



**NY Power
Authority**

**Canal
Corporation**

**JOINT REGULAR MEETING OF
THE NEW YORK POWER AUTHORITY BOARD OF TRUSTEES
AND
NEW YORK STATE CANAL CORPORATION BOARD OF DIRECTORS**

PROPOSED AGENDA

***December 9, 2020 at 10:00 A.M. (approximately)
Videoconference***

- 1. Adoption of the December 9, 2020 Proposed Meeting Agenda**
- 2. Motion to Conduct an Executive Session**
- 3. Motion to Resume Meeting in Open Session**
- 4. DISCUSSION AGENDA:**
 - a. Strategic Initiatives**
 - i. President and Chief Executive Officer's Report -- (Gil Quiniones)**
 - 1. COVID-19 Update**
 - 2. New York Power Authority's Vision2030 - Ten-Year Strategic Plan -- Resolution (Yves Noel)**
 - b. Chief Operations Officer's Report -- (Joseph Kessler)**
 - c. Chief Commercial Officer's Report -- (Sarah Salati)**
 - d. Chief Financial Officer's Report -- (Adam Barsky)**
 - e. Finance Committee Report -- (Chair Tracy McKibben)**
 - i. Utility Operations**
 - 1. Right-of-Way Vegetation Maintenance – Contract Award -- Resolution (Phil Toia)**

ii. Commercial Operations

1. Economic Development Customer Assistance Program – Temporary Power Assistance Initiative -- Resolution (Sarah Salati)

iii. Financial Operations

1. New York Power Authority Filing of the 2021 Budget and 2021-2024 Financial Plan Pursuant to Regulations of the Office of the State Comptroller -- Resolution (Adam Barsky)
2. Adoption of the 2021 New York State Canal Corporation Budget -- Resolution (Adam Barsky)
3. Release of Funds in Support of the New York State Canal Corporation (Q1 2021) -- Resolution (Adam Barsky)
4. Release of Funds in Support of the Residential Consumer Discount Program Created in Connection with the Recharge New York Power Program -- Resolution (Adam Barsky)

f. Governance Committee Report (Chair Dennis Trainor)

- i. Ten-Point Racial Justice and Equity Plan – Authorization -- Resolution (Kristine Pizzo)
- ii. NYPA Guidelines for Procurement Contracts -- Resolution (John Canale)
- iii. Canal Corporation Guidelines for Procurement Contracts -- Resolution (John Canale)
- iv. Proposed 2021 Schedule of Meetings -- Resolution (Karen Delince)
- v. Committee Appointments -- Resolution (John Koelmel)

g. Audit Committee Report (Chair Eugene Nicandri)

5. CONSENT AGENDA:

a. Commercial Operations

- i. Recharge New York Power – New, Extended, and Modified Allocations -- Resolution (Keith Hayes)

- ii. Transfer of Recharge New York Power and Replacement Power Allocations -- Resolution (Keith Hayes)
- iii. Expansion Power Allocations -- Resolution (Keith Hayes)
- iv. Contracts for the Sale of Preservation Power – Final Approval and Transmittal to the Governor -- Resolution (Keith Hayes)
- v. Contracts for the Sale of Hydropower – Final Approval and Transmittal to the Governor -- Resolution (Keith Hayes)
- vi. Extension of Peaking Power Hydropower Contracts with Upstate Investor-Owned Utilities – Transmittal to the Governor -- Resolution (Keith Hayes)
- vii. Recommendations for Awards of Fund Benefits from the Western New York Economic Development Fund by the Western New York Power Proceeds Allocation Board -- Resolution (Keith Hayes)
- viii. Green Jobs Evaluation Incentive Plan -- Resolution (Keith Hayes)

b. Utility Operations

- i. Niagara Power Project – Next Generation Niagara Program – Mechanical and Electrical Upgrades Project – Wicket Gate Procurement – Contract Award -- Resolution (Joseph Kessler)

c. Financial Operations

- i. Release of Funds in Support of the Western New York Power Proceeds Allocation Act – (Adam Barsky)
- ii. Release of Funds in Support of the Northern New York Power Proceeds Allocation Act – (Adam Barsky)

d. Public & Regulatory Affairs

- i. NYPA Fleet Vehicles – Transfer of Ownership to Regional Boards of Cooperative Education Centers -- Resolution (Lisa Wansley)

e. Procurement (Services) Contracts

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



- ii. Seaway Private Equity Corporation – Grant Agreement Amendment – Resolution (Debra Hopke)

f. Real Estate

- i. AC Transmission Proceeding – Lease of Real Property -- Resolution (Ruth Colón)

g. Canal Corporation

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

h. Governance Matters

- i. Approval of the Minutes:
 - 1. Minutes of the Regular Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held on September 23, 2020

6. Resolution – Kimberly Harriman -- (John Koelmel)

7. Next Meeting

December 9, 2020

Motion to Conduct an Executive Session

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

December 9, 2020

3. Motion to Resume Meeting in Open Session

I move to resume the meeting in Open Session.



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President and Chief Executive Officer's Report

Gil Quiniones

President & Chief Executive Officer

December 9, 2020

Corporate Scorecard through October 2020

	YTD Target	YTD Actual
Maintain Infrastructure		
● Generation Market Readiness	99.40%	● 99.92%
● Transmission System Reliability	90.89%	● 94.34%
Financial Management		
● Debt Coverage Ratio (Q)	2.50	● 4.29
● O&M Budget Performance (\$M)	\$425.11	● \$402.77
Energy Services		
● Greenhouse Gas (GHG) Saved (Tons)	6,937*	● 6,937
● MMBTUs Saved in State Facilities	68,018*	● 68,018
Workforce Management		
● Skilled Workforce: Retention (Q)	1,575	● 3,324
Safety Leadership		
● DART Rate	0.78	● 0.46
Environmental Responsibility		
● Environmental Incidents	42	● 25

*COVID Adjusted

●	Meeting or exceeding target
▲	Missing target
■	Significantly missing target
◆	No updated data
■	Informational, no target



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COVID-19 Update



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COVID-19 Task Force Update

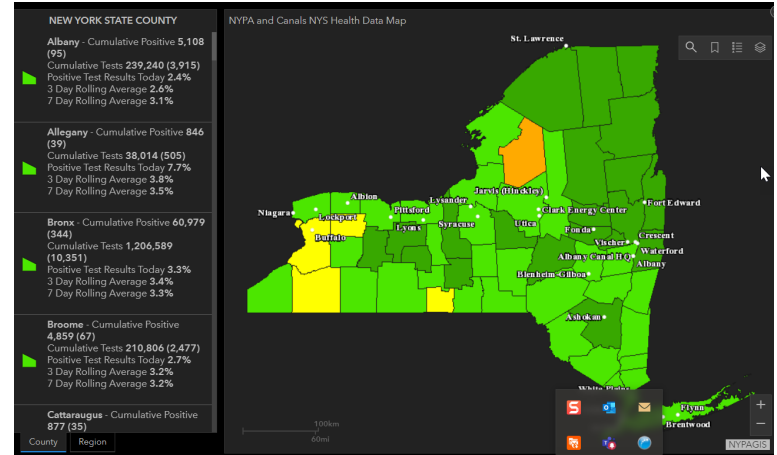
Taking a data-driven approach to maintaining employee safety and operations:

- Using six stages of comprehensive countermeasures to ensure the safety of NYPA staff and uninterrupted operations
- Dashboard proactively tracking state-wide infection rates and NYS Cluster Action Zones
- Case tracking tool used to monitor known and possible exposures so quarantining can be swift and targeted
- Improved daily health screening mobile app so employees can quickly answer the questions and security can verify it

Communications – Maintaining engagement and empowering employees with information:

- Developing COVID-19 Information and Safety tips page for every employee
- Working space reservation system allowing employees to safely return to work within our reduced capacity limits
- Daily communications with latest COVID-19 information and health and safety messages

STAGE	TRIGGER FACTORS	SUMMARY COUNTERMEASURE STRATEGY
0	<2.5% positivity	Maintain current readiness
1	2.5-5% positivity in a county/region with an office, facility or customer site	Increase vigilance and safety measures – Twice daily health surveys, increased monitoring, prepare for closing visitor centers and outdoor recreational facilities
2	5-7.5% positivity in a county/region with an office, facility or customer site	Initiate ICS, start reducing office density – 50% of facilities admin staff remote, WPO at 25% capacity, suspend inter-regional travel, suspend elective projects
3	7.5-10% positivity OR 10-20% employees out	Start testing employees doing essential work, mobilize for sequestration, admin staff 100% remote – Labor moves to 2 shifts with COVID-19 test weekly, suspend all priority 1 PMs, mobilize for sequestration
4	10-15% positivity OR 20-25% employees out OR 25% live in a moderately infected country/region	Move to essential work only, testing every rotation – Essential operations and security staff on 1-week crew rotations with COVID-19 testing, regulatory priority 2 and 3 maintenance work only, suspend all non-essential construction maintenance
5	15%+ positivity OR >25% employees out OR 30% live in heavily infected country/region	Sequestration – Sequester essential operating and security staff, 2-week crew rotation with COVID-19 testing

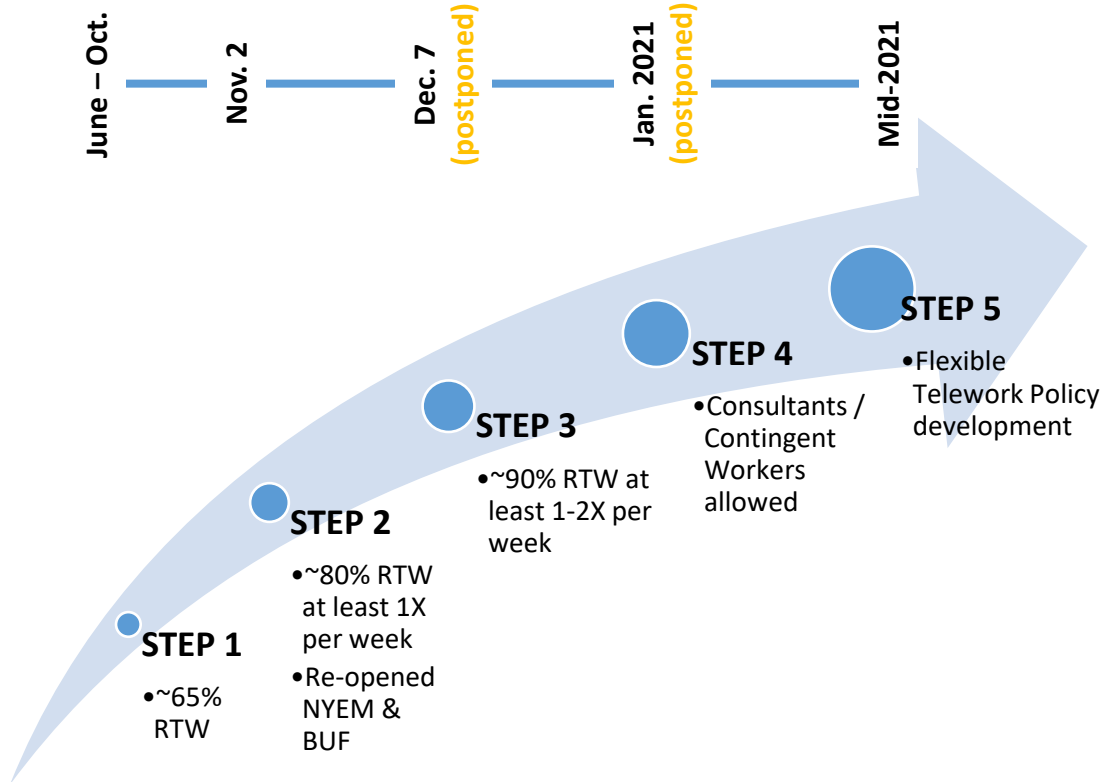


Maintaining engagement with employees

- **Employee-first approach** with transparent status of infection rates and countermeasures through regular NYPA-wide updates
- **Frequent support communications** including updates, CEO messaging, health & safety guidance and useful resources
- **Multiple PPE kits:** A “Take Care Package” sent to every employee and optional commuter kits
- **Empowering employees with digital tools** and information sources by deploying cell phones for all and apps such as – IT Reservation system to manage density, health screening app, NY COVID Alert app, and a personalized COVID-19 resource web page



Returning to the workplace safely with a phased approach



- **Successful** in returning ~80% of the workforce as of November
- **Supporting employees** with health, childcare or other concerns through our Reasonable Accommodation and Extenuating Circumstances processes
- Shared social responsibility to **monitor adherence** to the guidelines
- **Steps 3 & 4** paused based on latest Case Status



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NYPA / NYSCC – Case Status

An uptick in cases observed:

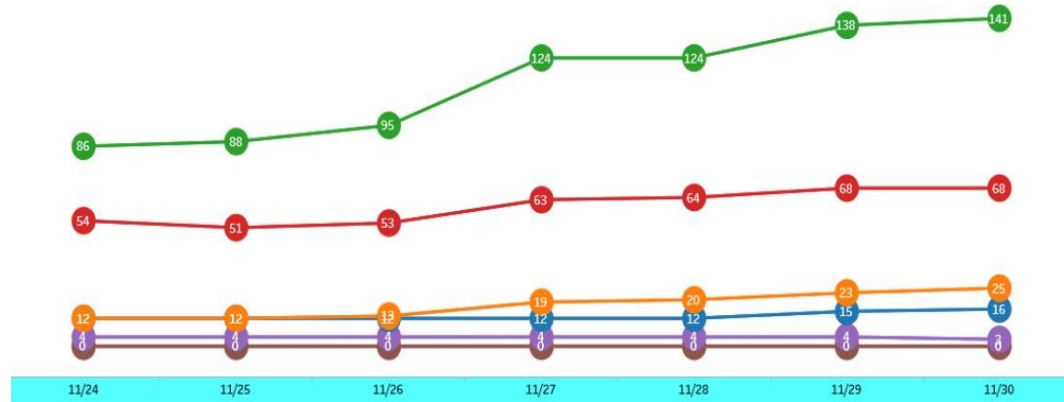
- Significant increase of internal cases ahead of and around the holiday; remains lower than community spread
- Minimal workplace exposure
- 25 positive cases**

Response:

- Voluntary testing conducted at NIA & CEC based on internal and community rates
- Performing 2X per shift health screening, including temperature checks (based on countermeasures)
- Mask usage always required indoors
- Targeted messages to employees based on NYS Cluster Action Zones
- Reinforced that all supervisors need to monitor adherence to the guidelines
- Targeted safety messages (i.e. avoiding holiday gatherings)

Recent NYPA COVID-19 Trend

Last Updated at: 11/30/2020 11:21:46 AM



- Quarantine - Employees that reported exposure, symptoms, positive
- Tested Cases* - Employees who have been or are pending test results
- Negative Cases* - Testing results shared with NYPA were negative
- Positive Cases* - Testing results shared with NYPA were positive
- Travel Cases - Employees who traveled and require Quarantine based on NYSDOH & Executive Order guidelines
- Red Zone - Employees residing in a NYS Red Zone requested to work remotely

