sensors. This is the second year the company reported below the compliance threshold. The company states that its job shortfalls can be attributed to reductions in sales prices and therefore lost revenue.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 480 kW, and authorize an adjustment of the job commitment to not less than 150 jobs.*

Kraft Foods Global, Inc. (Avon, Livingston County) AppID 9347

Allocation: 2,620 kW (effective 8-1-2016)
Contract Demand: 2,620 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$16,643,682 or 166% of 5 year commitment
Job Commitment: 386 jobs (effective 8-1-2016)
Jobs Reported: 332 jobs or 86%, *based on recent jobs reported*

Background: Kraft Foods Global, Inc. manufactures packaged food products. This is the second year the company reported below the compliance threshold with 314 jobs, or 81%. The company states headcount is low due to variability in demand for its products, and such variability has impeded the company's ability to meet its job commitments. Additionally, recent company mergers have resulted in an increase of

retirement for both hourly and salaried workforce. Kraft Foods has recently provided job counts for the period July 2016 through Nov 2016, averaging 332 jobs, or 86%.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 2,520 kW, and authorize an adjustment of the job commitment to not less than 332 jobs.*

Land O'Lakes, Inc. (Hicksville, Nassau County) AppID 5745

Allocation: 930 kW (effective 8-1-2016)
Contract Demand: 930 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$8,597,780 or 48% of 5 year commitment
Job Commitment: 287 jobs (effective 8-1-2016)
Jobs Reported: 190 jobs or 66%. (220 jobs or 77% used to calculate power reduction)

Background: Land O' Lakes, Inc. manufactures pudding products. This is the fourth year the company reported below the compliance threshold. The company provided details on several capital improvement projects that resulted in gained efficiencies which have the consequence of not requiring as many employees. 30 Full time positions were eliminated due to these gains and the company provided backup documenting the full time equivalent displacements.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 810 kW, and authorize an adjustment of the job commitment to not less than 190 jobs.*

Lehigh Hanson Services LLC (Glens Falls, Warren County) AppID 7250

Allocation: 4,430 kW (effective 8-1-2016)
Contract Demand: 4,430 kW (effective 8-1-2016)
Power Utilization: 100%
Job Commitment: 106 jobs (effective 8-1-2016)
Jobs Reported: 94 jobs or 89%, based on audit results.

Background: Lehigh Northeast Cement company manufactures cement. This is the second year the company fell below the job compliance threshold. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 4,390 kW, and authorize an adjustment of the job commitment to not less than 94 jobs.*

Linita Design & Mfg. Corp. (Lackawanna, Erie County) AppID 3894

Allocation: 60 kW (effective 8-1-2016)
Contract Demand: 60 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$557,070 or 28% of 5 year commitment
Job Commitment: 33 jobs (effective 8-1-2016)
Jobs Reported: 22 jobs or 67%

Background: Linita Design Manufacturing Corporation manufactures and designs steel. The company stated it continued to experience financial hardship in 2016 as in prior years which did not allow Linita to grow and hire more people as originally planned. Linitas' fiscal year end for Feb 2017 projections show profitability and will allow it to begin growth.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 50 kW, and authorize an adjustment of the job commitment to not less than 22 jobs.*

Lockheed Martin Corporation (Liverpool, Onondaga County) AppID 12995

Allocation: 2,940 kW (effective 8-1-2016)
Contract Demand: 2,940 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$68,217,986 or 68% of 5 year commitment
Job Commitment: 1,798 jobs (effective 8-1-2016)
Jobs Reported: 1,573 jobs or 87%

Background: Lockheed Martin produces radar systems. This is the third year the company reported below the compliance threshold. The company reported government sequestration and spending cuts as the reason for the jobs shortfall. It expects to reach committed levels as it wins new business. The company recently stated it is trending up in jobs, however no real impact as of yet.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 2,860 kW, and authorize an adjustment of the job commitment to not less than 1,573 jobs.*

Madelaine Chocolates Novelties, Inc. (Rockaway Beach, Queens County) AppID 3277

Allocation: 610 kW
Contract Demand: 500 kW
Power Utilization: 98%
Cumulative Capital Spending: \$11,339,330 or 454% of 5 year commitment
Job Commitment: 400 jobs
Jobs Reported: 200 jobs or 50%, *based on current job numbers obtained.*

Background: Madelaine Chocolates manufactures chocolate. This is the third year the company reported employment levels below the compliance threshold, reporting 127 jobs, or 32%. The company was greatly affected by Hurricane Sandy in October 2009, and it is still rebounding from the effects. Madelaine Chocolates was noncompliant in jobs during the last two reporting periods; however, action was not taken. Since reporting in July 2016, the company's employment figures have increased from 148 in July to 224 in February 2017, averaging 200 jobs, or 50% for that period. Additionally, it expects to bring two kitchens into production during 2017, which may provide for an increase in jobs.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation to not less than 370 kW and contract demand to not less than 300 kW, and authorize an adjustment of the job commitment to not less than 200 jobs.*

Mohawk Fine Papers, Inc. App. ID 4891 (Cohoes, Albany County) AppID 4891

Allocation: 1,926 kW
Contract Demand: 1,926 kW
Power Utilization: 100%
Cumulative Capital Spending: \$5,170,784 or 53% of 5 year commitment
Job Commitment: 242 jobs
Jobs Reported: 199 jobs or 82%

Background: Mohawk Fine Papers, Inc. is a manufacturer of paper products. This is the third year the company reported employment levels below the compliance threshold. Mohawk Fine Papers states a challenging economic climate with a decline in demand for the paper products it produces as the reason for its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 1,776 kW, and authorize an adjustment of the job commitment to not less than 199 jobs.*

GCT New York LP (New York Container Terminal, Inc.) (Staten Island, Richmond County) AppID 5790

Allocation: 340 kW (effective 8-1-2016)
Contract Demand: 340 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$42,898,744 or 9% of 5 year commitment
Job Commitment: 575 jobs
Jobs Reported: 304 jobs or 53%

Background: New York Container Terminal is a shipping terminal. The company's jobs have been on the steady decline for the past three years. The company claims that it lost business since 2014 due to toll increases. Tax breaks and other remedies have not aided in its recovery.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 220 kW, and authorize an adjustment of the job commitment to not less than 304 jobs.*

NYSW Beverage Brands, Inc. (New York Spring Water, Inc) (Halcott Center, Greene County) AppID 29431

Allocation: 60 kW
Contract Demand: 60 kW
Power Utilization: 100%
Cumulative Capital Spending: \$776,000 or 52% of 5 year commitment
Job Commitment: 15 jobs
Jobs Reported: 8 jobs or 53% *based on audit results*

Background: New York Spring Water, Inc is a bottling facility for water and flavored water. This is the fourth year the company reported employment levels below the compliance threshold. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 40 kW, and authorize an adjustment of the job commitment to not less than 8 jobs.*

Northrop Grumman Systems Corporation (Bethpage, Nassau County) AppID 9549

Allocation: 630 kW (effective 8-1-2016)
Contract Demand: 630 kW (effective 8-1-2016)
Power Utilization: 100%
Job Commitment: 572 jobs (effective 8-1-2016)
Jobs Reported: 321 jobs or 56%

Background: Northrop Grumman Systems Corporation is an R&D, engineering and design firm. It has vacated two buildings at this location, moving operations to Florida. The job reduction was part of an announced plan to relocate 850 jobs beginning in 2014.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 420 kW, and authorize an adjustment of the job commitment to not less than 321 jobs.*

Printex Packaging Corporation (Islandia, Suffolk County) AppID 17732

Allocation: 100 kW (effective 8-1-2016)
Contract Demand: 100 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$3,616,400 or 195% of 5 year commitment
Job Commitment: 50 jobs (effective 8-1-2016)
Jobs Reported: 40 jobs or 80%

Background: Printex Packaging Corporation manufactures clear plastic packaging cartons and displays. This is the third year the company reported employment levels below the compliance threshold. The company struggled with foreign competition, and is currently faced with the decision to continue operations in Long Island or to consolidate operations to its Montreal plant.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 90 kW, and authorize an adjustment of the job commitment to not less than 40 jobs.*

Richardson Brands Company (Canajoharie, Montgomery County) AppID 9225

Allocation: 346 kW
Contract Demand: 346 kW
Power Utilization: 100%
Cumulative Capital Spending: \$2,580,410 or 103% of 5 year commitment
Job Commitment: 213 jobs
Jobs Reported: 174 jobs or 82% based on audit results.

Background: Richardson Brands Company manufactures candy. This is the fourth year Richardson Brands fell below the compliance threshold. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 316 kW, and authorize an adjustment of the job commitment to not less than 174 jobs.*

SCA Tissue North America, LLC (South Glens Falls, Saratoga County) AppID 3900

Allocation: 5,750 kW (effective 8-1-2016)
Contract Demand: 5,750 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$15,814,255 or 36% of 5 year commitment
Job Commitment: 285 jobs (effective 8-1-2016)
Jobs Reported: 236 jobs or 83%

Background: SCA Tissue North America manufactures tissue products. This is the third year SCA Tissue fell below the compliance threshold at this South Glens Falls facility. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 5,350 kW, and authorize an adjustment of the job commitment to not less than 236 jobs.*

SCA Tissue North America, LLC (Greenwich, Washington County) AppID 3901

Allocation: 640 kW (effective 8-1-2016)
Contract Demand: 640 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$2,731,505 or 22% of 5 year commitment
Job Commitment: 112 jobs (effective 8-1-2016)
Jobs Reported: 83 jobs or 74%, *based on audit results*

Background: SCA Tissue North America manufactures tissue products. This is the fourth year SCA Tissue fell below the compliance threshold at this facility. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 540 kW, and authorize an adjustment of the job commitment to not less than 83 jobs.*

Snyder Industries, Inc. (Tonawanda, Niagara County) AppID 6884

Allocation: 370 kW (effective 8-1-2016)
Contract Demand: 370 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$1,401,717 or 4% of 5 year commitment
Job Commitment: 85 jobs (effective 8-1-2016)
Jobs Reported: 62 jobs or 73%

Background: Snyder Industries, Inc. manufactures machinery. This is the second year the company reported employment levels below the compliance threshold. The company reports 85% of sales are to

two large customers, both of which are in the coal mining equipment industry. The decline in coal usage has depressed its sales by 62% over the past two years. The company is attempting to increase sales to other customers.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 310 kW, and authorize an adjustment of the job commitment to not less than 62 jobs.*

Sonoco Plastics, Inc. (Chatham, Columbia County) AppID 3848

Allocation: 750 kW
Contract Demand: 750 kW
Power Utilization: 100%
Cumulative Capital Spending: \$2,047,767 or 118% of 5 year commitment
Job Commitment: 139 jobs
Jobs Reported: 123 jobs or 88%

Background: Sonoco manufactures plastics products. Due to consolidation of the company in 2015, divisional offer personnel were relocated and reduced. Although the company reported manufacturing jobs have not been affected, the company was unable to meet its job commitment.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 740 kW, and authorize an adjustment of the job commitment to not less than 123 jobs.*

Stature Electric, Inc. (Watertown, Jefferson County) AppID 5665

Allocation: 266 kW
Contract Demand: 266 kW
Power Utilization: 100%
Cumulative Capital Spending: \$1,651,922 or 33% of 5 year commitment
Job Commitment: 90 jobs
Jobs Reported: 71 jobs or 79%

Background: Stature Electric manufactures magnet motors and gear motors. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 236 kW, and authorize an adjustment of the job commitment to not less than 71 jobs.*

L. & J. G. Stickley Incorporated (Manlius, Onondaga County) AppID 5276

Allocation: 1,010 kW
Contract Demand: 1,010 kW
Power Utilization: 100%
Cumulative Capital Spending: \$13,998,778 or 93% of 5 year commitment
Job Commitment: 893 jobs
Jobs Reported: 695 jobs or 78%, (716 jobs or 80% used to calculate power reduction)

Background: Stickley Furniture Company manufactures furniture. Since setting its original job commitment figure, the company's sales has decreased by 12%, which has correlated with job reductions. The company provided details on several capital improvement projects that resulted in production efficiencies which translate into a reduced workforce. Twenty-one full time positions were eliminated. The company provided project details demonstrating the proof for the job displacements.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 910 kW, and authorize an adjustment of the job commitment to not less than 695 jobs.*

Sutherland Global Services Inc. (Rochester, Monroe County) AppID 11380

Allocation:	76 kW
Contract Demand:	76 kW
Power Utilization:	100%
Cumulative Capital Spending:	\$3,508,988 or 100% of 5 year commitment
Job Commitment:	2,975 jobs
Jobs Reported:	2,300 jobs or 77%

Background: Sutherland Global Services is a provider of analytics-driven business solutions. The decline in its employment levels is due to an effort to right-size in anticipation of an increase in minimum wage. The company anticipates its staff level will remain at 2,300 jobs for the foreseeable future.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 66 kW, and authorize an adjustment of the job commitment to not less than 2,300 jobs.*

TMI Trading corp. (Brooklyn, Kings County) AppID 45783

Allocation:	66 kW
Contract Demand:	66 kW
Power Utilization:	100%
Cumulative Capital Spending:	\$880,849 or 88% of 5 year commitment
Job Commitment:	27 jobs
Jobs Reported:	10 jobs or 37%

Background: TMI Trading is a food manufacturing company. After opening a new location in July 2015, 36 jobs were transferred from this location to the new warehouse. From July 2016 through December 2016, TMI staff levels continued to decline.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 36 kW, and authorize an adjustment of the job commitment to not less than 10 jobs.*

TMP Technologies, Inc. (Wyoming County) AppID 5294

Allocation: 200 kW
Contract Demand: 200 kW
Power Utilization: 100%
Cumulative Capital Spending: \$378,795 or 76% of 5 year commitment
Job Commitment: 30 jobs
Jobs Reported: 24 jobs or 80%

Background: TMP Technologies manufactures foam and plastic products. The company stated slower sales in 2016 led to lower employment. It reports that new major customers will begin orders in 2017.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 180 kW, and authorize an adjustment of the job commitment to not less than 24 jobs.*

Universal Photonics, Inc. (Vernon, Oneida County) AppID 9227

Allocation: 100 kW (effective 8-1-2016)
Contract Demand: 100 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$5,032,872 or 132% of 5 year commitment
Job Commitment: 71 jobs (effective 8-1-2016)
Jobs Reported: 42 jobs or 59%

Background: Universal Photonics, Inc. (Vernon Facility) provides critical surface preparation materials. This is its fourth year of noncompliance with job commitments. The company reduced jobs due to a slowdown in overseas business. It anticipates jobs figures to remain the same.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 70 kW, and authorize an adjustment of the job commitment to not less than 42 jobs.*

XLI Corporation (Rochester, Monroe County) AppID 7576

Allocation: 110 kW (effective 8-1-2016)
Contract Demand: 110 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$430,741 or 17% of 5 year commitment
Job Commitment: 55 jobs (effective 8-1-2016)
Jobs Reported: 42 jobs or 76%

Background: XLI Corporation manufactures machine components. This is second year XLI Corp fell below the compliance threshold. The company reports that its employment figures are dependent on variations in its customer demands. The company expects employment to stay at current levels.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 100 kW, and authorize an adjustment of the job commitment to not less than 42 jobs.*

EXHIBIT 5c iv-B

**NONCOMPLIANCE WITH JOB COMMITMENTS; RECOMMENDED ADJUSTMENTS TO
JOB COMMITMENTS**

Air Products and Chemicals, Inc. (Medina, Orleans County) AppID 10270

Allocation: 190 kW (effective 8-1-2016)
Contract Demand: 190 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$364,759 or 73% of 5 year commitment
Job Commitment: 7 jobs (effective 8-1-2016)
Jobs Reported: 6 jobs, or 86%

Background: Air Products, Inc. – Medina, formerly EPCO Carbon dioxide Products, Inc. manufactures purified liquid carbon dioxide. This is the third year the company reported employment levels below the compliance threshold. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 6 jobs.*

Ballet Hispanico of New York, Inc. (New York, New York County) AppID 10036

Allocation: 16 kW
Contract Demand: 16 kW
Power Utilization: 100%
Cumulative Capital Spending: \$1,434,917 or 605% of 5 year commitment
Job Commitment: 54 jobs
Jobs Reported: 46 jobs, or 85%

Background: Ballet Hispanico is a dance school and studio. The company did not provide any explanation regarding its job shortfall. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 46 jobs.*

Chef One Corporation (Brooklyn, Kings County) AppID 45796

Allocation: 40 kW
Contract Demand: 40 kW
Power Utilization: 100%
Cumulative Capital Spending: \$143,343 or 14% of 5 year commitment
Job Commitment: 17 jobs
Jobs Reported: 15 jobs, or 88%

Background: Chef One Corporation is a food manufacturing company. Chef One Corporation reported employment levels below the compliance threshold. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 15 jobs.*

Dayton T. Brown, Inc. (Bohemia, Suffolk County) AppID 9603

Allocation: 100 kW (effective 8-1-2016)
Contract Demand: 100 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$3,477,482 or 47% of 5 year commitment
Job Commitment: 177 jobs (effective 8-1-2016)
Jobs Reported: 155 jobs or 88%

Background: Dayton T. Brown performs test systems for industrial, commercial and military requirements. This is the fourth year the company reported employment levels below the compliance threshold. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 155 jobs.*

Maines Paper Food Service, Inc. (Conklin, Broome County) AppID 10212

Allocation: 610 kW (effective 8-1-2016)
Contract Demand: 610 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$19,113,678 or 127% of 5 year commitment
Job Commitment: 1,229 jobs (effective 8-1-2016)
Jobs Reported: 1,093 jobs or 89%

Background: Maines Paper Food Service Inc. is a food distributor and warehouse. This is the fourth year the company reported employment levels below the compliance threshold. After being noncompliant in jobs in the 2015 reporting period, compliance action was taken. However, for this reporting period, because the employment shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 1,093 jobs.*

Margaretville Memorial Hospital (Margaretville, Delaware County) AppID 9999

Allocation: 40 kW
Contract Demand: 40 kW
Power Utilization: 100%
Cumulative Capital Spending: \$7,916,855 or 186% of 5 year commitment
Job Commitment: 101 jobs
Jobs Reported: 75 jobs or 74%

Background: Margaretville Hospital provides healthcare and medical needs. This is the third year Margaretville Hospital reported below the compliance threshold. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 75 jobs.*

Mohawk LTD. (Chadwick's, Oneida County) AppID 8018

Allocation: 46 kW
Contract Demand: 46 kW
Power Utilization: 100%
Cumulative Capital Spending: \$977,446 or 150% of 5 year commitment
Job Commitment: 60 jobs
Jobs Reported: 53 jobs or 88%

Background: Mohawk LTD produces electronic calibration equipment. This is Mohawk LTD's first year reporting below the compliance threshold. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 53 jobs.*

Margaretville Nursing Home, Inc. (Margaretville, Delaware County) AppID 10000

Allocation: 40 kW
Contract Demand: 40 kW
Power Utilization: 100%
Cumulative Capital Spending: \$559,722 or 75% of 5 year commitment
Job Commitment: 88 jobs
Jobs Reported: 68 jobs or 77%

Background: Mountainside Residential Care Center is in the health services industry. This is the fourth year the company reported employment levels below the compliance threshold. Mountainside Residential works in conjunction with the Margaretville Hospital, which is also noncompliant after seeing a similar dip in employment at the beginning of the reporting period. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 68 jobs.

United Odd Fellow and Rebekah Home (Bronx, Bronx County) AppID 10410

Allocation: 140 kW (effective 8-1-2016)
Contract Demand: 140 kW effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$444,483 or 22% of 5 year commitment
Job Commitment: 201 jobs (effective 8-1-2016)
Jobs Reported: 169 jobs or 84%, based on audit results.

Background: Rebekah Rehab provides health services. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 169 jobs.

R.R. Donnelley & Sons Company (New York, New York County) AppID 9965

Allocation: 90 kW
Contract Demand: 90 kW
Power Utilization: 100%
Cumulative Capital Spending: \$132,597 or 66% of 5 year commitment
Job Commitment: 165 jobs
Jobs Reported: 146 jobs or 88%

Background: RR Donnelley & Sons provides printing services. The company was found to be noncompliant in job commitments. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 146 jobs.

Schneider Packing Equipment Company, Inc. (Brewerton, Onondaga County) AppID 9408

Allocation: 120 kW
Contract Demand: 120 kW
Power Utilization: 100%
Cumulative Capital Spending: \$1,352,602 or 54% of 5 year commitment
Job Commitment: 170 jobs
Jobs Reported: 151 jobs or 89%, based on audit results.

Background: Schneider Packing Equipment, Co., Inc. manufactures packaging machinery. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs. However, because the shortfall is relatively minor, the methodology used to

calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 151 jobs.*

Sleepy's, LLC (Hicksville, Nassau County) AppID 3708

Allocation: 160 kW
Contract Demand: 160 kW
Power Utilization: 100%
Cumulative Capital Spending: \$4,510,077 or 150% of 5 year commitment
Job Commitment: 658 jobs
Jobs Reported: 566 jobs or 86%

Background: Sleepy's is a mattress warehouse. The company did not provide any explanation regarding its job shortfall. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 566 jobs.*

Syracuse Plastics, LLC (Liverpool, Onondaga County) AppID 8104

Allocation: 200 kW (effective 8-1-2016)
Contract Demand: 200 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$1,415,126 or 94% of 5 year commitment
Job Commitment: 44 jobs (effective 8-1-2016)
Jobs Reported: 38 jobs or 86%

Background: **Background:** Syracuse Plastics LLC manufactures plastic parts and components. The company did not provide any explanation regarding its job shortfall. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 38 jobs.*

TMP Technologies, Inc. – Buffalo (Buffalo, Erie County) AppID 4497

Allocation: 60 kW
Contract Demand: 60 kW
Power Utilization: 100%
Cumulative Capital Spending: \$1,338,027 or 134% of 5 year commitment
Job Commitment: 31 jobs
Jobs Reported: 27 jobs or 87%

Background: TMP Technologies manufactures foam and plastic products. The company anticipates new business activity, which would result in additional jobs. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 27 jobs.*

Yeshiva University (New York, New York County) AppID 7104

Allocation:	90 kW (effective 8-1-2016)
Contract Demand:	90 kW (effective 8-1-2016)
Power Utilization:	100%
Cumulative Capital Spending:	\$402,529 or 16% of 5 year commitment
Job Commitment:	165 jobs (effective 8-1-2016)
Jobs Reported:	147 jobs or 89%

Background: Yeshiva University provides higher education. This is its second year of noncompliance. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 147 jobs.*

YWCA of Niagara Frontier, Inc. (Niagara Falls, Niagara County) AppID 4132

Allocation:	10 kW
Contract Demand:	10 kW
Power Utilization:	100%
Job Commitment:	12 jobs
Jobs Reported:	7 jobs or 58%

Background: YWCA of Niagara provides community services. Four employees were transferred to a different location. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 7 jobs.*

EXHIBIT 5c iv-C

**NONCOMPLIANCE WITH POWER UTILIZATION COMMITMENTS; RECOMMENDED (1)
REDUCTION IN ALLOCATION/CONTRACT DEMAND, AND (2) ADJUSTMENT TO JOB
COMMITMENT**

John Mezzalingua Associates, LLC (Liverpool, Onondaga County) AppID 24371

Allocation: 776 kW
Contract Demand: 776 kW
Power Utilization: 611 kW or 79%
Cumulative Capital Spending: \$14,414,126 or 131% of 5 year commitment
Job Commitment: 120 jobs
Jobs Reported: 331 jobs or 276%

Background: John Mezzalingua Associates provides telecommunications and wireless solutions. This is the second year the company did not meet its kW utilization. The company invested in capital machinery, expanded its production lines, and increased production hours. Its energy usage since reporting continues to fluctuate. John Mezzalingua expects an increase in its energy use to continue throughout 2017.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 696 kW, and authorize an adjustment of the job commitment to not less than 95 jobs.*

EXHIBIT 5c iv-D

**NONCOMPLIANCE WITH SUPPLEMENTAL COMMITMENTS; NOT RECOMMENDED FOR
(1) REDUCTIONS IN ALLOCATIONS/CONTRACT DEMANDS, OR (2) ADJUSTMENTS TO
JOB COMMITMENTS**

1. Job Commitments

Alken Industries, Inc. (Ronkonkoma, Suffolk County) AppID 9616

Allocation: 80 kW
Contract Demand: 80 kW
Power Utilization: 100%
Cumulative Capital Spending: \$106,637 or 3% of 5 year commitment
Job Commitment: 50 jobs
Jobs Reported: 43 jobs or 86%

Background: Alken Industries, Inc. manufactures and assembles aircrafts parts. This is the second year Alken reported below the compliance threshold. Alken was considering an out of state move, but has applied for NYS grants and local tax abaitments. The NYS grant was approved. The company recently stated it has since hired 5 additional machine worker as of December and is currently at 49 employees bringing its compliance to 96%. Its 2017 budget allows for hiring of additional employees. Staff will continue to monitor its performance closely.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

Associated Brands, Inc. (Medina, Orleans County) AppID 7479

Allocation: 610 kW
Contract Demand: 610 kW
Power Utilization: 100%
Cumulative Capital Spending: \$12,845,378 or 92% of 5 year commitment
Job Commitment: 326 jobs
Jobs Reported: 249 jobs, or 76%

Background: Associated Brands is a food distributor. Temporary employment services in the area do not always have staff available for positions required. Qualified candidates from Rochester or Buffalo face longer commute times; therefore, Associated Brands continues to struggle with job placement. The company recently provided a job count for the July 2016 through November 2016 period, averaging 324 jobs, or 99% of its commitment level. Based on this recently reported job information, Associated Brands has trended upwards and appears headed toward compliance for the next reporting period.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

Dupli Graphics Corporation (Syracuse, Onondaga County) AppID 8995

Allocation: 146 kW
Contract Demand: 146 kW
Power Utilization: 93%
Cumulative Capital Spending: \$2,665,443 or 133% of 5 year commitment
Job Commitment: 110 jobs
Jobs Reported: 3 jobs or 3%

Background: Dupli Envelopes provides commercial printing services. There is a current request from the company to transfer this allocation to another facility receiving NYPA power which has exceeded its job commitments. Contract modifications are being considered to provide that allocations from both facilities be combined. This would place the company in compliance. Staff expects to request Trustee approval of revised contract terms in the near future.

Recommendation: *Staff recommends that the Trustees take no action at this time due to new contract modification.*

Global Foundries U.S. 2 LLC (Hopewell Junction, Dutchess County) AppID 3676

Allocation: 10,000 kW
Contract Demand: 10,000 kW
Power Utilization: 100%
Cumulative Capital Spending: \$4,356,700,000 or 109% of 5 year commitment
Job Commitment: 2,350 jobs
Jobs Reported: 1,846 jobs or 79%

Background: Global Foundries manufactures semiconductors. In July 2015, the company acquired IBM's Microelectronic Division in East Fishkill. The company states that over 900 employees under the IBM umbrella did not transfer over to Global Foundries. The company has requested a contract modification that would allow the transfer of a portion of the job commitment from this facility to another facility receiving NYPA power. This will enable the company to maintain the overall job commitment and place the company in compliance. Staff expects to request Trustee approval of revised contract terms in the near future.

Recommendation: *Staff recommends that the Trustees take no action at this time due to new contract modification.*

The Indium Corporation of America (Utica, Oneida County) AppID 8946

Allocation: 120 kW (effective 8-1-2016)
Contract Demand: 120 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$1,778,625 or 178% of 5 year commitment
Job Commitment: 40 jobs (effective 8-1-2016)
Jobs Reported: 31 jobs, or 78%

Background: The Indium Corporation of America manufactures electronic assembly materials. This is the fourth year the company reported employment levels below the 90% compliance threshold for this facility. Indium has two other allocations associated with facilities that have met or exceeded job

commitments. Employees were transferred again to other locations to right size staffing needs. The company has requested another contract modification that would allow employment from other facilities within close proximity to be counted toward the total employment commitments. Staff expects to request Trustee approval of revised contract terms in the near future.