* Subset of Quarantine count

** Data as of 11/30/2020 AM

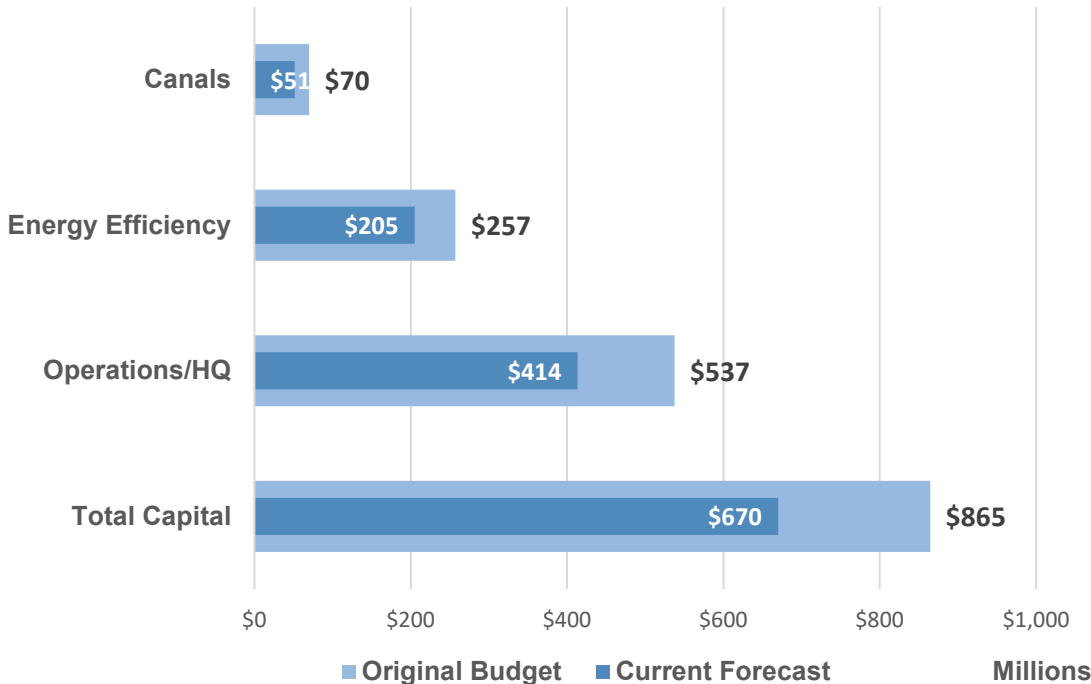


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Capital Summary – Original Budget vs. Current Forecast

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



Construction Unpausing Status (Entire Organization)

The plan following COVID Wave One was to Restart Construction projects valued at **\$492M**

100%
Goal

There are currently **202 Projects** actively in construction across New York State valued at **\$532M**

100%
Complete

Countermeasure response plans for projects have been developed and work has been proactively categorized based on criticality.
Teams are prepared to respond accordingly



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New York Power Authority's Vision2030- Ten-Year Strategic Plan

Yves Noel

SVP Strategy & Corporate Development

December 9, 2020



VISION 2030

A Strategic Plan Built Around
the People of New York State

NEW YORK
STATE OF
OPPORTUNITY.

**NY Power
Authority**

A Strategic Plan Built Around the People of New York State

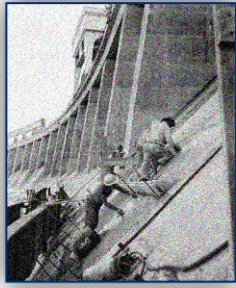


NYPA will continue to steward New York State's natural resources and reimagine its Canal System



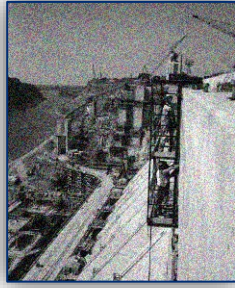
1931

NYPA established by Governor Franklin D. Roosevelt



1952

Permit for 800 MW **St. Lawrence-Roosevelt Power Project** granted



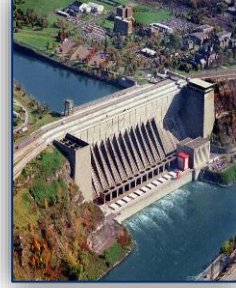
1957

Niagara Redevelopment Act leads to 2,700 MW **Niagara Power Project**



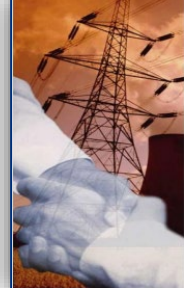
1968

Legislation authorizes 1,200 MW **Blenheim-Gilboa Pumped Storage Project** in the Catskill Mountains



2000

NYPA invests \$1.5B in continued stewardship of hydro resources



2014

NYPA issues **NYPA 2020** establishing **Asset Management** as a strategic initiative

Reimagine
the Canals

2017

NYPA assumes control of New York's **Canal System**

New York State's commitment to deep decarbonization has fundamentally changed the energy landscape



Accelerated Renewable Energy Growth and Community Benefit Act

Office of Renewable Energy Siting

Establish a new state office which will consolidate, review, and ensure siting decisions are predictable, responsible, and take input from local communities

Clean Energy Resource Development incentives program

NYSERDA will work with state partners and local communities to rapidly advance "Build-Ready" projects to maximize economic development and resource protection

Host Communities Benefit program

NYSERDA will develop a Host Community Benefit program, a program to offer utility bill discounts for host communities, and administer a local intervenor fund

Grid planning / energy delivery constant relief

Prioritize the planning, investment, and responsible development of grid infrastructure, allowing renewable energy power to be delivered to where it is needed



Climate Leadership and Community Protection Act (CLCPA)

Clean electric grid of tomorrow

Solar, wind, and other renewables combined with energy storage to deliver affordable and reliable electricity over the next decade and beyond

Affordable and safe energy efficient homes and businesses

New cooling and heating technologies, such as electric heat pumps and thermostats, combined with energy efficiency will save New Yorkers energy and money

Clean, reliable transportation

Zero emission transportation options for families and neighborhoods, enabling New York to trade gridlock for fresh air and cleaner communities

A clean energy economy for everyone

Every community, trade, and region will have access to clean energy solutions and economic opportunities that a transition to a just and equitable energy system provides



100%

Zero-carbon electricity by 2040

70%

Renewable energy generation by 2030

40%

Reduction in GHG emissions by 2030

85%

Reduction in GHG emissions by 2050

9 GW

Offshore wind by 2035

6 GW

Distributed solar by 2025

3 GW

Energy storage by 2030

185^{TBTU}

Energy consumption savings by 2025

35%

Benefits to disadvantaged communities

NYPA'S VISION

A thriving, resilient New York State powered by clean energy.

NYPA'S MISSION

Lead the transition to a carbon-free, economically vibrant New York through customer partnerships, innovative energy solutions, and the responsible supply of affordable, clean, and reliable electricity.

Our Values

- We work for the **greater good and a stronger, sustainable** New York
- We hold ourselves to the **highest standards of integrity, safety, and excellence**
- We are **resilient and use our ingenuity** to make big things happen
- We draw strength from **our diversity — everyone contributes, everyone belongs**
- We **work as one team**, putting our trust and confidence in each other

NYPA VISION 2030

STRATEGIC PRIORITIES



Preserve and enhance the value of our hydropower assets as a core source of carbon-free power and of flexibility and resilience as the state's grid evolves



Be the leading transmission developer, owner, and operator for New York State and its changing needs



Pioneer the path to decarbonization by acting as a test-bed for innovation while ensuring reliability, resilience, and affordability of the state's energy grid



Partner with our customers and the state to meet their energy goals in alignment with CLCPA¹ by providing clean and affordable energy along with innovative customer solutions



Repurpose the New York Canal System for the economic and recreational benefit of New Yorkers while driving operational efficiency

FOUNDATIONAL PILLARS

Digitization



Environment, Social, and Governance



Diversity, Equity, and Inclusion



Enterprise Resilience



Resource Alignment



¹ Climate Leadership and Community Protection Act



Hydropower

OUR VISION

Preserve and enhance the value of our hydropower assets as a core source of carbon-free power in New York State, and as a source of flexibility and resilience as the state's grid evolves.



A Double down on advocacy for policy and market rules recognizing hydro benefits to the grid



B Retain our assets in a state of good repair, including the life extension and modernization of the Robert Moses Niagara Plant



C Improve the competitiveness of our hydro plants in the market



D Evaluate alternative contracting or offtake arrangements



Transmission

OUR VISION

Be the leading transmission developer, owner, and operator for New York State and its changing needs.



A Invest \$200-400M annually to grow NYPA's transmission asset base 3-5x by 2030



B Focus our transmission portfolio on the right projects balancing system needs, returns, and wider state objectives



C Accelerate New York State's most critical transmission projects in support of the Climate Leadership and Community Protection Act goals



D Increase our focus on transmission as a core business within NYPA, with leading capabilities in planning and development, project delivery, and asset management



Natural Gas

OUR VISION

Pioneer the path to decarbonization by acting as a test-bed for innovation while ensuring reliability, resilience, and affordability of New York State's energy grid.



A Act as a test-bed for innovation, developing and demonstrating new low-to-zero carbon technologies



B Evaluate the economic performance of our gas fleet, and advocate for market rules and policies that recognize its value



C Partner to reinforce our own capabilities, educate the public, and set a clear direction to get from pilot to scale



Customer and the State

OUR VISION

Partner with our customers and the state to meet their energy goals in alignment with the Climate Leadership and Community Protection Act by providing clean and affordable energy along with innovative customer solutions.



A Grow our electricity supply business by pursuing the right opportunities with existing customers and under our expanded authority



B Support our customers and the state by providing 70% renewable energy supply in a cost-effective manner



C Empower our customers to decarbonize by serving as a trusted energy advisor providing integrated energy solutions



D Ensure the business is financially sustainable to serve our customers and the state



E Expand our capabilities to be able to competitively offer integrated solutions



Reimagine the Canals

OUR VISION

Repurpose the New York Canal System for the economic and recreational benefit of New Yorkers while driving operational efficiency.



A Demonstrate the recreational and economic value of the Canal System by investing in projects that provide tangible civic benefits and drive operational efficiency



B Establish and work with technical and regional councils to ensure local engagement



C Source new capital from a broader set of public and private investors



D Drive more efficient ways of working within NYPA and Canal Corp through a refined operating model



Foundational pillars to execute our mission

DIGITIZATION



Leverage connectivity, analytics, and cutting-edge digital infrastructure to optimize our physical and data assets, enable our workforce, and empower our customers

ENVIRONMENT, SOCIAL, AND GOVERNANCE (ESG)



Deliver on a best-in-class sustainability strategy to meet the present and future needs of our stakeholders and ensure long-term environmental, social, governance, and economic performance

DIVERSITY, EQUITY, AND INCLUSION (DEI)



Establish NYPA as a leader in DEI by developing an internal culture of inclusion, a diverse supplier base, and a commitment to environmental justice

ENTERPRISE RESILIENCE



Prepare for a more distributed and uncertain operating environment by rapidly embedding resilience into NYPA's culture

RESOURCE ALIGNMENT



Ensure we can provide the clean energy environment the people of New York deserve by making our workforce as skilled and flexible as possible, improve access to information and knowledge that enable effective delivery, and optimize our core business processes

NYPA VISION 2030

STRATEGIC PRIORITIES



**Preserve and
Enhance Hydropower**



**Expand
Transmission**



**Decarbonize
Natural Gas**



**Serve and Decarbonize
Customers and the State**



**Reimagine
the Canals**

FOUNDATIONAL PILLARS

Digitization



**Environment, Social,
and Governance**



**Diversity, Equity,
and Inclusion**



**Enterprise
Resilience**



**Resource
Alignment**



NYPA'S VISION

A thriving, resilient New York State powered by clean energy.

NYPA'S MISSION

Lead the transition to a carbon-free, economically vibrant New York through customer partnerships, innovative energy solutions, and the responsible supply of affordable, clean, and reliable electricity.

Aspiration for strategic priorities



Preserve Hydro

Maintain hydropower operating margin at **historical averages of \$320M**



Grow Transmission

Grow transmission rate base by **3-5x** by 2030

Achieve **top quartile O&M efficiency** in transmission



Decarbonize Gas

Achieve **zero carbon by 2035** for our natural gas fleet



Decarbonize Customers

Enable **325MW** of distributed solar at customer sites by 2025

Enable **450MW** storage projects by 2030

Conserve **11TBTu** of customer energy use by 2025

Supply customers with **70%** renewable energy by 2030

Grow the contracted supply business by **+15%⁴** by 2025

Respond to CLCPA² goals to provide available and relevant resources to disadvantaged communities



Reimagine the Canals

Reduce Canal O&M¹ costs and capital expenditures by **25%⁴** by 2025

1. Operations & Maintenance

2. Climate Leadership and Community Protection Act

3. 2025: 50MW customer-sited; 150MW grid-scale, 2030: 150MW customer-sited; 300MW grid-scale

4. Compared to 2019 base (contracted supply rounded)

Aspiration for foundational pillars



Digitization



Environment, Social, and Governance



Diversity, Equity, and Inclusion



Resource Alignment



Enterprise Resilience

¹ Compared to 2020 base (customer satisfaction)

² % of total procurement spend

³ Compared to 2019 base (employee engagement)

2030 targets

Increase our customer satisfaction by **+10%**¹

Support economic development by increasing customer capital investment commitment to **\$24B**

Create and retain **441,000 jobs** through economic development supply

Maintain our safety by keeping our DART rate at or below 0.78

Target **36% of spend**² to **MWBEs** (Minority and Women-owned Business Enterprises)

Increase our **employee engagement** by **+20%**³

Keep our fixed charge coverage ratio (**FCCR**) **stable at 2.0**



**NY Power
Authority**

**Canal
Corporation**



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: New York Power Authority's VISION2030 - Ten-Year Strategic Plan

SUMMARY

The Trustees are presented with the Authority's proposed 2021 strategic plan, for adoption, as set forth in Exhibit "A" attached hereto.

BACKGROUND

The Authority's By-Laws state that "the Trustees shall annually review a Strategic Plan developed by the Executive Management Committee, which shall become the basis for the development of departmental plans, the annual budget and the capital expenditure plan" (By-Laws, Article VII – Fiscal Management, Section 2 – Strategic Plan). In addition, Public Authorities Law § 2824-a requires state authorities to develop and adopt a mission statement.

The Authority has, for many years, annually reviewed and updated, as necessary, its mission statement and strategic plan. In late 2013, the Authority drafted a strategic plan containing a revised mission statement to advance alignment with the changing needs of its customers and to support the future energy structure of New York. In 2017, the Authority drafted a refreshed strategic plan specifying that digitization will enable NYPA's key strategic promises. Building on the success of the Authority's previous strategic plans, VISION2030 places the customer at its center. VISION2030 outlines the way the Authority will lead New York State to achieve the goals and mandates of the Climate Leadership and Community Protection Act, which Governor Andrew M. Cuomo signed into law in 2019 and the Accelerated Renewable Energy Growth & Community Benefits Act of 2020. VISION2030 also updates the Authority's vision and mission statements.

DISCUSSION

In 2019, Authority staff undertook an examination of its corporate strategy in the context of a rapidly changing energy and legislative landscape.

- In early 2019, Authority staff began meeting with external stakeholders representing customers, energy leaders, government officials, financial organizations, universities, and others to discuss customer requirements, key trends, and opportunities in the energy industry.

- In the summer of 2019, the strategy team and senior leadership from across the Authority went through a scenario planning process to evaluate core investment areas and ensure that the Authority's investments achieved New York State's goals and protected the Authority's financial position across various plausible future scenarios (combinations of economic, technological, social and competitive landscapes etc.).
- Throughout 2019, the strategy team conducted three rounds of "roadshows" to present VISION2030 at various stages of development to internal stakeholders at the Authority's sites to solicit feedback and gain buy-in from employees throughout the Authority.
- In 2020, with the arrival of the pandemic in New York, NYPA elected to pause its strategic planning process and focus on helping our customers and assessing the emerging situation. Additionally, the widespread social unrest from the death of George Floyd caused NYPA to reexamine its role in the just energy transition.
- In quarter four of 2020, NYPA conducted two Trustee Strategy Workshop Retreats in which we discussed trends impacting the energy industry; five strategic challenges facing NYPA; and NYPA's performance, i.e., track record of success. These strategy retreats afforded the Trustees with the opportunity to provide strategic guidance on the plan.
- Five strategic priorities were identified to reshape NYPA for the decade ahead and are supported by five foundational pillars.
- New mission and vision statements for the Authority were drafted by the strategy team and are as follows:
 - Vision Statement: A thriving, resilient New York State powered by clean energy.
 - Mission Statement: Lead the transition to a carbon-free, economically vibrant New York through customer partnerships, innovative energy solutions, and the responsible supply of affordable, clean, and reliable electricity.
- Throughout 2020, senior employees from across the Authority met to re-evaluate the strategic plan, mission, vision, and values in light of changes to both business and regulatory environments.
- As the Authority's current strategic initiatives come to a successful conclusion, VISION2030 builds on their success, continuing to focus on the customer and ensuring that the Authority leads the transformation to a clean energy economy for New York State as defined in law in the summer of 2019.

VISION2030, and the proposed Vision and Mission Statements, will serve, inspire, and provide direction as the Authority embraces an evolving energy landscape in New York State.

RECOMMENDATION

The Senior Vice President - Strategy and Corporate Development recommends that the Trustees adopt the Authority's VISION2030 – Ten-year Strategic Plan presented herein.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the Trustees hereby acknowledge that they have read, understand and adopt the Authority's 2021 Strategic Plan, VISION2030, attached hereto as Exhibit "A," and as discussed in the foregoing memorandum 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.



2021 Mission Statement and Strategic Plan

MISSION	1
VISION	1
VALUES	1
CORPORATE STRATEGIC PRIORITIES	2
CORPORATE STRATEGIC GOALS	2

MISSION

Lead the transition to a carbon-free, economically vibrant New York through customer partnerships, innovative energy solutions, and the responsible supply of affordable, clean, and reliable electricity.

VISION

A thriving, resilient New York State powered by clean energy.

VALUES

1. *We work for the greater good and a stronger, sustainable New York.*
 - Serve the interests of our primary customer—the people of NY State
 - Be a responsible steward of state resources
 - Make decisions for the long-term
 - Advance the state's leadership and the just transition to clean energy
2. *We hold ourselves to the highest standards of integrity, safety, and excellence*
 - Take personal responsibility for your and others' safety
 - Be honest and ethical
 - Balance quality, speed, and value to meet the mission
 - Own the result, deliver on your commitments and be accountable for your actions
3. *We are resilient and use our ingenuity to make big things happen*
 - Anticipate, plan, and manage for the future
 - Approach opportunities with curiosity, flexibility, and optimism
 - Look for ways to make things better, faster, and more efficient
 - Try, learn, adjust course when needed, recover quickly, and keep trying
4. *We draw strength from our diversity — everyone contributes, everyone belongs*
 - Seek out, listen to and respect different perspectives and backgrounds
 - Foster an environment where people feel safe to be themselves
 - Advocate for what we believe, speak up and set a positive example
 - Be fair and equitable with opportunities and recognition
5. *We work as one team, putting our trust and confidence in each other*
 - Consider how your actions, decisions and work may impact others
 - Share information, ask for input and involve others
 - Give, receive, and seek out feedback
 - Create opportunities for others to learn, develop and reach their potential

STRATEGIC PRIORITIES

VISION2030 focuses on five strategic priorities to achieve the clean energy goals of our customers and the state: preserve the value of hydroelectric generation; lead the transition to decarbonize natural gas plants; facilitate the rapid development of transmission assets; partner with our customers to deliver the custom solutions they require; and adaptively repurpose the New York State Canal system.

These strategic priorities are supported by investment in five foundational pillars that permeate throughout our organization: Digitization; Environmental, Social & Governance (ESG) framework; Diversity, Equity & Inclusion (DEI); Enterprise resilience; and Resource alignment.

CORPORATE STRATEGIC GOALS

Preserve Hydro	Maintain hydropower operating margin at historical averages of \$320M
Grow Transmission	Grow transmission rate base by 3-5x by 2030 Achieve top quartile O&M efficiency in transmission
Decarbonize Gas	Achieve zero carbon by 2035 for our natural gas fleet while maintaining system reliability
Decarbonize Customers	Enable 325MW of distributed solar at customer sites by 2025 Enable 450MW of energy storage by 2030 Facilitate the conservation of 11TBTu of customer energy use by 2025 Supply customers with 70% renewable energy by 2030 Grow the contracted electricity supply business by +15% by 2025 Achieve to CLCPA goals to provide available and relevant resources to disadvantaged communities
Reimagine the Canals	Reduce Canal O&M costs and capital expenditures 25% by 2025



**NY Power
Authority**

**Canal
Corporation**

Chief Operations Officer's Report

Joseph F. Kessler, P.E.

Executive Vice President & Chief Operating Officer

December 9, 2020

Level 1 KPIs: YTD October 2020

KPI Name	2020 Annual Target	YTD Target	YTD Actual	Status

Optimize financial performance of generation & transmission assets

Generation Market Readiness	99.40%	99.40%	99.92%	
Transmission System Reliability	90.50%	90.89%	94.34%	

Eliminate physical, cyber, environmental and safety risks to employees and the public

Environmental Incidents	50	42	25	
DART Rate	0.78	0.78	0.46	

Legend:



Meeting or exceeding target



Missing target



Significantly missing target

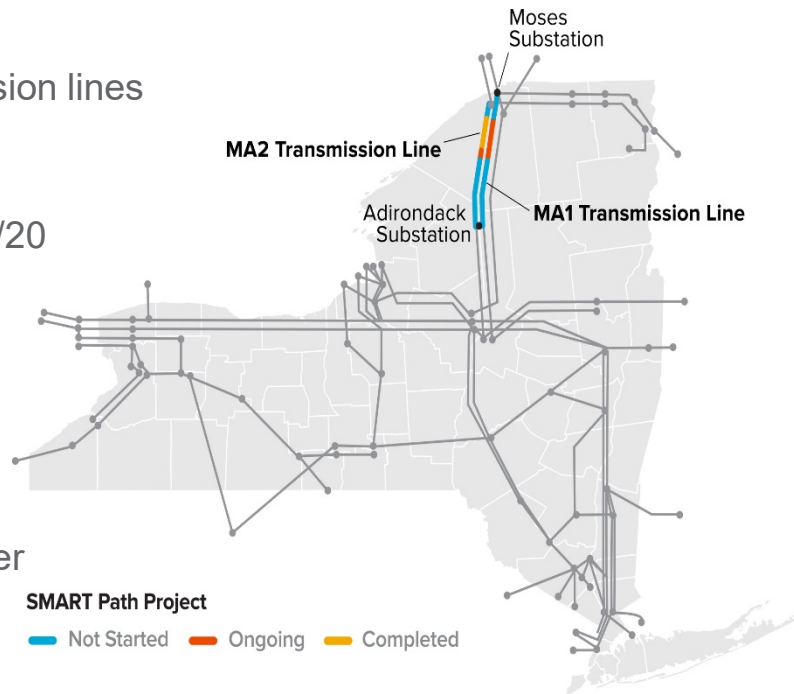


NY Power
Authority

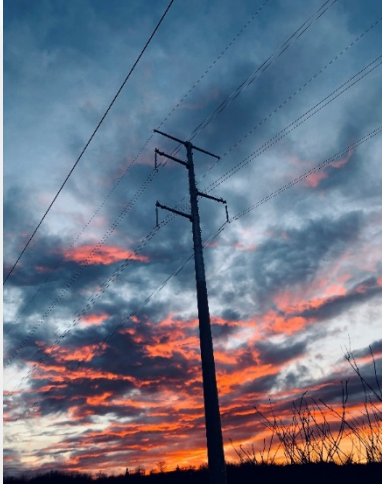
Canal
Corporation

Moses-Adirondack (MA) Smart Path Reliability Project

- Replacement of ~78 miles of the MA 1 and MA 2 transmission lines (total ~156 circuit miles)
- Major construction re-started in May 2020
- ~20 miles of MA 2 was completed and energized on 11/14/20
- To date:
 - 13% of conductor and optical ground wire installed
 - 35% of access roads completed
 - 127 foundations of 796 completed
 - 104 structures of 776 completed
- Work on first segment of MA 1 commenced early December
- Project in-service remains mid-2023



Moses-Adirondack (MA) Smart Path Reliability Project



COVID-19 Response – HVAC Modifications

Control Rooms

- Completed installation of portable air filters
- Ultraviolet Wave C (UVC) Treatment & Filter Upgrade installation to be completed by year end

NYPA & Canals Auxiliary Buildings

- Completed HVAC system UVC and filter upgrade assessment of 50 Aux Buildings
- Increased outside air intake
- Replaced existing HVAC filters with more effective filters in other highly-occupied facilities
- Deploying additional portable air filters

White Plains Office

- Increased outside air intake
- Completed permanent filter upgrades and UVC treatment

Leased Spaces

- Deploying portable air filters



Installed Portable &
Permanent Air Filters

Asset Management ISO 55001

Operations Virtual Offsites

- Gaps, actions taken and additional opportunities for “Operating Vision 2030” were summarized and discussed

Regional Asset Strategy Development

- Series of Regional Strategy Sessions completed for STL, BG, SENY and CEC with alignment to Vision 2030
- High potential regional ideas have been identified for further development and evaluation

AM System Expansion Evaluation

- Completed four Asset Management System expansion workshops to evaluate potential inclusion of Fleet, IT, OT & Canals assets into NYPA’s Asset Management System
- High level expansion roadmap is drafted

ISO Surveillance Audit

- Surveillance Audit was completed, covered:
 1. Review of Non-conformities & observations from Original Audit
 2. Transmission Regional Asset Management Plan
 3. NYPA’s response to Covid-19
- Received notification that we passed Surveillance Audit 1 – Oct 16, 2020

AM Business Case Update

- Future Roadmap of AMS improvement needs (13) were updated
- Quantitative benefits and costs were projected for a forward looking 10-year horizon
- Initial business case is generated and under review



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Chief Commercial Officer's Report

Sarah Orban Salati

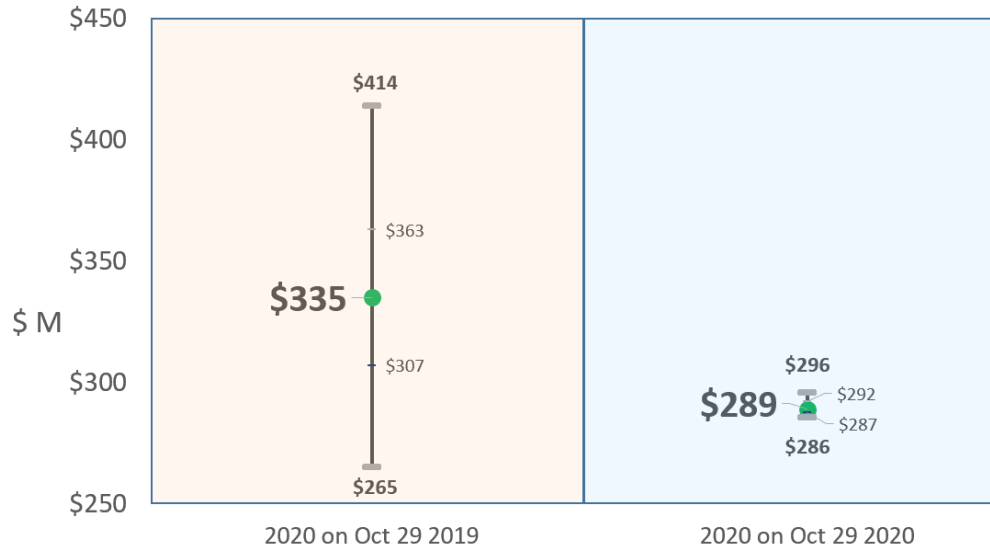
EVP & Chief Commercial Officer

December 9, 2020

Electricity Supply



Merchant Gross Margin



YE Target \$335M / Current YE Forecast \$289M



YTD Actual \$257M



2020 Hedging Energy Transactions - \$16M



Economic Development



**Power Allocated
1,520
Megawatts**



**410,810
Jobs Retained**



**\$22.4 Billion
Capital Committed**

Legend



Within
Target



Outside of
Target



Significantly Outside
of Target Range

Customer Offerings – Key Targets as of October 2020

KPI

Year to Date

COVID Adjusted YE Target/ Current YE Forecast

Clean Energy
Solutions



\$174M Capital Spend

\$220M / \$205M



\$13.5M YTD Non-Utility Revenues

\$21.2M / \$17M

EVolve



8 Public DCFC Charging Ports at two sites

40 / 29

New York
Energy Manager



560M Data Records

600M / 590M

Legend



Within
Target



Outside of
Target



Significantly Outside
of Target Range



**NY Power
Authority**

Key Milestones in Commercial Offerings

Voice of Customer

Virtual townhalls conducted; launched survey on community distributed generation for product dev insight



Transmission

Northern New York Project approved by NYSPSC as a Priority Project.