Recommendation: *Staff recommends that the Trustees take no action at this time due to new contract modification.*

NYCO Minerals, Inc. (Willsboro, Essex County) AppID 7037

Allocation: 1,400 kW
Contract Demand: 1,400 kW
Power Utilization: 100%
Cumulative Capital Spending: \$6,782,994 or 151% of 5 year commitment
Job Commitment: 104 jobs
Jobs Reported: 92 jobs or 88%

Background: NYCO Minerals has seen a loss of employees due to retirements. This is NYCO Minerals' first year of noncompliance. The company followed up after submitting its compliance report indicating it did not originally account for full time employees out on disability. The corrected employment figures result in an average of 97 jobs, or 93% of its commitment.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

Special Metals Corporation (New Hartford, Oneida County) AppID 9717

Allocation: 4,900 kW
Contract Demand: 4,900 kW
Power Utilization: 100%
Cumulative Capital Spending: \$25,518,520 or 59% of 5 year commitment
Job Commitment: 360 jobs
Jobs Reported: 322 jobs or 89%

Background: Special Metals Corporation produces super alloys. This is the first year Special Metals fell below the compliance threshold. The company recently provided a job count for the period July 2016 through November 2016, averaging 326 jobs for that period, or 91% of its commitment level. Based on this recently reported job information, Special Metals has trended upwards and is in compliance.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

St John's University (Jamaica, Queens County) AppID 9435

Allocation: 680 kW (effective 8-1-2016)
Contract Demand: 680 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$65,097,238 or 50% of 5 year commitment
Job Commitment: 2,321 jobs (effective 8-1-2016)
Jobs Reported: 1,981 jobs or 85%

Background: St John's University is an institution for higher education. This is the second year St John's fell below the compliance threshold. The company followed up since reporting in September and confirmed that it had neglected to report food service and maintenance contractors. This increases its employee count by 421 jobs bringing it to 103% of its compliance commitment.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

Town Sports International, LLC (Elmsford, Westchester County) AppID 24532

Allocation: 180 kW (effective 8-1-2016)
Contract Demand: 180 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$2,768,369 or 221% of 5 year commitment
Job Commitment: 93 jobs (effective 8-1-2016)
Jobs Reported: 79 jobs or 85%

Background: Town Sports International, LLC is a laundry facility and linen service. This is the second year the company reported below the compliance threshold. The company provided a job count for the period July 2016 through November 2016, averaging 91 jobs for that period, or 98% of its commitment level. Based on this recently reported job information, it appears that Town Sports International will be in compliance for the next reporting period.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

Upstate Niagara Cooperative, Inc. (Rochester, Monroe) AppID 5023

Allocation: 670 kW (effective 8-1-2016)
Contract Demand: 670 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$3,209,087 or 80% of 5 year commitment
Job Commitment: 177 jobs (effective 8-1-2016)
Jobs Reported: 158 jobs or 89%

Background: Upstate Niagara Coop Inc. – Rochester produces dairy products. This is its fourth year of noncompliance. The company provided a job count for the period July 2016 through October 2016, averaging 176 jobs for that period, or 99% of its commitment level. Based on this recently reported job information, Town Sports International has trended upwards and is in compliance.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

2. Power Utilization Commitments

Tapecon Inc. (Buffalo, Erie County) AppID 7398

Allocation: 230 kW
Contract Demand: 230 kW
Power Utilization: 196 kW or 85%
Cumulative Capital Spending: \$1,066,142 or 86% of 5 year commitment
Job Commitment: 110 jobs
Jobs Reported: 101 jobs or 92%

Background: Tapecon, Inc. prints custom labels. This is the first time Tapecon did not meet its power utilization commitment. The company reports that the drop in power utilization is due to lighting efficiency upgrades, which consist of switching all factory and office lighting to LED energy efficient lighting. The company recently made account modifications and reallocated its RNY allocation to additional electric meter accounts to better utilize its full allocation. Staff will continue to monitor the power use closely.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

3. No Contract Demand/RNY Power Allocation Reduction Calculated/Required

Barnes and Noble, Inc. (Westbury, Nassau County) AppID 9482

Allocation:	670 kW (effective 8-1-2016)
Contract Demand:	670 kW (effective 8-1-2016)
Power Utilization:	595 kW or 89%
Job Commitment:	227 jobs (effective 8-1-2016)
Jobs Reported:	255 jobs, or 112%

Background: Barnes & Noble is the business center for bookstore retail businesses. This is the third year Barnes & Noble did not meet its power utilization commitment. For the past two years, the company made modifications and reallocated its RNY allocation to additional electric accounts to better utilize its full allocation. Barnes and Nobel remains below the compliance threshold for power utilization. However, because the shortfall is relatively minor the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

DeLorio Foods, Inc. (Utica, Oneida County) AppID 3955

Allocation:	680 kW
Contract Demand:	680 kW
Power Utilization:	100%
Cumulative Capital Spending:	\$10,937,384 or 34% of 5 year commitment
Job Commitment:	175 jobs
Jobs Reported:	155 jobs or 89%

Background: DeLorio Foods processes frozen and baked foods. The company was found to be noncompliant in job commitments. However, because the shortfall is now relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

Jetro Cash and Carry Enterprises, LLC (Brooklyn, Kings County) AppID 9591

Allocation: 226 kW
Contract Demand: 226 kW
Power Utilization: 100%
Cumulative Capital Spending: \$1,422,734 or 41% of 5 year commitment
Job Commitment: 130 jobs
Jobs Reported: 116 jobs or 89%, *based on audit results*

Background: Jetro Holdings LLC is a wholesale grocery, food & restaurant supplier. The company was selected for an audit of its employment records and found to be non-compliant in jobs. However, because the shortfall is now relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

S. Howes, Inc. (Silver Creek, Chautauqua County) AppID 10387

Allocation: 20 kW (effective 8-1-2016)
Contract Demand: 20 kW (effective 8-1-2016)
Power Utilization: 16 kW or 80%
Cumulative Capital Spending: \$1,412,137 or 403% of 5 year commitment
Job Commitment: 12 jobs (effective 8-1-2016)
Jobs Reported: 20 jobs or 167%

Background: S. Howes Inc. manufactures and designs process equipment. This is the second year S. Howes did not meet its power utilization commitment. The company is an engineer-to-order manufacturing company and they state there is no way to predict its power demand as it fluctuates with business. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

SUMMARY OF EXHIBITS A-D
NONCOMPLIANCE WITH JOB COMMITMENTS; RECOMMENDED (1) REDUCTIONS IN ALLOCATIONS/CONTRACT DEMANDS, AND (2) ADJUSTMENTS TO JOB COMMITMENTS (Exhibit A)

Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Jobs Compliance %	Revised Commitments		Reductions		City	County
					(kW)	Jobs	(kW)	Jobs		
Aeroflex International Inc.	660	320	257	80%	600	257	60	63	Plainview	Nassau
Airsep Corporation	326	300	236	79%	296	236	30	64	Amherst	Erie
Air Techniques, Inc.	350	252	212	84%	330	212	20	40	Melville	Suffolk
Albert Einstein College of Medicine, Inc.	1,390	2,572	2,175	85%	1,320	2,175	70	397	Bronx	Bronx
Angion Biomedica Corp.	240	49	21	43%	130	21	110	28	Uniondale	Nassau
Arkwin Industries, Inc.	620	325	214	66%	480	214	140	111	Westbury	Nassau
AVA Pork Products, Inc.	180	300	251	84%	170	251	10	49	Hicksville	Nassau
Avon Products, Inc.	1,020	510	440	86%	980	440	40	70	Rye	Westchester
Blasch Precision Ceramics, Inc.	276	136	105	77%	246	105	30	31	Albany	Albany
Burton Industries Incorporated	300	39	30	77%	260	30	40	9	North Babylon	Suffolk
Cambridge Valley Machining, Inc.	180	110	83	75%	160	83	20	27	Cambridge	Washington
Computer Associates International, Inc.	2,460	1,728	1,500	87%	2,390	1,500	70	228	Islandia	Suffolk
Cannon Industries, Inc.	316	145	103	71%	256	103	60	42	Rochester	Monroe
Cooper Power Systems, LLC	810	199	131	66%	620	131	190	68	Olean	Cattaraugus
Derrick Corporation	1,170	570	412	72%	960	412	210	158	Cheektowaga	Erie
Flagpoles, Incorporated	110	100	80	80%	100	80	10	20	East Setauket	Suffolk
The Jesuits of Fordham, Inc.	1,910	3,821	2,365	62%	1,380	2,365	530	1,456	Bronx	Bronx
Geneva General Hospital	546	1,117	901	81%	496	901	50	216	Geneva	Ontario
Greek Mountain Dairy, LLC	86	67	11	16%	26	11	60	56	Goshen	Orange
HealthAlliance Hospital Broadway Campus	280	761	618	81%	260	618	20	143	Kingston	Ulster
HP Hood LLC	956	150	123	82%	886	123	70	27	LaFargeville	Jefferson
Huhtamaki, Inc.	2,100	555	489	88%	2,060	489	40	66	Fulton	Oswego
Intertek Testing Services NA, Inc.	570	393	290	74%	480	290	90	103	Cortland	Cortland
ITT Corporation (EDO)	270	186	147	79%	240	147	30	39	Bohemia	Suffolk
ITT Corporation (Exelis)	310	270	231	86%	300	231	10	39	North Amityville	Suffolk
ITT Corporation (Exelis)	406	142	122	86%	396	122	10	20	North Amityville	Suffolk
Kerry Biofunctional Ingredients Inc.	540	109	96	88%	530	96	10	13	Norwich	Chenango
Kionix, Inc.	560	199	150	75%	480	150	80	49	Ithaca	Tompkins
Kraft Foods Global, Inc.	2,620	386	332	86%	2,520	332	100	54	Avon	Livingston
Land O'Lakes, Inc.	930	287	190	77%	810	190	120	97	Hicksville	Nassau
Lehigh Hanson Services LLC	4,430	106	94	89%	4,390	94	40	12	Glens Falls	Warren
Linita Design & Mfg. Corp.	60	33	22	67%	50	22	10	11	Lackawanna	Erie
Lockheed Martin Corporation	2,940	1,798	1,573	87%	2,860	1,573	80	225	Liverpool	Onondaga
Madelaine Chocolate Novelties, Inc.	610	400	200	50%	370	200	240	200	Rockaway Beach	Queens
Mohawk Fine Papers, Inc.	1,926	242	199	82%	1,776	199	150	43	Cohoes	Albany
GCT New York LP	340	575	304	53%	220	304	120	271	Staten Island	Richmond
NYSW Beverage Brands, Inc.	60	15	8	53%	40	8	20	7	Halcott Center	Greene
Northrop Grumman Systems Corporation	630	572	321	56%	420	321	210	251	Bethpage	Nassau
Printex Packaging Corporation	100	50	40	80%	90	40	10	10	Islandia	Suffolk
Richardson Brands Company	346	213	174	82%	316	174	30	39	Canajoharie	Montgomery
SCA Tissue North America, LLC (South Glens Falls)	5,750	285	236	83%	5,350	236	400	49	South Glens Falls	Saratoga
SCA Tissue North America, LLC (Greenwich)	640	112	83	74%	540	83	100	29	Greenwich	Washington
Snyder Industries, Inc.	370	85	62	73%	310	62	60	23	Tonawanda	Niagara
Sonoco Plastics, Inc.	750	139	123	88%	740	123	10	16	Chatham	Columbia
Stature Electric, Inc.	266	90	71	79%	236	71	30	19	Watertown	Jefferson
L. & J. G. Stickley Incorporated	1,010	893	695	80%	910	695	100	198	Manlius	Onondaga
Sutherland Global Services Inc.	76	2,975	2,300	77%	66	2,300	10	675	Rochester	Monroe
TMI Trading Corp.	66	27	10	37%	36	10	30	17	Brooklyn	Kings
TMP Technologies, Inc.	200	30	24	80%	180	24	20	6	Wyoming	Wyoming
Universal Photonics, Inc.	100	71	42	59%	70	42	30	29	Vernon	Oneida
XLI Corporation	110	55	42	76%	100	42	10	13	Rochester	Monroe
					Total Reduction: Exhibit A		4,040	5,926		

Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Jobs Compliance %	Revised Commitments		Reductions		City	County
					(kW)	Jobs	(kW)	Jobs		

EXHIBIT E: SUMMARY OF EXHIBITS A-D
NONCOMPLIANCE WITH JOB COMMITMENTS; RECOMMENDED ADJUSTMENTS TO JOB COMMITMENTS (Exhibit B)

Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Jobs Compliance %	Revised Commitments		Reductions		City	County
					(kW)	Jobs	(kW)	Jobs		
Air Products and Chemicals, Inc.	190	7	6	86%	190	6	0	1	Medina	Orleans
Ballet Hispanico of New York, Inc.	16	54	46	85%	16	46	0	8	New York	New York
Chef One Corporation	40	17	15	88%	40	15	0	2	Brooklyn	Kings
Dayton T. Brown, Inc.	100	177	155	88%	100	155	0	22	Bohemia	Suffolk
Maines Paper Food Service, Inc.	610	1229	1093	89%	610	1093	0	136	Conklin	Broome
Margaretville Memorial Hospital	40	101	75	74%	40	75	0	26	Margaretville	Delaware
Mohawk LTD.	46	60	53	88%	46	53	0	7	Chadwicks	Oneida
Margaretville Nursing Home, Inc.	40	88	68	77%	40	68	0	20	Margaretville	Delaware
United Odd Fellow and Rebekah Home	140	201	169	84%	140	169	0	32	Bronx	Bronx
R.R. Donnelley & Sons Company	90	165	146	88%	90	146	0	19	New York	New York
Schneider Packaging Equipment Company, Inc.	120	170	151	89%	120	151	0	19	Brewerton	Onondaga
Sleepy's, LLC	160	658	566	86%	160	566	0	92	Hicksville	Nassau
Syracuse Plastics, LLC	200	44	38	86%	200	38	0	6	Liverpool	Onondaga
TMP Technologies, Inc.	60	31	27	87%	60	27	0	4	Buffalo	Erie
Yeshiva University	90	165	147	89%	90	147	0	18	New York	New York
YWCA of the Niagara Frontier, Inc.	10	12	7	58%	10	7	0	5	Niagara Falls	Niagara
Total Reduction: Exhibit B							0	417		

EXHIBIT E: SUMMARY OF EXHIBITS A-D

NONCOMPLIANCE WITH POWER UTILIZATION COMMITMENTS; RECOMMENDED (1) REDUCTION IN ALLOCATION/CONTRACT DEMAND, AND (2) ADJUSTMENTS TO JOB COMMITMENT (Exhibit C)

Customer	Allocation (kW)	Employment Commitment	6mos. Highest Average (kW) Reported	Utilization (kW) Compliance %	Revised Commitments		Reductions		City	County
					(kW)	Jobs	(kW)	Jobs		
John Mezzalingua Associates, LLC	776	120	611	79%	696	95	80	25	Liverpool	Onondaga
					Total Reduction: Exhibit C		80	25		

EXHIBIT E: SUMMARY OF EXHIBITS A-D

NONCOMPLIANCE WITH SUPPLEMENTAL COMMITMENTS; NOT RECOMMENDED FOR (1) REDUCTIONS IN ALLOCATIONS/CONTRACT DEMANDS, OR (2) ADJUSTMENTS TO JOB COMMITMENTS (Exhibit D)

1. Job Commitment	Allocation (kW)	Employment Commitment	Jobs Reported	Jobs Compliance %	Reductions		City	County
					(kW)	Jobs		
Alken Industries, Inc.	80	50	43	86%	0	0	Ronkonkoma	Suffolk
Associated Brands, Inc.	610	326	249	76%	0	0	Medina	Orleans
Dupli Graphics Corporation	146	110	3	3%	0	0	Syracuse	Onondaga
GLOBALFOUNDRIES U.S. 2 LLC	10,000	2,350	1,846	79%	0	0	Hopewell Junction	Dutchess
The Indium Corporation of America	120	40	31	78%	0	0	Utica	Oneida
NYCO Minerals, Inc.	1,400	104	92	88%	0	0	Willsboro	Essex
Special Metals Corporation	4,900	360	322	89%	0	0	New Hartford	Oneida
St. John's University	680	2321	1,981	85%	0	0	Jamaica	Queens
Town Sports International, LLC	180	93	79	85%	0	0	Elmsford	Westchester
Upstate Niagara Cooperative, Inc.	670	177	158	89%	0	0	Rochester	Monroe

2. Power Utilization Commitments	Allocation (kW)	Employment Commitment	Highest 6 month Average (kW) Reported	Utilization (kW) Compliance %	Reductions		City	County
					(kW)	Jobs		
Tapecon Inc.	230	110	196	85%	0	0	Buffalo	Erie

3. No Contract Demand/RNY Power Allocation Reduction Calculated/Required	Allocation (kW)	Employment Commitment	Jobs Reported	Jobs Compliance %	Reductions		City	County
					(kW)	Jobs		
Barnes and Noble, Inc.	670	227	255	112%	0	0	Westbury	Nassau
Delorio Foods, Inc.	680	175	155	89%	0	0	Utica	Oneida
Jetro Cash and Carry Enterprises, LLC	226	130	116	89%	0	0	Brooklyn	Kings
S. Howes, Inc.	20	12	20	167%	0	0	Silver Creek	Chautauqua

New York Power Authority
Contracts for the Sale of Hydropower - Transmittal to the Governor

Exhibit "4b i-A"
May 2, 2017

	Company Name	Program	City	County	Job Retention Commitment	Power Allocation (kW)	Original Contract Expiration Date	New Contract Expiration Date
1	Nestle Purina PetCare Company	Expansion Power	Dunkirk	Chautauqua	419	500	April 30, 2017	June 30, 2020
2	Upstate Niagara Cooperative, Inc.	Preservation Power	No. Lawrence	St. Lawrence	80	2,250	April 30, 2017	June 30, 2020
3	Try-It Distributors Co., Inc.	Expansion Power	Lancaster	Erie	265	200	June 30, 2017	June 30, 2020
Totals					764	2,950		

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

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

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

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

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

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

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

I.Billing Energy

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

J.Contract Demand

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

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

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

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

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

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

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

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

B. Marginal losses;

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

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

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

G. Rendition and Payment of Bills

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

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

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

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

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

Exhibit 4b i-B-2
May 2, 2107

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	June 30, 2020	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
ALBANY, NY 12207

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

Service Tariff No. 10

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

A. The following abbreviations are used:

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

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

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

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

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

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

- G. The term "Preservation Power" means Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).
- H. The term "Firm Power" means capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.
- I. The term "Firm Energy" means energy (kWh) associated with Firm Power.
- J. The term "Load Serving Entity" or "LSE" shall have the meaning set forth in the Agreement.
- K. The term "Project" means the Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.
- L. The term "Rate Year" or "RY" means the period from July 1 through June 30 of the following year.
- M. The term "Rules" means the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- N. The term "Service Tariff" means this Service Tariff No. 10.

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

III. Monthly Rates and Charges

A. Preservation Power Base Rates

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

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

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

B. Preservation Power Rates No Lower Than Rural/Domestic Rate

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Billing Period

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

F. Billing Demand

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

G. Billing Energy

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

H. Contract Demand

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

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

1. The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.
2. Billing Demand – Unless separately metered, the billing demand charged by the Authority to each Customer will be the highest 15-minute integrated demand during each billing period recorded on the Customer's meter multiplied by a percentage based on load factor sharing, as applicable.
3. Billing Energy – Unless separately metered, the kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the billing period multiplied by a percentage based on load factor sharing, as applicable.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

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

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

- A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
- B. Marginal losses;
- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

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

G. Adjustment of Charges

1. Distribution Losses

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

2. Transformer Losses

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

3. Power Factor

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

H. Conflicts

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

I. Customer Resales Prohibited

The Customer may not resell any quantity of Preservation Power.

v. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year."

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

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

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

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24

Measuring Year -1 (2011)

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

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

Apply AAF to Calculate the New Rate Year Base Rate

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

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

to

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

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

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

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

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

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

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

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

F.Adjustments to Charges

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

G.Billing Period

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

H.Billing Demand

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

I.Billing Energy

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

J.Contract Demand

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

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

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

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

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

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges (“NYISO Charges”)

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

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

B. Marginal losses;

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

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

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

G. Rendition and Payment of Bills

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

H. Adjustment of Charges

1. Distribution Losses

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

I. Conflicts

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

J. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

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

Exhibit 4b i-C-1

NEW YORK STATE POWER AUTHORITY

Public Hearing
April 6, 2017



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NEW YORK STATE POWER AUTHORITY

Thursday, April 6, 2017

2:30 P.M. - 6:30 P.M.

Niagara Power Project Visitors' Center

5777 Lewiston Road

Lewiston, New York 14092

APPEARANCES:

LOU PAONESSA,
Senior Director, Community Relations

LORNA JOHNSON,
NYPA Senior Associate Corporate Secretary

KAREN DELINCE,
NYPA Corporate Secretary

RICHARD SMITH,
Business and Project Development Director

PRESENT:

BARBARA BUYERS, CSR, RPR,
Notary Public.

1 MR. PAONESSA: Good afternoon. This is a
2 public hearing required by law and authorized by the
3 New York Power Authority's Board of Trustees on the
4 proposed customer contracts for the sale of
5 hydropower to Nestle Purina PetCare Company, Try-It
6 Distributing Company, Incorporated and Mayer
7 Brothers Apple Products, Incorporated.

8 My name is Lou Paonessa, and I am the senior
9 director of community relations for Western New
10 York. New York State Public Authorities Law Section
11 1009 sets forth procedures for executing certain
12 contracts negotiated by the authority. First, prior
13 to the hearing, it requires that notice of the
14 hearing be provided. Therefore, a notice was sent
15 to the governor, the senate's president pro temp,
16 the senate minority leader and the senate finance
17 committee chair, the assembly speaker, the assembly
18 minority leader and the assembly ways and means
19 committee chair.

20 In addition, notices appeared in the
21 following newspapers once a week for the four weeks
22 leading up to this hearing: The Niagara Gazette,
23 Buffalo News, Buffalo Business First, Lewiston

1 Porter Sentinel, Albany Times-Union, Dunkirk
2 Observer. The public was also given access to the
3 proposed contracts on the authority's Web site and
4 at the authority's White Plains office during the
5 thirty-day period prior to today's hearing.

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

10 The next step in the process set forth in
11 Section 1009 will be for the NYPA trustees to
12 reconsider the proposed contracts in light of public
13 comments. Once the trustees have completed their
14 final review, the contracts will be forwarded to the
15 governor for his consideration and approval.

16 If you plan to make an oral statement at this
17 hearing, I ask that you so indicate on the sign-in
18 sheet. Also, if you have a written statement please
19 give a copy to Lorna Johnson and one to the
20 reporter. Written statements may be of any length
21 and will appear in the order of the hearing in
22 addition to oral statements.

23 The record of the hearing will remain open

1 for additional comments through the close of
2 business Friday, April 7th, 2017. Additional
3 comments should be mailed, faxed or e-mailed to the
4 corporate secretary at 123 Main Street, 11 dash P,
5 White Plains, New York 10601 or area code
6 914-390-8040 or secretarys.office@nypa.gov.

7 At this point, I would like to present a
8 summary of proposed new contracts for several new
9 and current customers here in Western New York for
10 the sale of hydropower generated here at the Niagara
11 Project.

12 Regarding the contracts, under Public
13 Authorities Law Section 1005, Subsection 13, the
14 authority may allocate and sell, directly or by
15 sale-for-resale, two hundred fifty megawatts of
16 expansion power, known as EP, and four hundred
17 forty-five megawatts of replacement power, known as
18 RP, to businesses located within thirty miles of the
19 Niagara Power Project, provided that the amount of
20 EP allocated to businesses in Chautauqua County on
21 January 1st, 1987 shall continue to be allocated in
22 Chautauqua County.

23 One company was awarded a new hydropower

1 allocation by the authority's trustees on January
2 31st, 2017 in return for commitments made to create
3 or expand its business in Western New York.

4 Specifically, Mayer Brothers Apple Products,
5 Incorporated, a manufacturer of bottled beverages,
6 was awarded two hundred kilowatts of RP in support
7 of plans to construct a forty thousand square foot
8 addition and hot-fill production line at its
9 facility in the town of Somerset, Niagara County.
10 Mayer Brothers will invest at least three point two
11 million and create at least nineteen new jobs above
12 its base level jobs level of ninety-two.

13 Also on January 31st, 2017, the authority's
14 trustees approved an extension to the terms of two
15 existing hydropower allocations to two current
16 customers with facilities in Western New York.
17 Specifically, the trustees approved an extension of
18 the five hundred kilowatt allocation of EP to Nestle
19 Purina PetCare Company for its commitment to retain
20 at least four hundred nineteen jobs at its pet food
21 manufacturing facility in Dunkirk, Chautauqua
22 County. The new contract will extend the term of
23 the allocation from April 30, 2017 to June 30th,

1 2020.

2 The trustees also approved an extension of
3 the two hundred kilowatt allocation of EP to Try-It
4 Distributing Company, Incorporated for its
5 commitment to retain at least two hundred sixty-five
6 jobs at its beverage wholesaling operations in
7 Lancaster, Erie County. The new contract will
8 extend the term of the allocation from June 30th,
9 2017 to June 30th, 2020.

10 To summarize some of the pertinent provisions
11 in each of the proposed contracts, first the
12 contracts provide for the direct billing of all
13 hydropower supply charges and all New York
14 Independent System Operator, Incorporated, NYISO,
15 charges and taxes.

16 The contracts include the customers'
17 agreed-upon commitment with respect to employment
18 and capital investment. The contracts retain the
19 authority's right to reduce or terminate a
20 customer's allocation if employment, power
21 utilization or capital investment commitments are
22 not met.

23 For example, the contracts include an annual

1 job reporting requirement and a job compliance
2 threshold of ninety percent. Should a company's
3 average annual employment fall below the compliance
4 threshold of ninety percent of the employment
5 commitment, the authority has the right to reduce
6 the allocation on a prorated basis.

7 The contracts compel the companies to perform
8 an energy audit at their facility at least once
9 within five years, helping to ensure the customers
10 use the hydropower efficiently. Additionally, to
11 accommodate nonpayment risk that could result from
12 the direct billing arrangement, the contracts
13 include commercially-reasonable provisions
14 concerning the authority's ability to charge late
15 payment fees and to require deposits in the event of
16 a customer's failure to make payment for any two
17 monthly bills. These contract provisions are
18 consistent with other authority direct-sale
19 contracts, including the Recharge New York sales
20 contracts.

21 The contracts also include new provisions
22 expressly allowing NYPA's recovery from the customer
23 of any costs incurred in connection with the

1 purchase of zero emission credits and renewable
2 energy credits attributable to the customer's load
3 stemming from NYPA's implementation of the clean
4 energy standard, or CES.

5 On August 1st, 2016, the Public Service
6 Commission issued the CES order establishing a clean
7 energy standard for the state intended to meet the
8 state's energy plan's clean energy goals by, among
9 other things, one, increasing the amount of the
10 state's energy generation that comes from renewable
11 energy sources in New York State and two, preventing
12 the premature closure of upstate at risk zero
13 emission nuclear power plants.

14 NYPA supports the clean energy plan's clean
15 energy goals and in anticipation of NYPA's
16 participation in the Public Service Commission's CES
17 program at its September 27th, 2016 meeting, the
18 trustees approved a revised form of contract
19 including provisions for the pass-through to
20 customers of any costs NYPA incurs in connection
21 with the purchase of zero emission credits and
22 renewable energy credits attributable to the
23 customers' load.

1 Lastly, the contracts will serve the
2 allocations in accordance with the authority's
3 service tariff Western New York dash 1, which
4 specifies rates and other terms applicable to all EP
5 and RP allocations. The service tariff specifies a
6 three-year rate phase-in to a target rate based on
7 the rate of the authority's other hydropower
8 program, Preservation Power, to ultimately insure
9 consistency among the authority's three hydropower
10 programs. Transmission and delivery service for
11 these allocations will be provided by National Grid
12 or NYSEG in accordance with the utilities' Public
13 Service Commission approved delivery service
14 tariffs.

15 As I stated earlier, the authority will
16 accept comments on the proposed contracts until the
17 close of business on Friday, April 7th, 2017. At
18 this point, we will now recess and reconvene when
19 speakers arrive.

20 (A recess was then taken.)