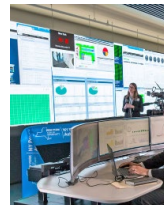
Smart Street Lighting NY

Completed major installation in the City of Syracuse, over 17K LED retrofits; coupled with digital sensors and intelligence features



Monitoring as a Service

Signed our first "Monitoring as a Service" project commitment with Massena Electric Department; sharing NYPA's digital strength of iSOC





**NY Power
Authority**

**Canal
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Chief Financial Officer's Report

Adam Barsky

EVP & Chief Financial Officer

December 9, 2020

YEAR-TO-DATE ACTUALS THROUGH OCTOBER 31st

YTD ACTUALS (JANUARY-OCTOBER 2020)

In \$ Thousands	2020 Budget (\$)	2020 Current (\$)	Variance (\$)	
Net Operating Income				
Operating Revenue				
Customer Revenue	\$1,514,836	\$1,353,853	(\$160,983)	
Market-Based Power Sales	441,446	328,891	(112,555)	
Non Utility Revenue	24,555	15,332	(9,223)	
Ancillary Service Revenue	37,482	25,491	(11,991)	
NTAC and Other	161,179	175,331	14,152	
Operating Revenue Total	2,179,498	1,898,898	(280,599)	
Operating Expense				
Purchase Power	(527,982)	(363,529)	164,453	
Ancillary Service Expense	(48,825)	(43,840)	4,985	
Fuel Consumed	(119,666)	(84,878)	34,788	
Wheeling	(554,865)	(558,230)	(3,365)	
Operations & Maintenance	(504,137)	(476,788)	27,349	
Other Expense	(99,053)	(116,321)	(17,268)	
Allocation to Capital	18,783	26,405	7,622	
Operating Expense Total	(1,835,744)	(1,617,180)	218,564	
EBIDA Total	343,754	281,718	(62,036)	(62,036)
EBIDA NYPA	420,668	350,918	(69,750)	
EBIDA Canals	(76,914)	(69,200)	7,714	
Non Operating				
Interest and Other Expenses				
Interest & Other Expenses	(100,209)	(95,909)	4,299	
Investment and Other Income	23,765	31,819	8,054	
Mark to Market Adjustments	(299)	(6,529)	(6,230)	
Depreciation	(218,780)	(216,889)	1,891	
Interest and Other Expenses Total	(295,524)	(287,509)	8,014	
NET INCOME	\$48,230	(\$5,791)	(\$54,022)	(\$54,022)

Margins - Generation (\$52,449)

Margins - Transmission (16,822)

Margins - Non Utility (10,468)

Operating Expenses 17,703

Non-Operating Net 8,014

EBIDA: Earnings Before Interest Depreciation & Amortization



NY Power
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FULL-YEAR FORECAST

YEAR END PROJECTION (JANUARY - DECEMBER 2020)

In \$ Thousands	2020 Budget (\$)	2020 Current (\$)	Variance (\$)
Net Operating Income			Current vs Budget
Operating Revenue			
Customer Revenue	\$1,785,929	\$1,628,156	(\$157,773)
Market-Based Power Sales	524,543	394,137	(130,405)
Non Utility Revenue	30,128	19,867	(10,261)
Ancillary Service Revenue	45,417	31,745	(13,672)
NTAC and Other	194,244	214,423	20,179
Operating Revenue Total	2,580,259	2,288,327	(291,931)
Operating Expense			
Purchase Power	(623,424)	(459,337)	164,088
Ancillary Service Expense	(58,270)	(53,217)	5,052
Fuel Consumed	(147,683)	(103,907)	43,776
Wheeling	(644,109)	(647,120)	(3,011)
Operations & Maintenance	(612,582)	(605,169)	7,413
Other Expense	(119,785)	(127,968)	(8,183)
Covid-19 Expense*	0	(8,352)	(8,352)
Allocation to Capital	22,156	36,409	14,253
Operating Expense Total	(2,183,698)	(1,968,662)	215,036
EBIDA Total	396,561	319,665	(76,896)
EBIDA NYPA	487,588	409,932	(77,656)
EBIDA Canals	(91,027)	(90,267)	760

Margins - Generation** (\$57,759)

Margins - Transmission*** (12,881)

Margins - Non Utility (11,387)

** Includes Merchant Gross Margin Variance of (\$46,612):
Budget @ \$335,449 vs Current @ \$288,837

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

Operating Expenses 5,131

Non Operating			
Interest and Other Expenses			
Interest & Other Expenses	(120,919)	(104,909)	16,010
Investment and Other Income	28,726	35,962	7,236
Mark to Market Adjustments	(359)	(6,529)	(6,170)
Depreciation	(262,536)	(261,645)	892
Interest and Other Expenses Total	(355,088)	(337,121)	17,967

Non-Operating Net 17,967

NET INCOME	\$41,473	(\$27,455)	(\$17,455)	(\$7,455)	(\$58,929)
		<i>Low Case</i>	<i>Expected</i>	<i>High Case</i>	

EBIDA: Earnings Before Interest Depreciation & Amortization

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



**NY Power
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December 9, 2020

4e. Finance Committee Report: (Chair Tracy McKibben)

[Oral Report Only]



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Right-of-Way Vegetation Maintenance –
Contract Award

SUMMARY

The Trustees are requested to approve the award of a non-personal services contract for Right-of-Way Vegetation Maintenance Services along the Authority's transmission lines to Lewis Tree Service, Inc. ("LTS") of West Henrietta, NY for a total authorization amount of \$12 million for a five-year term through December 31, 2025.

The Finance Committee, at its November 17, 2020 meeting, adopted a resolution recommending that the Trustees authorize the award to Lewis Tree Services, Inc. ("LTS") of West Henrietta, NY, in the amount of \$12 million for a five-year term through December 31, 2025.

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 construction services contracts in excess of \$6 million require the Trustees' approval.

The single largest cause of electric power outages is trees growing into or falling onto overhead power lines. The Federal Energy Regulatory Commission ("FERC"), the North American Electric Reliability Council ("NERC") and the New York State Public Service Commission ("PSC") have taken proactive steps to ensure that all utilities have a strong Integrated Vegetation Maintenance ("IVM") program in place. The Authority has implemented a vegetation maintenance treatment cycle that ensures that it continues to be a leader in this now widely scrutinized and sensitive aspect of the utility industry.

This contract is for the control of undesirable target trees along more than 20,000 acres or 1,400 miles of high voltage transmission lines over the course of a four-year cycle. These tall growing species will be removed by both mechanical means such as hand cutting with chainsaws or mowing and by chemical methods employing the selective use of herbicides in a cut-stump application or by low volume foliar treatments. Trees located alongside the transmission right-of-way will be cut down and properly disposed of. Access roads shall be maintained free of all woody and encroaching vegetation. Repairs will be made along these access roads, as necessary.

DISCUSSION

Construction Contractor RFQ, RFP and Contract Awards

On September 2, 2020, a Request for Proposal ("RFP") No. Q20-7034DK was advertised in the NY State *Contract Reporter* and the Authority's procurement websites for Right-of-Way Vegetation Maintenance along the Authority's transmission line system. Seven firms viewed the event notice in the Ariba platform with two firms submitting proposals on October 8, 2020. The proposals were reviewed by an Evaluation Committee from ROW Maintenance/Environmental and Strategic Supply Management. The proposals were evaluated based on unit and hourly prices for each method, and each year proposed by each bidder for the estimated acres anticipated to be required over the term of the contract were applied to extrapolate the total price estimate over the five-year period.

LTS was determined to be the lowest-priced, technically qualified bidder. LTS did not take any exceptions to the terms and conditions of the RFP documents and will meet the Minority and Women-Owned Business Enterprise ("M/WBE") requirements.

FISCAL INFORMATION

Funding for the Authority's Right-of-Way Vegetation Maintenance is provided from the Authority's operating and maintenance ("O&M") funds which is budgeted for on an annual basis.

RECOMMENDATION

The Senior Vice President – Power Supply and the Vice President – Strategic Supply Management and the Finance Committee recommend that the Trustees approve the award of a contract for Right-of-Way Vegetation Maintenance Services along the Authority's transmission lines to Lewis Tree Service, Inc. ("LTS") of West Henrietta, NY for a total authorization amount of \$12 million for a five-year term through December 31, 2025.

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

Gil C. Quinones
President and Chief Executive Officer

RESOLUTION

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 to Lewis Tree Services, Inc. of West Henrietta, NY for a total authorization amount of \$12 million to provide Right-of-Way Vegetation Maintenance Services along the Authority's transmission lines, as recommended in the foregoing memorandum of the President and Chief Executive Officer.

<u>Contractor</u>	<u>Contract Amount</u>
Lewis Tree Services, Inc. West Henrietta, NY Q20-7034DK	<u>\$12,000,000</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.



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Economic Development Customer Assistance Program
Temporary Power Assistance Initiative

SUMMARY

As an enhancement to the Authority's Economic Development Customer Assistance Program which the Trustees approved March 31, 2020, the Trustees are requested to authorize an initiative to make available for sale to Authority customers receiving power under the Recharge New York ("RNY"), Expansion Power ("EP"), Replacement Power ("RP"), and Preservation Power ("PP") programs (collectively, the "Economic Development Power" or "EDP" Programs) additional program power to be determined as a percentage of the customer's current allocation(s) on the terms and conditions discussed below. The amount of power to be made available under the initiative, to be known as Temporary Power Assistance ("TPA"), would not exceed in the aggregate 230 megawatts of unallocated EDP Program power (subject to statutory allocation limits) without additional Trustee approval.

The Finance Committee, at its November 17th, 2020 meeting, adopted a recommendation that the Trustees approve the Temporary Power Assistance initiative.

DISCUSSION

Businesses across New York State, including many customers in the Authority's EDP Programs have been severely impacted by the COVID-19 pandemic. Many businesses have suffered significant losses in revenue, increased operating costs, and supply chain difficulties, and have had to curtail operations, reduce or eliminate capital spending, and/or reduce employment levels.

Given these unprecedented circumstances, the Trustees, at their March 31, 2020 meeting, approved an Economic Development Customer Assistance Program ("EDCAP") consisting of the following two components:

- (1) suspension of the Annual Adjustment Factor under applicable tariffs to energy and demand rates for customers in the Authority's EDP Programs, beginning with the adjustment that would have taken effect on July 1, 2020 for a period of one year from July 1, 2020 through June 30, 2021; and
- (2) an option for customers to defer payment of energy bills to the Authority, beginning with the April 2020 invoice, for up to 6 months, with repayment of deferred amounts to occur in equal installments over the subsequent 18-month period.

The COVID-19 pandemic continues to impact businesses statewide. Accordingly, to give the Authority's business customers additional options to help manage their energy costs, staff is recommending the Trustees authorize the Authority to implement the TPA initiative as an additional component of EDCAP.

Under the TPA initiative, the Authority would make available for sale to EDP Program customers on a short-term and temporary basis additional program power determined as a percentage of the customer's current EDP Program allocation(s).

Staff envisions implementing the TPA initiative as follows:

- The Authority will notify customers in the EDP Programs of the TPA offering, and establish an initial application period and simple application process for interested customers to apply for a supplemental increase to their power allocation within parameters developed by staff for each power program.
- Staff will evaluate applications and offer supplemental increases in accordance with established metrics and other appropriate considerations.
- Depending on the progress of the initial application round, the Authority could extend the initial application round or establish additional application rounds.
- As part of the application, customers will be required to supply relevant information, including copies of recent power bills to enable staff to confirm the customer can use the additional power immediately.
- Customers will not be required to make additional job or capital investments commitments to qualify for a supplemental increase.
- Staff will use the information gathered during the application process to assess overall demand, assess resource availability, and where necessary adjust metrics for supplemental power offerings under each EDP Program.

Power for supplemental increases would be sourced from unallocated power under the respective EDP Programs (RNY, EP, RP and PP). The following is an estimate of the amount of power currently unallocated under each EDP Program: (1) RNY Power: 227,008 kilowatts;¹ EP: 63,595 kilowatts; RP: 90,836 kilowatts; and PP: 217,230 kilowatts.

The amount of supplemental power to be made available under TPA would not exceed in aggregate 230 megawatts of unallocated EDP Program power (subject to statutory allocation limits) without additional Trustee approval.

At this time staff is requesting authorization to implement TPA through January 31, 2024.

The proposed TPA initiative is consistent with the purposes underlying the other elements of the EDCAP.

If the Trustees approve the TPA initiative, staff will report to the Trustees periodically on TPA implementation, including on the metrics used to allocate supplemental increases, the supplemental increases made, and any recommended modifications to TPA.

FISCAL INFORMATION

The sale of supplemental power under the TPA will not have a negative fiscal impact on the Authority's finances.

¹ The Authority has nearly reached the statutory cap on the amount of RNY Power that may be allocated to not-for profit corporations and small businesses. Therefore, in the absence of an enactment increasing this cap, supplemental power for customers in these sectors will be extremely limited or unavailable.

RECOMMENDATION

The Senior Vice President Clean Energy Solutions recommends that the Trustees approve implementation of the Temporary Power Assistance (“TPA”) initiative as described above for the Authority’s Recharge New York, Expansion Power, Replacement Power and Preservation Power customers subject to the terms and conditions described above. The Finance Committee, at its November 17, 2020 meeting, adopted a recommendation that the Trustees approve the TPA initiative.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That as an enhancement to the Authority's Economic Development Customer Assistance Program, the Trustees authorize the Authority to make available for sale to customers receiving power under the Recharge New York ("RNY"), Expansion Power ("EP"), Replacement Power ("RP"), and Preservation Power ("PP") programs (collectively, the "Economic Development Power" or "EDP" Programs) supplemental power increases as part of a Temporary Power Assistance ("TPA") initiative as described in the attached Memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, that the amount of supplemental power increases shall be determined as a percentage of the customer's current allocation(s) and in accordance with other eligibility and allocation criteria developed by the Authority developed with the approval of Senior Vice President Clean Energy Solutions, and sold pursuant to the rates and other terms and conditions provided for in the customer's contract, provided that the total amount of supplemental power made available under each EDP Program shall not exceed in aggregate 230 megawatts of unallocated EDP Program power (subject to statutory allocation limits); and be it further

RESOLVED, that sales of supplemental power under TPA shall not be made beyond January 31, 2024, and all supplemental power sold shall be subject to recall on reasonable notice to customers to allow the Authority to address demand for new and extended allocations under the EDP Programs; and be it further

RESOLVED, That staff shall report to the Trustees no less often than quarterly on the implementation of the TPA initiative, including on the metrics used to allocate supplemental increases, overall customer response to the TPA, and any recommended modifications to the TPA; 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.



Date: DECEMBER 9, 2020
To: THE TRUSTEES
From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER
Subject: New York Power Authority Filing of the 2021 Budget
and 2021-2024 Financial Plan Pursuant to
Regulations of the Office of the State Comptroller

SUMMARY

In accordance with regulations of the Office of the State Comptroller (“OSC”), the Trustees are requested to approve the 2021 Budget and 2021-2024 Financial Plan (in the form approved, the “Approved 2021 Budget and 2021-2024 Financial Plan”) and authorize: (i) submitting the 2021 Budget and 2021-2024 Financial Plan to OSC, (ii) posting the Approved 2021 Budget and 2021-2024 Financial Plan on the Authority’s website, and (iii) making the Approved 2021 Budget and 2021-2024 Financial Plan available for public inspection at not less than five convenient public places throughout New York State.

The Trustees are requested to approve the 2021 Budget for the Authority, specifically including the expenditures for the 2021 New York Power Authority Budget, (i) Operations & Maintenance (“O&M”) Budget, (ii) Capital Budget, (iii) Energy Services Budget and 2021 Canal Corporation Authority Budget, (i) Operations & Maintenance (“O&M”) Budget, (ii) Canal Development Fund (“CDF”) Budget, (iii) Capital Budget

The 2021 Power Authority Budgets set forth the expected expenses of the Authority and include the recommended expenditures in the following amounts:

<u>2021 Power Authority Budgets</u>	<u>(\$ million)</u>
O&M	\$ 516.4
Capital	\$ 764.8
Energy Services	\$ 291.4

<u>2021 Canal Corporation Budgets</u>	<u>(\$ million)</u>
O&M (Inc. CDF)	\$ 91.6
Capital	\$ 40.3

Collectively, the 2021 Budget and 2021-2024 Financial Plan, 2021 New York Power Authority Budget and 2021 Canal Corporation Budget comprises Exhibit “A”.

BACKGROUND

The Authority is committed to providing clean, low-cost and reliable energy consistent with its commitment to the environment and safety, while promoting economic development and job development, energy efficiency, renewables and innovation, for the benefit of our customers and all New Yorkers. The mission statement of the Authority is to power the economic growth and competitiveness of New York State by providing customers with low-cost, clean, reliable power and the innovative energy infrastructure and services they value.

The New York State Canal Corporation (the “Canal Corporation”) became a subsidiary of the Authority effective January 1, 2017. The 2021 Power Authority Budgets include the budget information of the Authority and the Canal Corporation. Assumptions that were used by staff to prepare the 2021 Power Authority Budgets, and for forward periods, have been incorporated in the 2021 Budget and 2021-2024 Financial Plan.

The 2021 Power Authority Budgets are intended to provide the Authority’s operating facilities with, and support organizations by providing, the resources needed to meet the Authority’s overall mission and the Authority’s strategic objectives, and to fund the expenses of the Canal Corporation. Any transfers of funds from the Authority to the Canal Corporation would be subject to compliance with the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented (the “Revenue Bond Resolution”). Canal Development Fund expenses are expected to be reimbursed to the Authority by the State Comptroller with monies held in the New York State Canal System Development Fund as discussed in the attached Canal Corporation Budget memorandum.

In approving the 2021 Power Authority Budgets, the Trustees will be authorizing spending for 2021 operations, spending for capital projects, and spending for general plant purchases of \$1.5 million or less. The requested headcount in the 2021 Power Authority Budgets will remain unchanged.

In accordance with the Authority’s Expenditure Authorization Procedures, the President and Chief Executive Officer may, during the course of the year, authorize up to 15 new positions, new capital projects of \$6.0 million or less, or an increase in spending of no more than \$6.0 million to a capital project previously approved by the Trustees. All other spending authorizations must be approved by the Trustees.

The OSC implemented regulations in March 2006 addressing the preparation of annual budgets and four-year financial plans by “covered” public authorities, including the Authority. (See 2 NYCRR Part 203 (“Part 203”). These regulations, which are discussed below, establish various procedural and substantive requirements relating to the budgets and financial plans of public authorities. The 2021 Budget and 2021-2024 Financial Plan has been prepared in accordance with these regulations.

DISCUSSION

2021 NEW YORK POWER AUTHORITY BUDGET

Operations & Maintenance

The 2021 O&M Budget of \$516.4 million reflects a continued concentration on the effective operation and maintenance of the Authority’s critical investments in New York State’s electric infrastructure and the continued support of NYPA’s strategic investments. The 2021 O&M Budget for Operations provides \$276.3 million for baseline, or recurring work. In addition to the baseline work, scheduled maintenance outages at the Zeltmann Plant and the Small Clean Power Plants (totaling \$5.0 million), and planned enhancements in non-recurring maintenance work at the operating facilities (totaling \$30.4 million), are designed to support high reliability goals. Some of the major non-recurring projects include: Crescent Dam B Abutment C Concrete Repairs (\$4.0 Million), Robert Moses Niagara Power Project (“RMNPP”) Upper Headgate Rail Slot Refurbishment (\$2.7 Million), Headgate Refurbishment RMNPP (\$1.6 Million), RMNPP River Gorge Erosion Repair (\$1.2 million), Robert Moses Unit Lube Oil System Modernization (\$1.1 Million), and the SENY Zeltmann 500MW 80/20T Bridge Crane (\$1.0 Million).

Capital

The 2021 Capital Budget totals \$764.8 million, which is a 42.4% increase over the 2020 Budget. Of this amount \$591.4 million – or 77.3% of the total – represents planned investments in the Authorities generation facilities as well as in the Authorities statewide transmission network. Significant capital projects for 2021 include: Moses Adirondack 1 & 2 Transmission Line Upgrade (\$113.5 million), Marcy-Scott Yard Transmission Upgrade (\$95.3 million), Communications Backbone (\$53.2 million), RMNPP Transmission LEM (\$36.2 million), Strategic EV Charging Stations Installation (\$33.6 million), Lewiston Pump Generation Plant (“LPGP”) LEM (\$26.1 million), RMNPP Controls LEM (\$23.2 million).

Energy Services

The 2021 Energy Services Budget totals \$291.4 million, an increase of \$34.2 million from the 2020 Energy Services Budget. These expenditures will be subsequently recovered over time from the benefiting customers. The 2021 Energy Services budget includes funding for energy efficiency projects for Authority customers and other eligible entities as the Authority strives to support the State’s improved energy efficiency and clean, renewable energy goals.

2021 CANAL CORPORATION BUDGET

Operations & Maintenance

The 2021 Total O&M Budget for Operations includes \$91.6 million for the Canal Corporation for the purposes described in the 2021 Canal Corporation Budget memorandum being presented to the Canal Corporation Board of Directors at this December 2020 meeting. This figure, \$91.6 million, is made up of \$90.1 million in O&M for Canal Corporation in 2021 and \$1.5 million for the Canal Development Fund in 2021.

Canal Development Fund

The 2021 Canal Development Fund Budget totals \$1.5 million, representing ongoing costs associated with the New York State Canal System Development Fund (“Canal Development Fund”).

The Canal Development Fund, created by State Finance Law §92-u, is a fund established in the joint custody of the State Comptroller and the Commissioner of Taxation and Finance. The Canal Development Fund consists largely of revenues received from the operation of the Canal System. Monies of the Canal Development Fund, following appropriation by the legislature, is made available to the Authority, and may be expended by the Authority or the Canal Corporation for the maintenance, construction, reconstruction, development or promotion of the Canal System. In addition, monies of the Canal Development Fund may be used for the purposes of interpretive signage and promotion for appropriate historically significant Erie Canal lands and related sites. Monies from the Canal Development Fund are paid out by the State Comptroller on certificates issued by the Director of the Budget.

Capital

The 2021 Capital Budget includes \$40.3 million for the Canal Corporation for the purposes described to the Finance Committee at this meeting and will be presented to the Canal Corporation Board of Directors at its December 2020 meeting.

2021-2024 Four-Year Budget and Financial Plan

Under Part 203 of the OSC Regulations, the Trustees are required to adopt a Budget and Four-Year Financial Plan. The approved Budget and Four-Year Financial Plan must be available for public inspection not less than seven days before the commencement of the next fiscal year for a period of not less than 45 days and in not less than five convenient public places throughout the State. The approved Budget and Four-Year Financial Plan must also be submitted to OSC, via electronic filing through the Public Authorities Reporting Information System, within seven days of approval by the Trustees. The regulations also require the Authority to post the approved Budget and Four-Year Budget Financial Plan on its website.

Under Part 203, each Budget and Four-Year Financial Plan must be shown on both an accrual and cash basis and be prepared in accordance with generally accepted accounting principles; be based on reasonable assumptions and methods of estimation; be organized in a manner consistent with the public authority's programmatic and functional activities; include detailed estimates of projected operating revenues and sources of funding; contain detailed estimates of personal service expenses related to employees and outside contractors; list detailed estimates of non-personal service operating expenses and include estimates of projected debt service and capital project expenditures.

Other key elements that must be incorporated in each Budget and Four-Year Financial Plan are a description of the budget process and the principal assumptions, as well as a self-assessment of risks to the budget and financial plan. Additionally, each Budget and Four-Year Financial Plan must include a certification by the Chief Operating Officer.

The first year of the Four-Year Budget and Financial Plan is based on the 2021 Power Authority Budgets being brought to the Board for approval at this time. The remaining three years are indicative forecasts.

FISCAL INFORMATION

Payment of O&M expenses will be made from the Operating Fund. Any transfers of funds from the Authority for payment O&M expenses of the Canal Corporation would be subject to approval by the Authority's Board of Trustees and compliance with the Authority's Revenue Bond Resolution.

Payment for Capital and Energy Services expenditures will be made from the Capital Fund and the Energy Conservation Construction and Effectuation Fund, respectively. Monies of up to \$805.1 million from the Operating Fund will be transferred to the Capital Fund for capital expenditures, subject to compliance with the Revenue Bond Resolution.

The 2021 Operating Budget shows adequate earnings levels so that the Authority may maintain its financial goals for cash flow and reserve requirements.

The first year of the 2021 Budget and 2021-2024 is based on the 2021 Power Authority Budgets being brought to the Board for approval at this time. The remaining three years are indicative forecasts. The Trustees are not being asked to approve any revenue and expenditure amounts for years 2022-2024 at this time.

RECOMMENDATION

The Chief Financial Officer and the Finance Committee recommend that the Trustees approve the 2021 Budget for the Power Authority, specifically including the expenditures for the (i) 2021 Operations and Maintenance Budget, (ii) 2021 Capital Budget, (iii) 2021 Energy Services Budget and (iv) 2021 Canal Development Fund Budget, each as discussed herein.

In connection with the 2021 Capital Budget, the Chief Financial Officer and Finance Committee recommend that the Trustees authorize the transfer of up to \$805.1 million from the Operating Fund to the Capital Fund, subject to compliance with the Revenue Bond Resolution.

The Chief Financial Officer and Finance Committee further recommend the Trustees to (1) approve the 2021 Budget and 2021-2024 Financial Plan, and (2) authorize (i) submitting the 2021 Budget and 2021-2024 Financial Plan to the OSC in the prescribed format, (ii) posting the 2021 Budget and 2021-2024 Financial Plan on the Authority's website, and (iii) making the 2021 Budget and 2021-2024 Financial Plan available for public inspection at not less than five convenient public locations throughout New York State.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the 2021 Budget for the Power Authority, specifically including the expenditures for the (i) 2021 Power Authority Operations and Maintenance Budget, (ii) 2021 Capital Budget, (iii) 2021 Energy Services Budget and (iv) 2021 Canal Development Fund Budget, each as discussed in the attached memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That up to \$805.1 million of monies in the Operating Fund are hereby authorized to be withdrawn from such Fund and deposited in the Capital Fund, provided that at the time of withdrawal of such amount or portions of such amount, the monies withdrawn are not then needed for any of the purposes specified in Sections 503(1)(a)-(c) of the General Resolution Authorizing Revenue Obligations as amended and supplemented, with the satisfaction of such condition being evidenced by a certificate of the Treasurer or the Deputy Treasurer; and be it further

RESOLVED, That pursuant to 2 NYCRR Part 203, approve the 2021 Budget and 2021-2024 Financial Plan, including its certification by the Chief Operating Officer, in accordance with the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to 2 NYCRR Part 203, authorize the Corporate Secretary to submit the 2021 Budget and 2021-2024 Financial Plan to the Office of the State Comptroller in the prescribed format, post the 2021 Budget and 2021-2024 Financial Plan on the Authority's website and make the 2021 Budget and 2021-2024 Financial Plan available for public inspection at not less than five convenient public places throughout New York State.

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



2021-2024

APPROVED 2021 BUDGET AND 2021-2024 FINANCIAL PLAN

In Compliance with 2 NYCRR Chapter 5, Part 203



NEW YORK
STATE OF
OPPORTUNITY.

NY Power
Authority



Approved 2021 Budget and 2021–2024 Financial Plan

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Mission of the Power Authority of the State of New York

The new mission of the Power Authority of the State of New York (“NYPA” or the “Authority,”) which is expected to be ratified by our Trustees in their December 2020 meeting, is to “Lead the transition to a carbon-free, economically vibrant New York through customer partnerships, innovative energy solutions, and the responsible supply of affordable, clean, and reliable electricity.”

The new mission statement adheres to maintaining NYPA’s core operating businesses while also moving to support the energy goals of New York State, codified in the Clean Energy Standard, New York State Climate Leadership and Community Protection Act, our Enhanced Authority under changes to the Power Authority Act enacted in 2019, and the Accelerated Renewable Energy Growth and Community Benefit Act, outlined below.

The Authority’s financial performance goal is to maintain a strong financial position to have the resources necessary to achieve its mission.

Clean Energy Standard

On Aug. 1, 2016, the New York Public Service Commission (“NYPSC”, “PSC”) issued an order establishing a Clean Energy Standard (the “CES Order”) to implement the clean energy goals of the State Energy Plan. Pursuant to the CES Order, load-serving entities identified in the order are required to purchase “Zero Emission Credits” (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”) to support the preservation of existing at-risk zero emissions nuclear generation. The Authority is not subject to NYPSC jurisdiction for purposes of the CES Order but has assumed an obligation to purchase ZECs consistent with the terms of the CES Order and intends to seek recovery of such costs from the Authority’s customers.

On Jan. 31, 2017, the Authority’s Trustees authorized (a) participation in the NYPSC’s ZEC program and (b) execution of an agreement with NYSEDA to purchase ZECs associated with the Authority’s applicable share of energy sales. On April 1, 2020, the Authority and NYSEDA executed an agreement under which the Authority committed to purchase ZECs in a quantity based on its proportional load in the New York control area. The agreement is in effect until April 1, 2029.

As of October 2020, the Authority estimates that it will incur ZEC purchase costs associated with participation in the ZEC program of approximately \$298.2 million in aggregate over the 2021-2024 period, of which approximately \$20.3 million is not expected to be recovered under customer contracts that predate the adoption of the CES Order. As of June 30, 2020, the Authority has paid \$167.5 million in ZEC purchase costs.

New York State Climate Leadership and Community Protection Act

On July 18, 2019, the state enacted the “New York State Climate Leadership and Community Protection Act” as Chapter 106 of the Laws of 2019 (“Chapter 106”). Chapter 106 directs the New York State Department of Environmental Conservation (the “NYDEC”) to develop regulations to reduce statewide greenhouse gas emissions (“GHG”) to 60 percent of 1990 levels by 2030 and 15 percent of 1990 levels by 2050. Chapter 106 also requires that the state offset the remaining 15 percent of 1990 GHG emissions in 2050. NYDEC is drafting regulations that would implement these goals.

Several provisions of Chapter 106 could potentially impact the Authority’s business and operations, such as the following: (1) a requirement that specified state entities, including the Authority, adopt regulations to contribute to achieving statewide GHG emissions; (2) a requirement that state entities, including the Authority, assess and implement strategies to reduce GHG emissions; (3) consideration of whether actions that the Authority would undertake in the course of its operations are consistent with state GHG emission limits that will be established pursuant to the enactment; and (4) potential allocation or realignment of resources to support the state’s clean energy and energy efficiency goals for disadvantaged communities.

As part of the 2020-2021 Enacted State Budget, legislation was enacted that is expected to significantly speed up the siting and construction of clean energy projects to combat climate change in an effort to improve the state’s economic recovery from the COVID-19 health crisis.

The Accelerated Renewable Energy Growth and Community Benefit Act (the “CBA Act”) will create an Office of Renewable Energy Siting to improve and streamline the process for environmentally responsible and cost-effective

siting of large-scale renewable energy projects across the state while delivering significant benefits to local communities. The CBA Act, which will be implemented by the Authority and New York State Department of State, NYSERDA, the Department of Public Service (the “DPS”), NYDEC and the Empire State Development Corporation, will accelerate progress towards the state’s clean energy and climate goals, including the goal to obtain 70 percent of the state’s electricity from renewable sources by 2030.

Enhanced Authority

Chapter 58 of the Laws of 2019 (Parts KK and LL), enacted April 12, 2019, amended the Power Authority Act to give the Authority enhanced powers to continue to support New York State energy policies and priorities, and offer additional energy products to entities who desire to purchase power from the Authority. In summary, the enactment authorizes the Authority to:

- 1) Design, finance, develop, construct, install, lease, operate and maintain electric vehicle charging stations throughout the state for use by the public;
- 2) Plan, finance, construct, acquire, operate, improve and maintain transmission facilities to transmit power and energy generated from renewable wind energy generation in state territorial waters and waters under the jurisdiction or regulation of the U.S.;
- 3) Supply power and energy from competitive market sources to any Authority power customer, public entities (e.g. state entities, municipalities, public school districts), and community choice aggregation communities (Affected Entities);
- 4) Sell renewable power, energy, or related attributes (Energy Products) procured from competitive market and other qualifying sources to Affected Entities; and
- 5) Finance the development of renewable energy generating projects in the state in U.S. property/waters, including up to six projects with a generating capacity in excess of 25 megawatts, and sell Energy Products produced from such projects to Affected Entities.

The enhanced authority summarized in items 3-5 is subject to conditions and limitations specified in the enactment and is scheduled to repeal on June 30, 2024. The enactment does not impact the Authority’s legal authority existing under any other provision of law.

Leveraging this enactment, NYPA is developing new power products for customers, including green and blended power products, through rate structures intended to meet the energy, sustainability, and financial goals of its customers. No financial estimates related to these product offerings have been incorporated into this plan.