21 MS. DELINCE: The April 6th, 2017 public
22 hearing on proposed customer contracts for Nestle
23 Purina PetCare Company, Try-It Distributing Company,

1 Inc. and Mayer Brothers Apple Products, Inc. is now
2 officially closed.

3 As previously stated, the record of the
4 hearing will remain open for additional comments
5 through close of business Friday, April 7th, 2017.

6 Thank you, and good night.

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8 ***** (6:31 P.M.) *****

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1 STATE OF NEW YORK
2 COUNTY OF ERIE

3 I, Barbara Buyers, 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
7 deposition, duly sworn to testify the truth, the
8 whole truth and nothing but the truth; that such
9 testimony was taken pursuant to notice at the time
10 and place herein set forth; that said testimony was
11 taken down in shorthand by me and thereafter under
12 my supervision transcribed into the English
13 language, and I hereby certify the foregoing
14 testimony is a full, true and correct transcription
15 of the shorthand notes so taken.

16 I further certify that I am neither counsel for
17 nor related to any parties to said action, nor in
18 anywise interested in the outcome thereof.

19 IN WITNESS WHEREOF, I have hereunto subscribed
20 my name this 18th day of April, 2017.

21
22
23


Notary Public
State of New York

	9:13	4:18,20	3:15	
*	April (5)	C	consistency (1)	E
	4:2;5:23;9:17,21;		9:9	
**** (2)	10:5	capital (2)	consistent (1)	earlier (1)
10:8,8	area (1)	6:18,21	7:18	9:15
	4:5	certain (1)	construct (1)	efficiently (1)
A	arrangement (1)	2:11	5:7	7:10
	7:12	CES (3)	continue (1)	e-mailed (1)
ability (1)	arrive (1)	8:4,6,16	4:21	4:3
7:14	9:19	chair (2)	contract (4)	emission (3)
above (1)	assembly (3)	2:17,19	5:22;6:7;7:17;8:18	8:1,13,21
5:11	2:17,17,18	charge (1)	contracts (20)	employment (4)
accept (1)	attributable (2)	7:14	2:4,12;3:3,12,14;	6:17,20;7:3,4
9:16	8:2,22	charges (2)	4:8,12;6:11,12,16,18,	energy (11)
access (2)	audit (1)	6:13,15	23;7:7,12,19,20,21;	7:8;8:2,4,7,8,8,10,
3:2,7	7:8	Chautauqua (3)	9:1,16,22	11,14,15,22
accommodate (1)	August (1)	4:20,22;5:21	copy (1)	ensure (1)
7:11	8:5	clean (5)	3:19	7:9
accordance (2)	Authorities (2)	8:3,6,8,14,14	corporate (1)	EP (5)
9:2,12	2:10;4:13	close (3)	4:4	4:16,20;5:18;6:3;
addition (3)	authority (5)	4:1;9:17;10:5	costs (2)	9:4
2:20;3:22;5:8	2:12;4:14;7:5,18;	closed (1)	7:23;8:20	Erie (1)
additional (3)	9:15	10:2	County (5)	6:7
4:1,2;10:4	Authority's (10)	closure (1)	4:20,22;5:9,22;6:7	establishing (1)
Additionally (1)	2:3;3:3,4;5:1,13;	8:12	create (2)	8:6
7:10	6:19;7:14;9:2,7,9	code (1)	5:2,11	event (1)
afternoon (1)	authorized (1)	4:5	credits (4)	7:15
2:1	2:2	comments (5)	8:1,2,21,22	example (1)
agreed-upon (1)	average (1)	3:13;4:1,3;9:16;	current (2)	6:23
6:17	7:3	10:4	4:9;5:15	executing (1)
Albany (1)	awarded (2)	commercially-reasonable (1)	customer (3)	2:11
3:1	4:23;5:6	7:13	2:4;7:22;9:22	existing (1)
allocate (1)	B	Commission (2)	customers (4)	5:15
4:14		8:6;9:13	4:9;5:16;7:9;8:20	expand (1)
allocated (2)	base (1)	Commission's (1)	customers' (2)	5:3
4:20,21	5:12	8:16	6:16;8:23	expansion (1)
allocation (7)	based (1)	commitment (4)	customer's (3)	4:16
5:1,18,23;6:3,8,20;	9:6	5:19;6:5,17;7:5	6:20;7:16;8:2	expressly (1)
7:6	basis (1)	commitments (2)	D	7:22
allocations (4)	7:6	5:2;6:21	dash (2)	extend (2)
5:15;9:2,5,11	below (1)	committee (2)	4:4;9:3	5:22;6:8
allowing (1)	7:3	2:17,19	DELINCE (1)	extension (3)
7:22	beverage (1)	community (1)	9:21	5:14,17;6:2
among (2)	6:6	2:9	delivery (2)	F
8:8;9:9	beverages (1)	companies (1)	9:10,13	facilities (1)
amount (2)	5:5	7:7	deposits (1)	5:16
4:19;8:9	billing (2)	Company (7)	7:15	facility (3)
annual (2)	6:12;7:12	2:5,6;4:23;5:19;	direct (2)	5:9,21;7:8
6:23;7:3	bills (1)	6:4;9:23,23	6:12;7:12	failure (1)
anticipation (1)	7:17	company's (1)	directly (1)	7:16
8:15	Board (1)	7:2	4:14	fall (1)
appear (1)	2:3	compel (1)	director (1)	7:3
3:21	bottled (1)	7:7	2:9	faxed (1)
appeared (1)	5:5	completed (2)	direct-sale (1)	4:3
2:20	Brothers (4)	3:8,13	7:18	fees (1)
Apple (3)	2:7;5:4,10;10:1	compliance (2)	Distributing (3)	7:15
applicable (1)	Buffalo (2)	7:1,3	2:6;6:4;9:23	fifty (1)
9:4	2:23,23	concerning (1)	Dunkirk (2)	4:15
approval (1)	Business (5)	7:14	3:1;5:21	final (1)
3:15	2:23;4:2;5:3;9:17;	connection (2)	during (1)	3:14
approved (5)	10:5	7:23;8:20	3:4	finance (1)
5:14,17;6:2;8:18;	businesses (2)	consideration (1)		

2:16 First (3) 2:12,23;6:11 five (2) 5:18;7:9 following (1) 2:21 food (1) 5:20 foot (1) 5:7 form (1) 8:18 forth (2) 2:11;3:10 forty (1) 5:7 forty-five (1) 4:17 forwarded (1) 3:14 four (3) 2:21;4:16;5:20 Friday (3) 4:2;9:17;10:5	implementation (1) 8:3 Inc (2) 10:1,1 include (4) 6:16,23;7:13,21 including (2) 7:19;8:19 Incorporated (5) 2:6,7;5:5;6:4,14 increasing (1) 8:9 incurred (1) 7:23 incurs (1) 8:20 Independent (1) 6:14 indicate (1) 3:17 insure (1) 9:8 intended (1) 8:7 invest (1) 5:10 investment (2) 6:18,21 issued (1) 8:6	leader (2) 2:16,18 leading (1) 2:22 least (5) 5:10,11,20;6:5;7:8 length (1) 3:20 level (2) 5:12,12 Lewiston (1) 2:23 light (1) 3:12 line (1) 5:8 load (2) 8:2,23 located (1) 4:18 Lorna (1) 3:19 Lou (1) 2:8	9:11 negotiated (1) 2:12 Nestle (3) 2:5;5:18;9:22 New (18) 2:3,9,10;4:5,8,8,9, 23;5:3,11,16,22;6:7, 13;7:19,21;8:11;9:3 News (1) 2:23 newspapers (1) 2:21 next (1) 3:10 Niagara (4) 2:22;4:10,19;5:9 night (1) 10:6 nineteen (2) 5:11,20 ninety (2) 7:2,4 ninety-two (1) 5:12 nonpayment (1) 7:11 notice (2) 2:13,14 notices (1) 2:20 nuclear (1) 8:13 NYISO (1) 6:14 NYPA (3) 3:11;8:14,20 NYPA's (3) 7:22;8:3,15 NYSEG (1) 9:12	3:21;8:6
G	J	M	O	P
Gazette (1) 2:22 generated (1) 4:10 generation (1) 8:10 given (2) 3:2,6 goals (2) 8:8,15 Good (2) 2:1;10:6 governor (2) 2:15;3:15 Grid (1) 9:11	January (3) 4:21;5:1,13 job (2) 7:1,1 jobs (4) 5:11,12,20;6:6 Johnson (1) 3:19 June (3) 5:23;6:8,9	mailed (1) 4:3 Main (1) 4:4 manufacturer (1) 5:5 manufacturing (1) 5:21 may (2) 3:20;4:14 Mayer (4) 2:6;5:4,10;10:1 means (1) 2:18 meet (1) 8:7 meeting (1) 8:17 megawatts (2) 4:15,17 met (1) 6:22 miles (1) 4:18 million (1) 5:11 minority (2) 2:16,18 monthly (1) 7:17	Observer (1) 3:2 office (2) 3:4,9 officially (1) 10:2 once (4) 2:21;3:7,13;7:8 one (3) 3:19;4:23;8:9 open (2) 3:23;10:4 operations (1) 6:6 Operator (1) 6:14 oral (2) 3:16,22 order (2)	PAONESSA (2) 2:1,8 participation (1) 8:16 pass-through (1) 8:19 payment (2) 7:15,16 percent (2) 7:2,4 perform (1) 7:7 period (1) 3:5 pertinent (1) 6:10 pet (1) 5:20 PetCare (3) 2:5;5:19;9:23 phase-in (1) 9:6 Plains (3) 3:4,8;4:5 plan (1) 3:16 plans (1) 5:7 plan's (2) 8:8,14 plants (1) 8:13 please (1) 3:18 PM (1) 10:8 point (3) 4:7;5:10;9:18 Porter (1) 3:1 Power (7) 2:3;4:16,17,19; 6:20;8:13;9:8 premature (1) 8:12 present (1) 4:7 Preservation (1) 9:8 president (1) 2:15 preventing (1) 8:11 previously (1) 10:3 prior (2) 2:12;3:5 pro (1) 2:15
H	K	N		
hearing (12) 2:2,13,14,22;3:5,6, 7,17,21,23;9:22;10:4 helping (1) 7:9 hot-fill (1) 5:8 hundred (7) 4:15,16;5:6,18,20; 6:3,5 hydropower (8) 2:5;4:10,23;5:15; 6:13;7:10;9:7,9	kilowatt (2) 5:18;6:3 kilowatts (1) 5:6 known (2) 4:16,17	name (1) 2:8 National (1)		
I	L			
	Lancaster (1) 6:7 Lastly (1) 9:1 late (1) 7:14 law (3) 2:2,10;4:13			

procedures (1) 2:11	4:17	8:5,16;9:3,5,10,13, 13	6:14	use (1) 7:10
process (1) 3:10	reporter (1) 3:20	set (1) 3:10	T	utilities' (1) 9:12
production (1) 5:8	reporting (1) 7:1	sets (1) 2:11	target (1) 9:6	utilization (1) 6:21
Products (3) 2:7;5:4;10:1	require (1) 7:15	several (1) 4:8	tariff (2) 9:3,5	W
program (2) 8:17;9:8	required (1) 2:2	shall (1) 4:21	tariffs (1) 9:14	ways (1) 2:18
programs (1) 9:10	requirement (1) 7:1	sheet (1) 3:18	taxes (1) 6:15	Web (1) 3:3
Project (2) 4:11,19	requires (1) 2:13	sign-in (1) 3:17	temp (1) 2:15	week (1) 2:21
proposed (7) 2:4;3:3,12;4:8; 6:11;9:16,22	respect (1) 6:17	site (1) 3:3	term (2) 5:22;6:8	weeks (1) 2:21
prorated (1) 7:6	result (1) 7:11	sixty-five (1) 6:5	terminate (1) 6:19	Western (5) 2:9;4:9;5:3,16;9:3
provide (1) 6:12	retain (3) 5:19;6:5,18	Somerset (1) 5:9	terms (2) 5:14;9:4	White (3) 3:4,8;4:5
provided (3) 2:14;4:19;9:11	return (1) 5:2	sources (1) 8:11	Therefore (1) 2:14	wholesaling (1) 6:6
provisions (5) 6:10;7:13,17,21; 8:19	review (1) 3:14	speaker (1) 2:17	thirty (1) 4:18	within (2) 4:18;7:9
public (10) 2:2,10;3:2,6,12; 4:12;8:5,16;9:12,21	revised (1) 8:18	speakers (1) 9:19	thirty-day (1) 3:5	written (2) 3:18,20
purchase (2) 8:1,21	right (2) 6:19;7:5	Specifically (2) 5:4,17	thousand (1) 5:7	wwwnypagov (1) 3:8
Purina (3) 2:5;5:19;9:23	risk (2) 7:11;8:12	specifies (2) 9:4,5	three (2) 5:10;9:9	Y
R	RP (3) 4:18;5:6;9:5	square (1) 5:7	three-year (1) 9:6	years (1) 7:9
rate (3) 9:6,6,7	S	standard (2) 8:4,7	threshold (2) 7:2,4	York (11) 2:3,10,10;4:5,9; 5:3,16;6:13;7:19; 8:11;9:3
rates (1) 9:4	sale (2) 2:4;4:10	State (3) 2:10;8:7,11	Times-Union (1) 3:1	Z
recess (2) 9:18,20	sale-for-resale (1) 4:15	stated (2) 9:15;10:3	today's (1) 3:5	zero (3) 8:1,12,21
Recharge (1) 7:19	sales (1) 7:19	statement (2) 3:16,18	town (1) 5:9	1
reconsider (1) 3:12	secretary (1) 4:4	statements (2) 3:20,22	transcript (1) 3:7	1 (1) 9:3
reconvene (1) 9:18	secretarysoffice@nypagov (1)	state's (2) 8:8,10	Transmission (1) 9:10	1005 (1) 4:13
record (2) 3:23;10:3	Section (3) 2:10;3:11;4:13	stemming (1) 8:3	Trustees (8) 2:3;3:11,13;5:1,14, 17;6:2;8:18	1009 (2) 2:11;3:11
recovery (1) 7:22	sell (1) 4:14	step (1) 3:10	Try-It (3) 2:5;6:3;9:23	10601 (1) 4:5
reduce (2) 6:19;7:5	senate (2) 2:16,16	Street (1) 4:4	two (9) 4:15;5:6,10,14,15; 6:3,5;7:16;8:11	11 (1) 4:4
Regarding (1) 4:12	senate's (1) 2:15	Subsection (1) 4:13	U	123 (1) 4:4
relations (1) 2:9	senior (1) 2:8	summarize (1) 6:10	ultimately (1) 9:8	13 (1) 4:13
remain (2) 3:23;10:4	sent (1) 2:14	summary (1) 4:8	under (1) 4:12	1987 (1) 4:21
renewable (3) 8:1,10,22	Sentinel (1) 3:1	supply (1) 6:13	up (1) 2:22	1st (2)
replacement (1)	September (1) 8:17	support (1) 5:6	upstate (1) 8:12	
	serve (1) 9:1	supports (1) 8:14		
	Service (7)	System (1)		

4:21;8:5				
2				
2016 (2) 8:5,17 2017 (8) 4:2;5:2,13,23;6:9; 9:17,21;10:5 2020 (2) 6:1,9 27th (1) 8:17				
3				
30 (1) 5:23 30th (3) 5:23;6:8,9 31st (2) 5:2,13				
6				
6:31 (1) 10:8 6th (1) 9:21				
7				
7th (3) 4:2;9:17;10:5				
9				
914-390-8040 (1) 4:6				

1
2
3
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PUBLIC HEARING

Contracts for Sale of Hydropower to Potsdam Specialty
Paper, Inc., and Upstate Niagara Cooperative, Inc.

April 21, 2017

2:00 p.m to 6:00 p.m.

Frank S. McCullough, Jr. Hawkins Point Visitors Center

St. Lawrence/FDR Power Project

830 Barnhart Island

Massena, New York 13662

APPEARANCES

Patricia Wilson,
Northern New York Project Manager
New York Power Authority
Massena, New York 13662

Karen Delince,
Corporate Secretary
New York Power Authority
White Plains, New York 10601

Lorna Johnson,
Assistant Corporate Secretary
New York Power Authority
White Plains, New York 10601

1 April 21, 2017, 2:00 p.m.

2 MS. DELINCE: Good afternoon. This is a public
3 hearing required by law and authorized by the New York
4 Power Authority's Board of Trustees on the proposed
5 customer contracts for the sale of hydropower to
6 Potsdam Specialty Paper, Inc. and Upstate Niagara
7 Cooperative, Inc.

8 My name is Karen Delince and I'm the Authority's
9 Corporate Secretary. New York State Public
10 Authorities Law, Section 1009, sets forth procedures
11 for executing certain contracts negotiated by the
12 Authority. First, prior to the hearing, it requires
13 that notice of the hearing be provided. Therefore, a
14 notice was sent to the Governor, the Senate's
15 President Pro Temp, the Senate Minority Leader, the
16 Senate Finance Committee Chair, the Assembly Speaker,
17 the Assembly Minority Leader and the Assembly Ways and
18 Means Committee Chair.

19 In addition, notices appeared in the following
20 newspapers once a week for the four weeks leading up
21 to this hearing: Albany Times Union, Massena Daily
22 Courier-Observer, Ogdensburg Journal, Plattsburgh
23 Press Republican, Syracuse Post-Standard and Watertown

1 Daily Times. The public was also given access to the
2 proposed contracts on the Authority's website and at
3 the Authority's White Plains office during the 30-day
4 period prior to today's hearing. After the hearing,
5 the public will be given access to the hearing
6 transcript, once it is completed, at www.nypa.gov and
7 at the White Plains office.

8 The next step in the process set forth in section
9 1009 will be for the NYPA Trustees to reconsider the
10 proposed contracts in light of public comments. Once
11 the Trustees have completed their final review, the
12 contracts will be forwarded to the Governor for his
13 consideration and approval.

14 If you plan to make an oral statement at this
15 hearing, I ask that you so indicate on the sign-in
16 sheet. Also, if you have a written statement, please
17 give a copy to Lorna Johnson and one to the reporter.
18 Written statements may be of any length and will
19 appear in the record of the hearing in addition to
20 oral statements. The record of the hearing will
21 remain open for additional comments through close of
22 business Monday, April 24th, 2017. Additional
23 comments should be mailed, Faxed or e-mailed to the

1 Corporate Secretary at 123 Main Street, 11-P, White
2 Plains, New York 10601 or (914) 390-8040 or
3 secretarys.office@nypa.gov.

4 At this point I would like to introduce
5 Ms. Patricia Wilson, the Authority's Northern New York
6 Project Manager, who will provide additional details
7 on the proposed contracts.

8 MS. WILSON: Thank you. Good afternoon. My name
9 is Patricia Wilson and I am the Northern New York
10 Project Manager at the New York Power Authority. I am
11 here today to present an overview of a proposed
12 contract with Potsdam Specialty Paper, Inc., or PSPI,
13 located in Potsdam, St. Lawrence County, for the
14 direct sale of 400 kilowatts of Preservation Power;
15 hydropower that is generated here at the Authority's
16 St. Lawrence/FDR Power Project. In addition, I am
17 presenting a contract for Upstate Niagara Cooperative,
18 Inc., extending the term of the sale of 2,250
19 kilowatts of Preservation Power for use at Upstate
20 Niagara's North Lawrence facility also in St. Lawrence
21 County.

22 Preservation Power, established under Public
23 Authorities Law Section 1005, Subsection 13,

1 authorizes the Authority to allocate low-cost
2 hydropower that is relinquished from the block of 490
3 megawatts of St. Lawrence/FDR Power Project firm and
4 interruptible power currently sold to Alcoa and
5 formerly sold to General Motors. The law authorizes
6 the allocation of power to businesses in Northern New
7 York, specifically businesses located in Franklin,
8 Jefferson and St. Lawrence Counties, applying the same
9 allocation criteria as pertains to the Authority's
10 other hydropower programs, Replacement Power and
11 Expansion Power.

12 Each application for an allocation of
13 Preservation Power must be evaluated in consideration
14 of the legislative criteria that includes, but need
15 not be limited to, a consideration of the number of
16 jobs created as a result of the allocation; the
17 business' long-term commitment to the region as
18 evidenced by the current and/or planned capital
19 investment in the business' facilities in the region;
20 the ratio of the number of jobs to be created to the
21 amount of power requested; the types of jobs created,
22 as measured by wage and benefit levels; and the type
23 and cost of buildings, equipment and facilities to be

1 constructed, enlarged or installed.

2 At its meeting of January 31st, 2017, the Power
3 Authority's Board of Trustees approved an allocation
4 of 400 kilowatts of Preservation Power to PSPI for a
5 term of seven years. Approval of the allocation was
6 based on an evaluation of PSPI's application for
7 hydropower, in which it proposed to invest at least \$2
8 million to expand its existing facility. PSPI
9 committed to create a total of at least 22 new jobs as
10 a result of this expansion, above its current 67 base
11 jobs.

12 In addition, at its January 31st, 2017 meeting,
13 the Trustees approved an extension of the 2,250
14 kilowatt allocation of Preservation Power to Upstate
15 Niagara Cooperative for its commitment to retain at
16 least 80 jobs at its North Lawrence facility. The
17 allocation, originally awarded in May 2011, helped
18 Upstate Niagara invest in and re-open the dairy
19 processing plant that had been shuttered in January
20 2011. The new contract will extend the term of the
21 allocation from April 30th, 2017 to June 30th, 2020.

22 To summarize some of the pertinent provisions of
23 the proposed contracts, first, they provide for the

1 direct billing of all hydropower supply charges, all
2 New York Independent System Operator, Inc. charges and
3 taxes. To accommodate non-payment risk that could
4 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 payments for any two
9 monthly bills.

10 The contracts include the companies' commitments
11 with respect to employment and capital investment and
12 retain the Authority's right to reduce or terminate
13 the allocation if employment, power utilization or
14 capital investment commitments are not met. For
15 example, the contracts include an annual job reporting
16 requirement and a job compliance threshold of 90
17 percent. Should a company's average annual employment
18 fall below the compliance threshold of 90 percent of
19 the employment commitment, the Authority has the right
20 to reduce the allocation on a pro rata basis. The
21 contracts also require a company to perform an energy
22 audit at its facility at least once within five years,
23 helping to ensure the customer uses the hydropower

1 efficiently. This contract provision is consistent
2 with other Authority direct sale contracts, including
3 the Western New York and Recharge New York sales
4 contracts.

5 The contracts also include new provisions
6 expressly allowing NYPA's recovery from the customer
7 of any costs incurred in connection with the purchase
8 of Zero Emission Credits and Renewable Energy Credits
9 attributable to the customer's load, stemming from
10 NYPA's implementation of the Clean Energy Standard, or
11 CES.

12 On August 1st, 2016 the Public Service Commission
13 issued the 'CES Order' establishing a clean energy
14 standard for the State, intended to meet the State
15 Energy Plan's clean energy goals by, among other
16 things: One, increasing the amount of the State's
17 energy generation that comes from renewable energy
18 sources in New York State; and two, preventing the
19 premature closure of Upstate, at risk, zero emission
20 nuclear power plants.

21 NYPA supports the State Energy Plan's clean
22 energy goals, and in anticipation of NYPA's
23 participation in the Public Service Commission's CES

1 program, at its September 27th, 2016 meeting the
2 Trustees approved a revised form of contract,
3 including provisions for the pass through to customers
4 of any costs NYPA incurs in connection with the
5 purchase of Zero Emission Credits and Renewable Energy
6 Credits attributable to the customers' load.

7 Lastly, the Authority will provide firm electric
8 service from the St. Lawrence/FDR plant, which is
9 subject to pro rata curtailment when there is
10 insufficient generation at the Niagara and St.
11 Lawrence/FDR facilities to meet all its firm load
12 requirements. The rates, terms and conditions for the
13 sale of Preservation Power are contained in the
14 Authority's "Schedule of Rates For Sale of Firm Power
15 to Preservation Power Customers - Service Tariff No.
16 10." Delivery service will be provided and billed by
17 the local utility, National Grid, in accordance with
18 its Public Service Commission approved delivery
19 service tariff.

20 As Ms. Delince stated earlier, the Authority will
21 accept your comments on the proposed contracts until
22 the close of business Monday. I will now turn the
23 forum back to Ms. Delince.

1 MS. DELINCE: Thank you, Ms. Wilson. We will
2 recess now and reconvene when speakers arrive.

3 (Recess from 2:13 p.m. to 6:00 p.m.)

4 MS. DELINCE: The April 21st, 2017 public hearing
5 of the Proposed Customer Contract for Potsdam
6 Specialty Paper, Inc. and Upstate Niagara Cooperative,
7 Inc. is now officially closed. As previously stated,
8 the record of the hearing will remain open for
9 additional comments through close of business Monday
10 April 24th, 2017. Thank you and good night.

11

12 (End of Public Hearing at 6:01 p.m.)

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1 STATE OF NEW YORK)
2 COUNTY OF ST. LAWRENCE)

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5 I, Heidi C. Simmons, a Notary Public in the state of
6 New York, do hereby certify that the foregoing public
7 hearing was taken before me at the place as stated in the
8 caption hereto, at Page 1 hereof; that the foregoing
9 typewritten transcription, consisting of pages numbered 3
10 to 11, inclusive, was produced to the best of my ability of
11 said hearing.

12 IN WITNESS WHEREOF, I have hereunto subscribed my name
13 this, the 23rd day of April, 2017.

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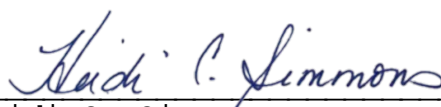
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Heidi C. Simmons, Notary Public
State of New York
County of St. Lawrence
My commission expires: 08/27/17

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
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	

Exhibit 4b ii-B
May 2, 2017

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

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Monthly Rates and Charges

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

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

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

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

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

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

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

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

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

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

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.
- For Customers whose allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement.

F.Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G.Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

- 1.The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer’s local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer’s local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer’s local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer’s billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer’s billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges (“NYISO Charges”)

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
 - a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year (2013)	Measuring Year -1 (2012)
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

Exhibit 4b ii-C

NEW YORK STATE POWER AUTHORITY

Public Hearing
April 6, 2017



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NEW YORK STATE POWER AUTHORITY

Thursday, April 6, 2017

2:30 P.M. - 6:30 P.M.

Niagara Power Project Visitors' Center

5777 Lewiston Road

Lewiston, New York 14092

APPEARANCES:

LOU PAONESSA,
Senior Director, Community Relations

LORNA JOHNSON,
NYPA Senior Associate Corporate Secretary

KAREN DELINCE,
NYPA Corporate Secretary

RICHARD SMITH,
Business and Project Development Director

PRESENT:

BARBARA BUYERS, CSR, RPR,
Notary Public.

1 MR. PAONESSA: Good afternoon. This is a
2 public hearing required by law and authorized by the
3 New York Power Authority's Board of Trustees on the
4 proposed customer contracts for the sale of
5 hydropower to Nestle Purina PetCare Company, Try-It
6 Distributing Company, Incorporated and Mayer
7 Brothers Apple Products, Incorporated.

8 My name is Lou Paonessa, and I am the senior
9 director of community relations for Western New
10 York. New York State Public Authorities Law Section
11 1009 sets forth procedures for executing certain
12 contracts negotiated by the authority. First, prior
13 to the hearing, it requires that notice of the
14 hearing be provided. Therefore, a notice was sent
15 to the governor, the senate's president pro temp,
16 the senate minority leader and the senate finance
17 committee chair, the assembly speaker, the assembly
18 minority leader and the assembly ways and means
19 committee chair.

20 In addition, notices appeared in the
21 following newspapers once a week for the four weeks
22 leading up to this hearing: The Niagara Gazette,
23 Buffalo News, Buffalo Business First, Lewiston

1 Porter Sentinel, Albany Times-Union, Dunkirk
2 Observer. The public was also given access to the
3 proposed contracts on the authority's Web site and
4 at the authority's White Plains office during the
5 thirty-day period prior to today's hearing.

6 After the hearing, the public will be given
7 access to the hearing transcript, once it is
8 completed, at www.nypa.gov and at the White Plains
9 office.

10 The next step in the process set forth in
11 Section 1009 will be for the NYPA trustees to
12 reconsider the proposed contracts in light of public
13 comments. Once the trustees have completed their
14 final review, the contracts will be forwarded to the
15 governor for his consideration and approval.