Accelerated Renewable Energy Growth and Community Benefit Act

The Accelerated Renewable Energy Growth and Community Benefit Act (the “Renewable Energy Act”) was enacted as part of the 2020-21 Enacted State Budget and amends state law with respect to the siting of major utility transmission facilities to (1) establish a 12-month target timeframe for the siting of major utility transmission facilities (“MUTFs”); and (2) authorizes the PSC to establish in regulation an expedited nine-month target timeframe for MUTFs that: (a) are constructed within existing rights-of-way, or (b) would not result in any significant adverse environmental impacts considering current uses and conditions existing at the site, as determined by the PSC, in consultation with the NYDEC, or (c) would necessitate expanding the existing rights-of-way where the expansion is for the purpose of complying with law, regulations or industry practices relating to electromagnetic fields.

This new, expedited siting process will be administered through a new siting office to be established within the Department of State. The Renewable Energy Act also establishes a new “Clean Resources Development and Incentives Program” pursuant to which NYSERDA will establish “build-ready” sites that would be made available to renewables developers through a competitive process, and a host community benefits program to be established by PSC pursuant to which renewable developers would fund programs to provide benefits to communities that host new renewable generation projects.

The Renewable Energy Act also contains provisions to facilitate new and upgraded distribution and transmission projects that are necessary for the state to avoid congestion and reach the Chapter 106 targets (the “Transmission Component”).

The Legislature found that the Authority owns and operates backbone electric transmission assets in the state, has rights of way that can support in whole or in part bulk transmission investment projects, and has the financial stability, access to capital, technical expertise and experience to effectuate expeditious development of bulk transmission investments needed to help the state meet its targets under Chapter 106. As such, the Transmission Component grants the Authority the ability to develop projects which the PSC determines should be pursued expeditiously to promote the state's public policy goals ("Priority Transmission Projects.")

After the completion of a comprehensive study for the purpose of identifying distribution upgrades, local transmission upgrades and bulk transmission investments that are necessary or appropriate to facilitate the timely achievement of Chapter 106 targets (collectively, "Grid Study") undertaken by the DPS in consultation with the Authority, NYSERDA, the New York Independent System Operator ("NYISO"), and jurisdictional utilities and transmission operators, the PSC will establish a distribution and local transmission capital plan for each utility in whose service territory the Grid Study identified distribution upgrades and local transmission upgrades that DPS determines are necessary or appropriate to achieve targets set forth in Chapter 106.

The upgrade programs shall establish a prioritized schedule upon which each such upgrade shall be accomplished. The PSC will also establish a bulk transmission system investment program that identifies bulk transmission investments it determines to be necessary or appropriate to achieve the Chapter 106 targets. PSC will identify Priority Transmission Projects to meet the Chapter 106 targets utilizing the NYISO's policy transmission planning process.

Pursuant to the Renewable Energy Act, the Authority is authorized to solicit interest from potential co-participants in each Priority Transmission Project it agrees to develop, and assess whether any joint development would provide for significant additional benefits in achieving the Chapter 106 targets. The Authority may then undertake the development of the Priority Transmission Project on its own or undertake the Priority Transmission Project jointly with one or more other parties.

A joint development of a Priority Transmission Project may be accomplished through agreements on such terms and conditions as the Authority finds to be appropriate and necessary to undertake and complete timely development of the Priority Transmission Project. For those Priority Transmission Projects that the Authority determines to undertake, and which are not substantially within its rights of way, the Authority will select private sector participants through a competitive bidding process. Excluded from these Priority Transmission Projects are generation lead lines, and repairs to, replacement of or upgrades to the Authority's transmission assets.

Background of the Power Authority of the State of New York

The Authority generates, transmits, purchases and sells electric power and energy as authorized by law. The Authority's customers include municipal and rural electric cooperatives, investor-owned utilities, high load factor industrial customers, commercial/industrial and not-for-profit businesses, public entities and Community Choice Aggregation Communities located throughout New York State, local towns, villages, school districts, fire departments, etc. located in Southeastern New York within the metropolitan area of New York City ("SENY governmental customers"), and certain neighboring states.

Legislation enacted in 2019, amended the Power Authority Act to give the Authority enhanced powers to continue to support New York State energy policies and priorities, and offer additional energy products to entities who desire to purchase power from the Authority. In addition to contractual sales to customers, NYPA also sells power into the wholesale electricity market operated by the NYISO.

To provide electric service, the Authority owns and operates five major generating facilities, 11 small gas-fired electric generating facilities, and four small hydroelectric facilities in addition to a number of transmission lines, including major 765 kilovolt (kV), 345kV, 230kV and 115kV transmission facilities. NYPA's five major generating facilities consist of two large hydroelectric facilities: Niagara Power Project ("Niagara") and St. Lawrence-Franklin D. Roosevelt Power Project ("St. Lawrence-FDR"); Blenheim-Gilboa Pumped Storage Power Project ("Blenheim-Gilboa") a large pumped-storage hydroelectric facility, and two combined-cycle electric generating plants: the Eugene W. Zeltmann Power Project ("Zeltmann") located in Queens, New York and the Richard M. Flynn Power Plant ("Flynn") located on Long Island.

As a component of NYPA's strategic plan, there are ongoing efforts to modernize NYPA's generation and transmission infrastructure to increase flexibility and resiliency, to serve customers' needs in an increasingly dynamic energy marketplace, and to support the state's clean energy goals.

On April 29, 2020, NYPA came to market with the largest issuance in its nearly 90-year existence and its inaugural Green Bond issuance of approximately \$792 million. NYPA's \$1.2 billion April financing is a major stepping stone in achieving the country's most ambitious decarbonization agenda as set out by New York's Climate Leadership and Community Protection Act ("CLCPA"), which Gov. Andrew M. Cuomo signed into law on July 18, 2019.

The issuance of the 2020 bonds continues to support NYPA's Strong Governance Practices, including supporting NYPA's capital plan and its goal of avoiding deferred maintenance, keeping assets in good repair, and investing in IT infrastructure projects to protect against cyber threats. The Authority owns and operates the Niagara Power Project, which provides up to 2.6 million kilowatts of clean electricity generated by two facilities, the Robert Moses Power Plant ("RMPP") and the Lewiston Pump-Generating Plant ("LPGP.")

Because a majority of the RMPP equipment is nearly 60 years old, NYPA is undertaking a Life Extension & Modernization (LEM) program for it and its associated infrastructure. The program, called Next Generation Niagara, is focused on modernizing the 13 units at RMPP, digitization of controls and providing for security and reliability of the RMPP and its integrated infrastructure.

The Authority provides customers with wide-ranging on-site energy solutions, including energy data analytics, planning, operations and the development of capital projects such as energy efficiency, distributed generation, advanced technologies and renewables. NYPA also has the responsibility for implementation of: (a) the Governor's Executive Order No. 88, known as BuildSmart NY, to improve energy efficiency at state-owned and managed buildings; (b) the Five Cities Energy Efficiency Implementation Plans (the cities of Albany, Buffalo, Rochester, Syracuse and Yonkers) to reduce overall energy costs and consumption, strengthen the reliability of energy infrastructure, create jobs in local clean energy industries and contribute to a cleaner environment.

From January 2013 through December 2019, NYPA provided approximately \$651 million in financing for energy efficiency projects covered by Executive Order 88. Overall financing from January 2013 through December 2019 for energy efficiency projects for all customers (including Executive Order 88 facilities) amounted to \$1.68 billion.

To achieve its goal of promoting clean energy and efficiency, NYPA implements energy services for the benefit of its power supply customers and for various other public entities throughout the state. Under these programs, the Authority finances the installation of energy-saving measures and equipment, which is owned by the customers and public entities upon their installation and which focus primarily on energy efficiency, renewables, resiliency and sustainability.

These programs provide funding for, among other things, high-efficiency lighting technology conversions, high-efficiency heating, ventilating and air conditioning systems and controls, boiler conversions, replacement of inefficient refrigerators with energy-efficient units in public housing projects, electric vehicles and charging stations, distributed generation technologies and clean energy technologies, and installation of non-electric energy-saving measures. The Authority has authorized, as of September 2019, the expenditure of an aggregate of \$5.4 billion on these programs.

Effective Jan. 1, 2017, the New York State Canal Corporation (the "Canal Corporation") became a subsidiary of the Authority, and NYPA assumed certain powers and duties relating to the Canal System (as defined below) to be exercised through the Canal Corporation. The Canal Corporation is responsible for a 524-mile canal system consisting of the Erie, Champlain, Oswego and Cayuga-Seneca canals (the "Canal System"). See "(c) Budget Assumptions, Canal Corporation" for more information.

In 2019, NYPA received ISO 55001 certification for asset management enterprise wide. Asset management is one of the critical components of the Authority's business strategy. ISO 55001 is an asset management system standard, the main objective of which is to help organizations manage the lifecycle of assets more effectively. By implementing ISO 55001, organizations will have better control over daily activities, achieve higher returns with their assets and reduce the total cost of risk.

In 2019, the Authority enrolled in the premier Bitsight cyber security ranking system to validate and monitor its external security posture. Bitsight is a web application that ranks companies based on external scans of their information technology environment. Since enrolling, NYPA has consistently ranked in the top 10 percent of all utilities in its peer group.

2021-2030 Strategic Plan

The Authority is closing out the NYPA 2020 strategic plan, which encompassed Customer Empowerment, Infrastructure Modernization and Resource Alignment themes and saw accomplishments that included the achievement of ISO 55001 certification for asset management, significant progress on the transition to an all-digital utility, which allowed for a near-seamless transition to working remotely during the pandemic, and the buildout of a statewide electric vehicle charging infrastructure.

As part of the next strategic plan, VISION2030, the Authority is proposing strategic goals that will focus on preserving the value of our hydropower assets; rapidly developing new transmission assets to meet market needs; leading the transition away from natural gas while ensuring system reliability; and growing NYPA's business lines to fulfill customers' energy, resiliency and decarbonization goals. NYPA's proposed goals also will ensure the continuation of its evolution to an all-digital utility and the adoption of the rigorous Environment, Social, Governance and Economic (ESG&E) framework.

VISION2030 is anchored in helping achieve the greenhouse gas reduction targets in New York State's Climate Leadership and Community Protection Act, which was passed in 2019 and is the most ambitious climate change legislation in the country, while ensuring an equitable transition to a thriving clean energy economy in New York. This plan will be presented to the Authority's Board of Trustees for approval in December 2020 and the costs and revenues with respect with the plan are reflected in this final budget and financial plan.

Documentation and Exhibits Supporting the Budget and Financial Plan

(a) NYPA's Relationship With New York State Government

The Authority is a corporate municipal instrumentality and political subdivision of the State of New York (the "state") created in 1931 by Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State, as amended from time to time (the "Act"), to help provide a continuous and adequate supply of dependable electric power and energy to the people of the state.

The Authority's operations are overseen by a Board of Trustees. NYPA's trustees are appointed by the governor of the state with the advice and consent of the state Senate. The Authority is a fiscally independent public corporation whose operations are not supported by state tax revenues. NYPA generally finances construction of new projects through internally generated funds and the sale of bonds and notes to investors, and it pays related debt service with revenues from the generation and transmission of electricity. Income of the Authority and properties acquired by it for its projects are exempt from taxation.

(b) Budget Process

NYPA operates in a capital-intensive industry where operating revenues and expenses are significant and highly variable due to the volatility of electricity prices and fuel costs. NYPA's operations are subject to electric and fuel cost volatility, and changing water flows that have a direct effect on hydroelectric generation levels. This Approved 2021 Budget and 2021-2024 Financial Plan ("Approved Budget and Four-Year Plan") relies on data and projections developed through the following time frame:

- During July–November 2020, developed preliminary forecasts of electric prices (both energy and capacity), ancillary services revenue and expenses, and fuel expenses; customer power and energy use; customer rates; Annual Transmission Revenue Requirement; generation levels at NYPA power projects reflecting scheduled outages; and purchased energy and power requirements and sources
- During July–November 2020, developed preliminary operations and maintenance, and capital expense targets
- Nov. 2, 2020, posted Proposed Four-Year Plan for public inspection at five convenient locations and on NYPA's website
- During October–November 2020, updated and finalized all forecasts and cost estimates
- During November–December 2020, integrated input data to produce the 2021-2024 Final Budget and Financial Plan
- Seek authorization of NYPA's Board of Trustees to approve the 2021-2024 Final Budget and Financial Plan at their meeting scheduled for Dec. 9, 2020
- Submit the approved 2021-2024 Budget and Financial Plan to the state Comptroller's Office; and make the approved document available for public inspection at five convenient locations and on NYPA's website upon Board of Trustee approval.

NYPA's Four-Year Projected Income Statements
(In \$ Millions)

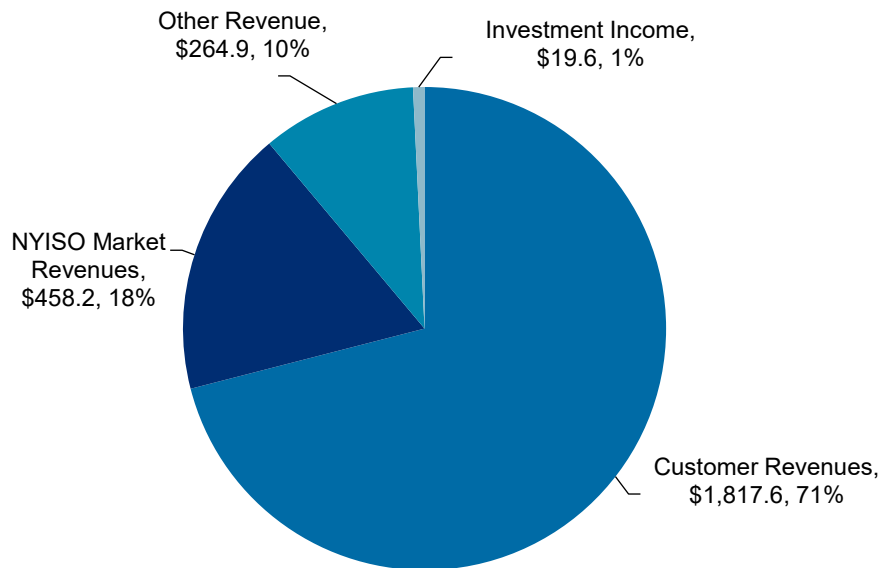
NYPA	2021	2022	2023	2024
Operating Revenue				
Customer Revenue	\$1,817.6	\$1,820.4	\$1,844.1	\$1,830.6
Market-Based Power Sales	430.5	439.9	466.6	547.0
Ancillary Service Revenue	27.7	28.5	28.6	29.1
NTAC and Other	237.5	247.5	270.1	297.9
Non Utility Revenue	<u>26.0</u>	<u>28.1</u>	<u>30.1</u>	<u>31.9</u>
Operating Revenue Total	2,539.3	2,564.4	2,639.5	2,736.5
Operating Expense				
Purchase Power	(629.3)	(642.0)	(656.6)	(676.8)
Ancillary Service Expense	(62.5)	(64.3)	(63.4)	(62.7)
Fuel Consumed	(119.2)	(136.3)	(146.7)	(169.0)
Wheeling	(642.2)	(642.4)	(642.4)	(642.4)
Operations & Maintenance	(460.6)	(467.8)	(491.9)	(537.5)
Other Expense	<u>(129.7)</u>	<u>(113.8)</u>	<u>(100.1)</u>	<u>(75.8)</u>
Operating Expense Total	(2,043.5)	(2,066.6)	(2,101.1)	(2,164.2)
EBIDA	495.8	497.8	538.4	572.3
Compounded Annual Growth Rate (CAGR)		0%	4%	5%
Non Operating Income & Expenses				
Depreciation & Amortization	(230.3)	(252.1)	(268.6)	(291.6)
Investment and Other Income	19.6	14.7	16.8	17.0
Mark to Market Adjustments	0.0	0.0	0.0	0.0
Interest & Other Expenses	<u>(129.3)</u>	<u>(111.7)</u>	<u>(123.7)</u>	<u>(128.0)</u>
Non Operating Income & Expenses Total	(340.0)	(349.1)	(375.5)	(402.6)
NYPA NET INCOME	\$155.8	\$148.7	\$162.9	\$169.7
CANALS				
Operating Revenue	\$1.5	\$1.5	\$1.5	\$1.4
Operating Expense	(88.2)	(85.4)	(82.7)	(80.2)
EBIDA	(86.7)	(83.9)	(81.2)	(78.8)
Non Operating Income & Expenses	(28.1)	(29.5)	(32.7)	(35.5)
CANALS NET INCOME	(114.8)	(113.4)	(113.9)	(114.3)
CONSOLIDATED NET INCOME (NYPA & CANALS)	\$41.0	\$35.3	\$49.0	\$55.4