16 If you plan to make an oral statement at this
17 hearing, I ask that you so indicate on the sign-in
18 sheet. Also, if you have a written statement please
19 give a copy to Lorna Johnson and one to the
20 reporter. Written statements may be of any length
21 and will appear in the order of the hearing in
22 addition to oral statements.

23 The record of the hearing will remain open

1 for additional comments through the close of
2 business Friday, April 7th, 2017. Additional
3 comments should be mailed, faxed or e-mailed to the
4 corporate secretary at 123 Main Street, 11 dash P,
5 White Plains, New York 10601 or area code
6 914-390-8040 or secretarys.office@nypa.gov.

7 At this point, I would like to present a
8 summary of proposed new contracts for several new
9 and current customers here in Western New York for
10 the sale of hydropower generated here at the Niagara
11 Project.

12 Regarding the contracts, under Public
13 Authorities Law Section 1005, Subsection 13, the
14 authority may allocate and sell, directly or by
15 sale-for-resale, two hundred fifty megawatts of
16 expansion power, known as EP, and four hundred
17 forty-five megawatts of replacement power, known as
18 RP, to businesses located within thirty miles of the
19 Niagara Power Project, provided that the amount of
20 EP allocated to businesses in Chautauqua County on
21 January 1st, 1987 shall continue to be allocated in
22 Chautauqua County.

23 One company was awarded a new hydropower

1 allocation by the authority's trustees on January
2 31st, 2017 in return for commitments made to create
3 or expand its business in Western New York.

4 Specifically, Mayer Brothers Apple Products,
5 Incorporated, a manufacturer of bottled beverages,
6 was awarded two hundred kilowatts of RP in support
7 of plans to construct a forty thousand square foot
8 addition and hot-fill production line at its
9 facility in the town of Somerset, Niagara County.
10 Mayer Brothers will invest at least three point two
11 million and create at least nineteen new jobs above
12 its base level jobs level of ninety-two.

13 Also on January 31st, 2017, the authority's
14 trustees approved an extension to the terms of two
15 existing hydropower allocations to two current
16 customers with facilities in Western New York.
17 Specifically, the trustees approved an extension of
18 the five hundred kilowatt allocation of EP to Nestle
19 Purina PetCare Company for its commitment to retain
20 at least four hundred nineteen jobs at its pet food
21 manufacturing facility in Dunkirk, Chautauqua
22 County. The new contract will extend the term of
23 the allocation from April 30, 2017 to June 30th,

1 2020.

2 The trustees also approved an extension of
3 the two hundred kilowatt allocation of EP to Try-It
4 Distributing Company, Incorporated for its
5 commitment to retain at least two hundred sixty-five
6 jobs at its beverage wholesaling operations in
7 Lancaster, Erie County. The new contract will
8 extend the term of the allocation from June 30th,
9 2017 to June 30th, 2020.

10 To summarize some of the pertinent provisions
11 in each of the proposed contracts, first the
12 contracts provide for the direct billing of all
13 hydropower supply charges and all New York
14 Independent System Operator, Incorporated, NYISO,
15 charges and taxes.

16 The contracts include the customers'
17 agreed-upon commitment with respect to employment
18 and capital investment. The contracts retain the
19 authority's right to reduce or terminate a
20 customer's allocation if employment, power
21 utilization or capital investment commitments are
22 not met.

23 For example, the contracts include an annual

1 job reporting requirement and a job compliance
2 threshold of ninety percent. Should a company's
3 average annual employment fall below the compliance
4 threshold of ninety percent of the employment
5 commitment, the authority has the right to reduce
6 the allocation on a prorated basis.

7 The contracts compel the companies to perform
8 an energy audit at their facility at least once
9 within five years, helping to ensure the customers
10 use the hydropower efficiently. Additionally, to
11 accommodate nonpayment risk that could result from
12 the direct billing arrangement, the contracts
13 include commercially-reasonable provisions
14 concerning the authority's ability to charge late
15 payment fees and to require deposits in the event of
16 a customer's failure to make payment for any two
17 monthly bills. These contract provisions are
18 consistent with other authority direct-sale
19 contracts, including the Recharge New York sales
20 contracts.

21 The contracts also include new provisions
22 expressly allowing NYPA's recovery from the customer
23 of any costs incurred in connection with the

1 purchase of zero emission credits and renewable
2 energy credits attributable to the customer's load
3 stemming from NYPA's implementation of the clean
4 energy standard, or CES.

5 On August 1st, 2016, the Public Service
6 Commission issued the CES order establishing a clean
7 energy standard for the state intended to meet the
8 state's energy plan's clean energy goals by, among
9 other things, one, increasing the amount of the
10 state's energy generation that comes from renewable
11 energy sources in New York State and two, preventing
12 the premature closure of upstate at risk zero
13 emission nuclear power plants.

14 NYPA supports the clean energy plan's clean
15 energy goals and in anticipation of NYPA's
16 participation in the Public Service Commission's CES
17 program at its September 27th, 2016 meeting, the
18 trustees approved a revised form of contract
19 including provisions for the pass-through to
20 customers of any costs NYPA incurs in connection
21 with the purchase of zero emission credits and
22 renewable energy credits attributable to the
23 customers' load.

1 Lastly, the contracts will serve the
2 allocations in accordance with the authority's
3 service tariff Western New York dash 1, which
4 specifies rates and other terms applicable to all EP
5 and RP allocations. The service tariff specifies a
6 three-year rate phase-in to a target rate based on
7 the rate of the authority's other hydropower
8 program, Preservation Power, to ultimately insure
9 consistency among the authority's three hydropower
10 programs. Transmission and delivery service for
11 these allocations will be provided by National Grid
12 or NYSEG in accordance with the utilities' Public
13 Service Commission approved delivery service
14 tariffs.

15 As I stated earlier, the authority will
16 accept comments on the proposed contracts until the
17 close of business on Friday, April 7th, 2017. At
18 this point, we will now recess and reconvene when
19 speakers arrive.

20 (A recess was then taken.)

21 MS. DELINCE: The April 6th, 2017 public
22 hearing on proposed customer contracts for Nestle
23 Purina PetCare Company, Try-It Distributing Company,

1 Inc. and Mayer Brothers Apple Products, Inc. is now
2 officially closed.

3 As previously stated, the record of the
4 hearing will remain open for additional comments
5 through close of business Friday, April 7th, 2017.

6 Thank you, and good night.

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8 ***** (6:31 P.M.) *****

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1 STATE OF NEW YORK
2 COUNTY OF ERIE

3 I, Barbara Buyers, 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
7 deposition, duly sworn to testify the truth, the
8 whole truth and nothing but the truth; that such
9 testimony was taken pursuant to notice at the time
10 and place herein set forth; that said testimony was
11 taken down in shorthand by me and thereafter under
12 my supervision transcribed into the English
13 language, and I hereby certify the foregoing
14 testimony is a full, true and correct transcription
15 of the shorthand notes so taken.

16 I further certify that I am neither counsel for
17 nor related to any parties to said action, nor in
18 anywise interested in the outcome thereof.

19 IN WITNESS WHEREOF, I have hereunto subscribed
20 my name this 18th day of April, 2017.

21
22
23


Notary Public
State of New York

	9:13	4:18,20	3:15	
*	April (5)	C	consistency (1)	E
	4:2;5:23;9:17,21;		9:9	
**** (2)	10:5	capital (2)	consistent (1)	earlier (1)
10:8,8	area (1)	6:18,21	7:18	9:15
	4:5	certain (1)	construct (1)	efficiently (1)
A	arrangement (1)	2:11	5:7	7:10
	7:12	CES (3)	continue (1)	e-mailed (1)
ability (1)	arrive (1)	8:4,6,16	4:21	4:3
7:14	9:19	chair (2)	contract (4)	emission (3)
above (1)	assembly (3)	2:17,19	5:22;6:7;7:17;8:18	8:1,13,21
5:11	2:17,17,18	charge (1)	contracts (20)	employment (4)
accept (1)	attributable (2)	7:14	2:4,12;3:3,12,14;	6:17,20;7:3,4
9:16	8:2,22	charges (2)	4:8,12;6:11,12,16,18,	energy (11)
access (2)	audit (1)	6:13,15	23;7:7,12,19,20,21;	7:8;8:2,4,7,8,8,10,
3:2,7	7:8	Chautauqua (3)	9:1,16,22	11,14,15,22
accommodate (1)	August (1)	4:20,22;5:21	copy (1)	ensure (1)
7:11	8:5	clean (5)	3:19	7:9
accordance (2)	Authorities (2)	8:3,6,8,14,14	corporate (1)	EP (5)
9:2,12	2:10;4:13	close (3)	4:4	4:16,20;5:18;6:3;
addition (3)	authority (5)	4:1;9:17;10:5	costs (2)	9:4
2:20;3:22;5:8	2:12;4:14;7:5,18;	closed (1)	7:23;8:20	Erie (1)
additional (3)	9:15	10:2	County (5)	6:7
4:1,2;10:4	Authority's (10)	closure (1)	4:20,22;5:9,22;6:7	establishing (1)
Additionally (1)	2:3;3:3,4;5:1,13;	8:12	create (2)	8:6
7:10	6:19;7:14;9:2,7,9	code (1)	5:2,11	event (1)
afternoon (1)	authorized (1)	4:5	credits (4)	7:15
2:1	2:2	comments (5)	8:1,2,21,22	example (1)
agreed-upon (1)	average (1)	3:13;4:1,3;9:16;	current (2)	6:23
6:17	7:3	10:4	4:9;5:15	executing (1)
Albany (1)	awarded (2)	commercially-reasonable (1)	customer (3)	2:11
3:1	4:23;5:6	7:13	2:4;7:22;9:22	existing (1)
allocate (1)	B	Commission (2)	customers (4)	5:15
4:14		8:6;9:13	4:9;5:16;7:9;8:20	expand (1)
allocated (2)	base (1)	Commission's (1)	customers' (2)	5:3
4:20,21	5:12	8:16	6:16;8:23	expansion (1)
allocation (7)	based (1)	commitment (4)	customer's (3)	4:16
5:1,18,23;6:3,8,20;	9:6	5:19;6:5,17;7:5	6:20;7:16;8:2	expressly (1)
7:6	basis (1)	commitments (2)	D	7:22
allocations (4)	7:6	5:2;6:21	dash (2)	extend (2)
5:15;9:2,5,11	below (1)	committee (2)	4:4;9:3	5:22;6:8
allowing (1)	7:3	2:17,19	DELINCE (1)	extension (3)
7:22	beverage (1)	community (1)	9:21	5:14,17;6:2
among (2)	6:6	2:9	delivery (2)	F
8:8;9:9	beverages (1)	companies (1)	9:10,13	facilities (1)
amount (2)	5:5	7:7	deposits (1)	5:16
4:19;8:9	billing (2)	Company (7)	7:15	facility (3)
annual (2)	6:12;7:12	2:5,6;4:23;5:19;	direct (2)	5:9,21;7:8
6:23;7:3	bills (1)	6:4;9:23,23	6:12;7:12	failure (1)
anticipation (1)	7:17	company's (1)	directly (1)	7:16
8:15	Board (1)	7:2	4:14	fall (1)
appear (1)	2:3	compel (1)	director (1)	7:3
3:21	bottled (1)	7:7	2:9	faxed (1)
appeared (1)	5:5	completed (2)	direct-sale (1)	4:3
2:20	Brothers (4)	3:8,13	7:18	fees (1)
Apple (3)	2:7;5:4,10;10:1	compliance (2)	Distributing (3)	7:15
applicable (1)	Buffalo (2)	7:1,3	2:6;6:4;9:23	fifty (1)
9:4	2:23,23	concerning (1)	Dunkirk (2)	4:15
approval (1)	Business (5)	7:14	3:1;5:21	final (1)
3:15	2:23;4:2;5:3;9:17;	connection (2)	during (1)	3:14
approved (5)	10:5	7:23;8:20	3:4	finance (1)
5:14,17;6:2;8:18;	businesses (2)	consideration (1)		

2:16 First (3) 2:12,23;6:11 five (2) 5:18;7:9 following (1) 2:21 food (1) 5:20 foot (1) 5:7 form (1) 8:18 forth (2) 2:11;3:10 forty (1) 5:7 forty-five (1) 4:17 forwarded (1) 3:14 four (3) 2:21;4:16;5:20 Friday (3) 4:2;9:17;10:5	implementation (1) 8:3 Inc (2) 10:1,1 include (4) 6:16,23;7:13,21 including (2) 7:19;8:19 Incorporated (5) 2:6,7;5:5;6:4,14 increasing (1) 8:9 incurred (1) 7:23 incurs (1) 8:20 Independent (1) 6:14 indicate (1) 3:17 insure (1) 9:8 intended (1) 8:7 invest (1) 5:10 investment (2) 6:18,21 issued (1) 8:6	leader (2) 2:16,18 leading (1) 2:22 least (5) 5:10,11,20;6:5;7:8 length (1) 3:20 level (2) 5:12,12 Lewiston (1) 2:23 light (1) 3:12 line (1) 5:8 load (2) 8:2,23 located (1) 4:18 Lorna (1) 3:19 Lou (1) 2:8	9:11 negotiated (1) 2:12 Nestle (3) 2:5;5:18;9:22 New (18) 2:3,9,10;4:5,8,8,9, 23;5:3,11,16,22;6:7, 13;7:19,21;8:11;9:3 News (1) 2:23 newspapers (1) 2:21 next (1) 3:10 Niagara (4) 2:22;4:10,19;5:9 night (1) 10:6 nineteen (2) 5:11,20 ninety (2) 7:2,4 ninety-two (1) 5:12 nonpayment (1) 7:11 notice (2) 2:13,14 notices (1) 2:20 nuclear (1) 8:13 NYISO (1) 6:14 NYPA (3) 3:11;8:14,20 NYPA's (3) 7:22;8:3,15 NYSEG (1) 9:12	3:21;8:6
G	J	M	O	P
Gazette (1) 2:22 generated (1) 4:10 generation (1) 8:10 given (2) 3:2,6 goals (2) 8:8,15 Good (2) 2:1;10:6 governor (2) 2:15;3:15 Grid (1) 9:11	January (3) 4:21;5:1,13 job (2) 7:1,1 jobs (4) 5:11,12,20;6:6 Johnson (1) 3:19 June (3) 5:23;6:8,9	mailed (1) 4:3 Main (1) 4:4 manufacturer (1) 5:5 manufacturing (1) 5:21 may (2) 3:20;4:14 Mayer (4) 2:6;5:4,10;10:1 means (1) 2:18 meet (1) 8:7 meeting (1) 8:17 megawatts (2) 4:15,17 met (1) 6:22 miles (1) 4:18 million (1) 5:11 minority (2) 2:16,18 monthly (1) 7:17	Observer (1) 3:2 office (2) 3:4,9 officially (1) 10:2 once (4) 2:21;3:7,13;7:8 one (3) 3:19;4:23;8:9 open (2) 3:23;10:4 operations (1) 6:6 Operator (1) 6:14 oral (2) 3:16,22 order (2)	PAONESSA (2) 2:1,8 participation (1) 8:16 pass-through (1) 8:19 payment (2) 7:15,16 percent (2) 7:2,4 perform (1) 7:7 period (1) 3:5 pertinent (1) 6:10 pet (1) 5:20 PetCare (3) 2:5;5:19;9:23 phase-in (1) 9:6 Plains (3) 3:4,8;4:5 plan (1) 3:16 plans (1) 5:7 plan's (2) 8:8,14 plants (1) 8:13 please (1) 3:18 PM (1) 10:8 point (3) 4:7;5:10;9:18 Porter (1) 3:1 Power (7) 2:3;4:16,17,19; 6:20;8:13;9:8 premature (1) 8:12 present (1) 4:7 Preservation (1) 9:8 president (1) 2:15 preventing (1) 8:11 previously (1) 10:3 prior (2) 2:12;3:5 pro (1) 2:15
H	K	N		
hearing (12) 2:2,13,14,22;3:5,6, 7,17,21,23;9:22;10:4 helping (1) 7:9 hot-fill (1) 5:8 hundred (7) 4:15,16;5:6,18,20; 6:3,5 hydropower (8) 2:5;4:10,23;5:15; 6:13;7:10;9:7,9	kilowatt (2) 5:18;6:3 kilowatts (1) 5:6 known (2) 4:16,17	name (1) 2:8 National (1)		
I	L			
	Lancaster (1) 6:7 Lastly (1) 9:1 late (1) 7:14 law (3) 2:2,10;4:13			

procedures (1) 2:11	4:17	8:5,16;9:3,5,10,13, 13	6:14	use (1) 7:10
process (1) 3:10	reporter (1) 3:20	set (1) 3:10	T	utilities' (1) 9:12
production (1) 5:8	reporting (1) 7:1	sets (1) 2:11	target (1) 9:6	utilization (1) 6:21
Products (3) 2:7;5:4;10:1	require (1) 7:15	several (1) 4:8	tariff (2) 9:3,5	W
program (2) 8:17;9:8	required (1) 2:2	shall (1) 4:21	tariffs (1) 9:14	ways (1) 2:18
programs (1) 9:10	requirement (1) 7:1	sheet (1) 3:18	taxes (1) 6:15	Web (1) 3:3
Project (2) 4:11,19	requires (1) 2:13	sign-in (1) 3:17	temp (1) 2:15	week (1) 2:21
proposed (7) 2:4;3:3,12;4:8; 6:11;9:16,22	respect (1) 6:17	site (1) 3:3	term (2) 5:22;6:8	weeks (1) 2:21
prorated (1) 7:6	result (1) 7:11	sixty-five (1) 6:5	terminate (1) 6:19	Western (5) 2:9;4:9;5:3,16;9:3
provide (1) 6:12	retain (3) 5:19;6:5,18	Somerset (1) 5:9	terms (2) 5:14;9:4	White (3) 3:4,8;4:5
provided (3) 2:14;4:19;9:11	return (1) 5:2	sources (1) 8:11	Therefore (1) 2:14	wholesaling (1) 6:6
provisions (5) 6:10;7:13,17,21; 8:19	review (1) 3:14	speaker (1) 2:17	thirty (1) 4:18	within (2) 4:18;7:9
public (10) 2:2,10;3:2,6,12; 4:12;8:5,16;9:12,21	revised (1) 8:18	speakers (1) 9:19	thirty-day (1) 3:5	written (2) 3:18,20
purchase (2) 8:1,21	right (2) 6:19;7:5	Specifically (2) 5:4,17	thousand (1) 5:7	wwwnypagov (1) 3:8
Purina (3) 2:5;5:19;9:23	risk (2) 7:11;8:12	specifies (2) 9:4,5	three (2) 5:10;9:9	Y
	RP (3) 4:18;5:6;9:5	square (1) 5:7	three-year (1) 9:6	years (1) 7:9
R	S	standard (2) 8:4,7	threshold (2) 7:2,4	York (11) 2:3,10,10;4:5,9; 5:3,16;6:13;7:19; 8:11;9:3
rate (3) 9:6,6,7	sale (2) 2:4;4:10	State (3) 2:10;8:7,11	Times-Union (1) 3:1	Z
rates (1) 9:4	sale-for-resale (1) 4:15	stated (2) 9:15;10:3	today's (1) 3:5	zero (3) 8:1,12,21
recess (2) 9:18,20	sales (1) 7:19	statement (2) 3:16,18	town (1) 5:9	1
Recharge (1) 7:19	secretary (1) 4:4	statements (2) 3:20,22	transcript (1) 3:7	1 (1) 9:3
reconsider (1) 3:12	secretarysoffice@nypagov (1)	state's (2) 8:8,10	Transmission (1) 9:10	1005 (1) 4:13
reconvene (1) 9:18	Section (3) 2:10;3:11;4:13	stemming (1) 8:3	Trustees (8) 2:3;3:11,13;5:1,14, 17;6:2;8:18	1009 (2) 2:11;3:11
record (2) 3:23;10:3	sell (1) 4:14	step (1) 3:10	Try-It (3) 2:5;6:3;9:23	10601 (1) 4:5
recovery (1) 7:22	senate (2) 2:16,16	Street (1) 4:4	two (9) 4:15;5:6,10,14,15; 6:3,5;7:16;8:11	11 (1) 4:4
reduce (2) 6:19;7:5	senate's (1) 2:15	Subsection (1) 4:13	U	123 (1) 4:4
Regarding (1) 4:12	senior (1) 2:8	summarize (1) 6:10	ultimately (1) 9:8	13 (1) 4:13
relations (1) 2:9	sent (1) 2:14	summary (1) 4:8	under (1) 4:12	1987 (1) 4:21
remain (2) 3:23;10:4	Sentinel (1) 3:1	supply (1) 6:13	up (1) 2:22	1st (2)
renewable (3) 8:1,10,22	September (1) 8:17	support (1) 5:6	upstate (1) 8:12	
replacement (1)	serve (1) 9:1	supports (1) 8:14		
	Service (7)	System (1)		

4:21;8:5				
2				
2016 (2) 8:5,17 2017 (8) 4:2;5:2,13,23;6:9; 9:17,21;10:5 2020 (2) 6:1,9 27th (1) 8:17				
3				
30 (1) 5:23 30th (3) 5:23;6:8,9 31st (2) 5:2,13				
6				
6:31 (1) 10:8 6th (1) 9:21				
7				
7th (3) 4:2;9:17;10:5				
9				
914-390-8040 (1) 4:6				

New York Power Authority
Contract for the Sale of Preservation Power - Transmittal to the Governor

Exhibit "4b iii-A"
May 2, 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
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	

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

Table of Contents

Schedule of Rates for Firm Power Service	Leaf No.
I. Applicability	3
II. Abbreviations and Terms	3
III. Monthly Rates and Charges	
A. Preservation Power Base Rates	5
B. Preservation Power Rates No Lower Than Rural/Domestic Rate	5
C. Monthly Base Rates Exclude Delivery Service Charges	5
D. Minimum Monthly Charge	6
E. Billing Period	6
F. Billing Demand	6
G. Billing Energy	6
H. Contract Demand	6
IV. General Provisions	
A. Character of Service	7
B. Availability of Energy	7
C. Delivery	7
D. Adjustment of Rates	7
E. Billing Methodology and Billing	8
F. Payment by Customer to Authority	
1. Demand and Energy Rates, Taxes	8
2. Transmission Charge	9
3. NYISO Transmission and Related Charges	9
4. Taxes Defined	10
5. Substitute Energy	10
6. Payment Information	10
G. Adjustment of Charges	
1. Distribution Losses	10
2. Transformer Losses	10
3. Power Factor	10
H. Conflicts	11
I. Customer Resales Prohibited	11
V. Annual Adjustment Factor	12

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

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PUBLIC HEARING

Contracts for Sale of Hydropower to Potsdam Specialty
Paper, Inc., and Upstate Niagara Cooperative, Inc.

April 21, 2017

2:00 p.m to 6:00 p.m.

Frank S. McCullough, Jr. Hawkins Point Visitors Center

St. Lawrence/FDR Power Project

830 Barnhart Island

Massena, New York 13662

1 APPEARANCES

2

3 Patricia Wilson,
4 Northern New York Project Manager
5 New York Power Authority
6 Massena, New York 13662

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8 Karen Delince,
9 Corporate Secretary
10 New York Power Authority
11 White Plains, New York 10601

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1 April 21, 2017, 2:00 p.m.

2 MS. DELINCE: Good afternoon. This is a public
3 hearing required by law and authorized by the New York
4 Power Authority's Board of Trustees on the proposed
5 customer contracts for the sale of hydropower to
6 Potsdam Specialty Paper, Inc. and Upstate Niagara
7 Cooperative, Inc.

8 My name is Karen Delince and I'm the Authority's
9 Corporate Secretary. New York State Public
10 Authorities Law, Section 1009, sets forth procedures
11 for executing certain contracts negotiated by the
12 Authority. First, prior to the hearing, it requires
13 that notice of the hearing be provided. Therefore, a
14 notice was sent to the Governor, the Senate's
15 President Pro Temp, the Senate Minority Leader, the
16 Senate Finance Committee Chair, the Assembly Speaker,
17 the Assembly Minority Leader and the Assembly Ways and
18 Means Committee Chair.

19 In addition, notices appeared in the following
20 newspapers once a week for the four weeks leading up
21 to this hearing: Albany Times Union, Massena Daily
22 Courier-Observer, Ogdensburg Journal, Plattsburgh
23 Press Republican, Syracuse Post-Standard and Watertown

1 Daily Times. The public was also given access to the
2 proposed contracts on the Authority's website and at
3 the Authority's White Plains office during the 30-day
4 period prior to today's hearing. After the hearing,
5 the public will be given access to the hearing
6 transcript, once it is completed, at www.nypa.gov and
7 at the White Plains office.

8 The next step in the process set forth in section
9 1009 will be for the NYPA Trustees to reconsider the
10 proposed contracts in light of public comments. Once
11 the Trustees have completed their final review, the
12 contracts will be forwarded to the Governor for his
13 consideration and approval.

14 If you plan to make an oral statement at this
15 hearing, I ask that you so indicate on the sign-in
16 sheet. Also, if you have a written statement, please
17 give a copy to Lorna Johnson and one to the reporter.
18 Written statements may be of any length and will
19 appear in the record of the hearing in addition to
20 oral statements. The record of the hearing will
21 remain open for additional comments through close of
22 business Monday, April 24th, 2017. Additional
23 comments should be mailed, Faxed or e-mailed to the

1 Corporate Secretary at 123 Main Street, 11-P, White
2 Plains, New York 10601 or (914) 390-8040 or
3 secretarys.office@nypa.gov.

4 At this point I would like to introduce
5 Ms. Patricia Wilson, the Authority's Northern New York
6 Project Manager, who will provide additional details
7 on the proposed contracts.

8 MS. WILSON: Thank you. Good afternoon. My name
9 is Patricia Wilson and I am the Northern New York
10 Project Manager at the New York Power Authority. I am
11 here today to present an overview of a proposed
12 contract with Potsdam Specialty Paper, Inc., or PSPI,
13 located in Potsdam, St. Lawrence County, for the
14 direct sale of 400 kilowatts of Preservation Power;
15 hydropower that is generated here at the Authority's
16 St. Lawrence/FDR Power Project. In addition, I am
17 presenting a contract for Upstate Niagara Cooperative,
18 Inc., extending the term of the sale of 2,250
19 kilowatts of Preservation Power for use at Upstate
20 Niagara's North Lawrence facility also in St. Lawrence
21 County.

22 Preservation Power, established under Public
23 Authorities Law Section 1005, Subsection 13,

1 authorizes the Authority to allocate low-cost
2 hydropower that is relinquished from the block of 490
3 megawatts of St. Lawrence/FDR Power Project firm and
4 interruptible power currently sold to Alcoa and
5 formerly sold to General Motors. The law authorizes
6 the allocation of power to businesses in Northern New
7 York, specifically businesses located in Franklin,
8 Jefferson and St. Lawrence Counties, applying the same
9 allocation criteria as pertains to the Authority's
10 other hydropower programs, Replacement Power and
11 Expansion Power.

12 Each application for an allocation of
13 Preservation Power must be evaluated in consideration
14 of the legislative criteria that includes, but need
15 not be limited to, a consideration of the number of
16 jobs created as a result of the allocation; the
17 business' long-term commitment to the region as
18 evidenced by the current and/or planned capital
19 investment in the business' facilities in the region;
20 the ratio of the number of jobs to be created to the
21 amount of power requested; the types of jobs created,
22 as measured by wage and benefit levels; and the type
23 and cost of buildings, equipment and facilities to be

1 constructed, enlarged or installed.

2 At its meeting of January 31st, 2017, the Power
3 Authority's Board of Trustees approved an allocation
4 of 400 kilowatts of Preservation Power to PSPI for a
5 term of seven years. Approval of the allocation was
6 based on an evaluation of PSPI's application for
7 hydropower, in which it proposed to invest at least \$2
8 million to expand its existing facility. PSPI
9 committed to create a total of at least 22 new jobs as
10 a result of this expansion, above its current 67 base
11 jobs.

12 In addition, at its January 31st, 2017 meeting,
13 the Trustees approved an extension of the 2,250
14 kilowatt allocation of Preservation Power to Upstate
15 Niagara Cooperative for its commitment to retain at
16 least 80 jobs at its North Lawrence facility. The
17 allocation, originally awarded in May 2011, helped
18 Upstate Niagara invest in and re-open the dairy
19 processing plant that had been shuttered in January
20 2011. The new contract will extend the term of the
21 allocation from April 30th, 2017 to June 30th, 2020.

22 To summarize some of the pertinent provisions of
23 the proposed contracts, first, they provide for the

1 direct billing of all hydropower supply charges, all
2 New York Independent System Operator, Inc. charges and
3 taxes. To accommodate non-payment risk that could
4 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 payments for any two
9 monthly bills.

10 The contracts include the companies' commitments
11 with respect to employment and capital investment and
12 retain the Authority's right to reduce or terminate
13 the allocation if employment, power utilization or
14 capital investment commitments are not met. For
15 example, the contracts include an annual job reporting
16 requirement and a job compliance threshold of 90
17 percent. Should a company's average annual employment
18 fall below the compliance threshold of 90 percent of
19 the employment commitment, the Authority has the right
20 to reduce the allocation on a pro rata basis. The
21 contracts also require a company to perform an energy
22 audit at its facility at least once within five years,
23 helping to ensure the customer uses the hydropower

1 efficiently. This contract provision is consistent
2 with other Authority direct sale contracts, including
3 the Western New York and Recharge New York sales
4 contracts.

5 The contracts also include new provisions
6 expressly allowing NYPA's recovery from the customer
7 of any costs incurred in connection with the purchase
8 of Zero Emission Credits and Renewable Energy Credits
9 attributable to the customer's load, stemming from
10 NYPA's implementation of the Clean Energy Standard, or
11 CES.

12 On August 1st, 2016 the Public Service Commission
13 issued the 'CES Order' establishing a clean energy
14 standard for the State, intended to meet the State
15 Energy Plan's clean energy goals by, among other
16 things: One, increasing the amount of the State's
17 energy generation that comes from renewable energy
18 sources in New York State; and two, preventing the
19 premature closure of Upstate, at risk, zero emission
20 nuclear power plants.

21 NYPA supports the State Energy Plan's clean
22 energy goals, and in anticipation of NYPA's
23 participation in the Public Service Commission's CES

1 program, at its September 27th, 2016 meeting the
2 Trustees approved a revised form of contract,
3 including provisions for the pass through to customers
4 of any costs NYPA incurs in connection with the
5 purchase of Zero Emission Credits and Renewable Energy
6 Credits attributable to the customers' load.

7 Lastly, the Authority will provide firm electric
8 service from the St. Lawrence/FDR plant, which is
9 subject to pro rata curtailment when there is
10 insufficient generation at the Niagara and St.
11 Lawrence/FDR facilities to meet all its firm load
12 requirements. The rates, terms and conditions for the
13 sale of Preservation Power are contained in the
14 Authority's "Schedule of Rates For Sale of Firm Power
15 to Preservation Power Customers - Service Tariff No.
16 10." Delivery service will be provided and billed by
17 the local utility, National Grid, in accordance with
18 its Public Service Commission approved delivery
19 service tariff.

20 As Ms. Delince stated earlier, the Authority will
21 accept your comments on the proposed contracts until
22 the close of business Monday. I will now turn the
23 forum back to Ms. Delince.

1 MS. DELINCE: Thank you, Ms. Wilson. We will
2 recess now and reconvene when speakers arrive.

3 (Recess from 2:13 p.m. to 6:00 p.m.)

4 MS. DELINCE: The April 21st, 2017 public hearing
5 of the Proposed Customer Contract for Potsdam
6 Specialty Paper, Inc. and Upstate Niagara Cooperative,
7 Inc. is now officially closed. As previously stated,
8 the record of the hearing will remain open for
9 additional comments through close of business Monday
10 April 24th, 2017. Thank you and good night.

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12 (End of Public Hearing at 6:01 p.m.)

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1 STATE OF NEW YORK)
2 COUNTY OF ST. LAWRENCE)

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5 I, Heidi C. Simmons, a Notary Public in the state of
6 New York, do hereby certify that the foregoing public
7 hearing was taken before me at the place as stated in the
8 caption hereto, at Page 1 hereof; that the foregoing
9 typewritten transcription, consisting of pages numbered 3
10 to 11, inclusive, was produced to the best of my ability of
11 said hearing.

12 IN WITNESS WHEREOF, I have hereunto subscribed my name
13 this, the 23rd day of April, 2017.

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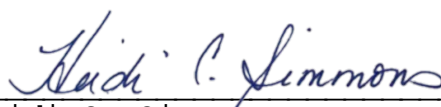
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Heidi C. Simmons, Notary Public
State of New York
County of St. Lawrence
My commission expires: 08/27/17

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)
to

Sumitomo Rubber USA, LLC

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Sumitomo Rubber USA, LLC (“Customer”) with offices and principal place of business at 10 Sheridan Drive, Tonawanda, NY 14150. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support expanded operations at a facility owned and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on May 2, 2017, the Authority’s Board of Trustees (“Trustees”) approved a 1,500 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the expansion and operation of the Facility as further described in this Agreement;

WHEREAS, on May 2, 2017, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement, and the Customer's obligation to take and pay for such Electric Service, are expressly conditioned upon the Customer's timely completion of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility by May 2, 2020 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the

Customer's local electric utility on terms and conditions that are acceptable to the Authority.

- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as

follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Sumitomo Rubber USA, LLC
10 Sheridan Drive
Tonawanda, NY 14150
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- B. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

SUMITOMO RUBBER USA, LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Sumitomo Rubber USA, LLC	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Replacement Power	1,500	10 Sheridan Drive Tonawanda, NY 14150	May 2, 2017	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service, the Customer shall employ at least 1,271 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall make a minimum capital investment of \$87,000,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following specific expenditures:

Phase I: Construction of a 35,000-sq. ft. finishing Building, including the extension of the curing trench and a temporary receiving dock.	\$33.0 Million
Phase II: Construction of a 75,000-sq. ft. chemical weigh building, including a mixer, 32 curing presses, tire building machines and curing trench rework.	\$52.9 Million
<u>Miscellaneous Project Costs</u>	<u>\$ 1.1 Million</u>
Total Minimum Capital Investment:	\$87.0 Million

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than May 2, 2020 (*i.e.*, within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR
REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to adjustment after a 3-year look-back, and the PSC indicates it will adopt

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year ("REC Program Year").

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP's clean energy goals. The Authority's participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the "EP and RP Programs ZEC Cost"). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP and RP Programs based on the proportion of the actual annual kilowatt-hours

load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

- iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).
- b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

- a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.
 - ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.
 - iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the REC Charge. Depending on the availability of the Customer's kilowatt-hour

load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- b. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

Table of Contents

Schedule of Rates for Firm Power Service	Leaf No.
I. Applicability	3
II. Abbreviations and Terms	3
III. Monthly Rates and Charges	5
A. Expansion Power (EP) and Replacement Power (RP) Base Rates	5
B. EP and RP Rates no Lower than Rural/Domestic Rate	5
C. Monthly Base Rates Exclude Delivery Service Charges.....	6
D. Minimum Monthly Charge.....	6
E. Estimated Billing.....	6
F. Adjustments to Charges	7
G. Billing Period	7
H. Billing Demand	7
I. Billing Energy	7
J. Contract Demand	7
IV. General Provisions	8
A. Character of Service.....	8
B. Availability of Energy	8
C. Delivery	8
D. Adjustment of Rates.....	8
E. Billing Methodology and Billing	8
F. Payment by Customer to Authority	9
1. Demand and Energy Rates, Taxes	9
2. Transmission Charge.....	9
3. NYISO Transmission and Related Charges	9
4. Taxes Defined.....	10
5. Substitute Energy	10
6. Payment Information.....	10
G. Rendition and Payment of Bills.....	11
H. Adjustment of Charges.....	11
1. Distribution Losses	11
I. Conflicts	11
J. Customer Resales Prohibited.....	11
V. Annual Adjustment Factor	12

Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff

Agreement: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power and/or **Replacement Power**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-1.

Target Rate: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

1. The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
 - C. Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its sole discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.
- For Customers whose allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement.

F.Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G.Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

- 1.The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer's local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer's local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer's local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges ("NYISO Charges")

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
 - a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year <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

APPLICATION SUMMARY
Replacement Power ("RP")

Company:	Sumitomo Rubber USA, LLC ("Sumitomo")
Project Location:	Town of Tonawanda
County:	Erie County
IOU:	National Grid
Business Activity:	Manufacturer of tires for a variety of vehicle types.
Project Description:	Sumitomo is planning a two-phased expansion project during the next three years to support passenger car tire growth from 5,000 to 10,000 tires per day at the Tonawanda facility
Existing Allocation(s):	Five allocations of a mixture of RP and Expansion Power totaling 12,091 kilowatts ("kW") tied to 1,239 jobs and \$5.1 million annual capital investment. Sumitomo is in compliance with its contractual obligations for these allocations.
Power Request:	2,000 kilowatts ("kW")
Power Recommended:	1,500 kW RP
Job Commitment:	
Base:	1,241 jobs
New:	At least 30 jobs
New Jobs/Power Ratio:	20 jobs/megawatts ("MW")
New Jobs - Avg. Wage and Benefits:	\$66,666
Capital Investment:	At least \$87 million
Capital Investment/MW:	\$58 million/MW
Other ED Incentives:	Erie County Industrial Development Agency standard PILOT incentive and sales tax package.
Summary:	Various companies have been manufacturing tires at the Tonawanda facility since the 1920s. During the past several decades, tire manufacturing at the facility has relied heavily on hydropower allocations to remain competitive in a worldwide market. Without an allocation supporting this major expansion project and new job creation, the company could look at locations in other countries to pursue expanded tire manufacturing.

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
(CES)
to

Sumitomo Rubber USA, LLC

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Sumitomo Rubber USA, LLC (“Customer”) with offices and principal place of business at 10 Sheridan Drive, Tonawanda, NY 14150. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support expanded operations at a facility owned and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on May 2, 2017, the Authority’s Board of Trustees (“Trustees”) approved a 1,500 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the expansion and operation of the Facility as further described in this Agreement;

WHEREAS, on May 2, 2017, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an

unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for certain contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A to this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Schedule D** refers to the Schedule D entitled "Clean Energy Standard Cost Recovery Charges" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- X. **Taxes** is as defined in Service Tariff No. WNY-1.
- Y. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Z. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

- C. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-1 and the Rules, Electric Service shall be subject to the Clean Energy Standard Cost Recovery Charges provided for in Schedule D.

IV. Expansion Power and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion Power and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement, and the Customer's obligation to take and pay for such Electric Service, are expressly conditioned upon the Customer's timely completion of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility by May 2, 2020 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the

Customer's local electric utility on terms and conditions that are acceptable to the Authority.

- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as

follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: _____
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Sumitomo Rubber USA, LLC
10 Sheridan Drive
Tonawanda, NY 14150
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- B. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each

Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

SUMITOMO RUBBER USA, LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER (CES)

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Sumitomo Rubber USA, LLC	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Type of Allocation				
Replacement Power	1,500	10 Sheridan Drive Tonawanda, NY 14150	May 2, 2017	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service, the Customer shall employ at least 1,271 full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall make a minimum capital investment of \$87,000,000 to construct and furnish the Facility (the “Capital Investment”). The Capital Investment is expected to consist of the following specific expenditures:

Phase I: Construction of a 35,000-sq. ft. finishing Building, including the extension of the curing trench and a temporary receiving dock.	\$33.0 Million
Phase II: Construction of a 75,000-sq. ft. chemical weigh building, including a mixer, 32 curing presses, tire building machines and curing trench rework.	\$52.9 Million
<u>Miscellaneous Project Costs</u>	<u>\$ 1.1 Million</u>
Total Minimum Capital Investment:	\$87.0 Million

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than May 2, 2020 (*i.e.*, within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER (CES)**

TAKEDOWN SCHEDULE

N/A

**SCHEDULE D TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR
REPLACEMENT POWER (CES)**

CLEAN ENERGY STANDARD COST RECOVERY CHARGES¹

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules, the Customer shall be subject to a (i) Zero Emission Credit (“ZEC”) Charge, and (ii) Renewable Energy Credit (“REC”) Charge (collectively, the “Clean Energy Standard Cost Recovery Charges”), as of the dates indicated herein. The Clean Energy Standard Cost Recovery Charges shall be in addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff No. WNY-1 and the Rules.
2. The Clean Energy Standard Cost Recovery Charges have been developed to support the Clean Energy Standard (“CES”) established by the New York Public Service Commission (“PSC”) in an order entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-270 (the “CES Order”). The CES is intended to implement the clean energy goals of the State Energy Plan (“SEP”). The SEP’s goals are that 50% of New York’s consumed electricity is to be provided by renewable electricity sources of power by 2030, and to reduce statewide greenhouse gases by 40% by 2030.
3. As detailed in the CES Order, the PSC established a regulatory program (the “CES Program”) which imposes two requirements on load serving entities (“LSEs”) identified in the CES Order (hereinafter, “Affected LSEs”):
 - (1) An obligation to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”), in an amount representing the Affected LSE’s proportional share of ZECs calculated by the amount of electric load it serves in relation to the total electric load served by all LSEs in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is currently scheduled to commence on April 1, 2017, and will be implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
 - (2) An obligation to support renewable generation resources to serve the Affected LSE’s retail customers to be evidenced by the procurement of qualifying Renewable Energy Credits (“RECs”) in quantities that satisfy mandatory minimum percentage proportions of the total retail load served by the Affected LSE (the “REC Purchase Obligation”). Minimum purchase proportions for Affected LSEs for years 2017-2021 are specified in the CES Order, subject to adjustment after a 3-year look-back, and the PSC indicates it will adopt

¹ Capitalized terms not defined in this Schedule D have the meaning ascribed to them in the Agreement, Service Tariff No. WNY-1, or the Rules.

increasingly larger minimum purchase proportions for years 2022-2030. The REC Purchase Obligation is scheduled to commence January 1, 2017 and will be implemented on the basis of program years running from January 1 through December 31 of each year ("REC Program Year").

4. The Authority is not subject to PSC jurisdiction for purposes of the CES Order. However, it supplies electricity to end-use customers throughout the State in a manner similar to an Affected LSE, and supports the clean energy goals of the SEP. Therefore, the Authority will participate in the CES Program as further explained herein by (i) assuming a ZEC Purchase Obligation, and (ii) adapting a form of the REC Purchase Obligation, through an Authority REC Program, to the end-user load for which the Authority serves as an LSE, including power sold under EP and RP Programs, for the purpose of implementing the CES and the SEP's clean energy goals. The Authority's participation in the CES Program as described will cause the Authority to incur costs. The ZEC Charge and the REC Charge are intended to recover from the Customer the costs the Authority will incur from purchasing ZECs and RECs that are attributable to Customer load served under this Agreement. By accepting Electric Service under the Agreement, the Customer agrees to reimburse the Authority for such costs through payment of the ZEC Charge and REC Charge.

5. ZEC Charge

- a. The Authority anticipates the ZEC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:
 - i. The cost of the total ZEC Requirement for all LSEs in the New York Control Area, including the Authority as a participating LSE, will be assessed as described in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA. Its share will be based on the proportion of the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The Authority anticipates that LSE ZEC Purchase Obligations will be based on initial forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.
 - ii. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as LSE, including the EP and RP Programs (the "EP and RP Programs ZEC Cost"). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP Programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for the ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation would be allocated to the EP and RP Programs based on the proportion of the actual annual kilowatt-hours

load served under such Programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

iii. The Authority will allocate a portion of the EP and RP Programs ZEC Cost to the Customer as the ZEC Charge based on the proportion of the Customer's actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP Programs (EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation mentioned above will be passed through to the Customer based on the proportion of the Customer's annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP Program by the Authority (EP and RP Programs level load).

b. The ZEC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after April 1, 2017, unless by written notice the Authority specifies that the ZEC Charge shall apply to sales of EP and/or RP commencing on a later date.

6. REC Charge

a. The Authority anticipates the REC Charge to the Customer will be determined as follows, subject to the qualifications provided for in other provisions of this Schedule D:

i. Under the Authority REC Program, the Authority will, at a minimum, secure a sufficient number of RECs as required by the REC Purchase Obligation to cover the Customer's load based on the percent of the Customer's kilowatt-hour load as prescribed in the CES Order. The Authority will purchase RECs from NYSERDA or secure qualified RECs from one or more other sources in the Authority's discretion.

ii. The Authority may, in its sole discretion, as part of the Authority REC Program, offer the Customer a "customer choice component" that would allow the Customer to elect one or more options in connection with the REC Purchase Obligation, such as (but not necessarily limited to) the following: (a) designate the Authority to secure RECs for the Customer's load, and pay the Authority the REC Charge; (b) purchase the required number of qualifying RECs itself pursuant to an authorized Authority-developed process, thereby avoiding payment of the standard REC Charge; or (c) make a form of Alternative Compliance Payments ("ACPs") as calculated by the Authority pursuant to an authorized Authority-developed process.

iii. The costs incurred by the Authority under the Authority REC Program that are attributable to the Customer's load will be passed on to the Customer as the REC Charge. Depending on the availability of the Customer's kilowatt-hour

load information and other data from third-party sources, the Customer will either be billed for actual costs or estimated costs subject to reconciliation adjustments.

- b. The REC Charge shall apply to the sale of EP and/or RP sold under this Agreement on and after January 1, 2017, unless by written notice the Authority specifies that the REC Charge shall apply to sales of EP and/or RP commencing on a later date.
7. The Authority may, in its discretion, provide the Customer with additional information relating to the determination of the Clean Energy Standard Cost Recovery Charges by notice prior to the first billing of either charge, at the time of the first billing of either charge, or in another appropriate manner determined by the Authority.
8. The Authority may, in its sole discretion, modify the manner in which it participates in the CES Program, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, the Authority's legal and financial obligations and policies, changes of law, and other information the Authority determines to be appropriate.
9. The Authority may, in its sole discretion, include the Clean Energy Standard Cost Recovery Charges as part of the bills that are rendered pursuant to Article VII of the Agreement, or bill the Customer for such Charges pursuant to another procedure to be established by the Authority.
10. The Authority may, in its sole discretion, modify the methodology used for determining the Clean Energy Standard Cost Recovery Charges and the procedures used to implement such charges, upon consideration of such matters as PSC orders modifying or implementing the CES Order and CES Program, guidance issued by the Department of Public Service, and any other matter the Authority determines to be appropriate to the determination of such methodology.
11. Nothing in this Schedule D shall limit or otherwise affect the Authority's right to: (a) charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-1 or the Rules; or (b) charge the Customer, or recover from the Customer for, any cost, expense or other liability to the Authority resulting from any statutory enactment, or any action of the PSC or other governmental authority relating to the SEP or CES.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

Table of Contents

Schedule of Rates for Firm Power Service	Leaf No.
I. Applicability	3
II. Abbreviations and Terms	3
III. Monthly Rates and Charges	5
A. Expansion Power (EP) and Replacement Power (RP) Base Rates	5
B. EP and RP Rates no Lower than Rural/Domestic Rate	5
C. Monthly Base Rates Exclude Delivery Service Charges	6
D. Minimum Monthly Charge	6
E. Estimated Billing	6
F. Adjustments to Charges	7
G. Billing Period	7
H. Billing Demand	7
I. Billing Energy	7
J. Contract Demand	7
IV. General Provisions	8
A. Character of Service	8
B. Availability of Energy	8
C. Delivery	8
D. Adjustment of Rates	8
E. Billing Methodology and Billing	8
F. Payment by Customer to Authority	9
1. Demand and Energy Rates, Taxes	9
2. Transmission Charge	9
3. NYISO Transmission and Related Charges	9
4. Taxes Defined	10
5. Substitute Energy	10
6. Payment Information	10
G. Rendition and Payment of Bills	11
H. Adjustment of Charges	11
1. Distribution Losses	11
I. Conflicts	11
J. Customer Resales Prohibited	11
V. Annual Adjustment Factor	12

Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power (as defined below) directly to a qualified business Customer (as defined below) for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff

Agreement: An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power and/or **Replacement Power**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-1.

Target Rate: This term shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

1. The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.
 - C. Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the

Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its sole discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.
- For Customers whose allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as following:

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the Takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III B.D. shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement.

F.Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G.Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H.Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

I.Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

J.Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
- 2.If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology and Billing

Unless otherwise specified in the Agreement, the following provisions shall apply:

- 1.The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer's local electric utility, any contract between the Authority and the Customer, or any contract between the Authority, the Customer and the Customer's local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer's local electric utility for delivery of WNY Power.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges ("NYISO Charges")

The Customer shall compensate the Authority for the following NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

J. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
 - a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24
<u>Measuring Year -1 (2011)</u>			
CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

Date of Issue: September 24, 2013

Date Effective: October 2013 Billing Period

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

Applicants Recommended for an Award of Fund Benefits by the Western NY Proceeds Allocation Board

Line	Business	City	County	Economic Development Region	Project Description	Project Type	Recommended Award Amount	Total Project Cost	Jobs Retained	Jobs Created
1	Triad Recycling and Energy Corp.	Tonawanda	Erie	Western NY	Business Expansion	Business Investment	\$150,000	\$1,017,750	12	3
Total:							\$150,000	\$1,017,750	12	3

Total Jobs Created & Retained: 15

Western NY Power Proceeds Allocation Board

Criteria adapted from the Western NY Power Proceeds Allocation Board’s
“Procedures for the Review of Applications for Fund Benefits”

1. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council (“REDC”) having responsibility for the region in which an Eligible Project is located.¹ The Western New York Regional Economic Development Council which is responsible for Eligible Projects in Erie and Niagara Counties Strategies & Priorities are:
 - Promote “Smart Growth” by investing in areas that infrastructure already exists and achieves certain goals, such as: preserving historic buildings; reviving downtowns; reviving main streets; investing in existing neighborhoods; and investing in former industrial sites. A project consistent with Smart Growth will also focus on: enhancing walkability; enhancing multiple modes of transportation; connecting disadvantaged communities to employment clusters; spurring mixed-use private investment in existing communities and preserving/enhancing natural lands and or resources.
 - Promote workforce development by increasing diversity in the labor force, developing and cultivating that includes workers with advancement potential, underemployed, unemployed and special population; align education and skills training to job market for current and future industry needs.
 - Foster entrepreneurship and new business formation and growth. Designing a plan that brings new technologies and/or products to the marketplace, increases new start ups in strategic industries and facilitates the commercialization of products that can lead to job growth in the Region.
 - Increase the industry profile of agriculture in WNY by: creating better access to markets; creating new products; creating new more efficient processes; creating strong regional brands; creating programs that promote careers in agriculture.
 - Utilize Western New York’s proximity to Canadian and U.S. population centers to advance economic development in WNY. Bi-national projects will: utilize cross-border planning to create transportation and logistical infrastructure; improve

¹ As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, “revitalization” projects.

operational relationships; promote the attractiveness of WNY as a hub for global trade.

- Position the WNY region as a global energy hub through new sources of clean energy, energy efficiency and energy efficient transportation.
- Support growth of advanced manufacturing by making research more available to manufacturers to help them innovate.
- Spur growth in the health and life sciences industry through improved commercialization, recruit high profile research talent and reducing the cost burden of healthcare while improving health outcomes.
- Expand the scope of higher education by increasing accessibility to Higher Education for communities that currently have limited access to educational opportunities; better aligning education with the industry needs and creating support structures for start-ups which will assist start-ups with commercialization, business planning, workforce preparation, facilities, etc.
- Grow visitors and visitor spending by raising the profile of WNY as a national and international destination; connect multiple tourist destinations in WNY; improve the profile of the WNY Gateway to the United States.

For more information on the Western New York Regional Economic Development Council please go to <http://regionalcouncils.ny.gov/content/western-new-york>.

2. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council ("REDC") having responsibility for the region in which an Eligible Project is located.² The Finger Lakes Regional Economic Development Council which is responsible for Eligible Projects in Orleans and Genesee Counties Strategies & Priorities can be found at: <http://regionalcouncils.ny.gov/content/finger-lakes>.
3. The number of jobs that would be created as a result of an award of Fund Benefits.
4. The applicant's long term commitment to the region as evidenced the current and/or planned capital investment in applicant's facilities in the region.
5. The ratio of the number of jobs to be created to the amount of Fund Benefits requested.
6. The types of jobs that would be created, as measured by wage and benefit levels, security and stability of employment.
7. The amount of capital investment, including the type and cost of buildings, equipment and facilities, proposed to be constructed, enlarged or installed.
8. The extent to which an award of Fund Benefits would affect the overall productivity or competitiveness of the applicant and its existing employment.

² As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, "revitalization" projects.

9. The extent to which an award of Fund Benefits may result in a competitive disadvantage for other business in the State.
 10. The growth potential of the applicant's facilities and the contribution of economic strength to the area in which the applicant's facilities are or would be located.
 11. The extent of the applicant's willingness to satisfy affirmative action goals.
 12. The extent to which an award of Fund Benefits is consistent with state, regional and local economic development strategies and priorities and supported by local units of government in the area in which the business is located.
 13. The impact of an award of Fund Benefits on the operation of any other facilities of the applicant, and on other businesses within the region.
 14. That the business is likely to close, partially close or relocate resulting in the loss of a substantial number of jobs.
 15. That the applicant is an important employer in the community and efforts to revitalize the business are in long-term interests of both employers and the community.
 16. That a reasonable prospect exists that the proposed award of Fund Benefits will enable the applicant to remain competitive and become profitable and preserve jobs for a substantial period of time.
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Western NY Power Proceeds Allocation Board

Western New York Economic Development Fund Recommendation Memo

EXHIBIT 4b v-C

Applicant Name:	Triad Recycling and Energy Corp. (“Triad”)	REDC Region:	Western New York
Project Type:	Business Investment	County:	Erie
Industry:	Solid Waste Services and Recycling	Locality:	Tonawanda
Amount Requested:	\$300,000	Start Date:	June 2017
		Finish Date:	June 2018
RECOMMENDED OFFER			
Recommended Total Award:		\$150,000	
Total Project Cost:		\$1,017,750	
% of Project Cost Recommended:		15%	
PROJECT BUDGET (Proposed by Applicant)			
Use of funds	Amount	Source of Funds	Amount
Site/Building Improvements	\$150,000	WNY EDF	\$300,000
Plastics Grinder/Wood Grinder	\$175,000	Cash Equity	\$278,450
Air Dryer	\$50,000	NYSERDA	\$166,800
Wind Turbine Found + 15% Cont.	\$142,750	Debt Financing	\$272,500
Wind Turbine	\$500,000		
Total:	\$1,017,750	Total:	\$1,017,750
REGIONAL IMPACT MEASUREMENTS			
Job Commitments:		Applicant will retain 12 full time equivalents (“FTE”) and create 3 FTE positions over seven years.	
Average Salary of Jobs:		\$35,000	
Indirect Jobs Created			
Other Impact			



Western NY Power Proceeds Allocation Board

Western New York Economic Development Fund Recommendation Memo

EXHIBIT 4b v-C

PROJECT DESCRIPTION (Adapted from Application)

Triad plans to renovate a vacant building and expand its operations to undertake the processing of scrap plastics and wood. Triad would market the processed materials for reuse in new products such as biomass pellet fuel and garden mulch, thereby diverting these wastes from landfilling. The project would allow Triad to undertake this processing work in-house thereby reducing the cost of trucking processed materials from Allentown, PA. As part of the project, Triad will add truck docks, material handling and related equipment, new building lighting, 800 amp/460 volt electric service, perform other site work, and add three full time positions. In addition to these building and operation-focused improvements, Triad proposes to add a 100kW wind turbine at the site to generate electricity to support the project.

OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED

ESD:	Start-Up NY	NYS Office of Community Renewal:	N/A
Economic Dev. Loan:	N/A	Other:	

PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED

TYPE	AMOUNT	STATUS
N/A	\$	

BASIS FOR RECOMMENDATION

By bringing business to WNY that is currently conducted in PA, the project would reduce Triad's costs, enhance its profitability, and create jobs in New York. Triad will further reduce its costs by using on site-generated renewable wind energy to support operations. The use of wind power will also provide environmental benefits such as reduced carbon emissions.