NYPA's Gross Margin Analysis*
(In \$ Millions)

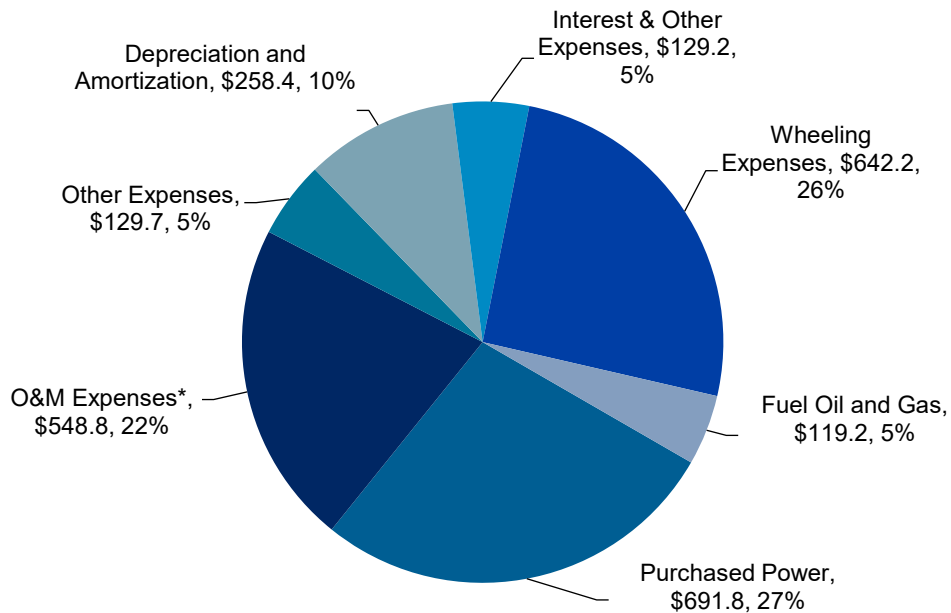
NYPA	2021	2022	2023	2024
Merchant Margin	\$272.4	\$249.7	\$256.0	\$278.8
Customer Margin	593.2	595.8	613.1	605.1
Transmission Margin	187.6	194.4	217.0	247.7
Other Margin	32.7	39.7	44.5	54.0
TOTAL MARGIN	1,085.9	1,079.6	1,130.6	1,185.6
Operations & Maintenance	(460.6)	(467.8)	(491.9)	(537.5)
Other Expenses	(129.5)	(114.0)	(100.3)	(75.8)
EBIDA	\$495.8	\$497.8	\$538.4	\$572.3

*Excludes Canals

2021 NYPA's Budget – Sources (In \$ Millions)



2021 NYPA's Budget – Uses (In \$ Millions)



* Reflects NYPA's base O&M expenses plus administrative expenses less the Allocation to Capital.

NYPA's Statement of Cash Flows*
(In \$ Millions)

	2019	2020	2021	2022	2023	2024
Revenue Receipts:						
Sale of Power, Use of Transmission Lines, Wheeling Charges and other receipts	\$2,355.7	\$2,269.4	\$2,528.8	\$2,561.9	\$2,645.5	\$2,751.5
Earnings on Investments and Time Deposits	<u>18.3</u>	<u>22.6</u>	<u>19.6</u>	<u>14.7</u>	<u>16.8</u>	<u>17.0</u>
Total Revenues	2,374.0	2,292.0	2,548.4	2,576.6	2,662.3	2,768.5
Expenses:						
Operation and Maintenance, including Transmission of Electricity by others, Purchased Power and Fuel Purchases	(2,113.3)	(2,088.4)	(2,258.7)	(2,302.1)	(2,334.1)	(2,398.9)
Debt Service:						
Interest on Bonds and Notes	(52.8)	(64.6)	(41.4)	(43.2)	(65.1)	(104.4)
Bonds and Notes Retired	<u>(349.0)</u>	<u>(268.8)</u>	<u>(0.9)</u>	<u>(2.7)</u>	<u>(0.9)</u>	<u>(16.8)</u>
Total Debt Service	(401.8)	(333.4)	(42.3)	(45.9)	(66.0)	(121.2)
Total Requirements	(2,515.1)	(2,421.8)	(2,301.0)	(2,348.0)	(2,400.1)	(2,520.1)
Net Operations	(141.1)	(129.8)	247.4	228.6	262.2	248.4
Capital Receipts:						
Sale of Bonds, Promissory Notes & Commercial Paper	294.4	1,234.6	0.0	0.0	119.8	106.6
Less: Repayments	0.0	0.0	0.0	0.0	0.0	0.0
Earnings on Construction Funds	0.0	0.0	0.0	0.0	0.0	0.0
DSM Recovery Receipts	0.0	0.0	0.0	0.0	0.0	0.0
Temporary Asset Transfer Return from NYS	43.0	0.0	43.0	43.0	43.0	0.0
Other	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
Total Capital Receipts	337.4	1,234.6	43.0	43.0	162.8	106.6
Capital Additions & Refunds:						
Additions to Electric Plant in Service and Construction Work in Progress, and Other costs	(391.4)	(468.9)	(805.1)	(874.3)	(695.1)	(386.8)
Construction Funds - Net Transfer	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
Total Capital Additions & Refunds	(391.4)	(468.9)	(805.1)	(874.3)	(695.1)	(386.8)
Net Capital	(54.0)	765.7	(762.1)	(831.3)	(532.3)	(280.2)
Net Increase/(Decrease):	(\$195.1)	\$635.9	(\$514.7)	(\$602.7)	(\$270.1)	(\$31.8)

* This Statement of Cash Flows follows the format prescribed by §2801 of New York State Public Authorities Law and does not follow GASB financial statement standards.

(c) Budget Assumptions

NYISO Revenue and Expenses

Based on scheduled customer power needs and available electricity generated by NYPA's operating assets, the Authority buys and sells capacity and energy through markets operated by the NYISO. Various NYISO-purchased power charges, in combination with generation-related fuel expenses, comprise a large portion of NYPA's operating expenses. A significant amount of the Authority's revenues result from sales of its generation into the NYISO market for which the energy revenues are projected based on available forward price curves and the capacity revenues are estimated using end-of-day price marks.

Customer and Project Revenue

The customers served by the Authority and the rates they pay vary within the NYPA Power Programs designated to serve such loads. NYPA's power supply customers are served under contracts and tariffs approved by the Board of Trustees.

St. Lawrence-FDR and Niagara Customers

Power and energy from the St. Lawrence-FDR and Niagara facilities are sold under contract to municipal electric systems, rural electric cooperatives, industrial and other business customers, certain public bodies, investor-owned utilities, and out-of-state customers. The balance is sold into the NYISO market.

The charges for firm and/or firm peaking power and associated energy sold by the Authority, as applicable, to the 51 municipal electric systems and rural electric cooperatives in New York State; two public transportation agencies; three investor-owned utilities for the benefit of rural and domestic customers; and seven out-of-state public customers have been established on the basis of the cost to serve these loads. This Approved Budget and Four-Year Plan models Board of Trustee-approved rate changes for customers and prospective rate changes.

Niagara and St. Lawrence-FDR's Expansion & Replacement Power, ReCharge New York and Preservation Power customers are allocated over 30 percent of the average generation capacity of the plants. Sale of expansion and replacement power historically had been handled on a sale-for-resale basis through National Grid and New York State Electric and Gas. However, the direct sale of low-cost hydropower to these customers commenced July 1, 2013. As a result, NYPA is now the load-serving entity for these transactions.

Legislation enacted in March 2011, effective July 2012, created a new economic development power program, the ReCharge New York Power Program ("RNYPP"), to replace two other economic development programs. RNYPP is a permanent power program administered by the Authority and the Economic Development Power Allocation Board ("EDPAB"). RNYPP utilizes up to 455 MW of hydropower from the Authority's Niagara and St. Lawrence-FDR projects combined with up to 455 MW of other power procured by the Authority from other sources. The 910 MW of power is available for allocations to eligible new and existing businesses and not-for-profit corporations under contracts of up to seven years.

The RNYPP legislation also authorizes the Authority, as deemed feasible and advisable by the Board of Trustees, to provide annual funding of \$30 million for a residential consumer discount program for those customers that had previously received this hydropower. Revenues earned from the sale of unused RNYPP power into the wholesale market may be used to offset the cost of these residential discounts.

The Board of Trustees have authorized the release of a total \$584 million for the period from August 2011 to December 2019 in support of this residential discount program. The Authority supplemented the market revenues used to fund the residential discount program with internal funds, totaling cumulatively \$64 million from August 2011 through June 30, 2020.

In March 2019, the Board of Trustees approved a seven-year extension of an agreement for the sale of firm hydroelectric power and energy from the St. Lawrence-FDR project to the Aluminum Company of America ("Alcoa") at its West Plant facilities. The existing contract with Alcoa, for an aggregate of 240 MW, has been executed effective April 1, 2019 through March 31, 2026, replacing prior long-term contracts. The contract extension provides for monthly Base Rate adjustments based upon on the price of aluminum on the London Metal Exchange and contains provisions for employment (450 jobs) and capital (\$14 million) commitments.

Changes from the previous contract include: a reduced allocation of 240 MW, with the additional 5 MW being allocated to Arconic, a newly formed business independent of Alcoa, sold under a separate Preservation Power sale agreement; a monthly Clean Energy Standard ("CES") charge relating to Zero Emission Credits ("ZEC") and Renewable Energy Credits ("REC") that NYPA purchases which are attributable to Alcoa's load. The contract specifies a sharing mechanism for the CES charges between Alcoa, New York State and NYPA, whereby Alcoa's share increases as the aluminum price increases. The Authority has entered into hedging contracts on the price of aluminum to mitigate potential downside risk in that market and intends to continue to do so based upon prevailing economic conditions as appropriate.

The Authority estimates that the total costs associated with the relicensing of the St. Lawrence-FDR Project in 2003 for a period of 50 years will be approximately \$224 million, of which approximately \$208 million has already been spent as of June 30, 2020. These total costs could increase in the future as a result of authorities reserved by the Federal Energy Regulatory Commission (FERC) in the license for the St. Lawrence-FDR Project issued in 2003. The Authority is collecting in its rates for the sale of St. Lawrence-FDR power amounts necessary to fund such relicensing costs.

Chapter 545 of the laws of 2014 enacted the "Northern New York Power Proceeds Act" ("NNYPPA.") NNYPPA authorizes the Authority, as deemed feasible and advisable by the Board of Trustees, to deposit net earnings from the sale of unallocated St. Lawrence County Economic Development Power ("SLCEDP") by the Authority in the wholesale energy market into an account known as the Northern New York Economic Development Fund ("NNYED Fund") administered by the Authority, and to make awards to eligible applicants that propose eligible projects that satisfy applicable criteria. NNYPPA established a five-member allocation board appointed by the governor to review applications seeking NNYED Fund benefits and to make recommendations to the Authority concerning benefits awards.

SLCEDP consists of up to 20 MW of hydropower from the St. Lawrence-FDR Power Project which the Authority has made available for sale to the Town of Massena Electric Department ("MED") for MED to sub-allocate for economic development purposes in accordance with a contract between the parties entered into in 2012 (the "Authority-MED Contract").

NNYPPA defines "net earnings" as the aggregate excess of revenues received by the Authority from the sale of energy associated with SLCEDP sold by the Authority in the wholesale energy market over what revenues would have been received had such energy been sold to MED on a firm basis under the terms of the Authority-MED Contract. For the first five years after enactment, the amount of SLCEDP the Authority could use to generate net earnings may not exceed the lesser of 20 MW or the amount of SLCEDP that has not been allocated by the Authority pursuant to the Authority-MED contract. Thereafter, the amount of SLCEDP that the Authority could use for such purpose may not exceed the lesser of 10 MW or the amount of SLCEDP that has not been allocated. The Authority's estimates of payments from the Authority to the NNYED Fund have been incorporated into this Approved Budget and Four-Year Plan.

The Western New York Power Proceeds Act ("WNYPPA"), which was enacted on March 30, 2012, authorizes the Authority to deposit net earnings from the sale of unused Expansion Power and Replacement Power from the Authority's Niagara project into the Western New York Economic Development Fund ("WNY Fund") as deemed feasible and advisable by the Board of Trustees.

"Net earnings" are defined as any excess revenue earned from such power sold into the wholesale market over the revenue that would have been received had the power been sold at the Expansion Power and Replacement Power rates. Proceeds from the WNY Fund may be used to support eligible projects undertaken within a 30-mile radius of the Niagara project that qualify under the applicable criteria. The WNYPPA established a five-member allocation board appointed by the governor. NYPA's estimates of payments from the Authority to the WNY Fund have been incorporated into this Approved Budget and Four-Year Plan.

SENY Governmental Customers

Various municipalities, school districts and public agencies in New York City are served by the Authority's combined-cycle Zeltmann plant, the contracted output of the Astoria Energy II plant, and capacity and energy purchased by the Authority in the NYISO markets.

In 2018 and 2019, the Authority executed new supplemental long-term electricity supply agreements (2018 LTAs) with its eleven NYC Governmental Customers, including the Metropolitan Transportation Authority, the City of New York, the Port Authority of New York and New Jersey (Port Authority), the New York City Housing Authority, and the New York State Office of General Services. Under the Supplemental LTAs, the NYC Governmental Customers agreed to

purchase their electricity from the Authority through Dec. 31, 2027, with the NYC Governmental Customers having the right to terminate at any time upon at least 12 months' notice. Both the Authority and the NYC Governmental Customers may also terminate effective Dec. 31, 2022 upon at least six months' notice. Under the Supplemental LTAs, fixed costs were set for each customer and are subject to renegotiation after five years. Variable costs, including fuel, purchased power and NYISO related costs, are to be set on a pro-forma cost of service basis and reconciled as a pass-through to each customer by an energy charge adjustment.