Triad has traditionally hired from an ethnically diverse employment pool. To support this project, it will make additional hires from underserved populations, thereby allowing the new hires to make a decent salary while learning a skill.

Triad provides an important service to the WNY community by diverting landfill waste streams and processing waste materials so they can be reused in new products. The project aligns well with REDC strategies and priorities, NYPA clean energy strategies, and other state objectives.



NEW YORK
STATE OF
OPPORTUNITY.

Western NY Power Proceeds Allocation Board

Western New York Economic Development Fund Recommendation Memo

EXHIBIT 4b v-C

ANTICIPATED DISBURSEMENT TERMS
Fund Benefits would be used to reimburse the applicant for a portion of costs associated with purchasing and installing the wind turbine. It is anticipated that funds will be disbursed in arrears in a manner that is proportionate to the total for eligible expenses. Payment will be made upon presentation to NYPA of invoices and such other documentation acceptable to NYPA verifying the applicant has incurred eligible expenses of approximately \$1MM and is compliant with yearly job commitments.

Appraisal Report

Date of Inspection: 2-27-17

My Notes: "There is little to no comparative market data for this hybrid, in the summer of 2013 Thomas removed the C2e product literature from their website; it is uncertain if the C2e remains an offered product, replacement batteries cost around \$12,000.00"

Location Gates Chili CSD, 910 Wegman Rd., Rochester NY 14624

Contact at location Matthew Helmbold 585-247-4774, Matthew.Helmbold@gateschili.org

For: John Markowitz New York Power Authority, 123 Main St., White Plains NY 10601, 914-310-8209, John.Markowitz@nypa.gov

Manufacturer Thomas Built/Freightliner

Model Year 2013

Model Saf-T-Liner® C2e Hybrid

VIN# 4UZADADT8DCBX5702

Fleet #520

GVWR 31,000LBS

Class Class 7 (GVW 26,001-33,000 lbs)

Body Number of Passengers 66

Engine & Drivetrain Engine Type 6.7 I, 6-cylinder in-line

Engine Make Cummins® ISB Horsepower 200 hp, 520 ft. lbs. torque @ 1,600 rpm

Fuel Type Diesel/Electric Drive

Transmission Eaton automated manual transmission

Condition Very good, little to no rust

Miles 65,658

Hours 2,423

Tires Dual wheel, 10R-22.5 good condition

To Be Removed - 2-Way Radio, Hard-drive from DVR

E-Drive System: GENERAL SPECS.

Electric Drive

Electric Motor: Output 44 kW

Generator Output: 44 kW

Drive System

Eaton parallel hybrid drive system / diesel-electric

Battery Pack

Lithium-ion batteries, capacity 1.9 kW/h

Hybrid Features Customer Benefits

Electric Motor Launch and Acceleration Assist:

Increases fuel economy

Reduces emissions

Regenerative Braking:

Aids in braking

Reduces brake wear

Charge-Sustaining Battery System (vs. Depleting System):

Charges without plug or electrical outlet

Requires smaller battery system

Less vehicle weight due to lighter batteries

Parallel System:

Engine-only operation if hybrid goes offline

Increases reliability as both electric-diesel or diesel-only operation are available

Engine Start from Electric Motor:

Starts more quickly

Reduces engine starter wear

Increases reliability

My Opinion of Value:

Fair Market \$65-75,000.00

Orderly Liquidation \$40,000.00

Forced Liquidation (online \$) \$20-25,000.00

Marketing Hybrid Info:

Thomas Built has a role to play when it comes to taking care of the earth. That role is helping reduce emissions and lower dependence on fossil fuels through alternative powered buses. The idea of a greener future is nothing new at our company. Daimler developed its first hybrid bus, the Mercedes OE302, back in 1969, and Daimler remains the world leader in green technology today. That extensive research and experience uniquely positions Thomas Built to provide innovative hybrid solutions, like our first hybrid electric vehicle, the Saf-T-Liner C2e. Introduced to the market in 2007, the C2e is based on Eaton's hybrid electric parallel system, which is powered by both a diesel engine and an electric motor / generator. The forward-thinking design and engineering is carried over from our innovative Saf-T-Liner® C2.

RJ Klisiewicz, AMM

Operations Manager/ Assistant Auctioneer

Auctions International, Inc.

11167 Big Tree Rd

East Aurora, NY 14052

Office: 800-536-1401 x 110

Cell: (716) 870-8506

rich@auctionsinternational.com

VEHICLE & EQUIPMENT CONDITION REPORT

PHOTOCOPY THIS REPORT AS NEEDED - WHEN COMPLETE FAX TO: 1-866-718-7577

SELLER INFORMATION - Please type or print all information clearly (if your info is same for all just fill out top of first report)			
Name of Seller: NY Power Authority		Dept:	FLEET #
Item Location Address:		LOT #	
City:	State:	Zipcode:	
Contact Name:	Phone: ()	Fax: ()	
Approval E-Mail:			
Board Approval: ☐ Yes For Final Price		/	Meeting Date
ITEM INFORMATION - Please type or print the item or vehicle information clearly - Fill out only the parts appropriate for this item			
Year: 2009	Make: International	Model: CE	Body Style: School Bus
VIN / Serial: 4 D R B U S K N 3 9 A 0 6 0 0 9 7		Miles: 0 8 5 0 7 9	Hours:
Engine Make/Model:		Cyl:	Gas ☐ Diesel ☐ Hybrid ☒ Electric ☐
Horsepower:	Transmission:	AUTO ☒ MANU ☐	Single Axle ☒ Dual Axle ☐
Tire Type/Size: 295/75R22.5		Good ☒ Fair ☐ Poor ☐	Plow or Attachment Type: Dump Box Size:
Features: 2WD ☒ 4WD ☐ A/C ☐		Does Unit Operate/Drive: YES ☒ NO ☐	
OVERALL CONDITION OF ITEM AND ADDITIONAL OWNERSHIP INFORMATION			
Body:	Good ☒ Fair ☐ Poor ☐	Does Vehicle Start: YES ☒ NO ☐ UNKNOWN ☐	
Interior:	Good ☒ Fair ☐ Poor ☐	Keys Available: YES ☐ NO ☐ N/A ☐	
Mechanical:	Good ☒ Fair ☐ Poor ☐	Bill of Sale Only (No Title): ☐ Certificate of Origin Only: ☐	
		Clean Title Available: ☒ Transferable Registration: ☐	

Please describe any overhauls or maintenance for your item in the box below. Items that have more complete descriptions receive higher bid prices. You should pressure wash your equipment, broom-clean vehicles, and wash the windows before taking digital photographs of your online auction merchandise

Mechanical

Body

Interior

☐ **ADDITIONAL INFO** Check the box if you provided more info on back of report or on attached sheets

PLEASE FAX COMPLETED CONDITION REPORTS TO: 1-866-718-7577 Please upload photos to: www.wetransfer.com (2 GB per upload) Mail printed photos, photo CD & other info to: Auctions International c/o Marc Smith P.O. Box 215 Yorkville, N.Y. 13495 315-794-4660

Last Revised: 3-27-15



GEORGE A. ENGLISH
Director of Facilities and Transportation
George_English@gateschili.org

FACILITIES AND TRANSPORTATION

TEL: 585.247.4774
FAX: 585.340.5596

April 4, 2017

Mr. Gil Quiniones
President and CEO
New York Power Authority
123 Main Street
White Plains, NY 10601

Dear Mr. Quiniones:

The Gates-Chili Central School District has been pleased to participate in a demonstration project, funded by NYPA and NYSERDA, to gauge the feasibility of hybrid-electric school bus technology. The Gates-Chili Central School District is participating in a field test program under an agreement with the New York Power Authority, signed on April 9th, 2012. Under the field test program, fuel economy testing was conducted on one hybrid-electric and one standard diesel school bus which included a one-year in-service evaluation of the buses in the school district over the 2012–2013 school year.

The Gates-Chili Central School District contains four elementary schools (Armstrong, Brasser, Disney and Paul Road), a Middle School and the High School serving Gates Chili's student population of just over 4,100.

We have been operating one of these hybrid buses, transporting students and cooperating with the demonstration programs data collection efforts. It is our understanding your data collection phase of the program is completed, but we want to continue our evaluation of the hybrid bus. We would like to continue using this bus to transport our students and it is our understanding that the bus is currently owned by NYPA and is under loan to our district.

We further understand your board is considering the possibility of transferring ownership to our district, and we have been asked to express why losing the bus will have a negative impact on our district.

The bus is used in our daily routes and removal of this bus from our fleet would result in an immediate expense as we would need to purchase a replacement bus. It is the intention of the district to own and continue operating the hybrid-electric school bus for transporting our students for the rest of the vehicle's useful life.

In addition to the hybrid bus demonstration, our district has invested in several initiatives to benefit our students and community including a safety bus program and a free meals program.

We greatly appreciate the opportunity to participate in the demonstration project and being part of the State's program to reduce the use of fossil fuels and greenhouse gas emissions in transportation.

Thank you,

George A. English

Cc:
Superintendent Kimberle Ward

"Together we teach and inspire excellence for all learners."

Facilities and Transportation Building • 4 Spartan Way • Rochester, NY 14624 • www.gateschili.org

The Greater Amsterdam School District

Facilities Service Unit
LMS Annex
P.O. Box 309
Amsterdam, New York 12010



www.gasd.org
Telephone: 518-843-3186
Fax: 518-843-0939

March 15, 2017

Mr. Gil Quiniones
President and CEO
New York Power Authority
123 Main Street
White Plains, NY 10601

Dear Mr. Quiniones:

The Greater Amsterdam School District has been pleased to participate in a demonstration project, funded by NYPA and NYSERDA, to gauge the feasibility of hybrid-electric school bus technology. NYPA and the Greater Amsterdam school District entered into this Hybrid-Electric School Bus Demonstration Agreement on December 30, 2010 whereby NYPA agreed to provide one plug-in charge depleting hybrid electric school bus and one charge-sustaining hybrid-electric school bus. The school district agreed to provide NYPA with performance data for the duration of the demonstration project.

Approximately 3,700 students attend the six schools in the Greater Amsterdam School District, located in the city of Amsterdam, New York. The district serves residents in the city and town of Amsterdam, as well as those in the nearby towns of Florida, Duaneburg, Glenville, Perth and Hagan. The student population of Greater Amsterdam is diverse, with about 50 percent being of Hispanic descent.

We have been operating one of these hybrid buses since 2011, transporting students and cooperating with the demonstration programs data collection efforts. It is our understanding that the data collection phase of the program is completed. We would like to continue using this bus to transport our students and it is our understanding that the bus is currently owned by NYPA and is under loan to our district.

Where students succeed and community cares.

We would like to request a transfer in ownership for this hybrid-electric school bus to our school district. The bus is used in our daily routes and removal of this bus from our fleet would result in an immediate expense as we would need to purchase a replacement bus. It is the intention of the district to own and continue operating the hybrid-electric school bus for transporting our students for the rest of the vehicle's useful life.

We greatly appreciate the opportunity to participate in the demonstration project and being part of the State's program to reduce the use of fossil fuels and greenhouse gas emissions in transportation.

Thank you,

A handwritten signature in black ink, consisting of a stylized 'S' followed by a large, sweeping 'C' shape.



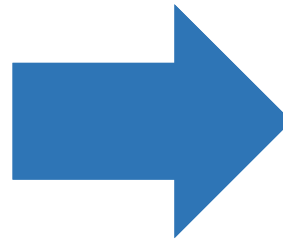
President and CEO Report

Gil Quiniones, President & Chief Executive Officer

We are in the third year of our six year 2020 strategic plan. Our focus in 2017 is making necessary mid-game adjustments.

Much has changed since the creation of our strategic plan

- Sustained low gas prices
- New State clean energy policy (REV and the Clean Energy Standard)
- Increased competition (particularly in generation and energy efficiency services)



2017 Off-site objectives

1. A refreshed NYPA 2020 Strategic Plan to be launched in Q3 2017
2. Practical actions that will allow us prioritize and focus strategic investments more effectively moving forward

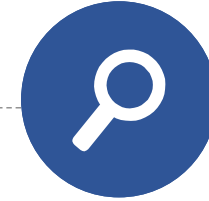
2017 Strategy Offsite: Day one key themes



NYPA's Competitiveness



Scenario Planning



Digitization





**NY Power
Authority**

**Canal
Corporation**



**NY Power
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**Canal
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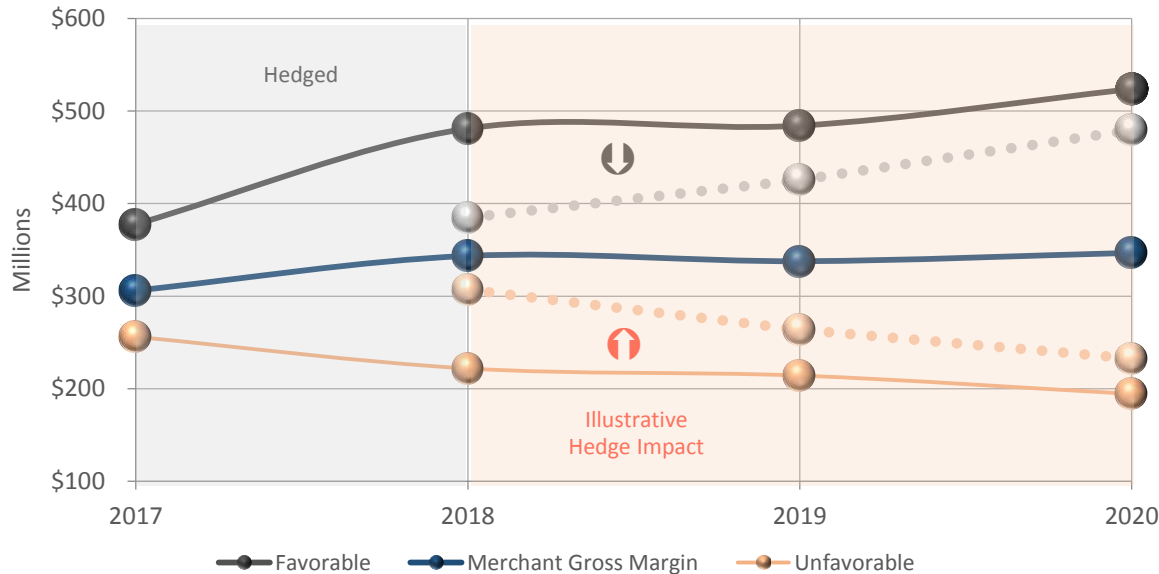
Commodity Risk Management Governance

Soubhagya Parija

Chief Risk Officer, Senior Vice President

May 2, 2017

Merchant Portfolio Risk



- Merchant revenue is uncertain with range of outcomes that may affect ability to cover operating expenses or meet financial budget
- Hedging strategy leads to more certain financial budget

Supportive processes

Week	1	2	3	4
Risk Management Limits and Target Reporting (Daily)				
ERM Morning Meeting (Daily)				
ERM Portfolio Review Meeting (Weekly)				
Risk Management and ERM Meeting				
ERMC Meeting				

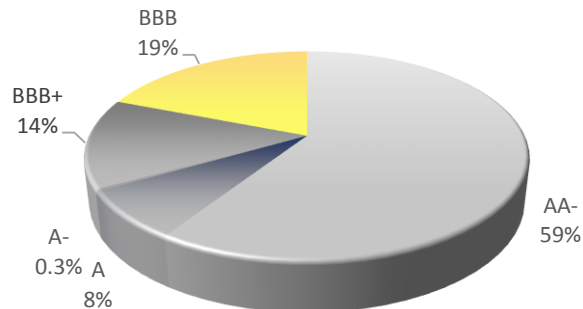


- Gross Margin Limits:
 - 3 Tiers corresponding to levels of FCCR
- Trader Volume Limits (ERM):
 - 6 levels progressive with Seniority
- Trading Term Limits (ERM):
 - 6 levels progressive with Seniority
- ERMC voting members (rotating Chairperson):
 - Chief Commercial Officer
 - Chief Financial Officer
 - Chief Operating Officer
 - General Counsel
 - Chief Information Officer

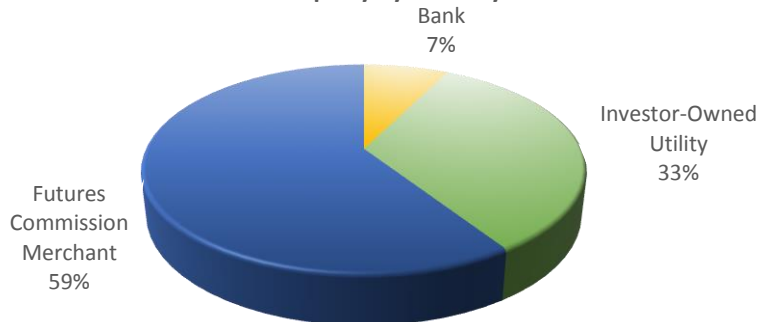
Merchant Portfolio Performance

Credit Exposure (Outstanding Notional Swaps)

Counterparty by Credit Rating



Counterparty by Industry



Collateral Requirements (in millions)



- Transactions with highly rated counterparties
- Industry diversification prevents systemic risks
- Monitor potential cash posting needs



**NY Power
Authority**

**Canal
Corporation**

Exhibit 5c i-A

Board of Trustees Meeting

Chief Operating Officer Report

Presented By:

Joseph F. Kessler PE

EVP & Chief Operating Officer

Performance Measures – YTD March 2017

Utility Operations



Generation Market Readiness

99.92% vs 99.40%
(actual vs target YTD)



Transmission Reliability

95.46% vs 94.02%
(actual vs target YTD)

NYPA Overall



Environmental Incidents

1 vs 8
(actual vs target YTD)



Dart Rate

0.72 vs 0.78
(actual vs target YTD)



NY Power
Authority

Canal
Corporation

Canal Transfer Effort – Update

Post-Day 1 (operation transfer) work is progressing to plan

- No significant post-Day 1 issues have been reported
- Execution continues across all functional areas in relation to post-Day 1 work
- O&M and capital spend remains in-line with the 2017 budget
- Hiring requirements for the summer season have been confirmed and recruitment is underway
- Transitional Service Agreement Exit Plans have been developed and signed-off; 15 of 41 have been exited to date and the remaining services are on-track to exit in-line with agreed plans



**NY Power
Authority**

**Canal
Corporation**



Commercial Operations Report

Jill C. Anderson, Chief Commercial Officer

Commercial Ops: Summary

Year to Date - Mar

in millions

**Customer Fees
for Energy
Services**

Actual

3.1

Budget

2.6



19%

in millions

**Customer
Operating
Costs**

6.6

7.5



12%

in \$/mwh

Electric Prices

Year to Date - Mar

Actual

\$ 38.50

Budget

\$ 54.98



30%

in \$/mmbtu

Fuel Prices

(unit cost of fuel)

\$ 3.97

\$ 6.46



39%



Chief Financial Officer Report

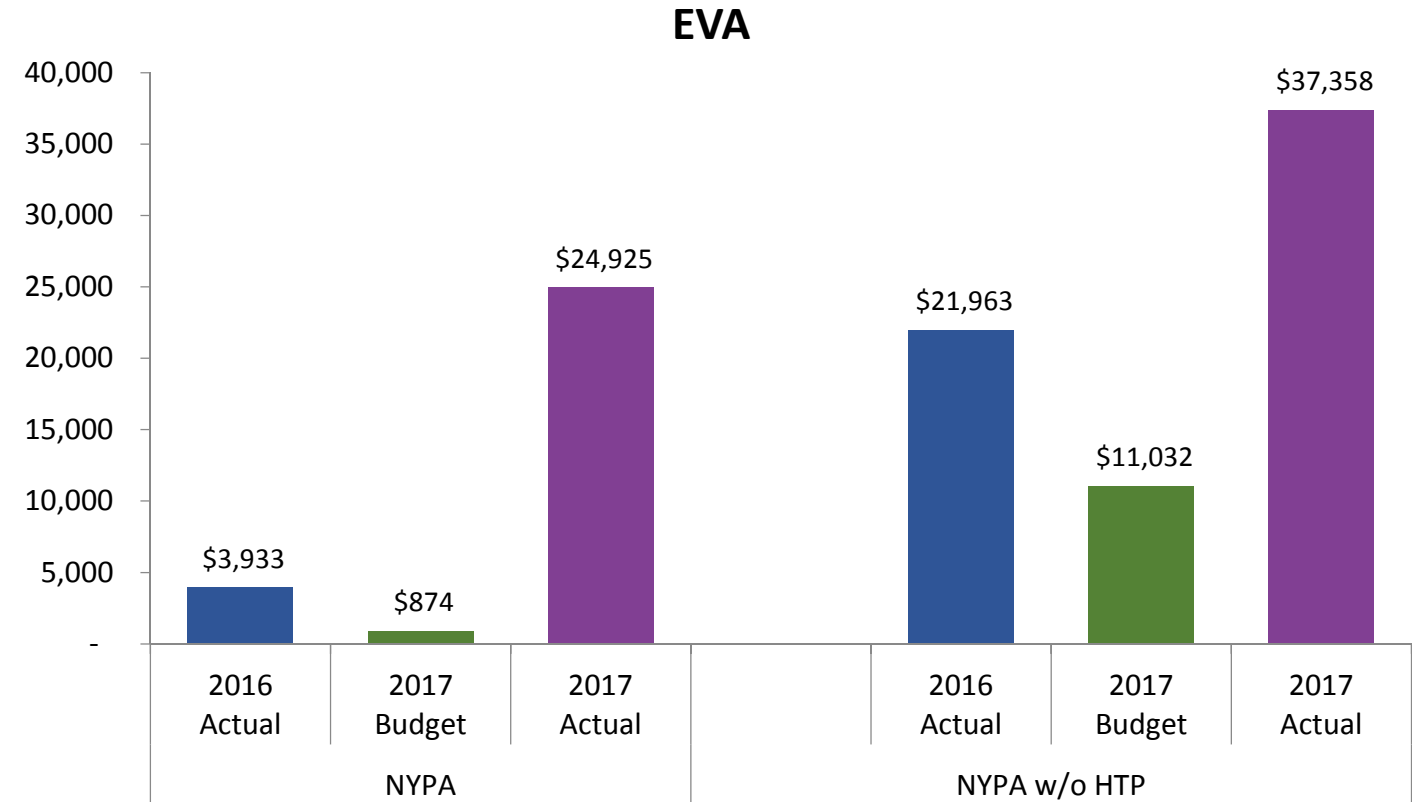
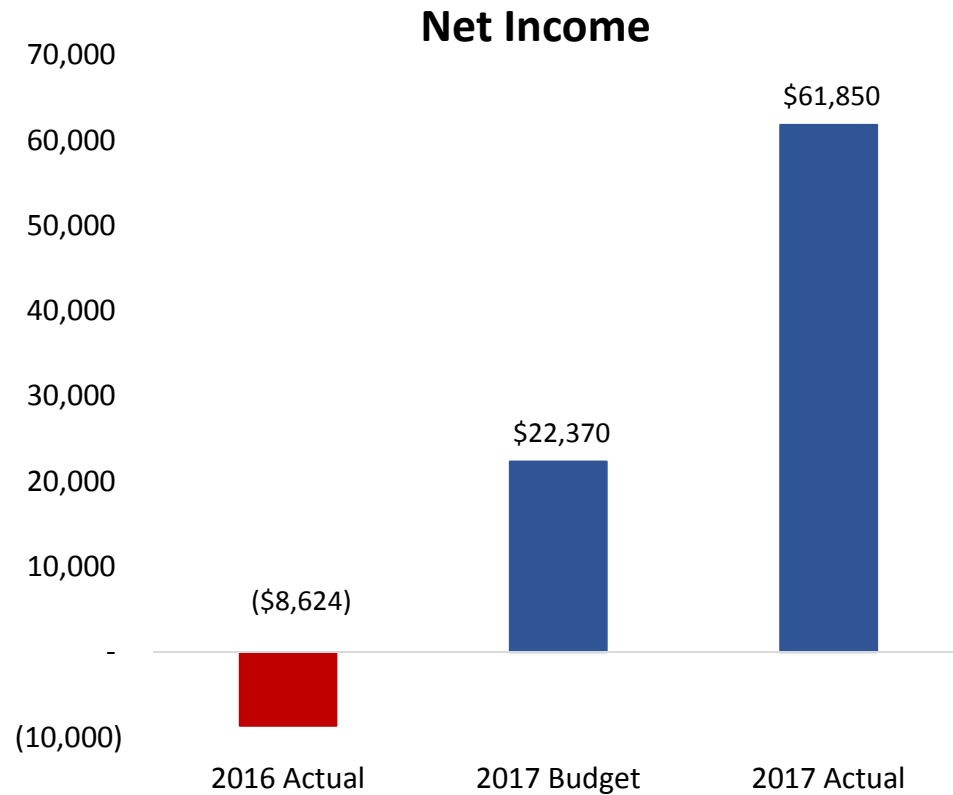
Robert Lurie, Chief Financial Officer

2017- Year to Date March

Variances from Budget (\$000's)

2016 Budget	\$	22,374
Energy Price & Margin		11,708
Transmission		7,804
Operating Expenses		11,964
Energy - NDTF Transfer		8,000
YTD Net Income	\$	61,850

YTD March 2017 Vs 2016 (in \$000's)





**NY Power
Authority**

**Canal
Corporation**

EXHIBIT 5c iv-A

NONCOMPLIANCE WITH JOB COMMITMENTS; RECOMMENDED (1) REDUCTIONS IN ALLOCATIONS/CONTRACT DEMANDS, AND (2) ADJUSTMENTS TO JOB COMMITMENTS

Aeroflex International Inc. (Plainview, Nassau County) AppID 10071

Allocation: 660 kW
Contract Demand: 660 kW
Power Utilization: 90%
Cumulative Capital Spending: \$16,000,122 or 80% of 5 year commitment
Job Commitment: 320 jobs
Jobs Reported: 257 jobs, or 80% based on audit results.

Background: Aeroflex manufactures electronics. The company did not provide any explanation regarding its job shortfall. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs.

Recommendation: Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 600 kW, and authorize an adjustment of the job commitment to not less than 257 jobs.

Airsep Corporation (Amherst, Erie County) AppID 4077

Allocation: 326 kW
Contract Demand: 326 kW
Power Utilization: 90%
Cumulative Capital Spending: \$2,905,833 or 65% of 5 year commitment
Job Commitment: 300 jobs
Jobs Reported: 236 jobs, or 79%

Background: Airsep Corporation manufactures medical air separation equipment and is under new ownership as of 2015. Airsep states its job shortfall is due to an unexpected decrease in sales due to energy sector declines and its cutting back in all areas. Employment levels are not expected to increase in the near future.

Recommendation: Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 296 kW, and authorize an adjustment of the job commitment to not less than 236 jobs.

Air Techniques, Inc. (Melville, Suffolk County) AppID 9947

Allocation: 350 kW (effective 8-1-2016)
Contract Demand: 350 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$2,905,833 or 65% of 5 year commitment
Job Commitment: 252 jobs (effective 8-1-2016)
Jobs Reported: 212 jobs, or 84%

Background: Air Techniques manufactures dental and medical products. This is the third year Air Techniques reported below the compliance threshold and employment levels have continued to decline. This is attributed in part to a soft market for the company's dental equipment. Employment agencies were brought in to assist affected employees and some have been employed by the companies that are now supplying the parts that were produced in-house.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 330 kW, and authorize an adjustment of the job commitment to not less than 212 jobs.*

Albert Einstein College of Medicine, Inc. (Bronx, Bronx County) AppID 3651

Allocation: 1,390 kW (effective 8-1-2016)
Contract Demand: 1,390 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$58,281,000 or 89% of 5 year commitment
Job Commitment: 2,572 jobs (effective 8-1-2016)
Jobs Reported: 2,175 jobs or 85%

Background: Albert Einstein College of Medicine at Yeshiva University is a higher education teaching medical hospital. This is the second year Albert Einstein College reported below the compliance threshold. In 2015, Albert Einstein reached an operating joint venture with Montefiore Medical Academic Health systems which resulted in a transfer of staffing positions. Employment data is expected to remain similar to current employment levels.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 1,320 kW, and authorize an adjustment of the job commitment to not less than 2,175 jobs.*

Angion Biomedica Corp. (Uniondale, Nassau County) AppID 9894

Allocation: 240 kW (effective 8-1-2016)
Contract Demand: 240 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$118,697 or 12% of 5 year commitment
Job Commitment: 49 jobs (effective 8-1-2016)
Jobs Reported: 21 jobs or 43%

Background: Angion Biomedica is a research and development laboratory. This is the second year Angion reported below the compliance threshold. The company states it plans to recruit 10 additional staff in the future.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 130 kW, and authorize an adjustment of the job commitment to not less than 21 jobs.*

Arkwin Industries, Inc. (Westbury, Nassau County) AppID 9283

Allocation: 620 kW (effective 8-1-2016)
Contract Demand: 620 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$4,422,900 or 43% of 5 year commitment
Job Commitment: 325 jobs (effective 8-1-2016)
Jobs Reported: 214 jobs, or 66%

Background: Arkwin Industries manufactures aerospace components. This is the third year the company reported employment levels below the compliance threshold. According to Arkwin Industries, much of its success was predicated on its ability to participate in Lockheed Martin's F-35 Joint Strike Fighter program. Arkwin estimates it will be 2 years until the program is fully certified and full scale production will begin. In addition, the recent drop in oil prices has caused the helicopter segment of Arkwin's business base to decline drastically, resulting in cut backs and cancellation of helicopter orders used for off-shore oil exploration.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 480 kW, and authorize an adjustment of the job commitment to not less than 214 jobs.*

AVA Pork Products, Inc. (Hicksville, Nassau County) AppID 11682

Allocation: 180 kW
Contract Demand: 180 kW
Power Utilization: 100%
Job Commitment: 300 jobs
Jobs Reported: 251 jobs, or 84%

Background: AVA Pork Products, Inc. produces pork products. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 170 kW, and authorize an adjustment of the job commitment to not less than 251 jobs.*

Avon Products, Inc. (Rye, Westchester County) AppID 3555

Allocation: 1,020 kW
Contract Demand: 1,020 kW
Power Utilization: 100%
Cumulative Capital Spending: \$3,397,495 or 19% of 5 year commitment
Job Commitment: 510 jobs
Jobs Reported: 440 jobs, or 86%

Background: Avon Products is a distributor of beauty products. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 980 kW, and authorize an adjustment of the job commitment to not less than 440 jobs.*

Blasch Precision Ceramics, Inc. (Albany, Albany County) AppID 9667

Allocation: 276 kW
Contract Demand: 276 kW
Power Utilization: 100%
Cumulative Capital Spending: \$3,347,748 or 67% of 5 year commitment
Job Commitment: 136 jobs
Jobs Reported: 105 jobs, or 77%

Background: Blasch Precision Ceramics manufactures ceramic products. This is the first year Blasch Precision fell below the compliance threshold. The company attributes a downturn in the chemical/petrochemical market to its job shortfall. Blasch Precision also reported it had difficulties finding employees with the qualifications required. Since reporting, it has had fluctuating head counts and has hired up to 9 employees through a temp job service company. The company is working diligently to recruit new staff by participating in job fairs and recruiting agencies.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 246 kW, and authorize an adjustment of the job commitment to not less than 105 jobs.*

Burton Industries, Incorporated (North Babylon, Suffolk County) AppID 5250

Allocation: 300 kW (effective 8-1-2016)
Contract Demand: 300 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$1,030,280 or 137% of 5 year commitment
Job Commitment: 39 jobs (effective 8-1-2016)
Jobs Reported: 30 jobs or 77%

Background: Burton Industries Inc. provides metal heat-treating services. This is the third year the company reported below the compliance threshold. During the first half of 2013, a division of Burton Industries, the North East Finishing Company (NEFCO) was separated from Burton Industries. NEFCO is no longer part of Burton Industries and separately employs approximately 20 people. Burton Industries no longer has financial interest in this division and no longer controls employment at NEFCO.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 260 kW, and authorize an adjustment of the job commitment to not less than 30 jobs.*

Cambridge Valley Machining, Inc. (Cambridge, Washington County) AppID 9496

Allocation: 180 kW (effective 8-1-2016)
Contract Demand: 180 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$5,415,049 or 67% of 5 year commitment
Job Commitment: 110 jobs (effective 8-1-2016)
Jobs Reported: 83 jobs, or 75%, *based on current job numbers obtained.*

Background: Cambridge Valley Machining manufactures machine components. This is the second year the company reported employment levels below the compliance threshold, reporting 79 jobs or 72%. Cambridge Valley has been actively seeking to hire 20 full time employees. The labor pool is limited. Two staffing agencies are working with Cambridge Valley to recruit new talent. During the year 2016, Cambridge Valley has interviewed applicants on a constant basis for positions. Due to its government contracts, employees must pass a very strict and stringent background check. In addition, the company has recently implemented wage increases and other employee benefits to attract new candidates. Cambridge Valley recently provided job counts for the period October 2016 through Dec 2016, averaging 83 jobs, or 75% of its commitment level.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 160 kW, and authorize an adjustment of the job commitment to not less than 83 jobs.*

Computer Associates International, Inc. (Islandia, Suffolk County) AppID 8549

Allocation: 2,460 kW (effective 8-1-2016)
Contract Demand: 2,460 kW (effective 8-1-2016)
Power Utilization: 100%
Job Commitment: 1,728 jobs
Cumulative Capital Spending: \$3,478,494 or 39% of 5 year commitment
Jobs Reported: 1,500 jobs or 87% *based on audit results*

Background: Computer Associates International is an I.T. data center. This is the second year CA Technologies reported employment levels below the compliance threshold and the second year the company did not provide any information explaining its job shortfall. The company was selected for an audit of its employment records and confirmed to be below the job compliance threshold.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 2,390 kW, and authorize an adjustment of the job commitment to not less than 1,500 jobs.*

Cannon Industries, Inc. (Rochester, Monroe County) AppID 9266

Allocation: 316 kW
Contract Demand: 316 kW
Power Utilization: 100%
Cumulative Capital Spending: \$3,235,547 or 65% of 5 year commitment
Job Commitment: 145 jobs
Jobs Reported: 103 jobs or 71% *based on audit results*

Background: Cannon Industries provides fabrication and powder coating services. This is the second year the company reported below the compliance threshold. The company states headcount has not changed much since the reporting period. It has added a QA Manager, Tool Maker and Shipping Clerk but has lost several other staff positions. The company was selected for an audit of its employment records and confirmed to be not compliant through third party auditor findings.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 256 kW, and authorize an adjustment of the job commitment to not less than 103 jobs.*

Cooper Power Systems, LLC (Olean, Cattaraugus County) AppID 9988

Allocation: 810 kW (effective 8-1-2016)
Contract Demand: 810 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$4,719,836 or 59 of 5 year commitment
Job Commitment: 199 jobs (effective 8-1-2016)
Jobs Reported: 131 jobs, or 66%

Background: Cooper Power Systems produces surge-arrester products. This is the fourth year the company reported employment levels below the compliance threshold. The company states it has gone through product line transitions resulting in lost production at its facility. The company states its headcount decline is due to an overall decline in sales. Cooper Power Systems can not specify when conditions will improve.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 620 kW, and authorize an adjustment of the job commitment to not less than 131 jobs.*

Derrick Corporation (Cheektowaga, Erie County) AppID 7530

Allocation: 1,170 kW
Contract Demand: 1,170 kW
Power Utilization: 100%
Cumulative Capital Spending: \$21,965,000 or 34% of 5 year commitment
Job Commitment: 570 jobs
Jobs Reported: 412 jobs or 72%

Background: Derrick Corp manufactures separation technology for oil drilling. This is the first year the company fell below the compliance threshold. The total number of jobs dropped below commitment levels due to its sales being closely tied to the oil industry. The sharp drop in oil prices has led to a decline in capital expenditures throughout the industry, and in turn, a decline in sales. The company cannot estimate a timeframe for this recovery.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 960 kW, and authorize an adjustment of the job commitment to not less than 412 jobs.*

Flagpoles, Incorporated (East Setauket, Suffolk County) AppID 11414

Allocation: 110 kW (effective 8-1-2016)
Contract demand: 110 kW (effective 8-1-2016)
Power Utilization: 100% of commitment
Cumulative Capital Spending: \$1,253,439 or 57% of 5 year commitment
Job Commitment: 100 jobs (effective 8-1-2016)
Jobs Reported: 80 jobs, or 80%

Background: Flag Poles manufactures poles for tented structures and flags. This is the fourth year the company has reported below the compliance threshold. A large portion of its sales are associated with government contracts. The company reported that due to the decline in government spending, Flagpoles' sales have decreased. The company is aggressively marketing in its commercial sector and has experienced an improved year in commercial sales to try to make up for the reduced Department of Defense sales.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 100 kW, and authorize an adjustment of the job commitment to not less than 80 jobs.*

The Jesuits of Fordham, Inc. (Fordham University) (Bronx, Bronx County) AppID 8616

Allocation: 1,910 kW
Contract Demand: 1,910 kW
Power Utilization: 100%
Cumulative Capital Spending: \$486,355,287 or 122% of 5 year commitment
Job Commitment: 3,821 jobs
Jobs Reported: 2,365 jobs or 62% based on audit results.

Background: Fordham University is an institution of higher education. The company was selected for an audit of its employment records by NYPA's third party auditing firm and found to be non-compliant for the reporting year.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 1,380 kW, and authorize an adjustment of the job commitment to not less than 2,365 jobs.*

Geneva General Hospital (Geneva, Ontario County) AppID 5482

Allocation: 546 kW
Contract Demand: 546 kW
Power Utilization: 100%
Cumulative Capital Spending: \$60,360,826 or 77% of 5 year commitment
Job Commitment: 1,117 jobs
Jobs Reported: 901 jobs or 81%

Background: This is the fourth year Geneva General reported employment levels below the compliance threshold. The hospital employs over 1,900 employees between various other hospitals, nursing homes, surgical centers, and multiple lab/physician centers encompassing several counties. The hospital states the movement of employees between multiple work locations as the reason for its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 496 kW, and authorize an adjustment of the job commitment to not less than 901 jobs.*

Greek Mountain Dairy, LLC (Goshen, Orange County) AppID 8202

Allocation: 86 kW
Contract Demand: 86 kW
Power Utilization: 100%
Cumulative Capital Spending: \$959,583 or 10% of 5 year commitment
Job Commitment: 67 jobs
Jobs Reported: 11 jobs or 16%

Background: Greek Mountain Dairy manufactures cheese and dairy products. This is the third year the company reported employment levels below the compliance threshold. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 26 kW, and authorize an adjustment of the job commitment to not less than 11 jobs.*

HealthAlliance Hospital Broadway Campus (Kingston, Ulster County) AppID 9998

Allocation: 280 kW
Contract Demand: 280 kW
Power Utilization: 100% of commitment
Cumulative Capital Spending: \$13,597,628 or 82% of 5 year commitment
Job Commitment: 761 jobs
Jobs Reported: 618 jobs, or 81%

Background: HealthAlliance Hospital is a medical facility. This is the fourth year the hospital reported employment levels below the compliance threshold. HealthAlliance Hospital states the consolidation of HealthAlliance campuses and movement of employees between facility locations as the reason for its jobs shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 260 kW, and authorize an adjustment of the job commitment to not less than 618 jobs.*

HP Hood LLC (LaFargeville, Jefferson County) AppID 10075

Allocation: 956 kW
Contract Demand: 956 kW
Power Utilization: 100%
Cumulative Capital Spending: \$6,587,000 or 132% of 5 year commitment
Job Commitment: 150 jobs
Jobs Reported: 123 jobs, or 82%

Background: HP Hood LLC manufactures cultured dairy projects. This is the second year the company reported employment levels below the compliance threshold. HP Hood states it has lost a significant

portion of business to a competitor and has had to combine a few staff positions and move other staff out of this facility. The company hopes to gain some sales volume during 2017.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 886 kW, and authorize an adjustment of the job commitment to not less than 123 jobs.*

Huhtamaki, Inc. (Fulton, Oswego County) AppID 7127

Allocation: 2,100 kW
Contract Demand: 2,100 kW
Power Utilization: 100%
Cumulative Capital Spending: \$11,464,811 or 43% of 5 year commitment
Job Commitment: 555 jobs
Jobs Reported: 489 jobs, or 88%

Background: Huhtamaki, Inc. is a paper printing and package conversion operation. This is the first year the company fell below the compliance threshold. In the past few years, Huhtamaki has moved some of its business to other facilities to align technologies and reduce production costs. Any future employment losses due to automation will be documented to detail the number of work hours reduced and productivity gains in order to avoid compliance action if possible.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 2,060 kW, and authorize an adjustment of the job commitment to not less than 489 jobs.*

Intertek Testing Services NA, Inc. (Cortland, Cortland County) AppID 10157

Allocation: 570 kW (effective 8-1-2016)
Contract Demand: 570 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$5,755,644 or 48% of 5 year commitment
Job Commitment: 393 jobs (effective 8-1-2016)
Jobs Reported: 290 jobs, or 74% based on audit results

Background: Intertek Testing Services provides testing, inspecting and product certification services. This is the fourth year the company reported employment levels below the compliance threshold. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 480 kW, and authorize an adjustment of the job commitment to not less than 290 jobs.*

ITT Corporation (Bohemia, Suffolk County) AppID 3954

Allocation: 270 kW (effective 8-1-2016)
Contract Demand: 270 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$1,518,968 or 61% of 5 year commitment
Job Commitment: 186 jobs (effective 8-1-2016)
Jobs Reported: 147 jobs or 79%

Background: ITT Corp. (EDO) manufactures antennas. This is the fourth year the company reported below the compliance threshold at this facility. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 240 kW, and authorize an adjustment of the job commitment to not less than 147 jobs.*

ITT Corporation (North Amityville, Suffolk County) AppID 4010

Allocation: 310 kW
Contract Demand: 310 kW
Power Utilization: 100%
Cumulative Capital Spending: \$8,160,768 or 544% of 5 year commitment
Job Commitment: 270 jobs
Jobs Reported: 231 jobs or 86%

Background: ITT Corporation (Exelis) is a government contractor. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 300 kW, and authorize an adjustment of the job commitment to not less than 231 jobs.*

ITT Corporation (North Amityville, Suffolk County) AppID 4094

Allocation: 406 kW
Contract Demand: 406 kW
Power Utilization: 100%
Cumulative Capital Spending: \$3,218,667 or 54% of 5 year commitment
Job Commitment: 142 jobs
Jobs Reported: 122 jobs or 86%

Background: ITT Corporation (Exelis) is a government contractor. This is the second year the company reported employment levels below the compliance threshold at this facility. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 396 kW, and authorize an adjustment of the job commitment to not less than 122 jobs.*

Kerry Biofunctional Ingredients, Inc. (Norwich, Chenango County) AppID 32622

Allocation: 540 kW (effective 8-1-2016)
Contract Demand: 540 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$2,711,656 or 45% of 5 year commitment
Job Commitment: 109 jobs (effective 8-1-2016)
Jobs Reported: 96 jobs or 88%

Background: Kerry Biofunctional Ingredients, Inc. produces pharmaceutical lactose/excipients, casein hydrolysates, flavors and tablet coatings. The headcount reduction has stabilized since the relocation of an existing production line in 2015. Although the business is consistently evaluating options to replace that line, there are currently no approved projects that would increase the headcount over the next 12 months. Kerry Biofunctional anticipates that headcount will not increase over the next year.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 530 kW, and authorize an adjustment of the job commitment to not less than 96 jobs.*

Kionix, Inc. (Ithaca, Tompkins County) AppID 14404

Allocation: 560 kW
Contract Demand: 560 kW
Power Utilization: 100%
Cumulative Capital Spending: \$22,773,971 or 202% of 5 year commitment
Job Commitment: 199 jobs
Jobs Reported: 150 jobs or 75%

Background: Kionix, Inc. is a manufacturer of MEMS inertial sensors. This is the second year the company reported below the compliance threshold. The company states that its job shortfalls can be attributed to reductions in sales prices and therefore lost revenue.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 480 kW, and authorize an adjustment of the job commitment to not less than 150 jobs.*

Kraft Foods Global, Inc. (Avon, Livingston County) AppID 9347

Allocation: 2,620 kW (effective 8-1-2016)
Contract Demand: 2,620 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$16,643,682 or 166% of 5 year commitment
Job Commitment: 386 jobs (effective 8-1-2016)
Jobs Reported: 332 jobs or 86%, *based on recent jobs reported*

Background: Kraft Foods Global, Inc. manufactures packaged food products. This is the second year the company reported below the compliance threshold with 314 jobs, or 81%. The company states headcount is low due to variability in demand for its products, and such variability has impeded the company's ability to meet its job commitments. Additionally, recent company mergers have resulted in an increase of

retirement for both hourly and salaried workforce. Kraft Foods has recently provided job counts for the period July 2016 through Nov 2016, averaging 332 jobs, or 86%.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 2,520 kW, and authorize an adjustment of the job commitment to not less than 332 jobs.*

Land O'Lakes, Inc. (Hicksville, Nassau County) AppID 5745

Allocation: 930 kW (effective 8-1-2016)
Contract Demand: 930 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$8,597,780 or 48% of 5 year commitment
Job Commitment: 287 jobs (effective 8-1-2016)
Jobs Reported: 190 jobs or 66%. (220 jobs or 77% used to calculate power reduction)

Background: Land O' Lakes, Inc. manufactures pudding products. This is the fourth year the company reported below the compliance threshold. The company provided details on several capital improvement projects that resulted in gained efficiencies which have the consequence of not requiring as many employees. 30 Full time positions were eliminated due to these gains and the company provided backup documenting the full time equivalent displacements.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 810 kW, and authorize an adjustment of the job commitment to not less than 190 jobs.*

Lehigh Hanson Services LLC (Glens Falls, Warren County) AppID 7250

Allocation: 4,430 kW (effective 8-1-2016)
Contract Demand: 4,430 kW (effective 8-1-2016)
Power Utilization: 100%
Job Commitment: 106 jobs (effective 8-1-2016)
Jobs Reported: 94 jobs or 89%, based on audit results.

Background: Lehigh Northeast Cement company manufactures cement. This is the second year the company fell below the job compliance threshold. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 4,390 kW, and authorize an adjustment of the job commitment to not less than 94 jobs.*

Linita Design & Mfg. Corp. (Lackawanna, Erie County) AppID 3894

Allocation: 60 kW (effective 8-1-2016)
Contract Demand: 60 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$557,070 or 28% of 5 year commitment
Job Commitment: 33 jobs (effective 8-1-2016)
Jobs Reported: 22 jobs or 67%

Background: Linita Design Manufacturing Corporation manufactures and designs steel. The company stated it continued to experience financial hardship in 2016 as in prior years which did not allow Linita to grow and hire more people as originally planned. Linitas' fiscal year end for Feb 2017 projections show profitability and will allow it to begin growth.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 50 kW, and authorize an adjustment of the job commitment to not less than 22 jobs.*

Lockheed Martin Corporation (Liverpool, Onondaga County) AppID 12995

Allocation: 2,940 kW (effective 8-1-2016)
Contract Demand: 2,940 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$68,217,986 or 68% of 5 year commitment
Job Commitment: 1,798 jobs (effective 8-1-2016)
Jobs Reported: 1,573 jobs or 87%

Background: Lockheed Martin produces radar systems. This is the third year the company reported below the compliance threshold. The company reported government sequestration and spending cuts as the reason for the jobs shortfall. It expects to reach committed levels as it wins new business. The company recently stated it is trending up in jobs, however no real impact as of yet.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 2,860 kW, and authorize an adjustment of the job commitment to not less than 1,573 jobs.*

Madelaine Chocolates Novelties, Inc. (Rockaway Beach, Queens County) AppID 3277

Allocation: 610 kW
Contract Demand: 500 kW
Power Utilization: 98%
Cumulative Capital Spending: \$11,339,330 or 454% of 5 year commitment
Job Commitment: 400 jobs
Jobs Reported: 200 jobs or 50%, *based on current job numbers obtained.*

Background: Madelaine Chocolates manufactures chocolate. This is the third year the company reported employment levels below the compliance threshold, reporting 127 jobs, or 32%. The company was greatly affected by Hurricane Sandy in October 2009, and it is still rebounding from the effects. Madelaine Chocolates was noncompliant in jobs during the last two reporting periods; however, action was not taken. Since reporting in July 2016, the company's employment figures have increased from 148 in July to 224 in February 2017, averaging 200 jobs, or 50% for that period. Additionally, it expects to bring two kitchens into production during 2017, which may provide for an increase in jobs.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation to not less than 370 kW and contract demand to not less than 300 kW, and authorize an adjustment of the job commitment to not less than 200 jobs.*

Mohawk Fine Papers, Inc. App. ID 4891 (Cohoes, Albany County) AppID 4891

Allocation: 1,926 kW
Contract Demand: 1,926 kW
Power Utilization: 100%
Cumulative Capital Spending: \$5,170,784 or 53% of 5 year commitment
Job Commitment: 242 jobs
Jobs Reported: 199 jobs or 82%

Background: Mohawk Fine Papers, Inc. is a manufacturer of paper products. This is the third year the company reported employment levels below the compliance threshold. Mohawk Fine Papers states a challenging economic climate with a decline in demand for the paper products it produces as the reason for its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 1,776 kW, and authorize an adjustment of the job commitment to not less than 199 jobs.*

GCT New York LP (New York Container Terminal, Inc.) (Staten Island, Richmond County) AppID 5790

Allocation: 340 kW (effective 8-1-2016)
Contract Demand: 340 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$42,898,744 or 9% of 5 year commitment
Job Commitment: 575 jobs
Jobs Reported: 304 jobs or 53%

Background: New York Container Terminal is a shipping terminal. The company's jobs have been on the steady decline for the past three years. The company claims that it lost business since 2014 due to toll increases. Tax breaks and other remedies have not aided in its recovery.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 220 kW, and authorize an adjustment of the job commitment to not less than 304 jobs.*

NYSW Beverage Brands, Inc. (New York Spring Water, Inc) (Halcott Center, Greene County) AppID 29431

Allocation: 60 kW
Contract Demand: 60 kW
Power Utilization: 100%
Cumulative Capital Spending: \$776,000 or 52% of 5 year commitment
Job Commitment: 15 jobs
Jobs Reported: 8 jobs or 53% *based on audit results*

Background: New York Spring Water, Inc is a bottling facility for water and flavored water. This is the fourth year the company reported employment levels below the compliance threshold. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 40 kW, and authorize an adjustment of the job commitment to not less than 8 jobs.*

Northrop Grumman Systems Corporation (Bethpage, Nassau County) AppID 9549

Allocation: 630 kW (effective 8-1-2016)
Contract Demand: 630 kW (effective 8-1-2016)
Power Utilization: 100%
Job Commitment: 572 jobs (effective 8-1-2016)
Jobs Reported: 321 jobs or 56%

Background: Northrop Grumman Systems Corporation is an R&D, engineering and design firm. It has vacated two buildings at this location, moving operations to Florida. The job reduction was part of an announced plan to relocate 850 jobs beginning in 2014.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 420 kW, and authorize an adjustment of the job commitment to not less than 321 jobs.*

Printex Packaging Corporation (Islandia, Suffolk County) AppID 17732

Allocation: 100 kW (effective 8-1-2016)
Contract Demand: 100 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$3,616,400 or 195% of 5 year commitment
Job Commitment: 50 jobs (effective 8-1-2016)
Jobs Reported: 40 jobs or 80%

Background: Printex Packaging Corporation manufactures clear plastic packaging cartons and displays. This is the third year the company reported employment levels below the compliance threshold. The company struggled with foreign competition, and is currently faced with the decision to continue operations in Long Island or to consolidate operations to its Montreal plant.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 90 kW, and authorize an adjustment of the job commitment to not less than 40 jobs.*

Richardson Brands Company (Canajoharie, Montgomery County) AppID 9225

Allocation: 346 kW
Contract Demand: 346 kW
Power Utilization: 100%
Cumulative Capital Spending: \$2,580,410 or 103% of 5 year commitment
Job Commitment: 213 jobs
Jobs Reported: 174 jobs or 82% based on audit results.

Background: Richardson Brands Company manufactures candy. This is the fourth year Richardson Brands fell below the compliance threshold. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 316 kW, and authorize an adjustment of the job commitment to not less than 174 jobs.*

SCA Tissue North America, LLC (South Glens Falls, Saratoga County) AppID 3900

Allocation: 5,750 kW (effective 8-1-2016)
Contract Demand: 5,750 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$15,814,255 or 36% of 5 year commitment
Job Commitment: 285 jobs (effective 8-1-2016)
Jobs Reported: 236 jobs or 83%

Background: SCA Tissue North America manufactures tissue products. This is the third year SCA Tissue fell below the compliance threshold at this South Glens Falls facility. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 5,350 kW, and authorize an adjustment of the job commitment to not less than 236 jobs.*

SCA Tissue North America, LLC (Greenwich, Washington County) AppID 3901

Allocation: 640 kW (effective 8-1-2016)
Contract Demand: 640 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$2,731,505 or 22% of 5 year commitment
Job Commitment: 112 jobs (effective 8-1-2016)
Jobs Reported: 83 jobs or 74%, *based on audit results*

Background: SCA Tissue North America manufactures tissue products. This is the fourth year SCA Tissue fell below the compliance threshold at this facility. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 540 kW, and authorize an adjustment of the job commitment to not less than 83 jobs.*

Snyder Industries, Inc. (Tonawanda, Niagara County) AppID 6884

Allocation: 370 kW (effective 8-1-2016)
Contract Demand: 370 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$1,401,717 or 4% of 5 year commitment
Job Commitment: 85 jobs (effective 8-1-2016)
Jobs Reported: 62 jobs or 73%

Background: Snyder Industries, Inc. manufactures machinery. This is the second year the company reported employment levels below the compliance threshold. The company reports 85% of sales are to

two large customers, both of which are in the coal mining equipment industry. The decline in coal usage has depressed its sales by 62% over the past two years. The company is attempting to increase sales to other customers.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 310 kW, and authorize an adjustment of the job commitment to not less than 62 jobs.*

Sonoco Plastics, Inc. (Chatham, Columbia County) AppID 3848

Allocation: 750 kW
Contract Demand: 750 kW
Power Utilization: 100%
Cumulative Capital Spending: \$2,047,767 or 118% of 5 year commitment
Job Commitment: 139 jobs
Jobs Reported: 123 jobs or 88%

Background: Sonoco manufactures plastics products. Due to consolidation of the company in 2015, divisional offer personnel were relocated and reduced. Although the company reported manufacturing jobs have not been affected, the company was unable to meet its job commitment.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 740 kW, and authorize an adjustment of the job commitment to not less than 123 jobs.*

Stature Electric, Inc. (Watertown, Jefferson County) AppID 5665

Allocation: 266 kW
Contract Demand: 266 kW
Power Utilization: 100%
Cumulative Capital Spending: \$1,651,922 or 33% of 5 year commitment
Job Commitment: 90 jobs
Jobs Reported: 71 jobs or 79%

Background: Stature Electric manufactures magnet motors and gear motors. The company did not provide any explanation regarding its job shortfall.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 236 kW, and authorize an adjustment of the job commitment to not less than 71 jobs.*

L. & J. G. Stickley Incorporated (Manlius, Onondaga County) AppID 5276

Allocation: 1,010 kW
Contract Demand: 1,010 kW
Power Utilization: 100%
Cumulative Capital Spending: \$13,998,778 or 93% of 5 year commitment
Job Commitment: 893 jobs
Jobs Reported: 695 jobs or 78%, (716 jobs or 80% used to calculate power reduction)

Background: Stickley Furniture Company manufactures furniture. Since setting its original job commitment figure, the company's sales has decreased by 12%, which has correlated with job reductions. The company provided details on several capital improvement projects that resulted in production efficiencies which translate into a reduced workforce. Twenty-one full time positions were eliminated. The company provided project details demonstrating the proof for the job displacements.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 910 kW, and authorize an adjustment of the job commitment to not less than 695 jobs.*

Sutherland Global Services Inc. (Rochester, Monroe County) AppID 11380

Allocation:	76 kW
Contract Demand:	76 kW
Power Utilization:	100%
Cumulative Capital Spending:	\$3,508,988 or 100% of 5 year commitment
Job Commitment:	2,975 jobs
Jobs Reported:	2,300 jobs or 77%

Background: Sutherland Global Services is a provider of analytics-driven business solutions. The decline in its employment levels is due to an effort to right-size in anticipation of an increase in minimum wage. The company anticipates its staff level will remain at 2,300 jobs for the foreseeable future.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 66 kW, and authorize an adjustment of the job commitment to not less than 2,300 jobs.*

TMI Trading corp. (Brooklyn, Kings County) AppID 45783

Allocation:	66 kW
Contract Demand:	66 kW
Power Utilization:	100%
Cumulative Capital Spending:	\$880,849 or 88% of 5 year commitment
Job Commitment:	27 jobs
Jobs Reported:	10 jobs or 37%

Background: TMI Trading is a food manufacturing company. After opening a new location in July 2015, 36 jobs were transferred from this location to the new warehouse. From July 2016 through December 2016, TMI staff levels continued to decline.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 36 kW, and authorize an adjustment of the job commitment to not less than 10 jobs.*

TMP Technologies, Inc. (Wyoming County) AppID 5294

Allocation: 200 kW
Contract Demand: 200 kW
Power Utilization: 100%
Cumulative Capital Spending: \$378,795 or 76% of 5 year commitment
Job Commitment: 30 jobs
Jobs Reported: 24 jobs or 80%

Background: TMP Technologies manufactures foam and plastic products. The company stated slower sales in 2016 led to lower employment. It reports that new major customers will begin orders in 2017.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 180 kW, and authorize an adjustment of the job commitment to not less than 24 jobs.*

Universal Photonics, Inc. (Vernon, Oneida County) AppID 9227

Allocation: 100 kW (effective 8-1-2016)
Contract Demand: 100 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$5,032,872 or 132% of 5 year commitment
Job Commitment: 71 jobs (effective 8-1-2016)
Jobs Reported: 42 jobs or 59%

Background: Universal Photonics, Inc. (Vernon Facility) provides critical surface preparation materials. This is its fourth year of noncompliance with job commitments. The company reduced jobs due to a slowdown in overseas business. It anticipates jobs figures to remain the same.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 70 kW, and authorize an adjustment of the job commitment to not less than 42 jobs.*

XLI Corporation (Rochester, Monroe County) AppID 7576

Allocation: 110 kW (effective 8-1-2016)
Contract Demand: 110 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$430,741 or 17% of 5 year commitment
Job Commitment: 55 jobs (effective 8-1-2016)
Jobs Reported: 42 jobs or 76%

Background: XLI Corporation manufactures machine components. This is second year XLI Corp fell below the compliance threshold. The company reports that its employment figures are dependent on variations in its customer demands. The company expects employment to stay at current levels.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 100 kW, and authorize an adjustment of the job commitment to not less than 42 jobs.*

EXHIBIT 5c iv-B

**NONCOMPLIANCE WITH JOB COMMITMENTS; RECOMMENDED ADJUSTMENTS TO
JOB COMMITMENTS**

Air Products and Chemicals, Inc. (Medina, Orleans County) AppID 10270

Allocation: 190 kW (effective 8-1-2016)
Contract Demand: 190 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$364,759 or 73% of 5 year commitment
Job Commitment: 7 jobs (effective 8-1-2016)
Jobs Reported: 6 jobs, or 86%

Background: Air Products, Inc. – Medina, formerly EPCO Carbon dioxide Products, Inc. manufactures purified liquid carbon dioxide. This is the third year the company reported employment levels below the compliance threshold. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 6 jobs.*

Ballet Hispanico of New York, Inc. (New York, New York County) AppID 10036

Allocation: 16 kW
Contract Demand: 16 kW
Power Utilization: 100%
Cumulative Capital Spending: \$1,434,917 or 605% of 5 year commitment
Job Commitment: 54 jobs
Jobs Reported: 46 jobs, or 85%

Background: Ballet Hispanico is a dance school and studio. The company did not provide any explanation regarding its job shortfall. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 46 jobs.*

Chef One Corporation (Brooklyn, Kings County) AppID 45796

Allocation: 40 kW
Contract Demand: 40 kW
Power Utilization: 100%
Cumulative Capital Spending: \$143,343 or 14% of 5 year commitment
Job Commitment: 17 jobs
Jobs Reported: 15 jobs, or 88%

Background: Chef One Corporation is a food manufacturing company. Chef One Corporation reported employment levels below the compliance threshold. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 15 jobs.*

Dayton T. Brown, Inc. (Bohemia, Suffolk County) AppID 9603

Allocation: 100 kW (effective 8-1-2016)
Contract Demand: 100 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$3,477,482 or 47% of 5 year commitment
Job Commitment: 177 jobs (effective 8-1-2016)
Jobs Reported: 155 jobs or 88%

Background: Dayton T. Brown performs test systems for industrial, commercial and military requirements. This is the fourth year the company reported employment levels below the compliance threshold. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 155 jobs.*

Maines Paper Food Service, Inc. (Conklin, Broome County) AppID 10212

Allocation: 610 kW (effective 8-1-2016)
Contract Demand: 610 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$19,113,678 or 127% of 5 year commitment
Job Commitment: 1,229 jobs (effective 8-1-2016)
Jobs Reported: 1,093 jobs or 89%

Background: Maines Paper Food Service Inc. is a food distributor and warehouse. This is the fourth year the company reported employment levels below the compliance threshold. After being noncompliant in jobs in the 2015 reporting period, compliance action was taken. However, for this reporting period, because the employment shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 1,093 jobs.*

Margaretville Memorial Hospital (Margaretville, Delaware County) AppID 9999

Allocation: 40 kW
Contract Demand: 40 kW
Power Utilization: 100%
Cumulative Capital Spending: \$7,916,855 or 186% of 5 year commitment
Job Commitment: 101 jobs
Jobs Reported: 75 jobs or 74%

Background: Margaretville Hospital provides healthcare and medical needs. This is the third year Margaretville Hospital reported below the compliance threshold. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 75 jobs.*

Mohawk LTD. (Chadwick's, Oneida County) AppID 8018

Allocation: 46 kW
Contract Demand: 46 kW
Power Utilization: 100%
Cumulative Capital Spending: \$977,446 or 150% of 5 year commitment
Job Commitment: 60 jobs
Jobs Reported: 53 jobs or 88%

Background: Mohawk LTD produces electronic calibration equipment. This is Mohawk LTD's first year reporting below the compliance threshold. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 53 jobs.*

Margaretville Nursing Home, Inc. (Margaretville, Delaware County) AppID 10000

Allocation: 40 kW
Contract Demand: 40 kW
Power Utilization: 100%
Cumulative Capital Spending: \$559,722 or 75% of 5 year commitment
Job Commitment: 88 jobs
Jobs Reported: 68 jobs or 77%

Background: Mountainside Residential Care Center is in the health services industry. This is the fourth year the company reported employment levels below the compliance threshold. Mountainside Residential works in conjunction with the Margaretville Hospital, which is also noncompliant after seeing a similar dip in employment at the beginning of the reporting period. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 68 jobs.

United Odd Fellow and Rebekah Home (Bronx, Bronx County) AppID 10410

Allocation: 140 kW (effective 8-1-2016)
Contract Demand: 140 kW effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$444,483 or 22% of 5 year commitment
Job Commitment: 201 jobs (effective 8-1-2016)
Jobs Reported: 169 jobs or 84%, based on audit results.

Background: Rebekah Rehab provides health services. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 169 jobs.

R.R. Donnelley & Sons Company (New York, New York County) AppID 9965

Allocation: 90 kW
Contract Demand: 90 kW
Power Utilization: 100%
Cumulative Capital Spending: \$132,597 or 66% of 5 year commitment
Job Commitment: 165 jobs
Jobs Reported: 146 jobs or 88%

Background: RR Donnelley & Sons provides printing services. The company was found to be noncompliant in job commitments. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 146 jobs.

Schneider Packing Equipment Company, Inc. (Brewerton, Onondaga County) AppID 9408

Allocation: 120 kW
Contract Demand: 120 kW
Power Utilization: 100%
Cumulative Capital Spending: \$1,352,602 or 54% of 5 year commitment
Job Commitment: 170 jobs
Jobs Reported: 151 jobs or 89%, based on audit results.

Background: Schneider Packing Equipment, Co., Inc. manufactures packaging machinery. The company was selected for an audit of its employment records by NYPA's third party auditor and confirmed to be not compliant with jobs. However, because the shortfall is relatively minor, the methodology used to

calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 151 jobs.*

Sleepy's, LLC (Hicksville, Nassau County) AppID 3708

Allocation: 160 kW
Contract Demand: 160 kW
Power Utilization: 100%
Cumulative Capital Spending: \$4,510,077 or 150% of 5 year commitment
Job Commitment: 658 jobs
Jobs Reported: 566 jobs or 86%

Background: Sleepy's is a mattress warehouse. The company did not provide any explanation regarding its job shortfall. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 566 jobs.*

Syracuse Plastics, LLC (Liverpool, Onondaga County) AppID 8104

Allocation: 200 kW (effective 8-1-2016)
Contract Demand: 200 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$1,415,126 or 94% of 5 year commitment
Job Commitment: 44 jobs (effective 8-1-2016)
Jobs Reported: 38 jobs or 86%

Background: **Background:** Syracuse Plastics LLC manufactures plastic parts and components. The company did not provide any explanation regarding its job shortfall. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 38 jobs.*

TMP Technologies, Inc. – Buffalo (Buffalo, Erie County) AppID 4497

Allocation: 60 kW
Contract Demand: 60 kW
Power Utilization: 100%
Cumulative Capital Spending: \$1,338,027 or 134% of 5 year commitment
Job Commitment: 31 jobs
Jobs Reported: 27 jobs or 87%

Background: TMP Technologies manufactures foam and plastic products. The company anticipates new business activity, which would result in additional jobs. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 27 jobs.*

Yeshiva University (New York, New York County) AppID 7104

Allocation:	90 kW (effective 8-1-2016)
Contract Demand:	90 kW (effective 8-1-2016)
Power Utilization:	100%
Cumulative Capital Spending:	\$402,529 or 16% of 5 year commitment
Job Commitment:	165 jobs (effective 8-1-2016)
Jobs Reported:	147 jobs or 89%

Background: Yeshiva University provides higher education. This is its second year of noncompliance. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 147 jobs.*

YWCA of Niagara Frontier, Inc. (Niagara Falls, Niagara County) AppID 4132

Allocation:	10 kW
Contract Demand:	10 kW
Power Utilization:	100%
Job Commitment:	12 jobs
Jobs Reported:	7 jobs or 58%

Background: YWCA of Niagara provides community services. Four employees were transferred to a different location. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees authorize an adjustment of the job commitment to not less than 7 jobs.*

EXHIBIT 5c iv-C

**NONCOMPLIANCE WITH POWER UTILIZATION COMMITMENTS; RECOMMENDED (1)
REDUCTION IN ALLOCATION/CONTRACT DEMAND, AND (2) ADJUSTMENT TO JOB
COMMITMENT**

John Mezzalingua Associates, LLC (Liverpool, Onondaga County) AppID 24371

Allocation: 776 kW
Contract Demand: 776 kW
Power Utilization: 611 kW or 79%
Cumulative Capital Spending: \$14,414,126 or 131% of 5 year commitment
Job Commitment: 120 jobs
Jobs Reported: 331 jobs or 276%

Background: John Mezzalingua Associates provides telecommunications and wireless solutions. This is the second year the company did not meet its kW utilization. The company invested in capital machinery, expanded its production lines, and increased production hours. Its energy usage since reporting continues to fluctuate. John Mezzalingua expects an increase in its energy use to continue throughout 2017.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 696 kW, and authorize an adjustment of the job commitment to not less than 95 jobs.*

EXHIBIT 5c iv-D

**NONCOMPLIANCE WITH SUPPLEMENTAL COMMITMENTS; NOT RECOMMENDED FOR
(1) REDUCTIONS IN ALLOCATIONS/CONTRACT DEMANDS, OR (2) ADJUSTMENTS TO
JOB COMMITMENTS**

1. Job Commitments

Alken Industries, Inc. (Ronkonkoma, Suffolk County) AppID 9616

Allocation: 80 kW
Contract Demand: 80 kW
Power Utilization: 100%
Cumulative Capital Spending: \$106,637 or 3% of 5 year commitment
Job Commitment: 50 jobs
Jobs Reported: 43 jobs or 86%

Background: Alken Industries, Inc. manufactures and assembles aircrafts parts. This is the second year Alken reported below the compliance threshold. Alken was considering an out of state move, but has applied for NYS grants and local tax abaitments. The NYS grant was approved. The company recently stated it has since hired 5 additional machine worker as of December and is currently at 49 employees bringing its compliance to 96%. Its 2017 budget allows for hiring of additional employees. Staff will continue to monitor its performance closely.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

Associated Brands, Inc. (Medina, Orleans County) AppID 7479

Allocation: 610 kW
Contract Demand: 610 kW
Power Utilization: 100%
Cumulative Capital Spending: \$12,845,378 or 92% of 5 year commitment
Job Commitment: 326 jobs
Jobs Reported: 249 jobs, or 76%

Background: Associated Brands is a food distributor. Temporary employment services in the area do not always have staff available for positions required. Qualified candidates from Rochester or Buffalo face longer commute times; therefore, Associated Brands continues to struggle with job placement. The company recently provided a job count for the July 2016 through November 2016 period, averaging 324 jobs, or 99% of its commitment level. Based on this recently reported job information, Associated Brands has trended upwards and appears headed toward compliance for the next reporting period.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

Dupli Graphics Corporation (Syracuse, Onondaga County) AppID 8995

Allocation: 146 kW
Contract Demand: 146 kW
Power Utilization: 93%
Cumulative Capital Spending: \$2,665,443 or 133% of 5 year commitment
Job Commitment: 110 jobs
Jobs Reported: 3 jobs or 3%

Background: Dupli Envelopes provides commercial printing services. There is a current request from the company to transfer this allocation to another facility receiving NYPA power which has exceeded its job commitments. Contract modifications are being considered to provide that allocations from both facilities be combined. This would place the company in compliance. Staff expects to request Trustee approval of revised contract terms in the near future.

Recommendation: *Staff recommends that the Trustees take no action at this time due to new contract modification.*

Global Foundries U.S. 2 LLC (Hopewell Junction, Dutchess County) AppID 3676

Allocation: 10,000 kW
Contract Demand: 10,000 kW
Power Utilization: 100%
Cumulative Capital Spending: \$4,356,700,000 or 109% of 5 year commitment
Job Commitment: 2,350 jobs
Jobs Reported: 1,846 jobs or 79%

Background: Global Foundries manufactures semiconductors. In July 2015, the company acquired IBM's Microelectronic Division in East Fishkill. The company states that over 900 employees under the IBM umbrella did not transfer over to Global Foundries. The company has requested a contract modification that would allow the transfer of a portion of the job commitment from this facility to another facility receiving NYPA power. This will enable the company to maintain the overall job commitment and place the company in compliance. Staff expects to request Trustee approval of revised contract terms in the near future.

Recommendation: *Staff recommends that the Trustees take no action at this time due to new contract modification.*

The Indium Corporation of America (Utica, Oneida County) AppID 8946

Allocation: 120 kW (effective 8-1-2016)
Contract Demand: 120 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$1,778,625 or 178% of 5 year commitment
Job Commitment: 40 jobs (effective 8-1-2016)
Jobs Reported: 31 jobs, or 78%

Background: The Indium Corporation of America manufactures electronic assembly materials. This is the fourth year the company reported employment levels below the 90% compliance threshold for this facility. Indium has two other allocations associated with facilities that have met or exceeded job

commitments. Employees were transferred again to other locations to right size staffing needs. The company has requested another contract modification that would allow employment from other facilities within close proximity to be counted toward the total employment commitments. Staff expects to request Trustee approval of revised contract terms in the near future.

Recommendation: *Staff recommends that the Trustees take no action at this time due to new contract modification.*

NYCO Minerals, Inc. (Willsboro, Essex County) AppID 7037

Allocation: 1,400 kW
Contract Demand: 1,400 kW
Power Utilization: 100%
Cumulative Capital Spending: \$6,782,994 or 151% of 5 year commitment
Job Commitment: 104 jobs
Jobs Reported: 92 jobs or 88%

Background: NYCO Minerals has seen a loss of employees due to retirements. This is NYCO Minerals' first year of noncompliance. The company followed up after submitting its compliance report indicating it did not originally account for full time employees out on disability. The corrected employment figures result in an average of 97 jobs, or 93% of its commitment.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

Special Metals Corporation (New Hartford, Oneida County) AppID 9717

Allocation: 4,900 kW
Contract Demand: 4,900 kW
Power Utilization: 100%
Cumulative Capital Spending: \$25,518,520 or 59% of 5 year commitment
Job Commitment: 360 jobs
Jobs Reported: 322 jobs or 89%

Background: Special Metals Corporation produces super alloys. This is the first year Special Metals fell below the compliance threshold. The company recently provided a job count for the period July 2016 through November 2016, averaging 326 jobs for that period, or 91% of its commitment level. Based on this recently reported job information, Special Metals has trended upwards and is in compliance.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

St John's University (Jamaica, Queens County) AppID 9435

Allocation: 680 kW (effective 8-1-2016)
Contract Demand: 680 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$65,097,238 or 50% of 5 year commitment
Job Commitment: 2,321 jobs (effective 8-1-2016)
Jobs Reported: 1,981 jobs or 85%

Background: St John's University is an institution for higher education. This is the second year St John's fell below the compliance threshold. The company followed up since reporting in September and confirmed that it had neglected to report food service and maintenance contractors. This increases its employee count by 421 jobs bringing it to 103% of its compliance commitment.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

Town Sports International, LLC (Elmsford, Westchester County) AppID 24532

Allocation: 180 kW (effective 8-1-2016)
Contract Demand: 180 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$2,768,369 or 221% of 5 year commitment
Job Commitment: 93 jobs (effective 8-1-2016)
Jobs Reported: 79 jobs or 85%

Background: Town Sports International, LLC is a laundry facility and linen service. This is the second year the company reported below the compliance threshold. The company provided a job count for the period July 2016 through November 2016, averaging 91 jobs for that period, or 98% of its commitment level. Based on this recently reported job information, it appears that Town Sports International will be in compliance for the next reporting period.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

Upstate Niagara Cooperative, Inc. (Rochester, Monroe) AppID 5023

Allocation: 670 kW (effective 8-1-2016)
Contract Demand: 670 kW (effective 8-1-2016)
Power Utilization: 100%
Cumulative Capital Spending: \$3,209,087 or 80% of 5 year commitment
Job Commitment: 177 jobs (effective 8-1-2016)
Jobs Reported: 158 jobs or 89%

Background: Upstate Niagara Coop Inc. – Rochester produces dairy products. This is its fourth year of noncompliance. The company provided a job count for the period July 2016 through October 2016, averaging 176 jobs for that period, or 99% of its commitment level. Based on this recently reported job information, Town Sports International has trended upwards and is in compliance.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

2. Power Utilization Commitments

Tapecon Inc. (Buffalo, Erie County) AppID 7398

Allocation: 230 kW
Contract Demand: 230 kW
Power Utilization: 196 kW or 85%
Cumulative Capital Spending: \$1,066,142 or 86% of 5 year commitment
Job Commitment: 110 jobs
Jobs Reported: 101 jobs or 92%

Background: Tapecon, Inc. prints custom labels. This is the first time Tapecon did not meet its power utilization commitment. The company reports that the drop in power utilization is due to lighting efficiency upgrades, which consist of switching all factory and office lighting to LED energy efficient lighting. The company recently made account modifications and reallocated its RNY allocation to additional electric meter accounts to better utilize its full allocation. Staff will continue to monitor the power use closely.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

3. No Contract Demand/RNY Power Allocation Reduction Calculated/Required

Barnes and Noble, Inc. (Westbury, Nassau County) AppID 9482

Allocation:	670 kW (effective 8-1-2016)
Contract Demand:	670 kW (effective 8-1-2016)
Power Utilization:	595 kW or 89%
Job Commitment:	227 jobs (effective 8-1-2016)
Jobs Reported:	255 jobs, or 112%

Background: Barnes & Noble is the business center for bookstore retail businesses. This is the third year Barnes & Noble did not meet its power utilization commitment. For the past two years, the company made modifications and reallocated its RNY allocation to additional electric accounts to better utilize its full allocation. Barnes and Nobel remains below the compliance threshold for power utilization. However, because the shortfall is relatively minor the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

DeLorio Foods, Inc. (Utica, Oneida County) AppID 3955

Allocation:	680 kW
Contract Demand:	680 kW
Power Utilization:	100%
Cumulative Capital Spending:	\$10,937,384 or 34% of 5 year commitment
Job Commitment:	175 jobs
Jobs Reported:	155 jobs or 89%

Background: DeLorio Foods processes frozen and baked foods. The company was found to be noncompliant in job commitments. However, because the shortfall is now relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

Jetro Cash and Carry Enterprises, LLC (Brooklyn, Kings County) AppID 9591

Allocation: 226 kW
Contract Demand: 226 kW
Power Utilization: 100%
Cumulative Capital Spending: \$1,422,734 or 41% of 5 year commitment
Job Commitment: 130 jobs
Jobs Reported: 116 jobs or 89%, *based on audit results*

Background: Jetro Holdings LLC is a wholesale grocery, food & restaurant supplier. The company was selected for an audit of its employment records and found to be non-compliant in jobs. However, because the shortfall is now relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

S. Howes, Inc. (Silver Creek, Chautauqua County) AppID 10387

Allocation: 20 kW (effective 8-1-2016)
Contract Demand: 20 kW (effective 8-1-2016)
Power Utilization: 16 kW or 80%
Cumulative Capital Spending: \$1,412,137 or 403% of 5 year commitment
Job Commitment: 12 jobs (effective 8-1-2016)
Jobs Reported: 20 jobs or 167%

Background: S. Howes Inc. manufactures and designs process equipment. This is the second year S. Howes did not meet its power utilization commitment. The company is an engineer-to-order manufacturing company and they state there is no way to predict its power demand as it fluctuates with business. However, because the shortfall is relatively minor, the methodology used to calculate reduction of contract demand and allocation does not result in a reduction of the contract demand and allocation.

Recommendation: *Staff recommends that the Trustees take no action at this time.*

SUMMARY OF EXHIBITS A-D
NONCOMPLIANCE WITH JOB COMMITMENTS; RECOMMENDED (1) REDUCTIONS IN ALLOCATIONS/CONTRACT DEMANDS, AND (2) ADJUSTMENTS TO JOB COMMITMENTS (Exhibit A)

Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Jobs Compliance %	Revised Commitments		Reductions		City	County
					(kW)	Jobs	(kW)	Jobs		
Aeroflex International Inc.	660	320	257	80%	600	257	60	63	Plainview	Nassau
Airsep Corporation	326	300	236	79%	296	236	30	64	Amherst	Erie
Air Techniques, Inc.	350	252	212	84%	330	212	20	40	Melville	Suffolk
Albert Einstein College of Medicine, Inc.	1,390	2,572	2,175	85%	1,320	2,175	70	397	Bronx	Bronx
Angion Biomedica Corp.	240	49	21	43%	130	21	110	28	Uniondale	Nassau
Arkwin Industries, Inc.	620	325	214	66%	480	214	140	111	Westbury	Nassau
AVA Pork Products, Inc.	180	300	251	84%	170	251	10	49	Hicksville	Nassau
Avon Products, Inc.	1,020	510	440	86%	980	440	40	70	Rye	Westchester
Blasch Precision Ceramics, Inc.	276	136	105	77%	246	105	30	31	Albany	Albany
Burton Industries Incorporated	300	39	30	77%	260	30	40	9	North Babylon	Suffolk
Cambridge Valley Machining, Inc.	180	110	83	75%	160	83	20	27	Cambridge	Washington
Computer Associates International, Inc.	2,460	1,728	1,500	87%	2,390	1,500	70	228	Islandia	Suffolk
Cannon Industries, Inc.	316	145	103	71%	256	103	60	42	Rochester	Monroe
Cooper Power Systems, LLC	810	199	131	66%	620	131	190	68	Olean	Cattaraugus
Derrick Corporation	1,170	570	412	72%	960	412	210	158	Cheektowaga	Erie
Flagpoles, Incorporated	110	100	80	80%	100	80	10	20	East Setauket	Suffolk
The Jesuits of Fordham, Inc.	1,910	3,821	2,365	62%	1,380	2,365	530	1,456	Bronx	Bronx
Geneva General Hospital	546	1,117	901	81%	496	901	50	216	Geneva	Ontario
Greek Mountain Dairy, LLC	86	67	11	16%	26	11	60	56	Goshen	Orange
HealthAlliance Hospital Broadway Campus	280	761	618	81%	260	618	20	143	Kingston	Ulster
HP Hood LLC	956	150	123	82%	886	123	70	27	LaFargeville	Jefferson
Huhtamaki, Inc.	2,100	555	489	88%	2,060	489	40	66	Fulton	Oswego
Intertek Testing Services NA, Inc.	570	393	290	74%	480	290	90	103	Cortland	Cortland
ITT Corporation (EDO)	270	186	147	79%	240	147	30	39	Bohemia	Suffolk
ITT Corporation (Exelis)	310	270	231	86%	300	231	10	39	North Amityville	Suffolk
ITT Corporation (Exelis)	406	142	122	86%	396	122	10	20	North Amityville	Suffolk
Kerry Biofunctional Ingredients Inc.	540	109	96	88%	530	96	10	13	Norwich	Chenango
Kionix, Inc.	560	199	150	75%	480	150	80	49	Ithaca	Tompkins
Kraft Foods Global, Inc.	2,620	386	332	86%	2,520	332	100	54	Avon	Livingston
Land O'Lakes, Inc.	930	287	190	77%	810	190	120	97	Hicksville	Nassau
Lehigh Hanson Services LLC	4,430	106	94	89%	4,390	94	40	12	Glens Falls	Warren
Linita Design & Mfg. Corp.	60	33	22	67%	50	22	10	11	Lackawanna	Erie
Lockheed Martin Corporation	2,940	1,798	1,573	87%	2,860	1,573	80	225	Liverpool	Onondaga
Madelaine Chocolate Novelties, Inc.	610	400	200	50%	370	200	240	200	Rockaway Beach	Queens
Mohawk Fine Papers, Inc.	1,926	242	199	82%	1,776	199	150	43	Cohoes	Albany
GCT New York LP	340	575	304	53%	220	304	120	271	Staten Island	Richmond
NYSW Beverage Brands, Inc.	60	15	8	53%	40	8	20	7	Halcott Center	Greene
Northrop Grumman Systems Corporation	630	572	321	56%	420	321	210	251	Bethpage	Nassau
Printex Packaging Corporation	100	50	40	80%	90	40	10	10	Islandia	Suffolk
Richardson Brands Company	346	213	174	82%	316	174	30	39	Canajoharie	Montgomery
SCA Tissue North America, LLC (South Glens Falls)	5,750	285	236	83%	5,350	236	400	49	South Glens Falls	Saratoga
SCA Tissue North America, LLC (Greenwich)	640	112	83	74%	540	83	100	29	Greenwich	Washington
Snyder Industries, Inc.	370	85	62	73%	310	62	60	23	Tonawanda	Niagara
Sonoco Plastics, Inc.	750	139	123	88%	740	123	10	16	Chatham	Columbia
Stature Electric, Inc.	266	90	71	79%	236	71	30	19	Watertown	Jefferson
L. & J. G. Stickley Incorporated	1,010	893	695	80%	910	695	100	198	Manlius	Onondaga
Sutherland Global Services Inc.	76	2,975	2,300	77%	66	2,300	10	675	Rochester	Monroe
TMI Trading Corp.	66	27	10	37%	36	10	30	17	Brooklyn	Kings
TMP Technologies, Inc.	200	30	24	80%	180	24	20	6	Wyoming	Wyoming
Universal Photonics, Inc.	100	71	42	59%	70	42	30	29	Vernon	Oneida
XLI Corporation	110	55	42	76%	100	42	10	13	Rochester	Monroe
					Total Reduction: Exhibit A		4,040	5,926		

Customer	Allocation (kW)	Employment Commitment	Jobs Reported	Jobs Compliance %	Revised Commitments		Reductions		City	County
					(kW)	Jobs	(kW)	Jobs		