In 2008, NYPA entered into a long-term power purchase agreement with Astoria Energy II LLC for the purchase of the output of Astoria Energy II, a 550 MW plant, which entered into commercial operation on July 1, 2011 in Astoria, Queens, for the sole benefit of the NYC Governmental Customers. Although the Astoria Energy II power purchase contract goes through to 2031 and is beyond the electricity supply agreement under the Supplemental LTA's, the Authority's contract with the NYC Governmental Customers served by the output of Astoria Energy II is coterminous with the power purchase agreement with Astoria Energy II LLC.

Energy generated by the Astoria Energy II and Zeltmann plants is sold into the NYISO markets, and proceeds are used to offset the cost associated with the production of energy and capacity from the plants. All net costs and benefits to the Authority for both facilities are directly passed through to the NYC Governmental customers. Approximately 26 percent and 20 percent of the NYC Governmental Customer load requirements are covered by Astoria Energy II and Zeltmann plants respectively, while the remainder – more than 53 percent -- remain open to be sourced from the open market.

The Authority's other Southeastern New York (SENY) Governmental Customers are Westchester County and numerous municipalities, school districts and other public agencies located in Westchester County (collectively, the "Westchester Governmental Customers.") NYPA has entered into an evergreen supplemental electricity supply agreement with all 103 Westchester Governmental Customers. Among other things, under the agreement, customers can partially terminate service from the Authority on at least two months' notice prior to the start of the NYISO capability periods. Full termination is allowed on at least one year's notice, effective no sooner than Jan. 1 following the one-year notice.

Westchester Governmental Customers are partially served by NYPA's four small hydroelectric plants. The remainder of the Westchester Governmental Customers' load requirements are supplied through energy and capacity purchased from the NYISO markets. Sales into the NYISO of energy generated by the small hydroelectric resources, as well as grandfathered and historic fixed priced transmission congestion contracts, all help to offset the cost of the energy purchased, with an energy charge adjustment mechanism in place for cost reconciliation.

Blenheim-Gilboa Customers

The Blenheim-Gilboa project operates as a merchant plant, with power and energy not committed to any customer, but primarily used to meet the requirements of the Authority's business and governmental customers and to provide services in the NYISO markets generally at the market-clearing price. The forecast assumes Blenheim-Gilboa will operate as a merchant plant for the upcoming four years.

Small Clean Power Plants ("SCPPs")

In the summer of 2001, NYPA placed in operation 44 MW natural-gas-fueled SCPPs -- 10 in New York City and one on Long Island -- to address a potential local reliability deficiency in the New York City metropolitan area and its potential impact on statewide reliability. As a result of the settlement of litigation relating to certain SCPPs, the Authority has agreed under the settlement agreement to cease operations at the Vernon location, which houses two units, under certain conditions and if the mayor of New York City directs such cessation. No such cessation has occurred. The Vernon location is assumed to be operating during the forecast period pursuant to the terms of an agreement entered into at the time of construction.

For this Approved Budget and Four-Year Plan, it is assumed that the capacity of the SCPPs may be used to meet NYPA's customers' capacity requirements, sold to other users via bilateral arrangements and/or sold into the NYISO capacity auctions. NYPA sells the energy produced by the SCPPs into the NYISO energy markets.

Flynn

The Flynn plant operates as a merchant plant, with capacity and energy output sold into the NYISO market. The forecast assumes Flynn operates as a merchant plant for the upcoming four years.

Transmission Projects

The Authority owns approximately 1,400 circuit-miles of high-voltage transmission lines and associated substations operating at voltages of 115kV, 230kV, 345kV and 765kV. The Authority's Backbone Transmission System consists of a large subset of these transmission facilities, with major circuits such as:

765kV

- MSU1 (Marcy-Massena)
- MSC-7040 (Massena-Chateaugay)

345kV

- UE1-7 (Marcy-Edic)
- UNS-18 (Marcy-New Scotland)
- VU19 (Volney-Marcy)
- NR-2 (Niagara-Rochester)
- NS-1 (Niagara-Somerset)
- Y-49 (Long Island Sound Cable)
- Q-35L&M (Queens-Manhattan)

230kV

- MA-1/MA-2 (Moses-Adirondack)
- MMS-1/MMS-2 (Moses-Massena)
- MW-1/MW-2 (Moses-Willis)

Since the formation of the NYISO in November 1999, cost recovery for the Authority's provision of transmission service over its facilities has been governed by the NYISO tariff, which included an annual transmission revenue requirement ("TRR") for NYPA of \$165.4 million. The Authority receives cost recovery through the NYISO tariff mechanism known as the NYPA Transmission Adjustment Charge ("NTAC,") recovering NYPA Backbone Transmission System costs on a statewide basis after accounting for NYPA's revenues received from pre-existing customer transmission service contracts, a Transmission Service Charge assessed on customers in NYPA's upstate load zone and other sources.

In July 2012, the Authority filed for its first TRR increase with FERC. The Authority's filing resulted in an uncontested settlement approved by FERC for a new, \$175.5 million TRR applicable to the Authority, effective Aug. 1, 2012. The increased TRR is necessary to cover increased operating and maintenance expenses of NYPA's bulk transmission system, and to make necessary capital improvements.

In January 2016, the Authority filed for a TRR formula rate with FERC. In March 2016, FERC accepted the filing and made it effective April 1, 2016, as requested, subject to hearing and settlement judge procedures. The Authority requested a formula rate to more efficiently recover its increased capital and operating expenditures needed to maintain the reliability of its transmission system.

The Authority filed an unopposed Offer of Settlement on Sept. 30, 2016 that fully resolves the issues raised by interested parties in settlement negotiations concerning the formula rate. Separately, the annual TRR under the formula of \$190 million initially made effective April 1 was updated on July 1, 2016 to \$198.2 million pursuant to the formula rate annual update process.

Effective July 1, 2020, the Transmission Revenue Requirement is \$276.7 million, which includes the revenue requirements for the Marcy South Series Compensation and AC Transmission projects. Annual updates commensurate with projected costs are assumed to continue throughout the forecast period.

NYPA is replacing a major section of the Moses Adirondack line, one of the Authority's Backbone Transmission System lines. The Smart Path Reliability Project covers 78 circuit-miles of 230kV transmission line from Massena to the Town of Croghan in Lewis County. The project includes the replacement of obsolete wood pole structures with higher, steel

pole structures, as well as replacement of failing conductors with new conductors and insulators. The line will initially operate at its current 230kV level, but the conductors and insulators will accommodate 345kV operation.

In July 2017, the Authority received authorization under the NYISO tariff to include the costs of this replacement project in its NTAC mechanism for cost recovery of transmission system costs, which means the costs will be allocated to all ratepayers in the state. On Nov. 14, 2019, the PSC granted the Authority's Article VII certificate for the project. The Authority estimates a project cost of \$484 million through project completion. This Approved Budget and Four-Year Plan includes revenues and costs associated with the Moses Adirondack project.

In October 2020, the PSC adopted criteria for identifying urgently needed transmission projects to meet the renewable energy goals of the Climate Leadership and Community Protection Act. The PSC identified the Authority's proposed Northern New York Project as a high-priority project and referred it to NYPA for development and construction in accordance with the Accelerated Energy Growth and Community Benefit Act.

The Northern NY Project is a multi-faceted project that includes completion of the second phase of NYPA's 86-mile Smart Path Moses-Adirondack rebuild, rebuilding approximately 45 circuit miles of transmission eastward from Massena to the Town of Clinton, rebuilding approximately 55 circuit miles of transmission southward from Croghan to Marcy, and rebuilding and expanding several substations along the impacted transmission corridor.

The work falls largely within NYPA's existing transmission rights of way. NYPA identified the multi-pronged Northern NY Project earlier this year as work that is urgently needed to help unbottle existing renewable energy in the region. NYPA estimates it will result in significant production cost savings, emissions reductions and less transmission congestion.

The project is estimated to result in more than 1.16 million tons of carbon dioxide emissions avoided annually on a statewide basis, and an annual reduction of approximately 160 tons of nitrogen oxide emissions from downstate emissions sources. NYPA estimates the project would result in more than \$447 million in annual congestion savings in Northern New York and will create hundreds of jobs in the North Country during construction. The costs and revenues associated with the Northern New York Project are included as part of this plan.

On Aug. 1, 2014, the Public Policy Transmission Planning Process administered by the NYISO invited solicitations to address the AC Transmission Public Policy Need for new transmission lines to relieve the congested Central East and UPNY/SENY transmission interfaces. In June 2018, the Authority and North America Transmission ("NAT") entered into a Participation Agreement which granted the Authority the option to secure an ownership interest of up to 37.5 percent in the projects that they jointly proposed.

In April 2019, the NYISO board selected the project proposed by LS Power Grid New York, LLC ("LS Power") (formerly known as NAT) and the Authority for Segment A (also known as the Marcy to New Scotland Upgrade Project and AC Transmission) to increase transfer capability from central to eastern New York. The project proposed by NYPA and LS Power includes the construction of more than 90 circuit-miles of new 345kV and 115kV transmission lines and two substations.

In August 2019, LS Power and the Authority submitted an Article VII application to the PSC. If the PSC authorizes the project, construction is targeted to begin early 2021. The transmission lines to be rebuilt as part of the Segment A project are expected to be energized as part of New York State's electrical system by the end of 2023.

NYPA originally funded 33 percent of the Segment A project development costs and exercised its 37.5 percent purchase option in July 2020, bringing the Authority's total estimated project costs to \$276 million.

FERC authorized NYPA's recovery of a facility charge for AC Transmission project costs, adopted per a NYISO filing made on behalf of NYPA. The Authority is recovering its costs associated with Segment A of the project through its FERC-approved cost-recovery mechanisms in its TRR formula rate, which include an incentive rate of return applied to the Authority's "Construction Work in Progress" balances for the project. This Approved Budget and Four-Year Plan models estimated revenues and costs associated with the AC Transmission project.

Large-Scale Renewable Program

The CLCPA and CES Order, as modified by the PSC per the Order dated Oct. 15, 2020, requires that 70 percent of the state's electricity comes from renewable sources by 2030. In support of the CLCPA and CES goal, the Authority issued a request for proposals in July 2020 to solicit Renewable Energy Certificates ("RECs"), energy and capacity from eligible large-scale renewable projects which include wind and solar resources. The Authority expects to award

project(s) with long-term agreement(s) for the purchase of RECs that will be generated from the projects.

The Authority expects to recover costs associated with the agreement(s) through sales of RECs by the Authority to the Authority's customers. The Authority anticipates that it will undertake future procurements of RECs in order to support its customers and the achievement of the Clean Energy Standard goals.

Hudson Transmission Project

In 2011, the Board of Trustees authorized NYPA to enter into an agreement with Hudson Transmission Partners, LLC ("HTP") for the purchase of capacity to meet the long-term requirements of the Authority's NYC Governmental Customers and to improve the transmission infrastructure serving New York City through the transmission rights associated with HTP's transmission line (the "Line") extending from Bergen County, N.J., in the PJM Interconnection, LLC ("PJM") transmission system, to Consolidated Edison Company of New York, Inc.'s ("Con Edison") West 49th Street substation in the NYISO.

The Authority executed a Firm Transmission Capacity Purchase Agreement ("FTCPA") with HTP under which the Authority gained the entitlement to 75 percent of the Line's 660 MW capacity, or 495 MW, for 20 years. NYPA's capacity payment obligations under the FTCPA began upon the Line's commencement of commercial operation, which occurred on June 3, 2013. Also, upon commercial operation, the FTCPA obligates the Authority to reimburse HTP for the cost of interconnection and transmission upgrades in New York and New Jersey associated with the Line and to pay for all remaining upgrade costs as they are incurred.

Such interconnection and transmission upgrades have been completed at a total cost to the Authority of \$334.9 million. The Authority's obligations under the FTCPA also include payment of the Regional Transmission Enhancement Plan ("RTEP") charges allocated to HTP in accordance with the PJM tariff. RTEP costs are significant and are discussed below.

PJM's RTEP cost allocation methodology for certain upgrades, such as the Bergen-Linden Corridor ("BLC") project built by Public Service Electric & Gas Company ("PSE&G") in New Jersey, was challenged at FERC in numerous proceedings by Con Edison, the Authority, HTP and other New York parties on the grounds that PJM has disproportionately allocated the costs of those projects to those parties. These challenges are pending before the D.C. Circuit Court of Appeals.

In a separate FERC proceeding (also now before the D.C. Circuit), the Authority challenged the RTEP share of the BLC project costs allocated to HTP that were effective May 1, 2017 as a result of Con Edison's termination of its PJM firm transmission rights. The cost allocations shifted approximately \$533 million in RTEP charges for the BLC project that had been previously allocated to Con Edison to HTP. Such costs are in addition to the \$111 million in RTEP charges for the BLC project that had been previously allocated to HTP.

In July 2017, the Authority, together with HTP, petitioned FERC to relinquish the Firm Transmission Withdrawal Rights ("FTWRs") held by HTP on the Line. HTP's FTWRs formed the basis for the allocation of RTEP costs to HTP, which are the Authority's obligation under the FTCPA. By order dated Dec. 15, 2017, FERC granted the request, permitting HTP to relinquish its firm rights ("December 2017 Order").

When PJM's annual RTEP cost allocation update for 2018 was filed, the Authority's obligation to pay RTEP charges related to the BLC project was eliminated for 2018 and beyond. FERC denied requests for rehearing of the December 2017 Order, but the New Jersey Board of Public Utilities ("BPU") petitioned for review before the D.C. Circuit, where the case is now pending.

On Jan. 19, 2018, PJM filed tariff revisions that eliminated NYPA's cost responsibility for RTEP projects subject to annual updates (a category that included the BLC project costs) and its cost responsibility for RTEP charges that are not generally updated each year. Though challenged by the PJM transmission owners and the BPU, NYPA was allocated zero RTEP charges by PJM for 2018, 2019 and the first quarter of 2020. In March 2020, FERC partially reversed PJM's allocation determinations, which is discussed below.

On March 31, 2017, the Authority and HTP executed an amendment to the FTCPA. In exchange for the Authority extending the cure period for HTP to replace underwater cables that have been subject to failure and which have resulted in the line being out of service, under the amended FTCPA the Authority received HTP's assurances to pursue certain remedies at FERC concerning the termination of the 320 MW of FTWRs in order to eliminate RTEP assessments and a guarantee that if PJM RTEP assessments cannot be eliminated despite HTP's efforts to terminate the FTWRs,

that HTP will cancel its interconnection service agreement (“ISA”) to physically disconnect the Line from the PJM transmission system, causing termination of all RTEP allocations.

The December 2017 Order and resulting PJM allocations have fulfilled the goal of eliminating the RTEP assessments associated with the BLC project (though subject to further legal processes as described above). In addition, the Authority and HTP agreed to: (a) based upon RTEP costs already paid, increase, by \$40 million, the size of the tracking account that is used to offset the cost to purchase the line at the end of the FTCPA term, at the Authority’s option, and (b) shared rights to direct power on the line in the opposite direction of its current flow should market conditions present revenue opportunities for selling capacity and energy from New York to New Jersey.

In November 2017, HTP completed the cable replacement and, pursuant to the March 31, 2017 amendments, the Authority increased the leased portion of the line’s capacity from 75 percent to 87.12 percent, bringing the total leased capacity from 495 MW to 575 MW at a monthly capacity charge rate that represents a decrease in the unit price (on a \$/MW-month basis) paid to HTP in the original FTCPA.

In 2020, FERC partially reversed PJM’s January 2018 RTEP allocations over the Authority’s objections. FERC determined that PJM’s tariff did not permit the cancellation of RTEP cost responsibility for certain RTEP projects allocated using the older violations-based DFAX (“VBDFAX”) methodology, which in this case applied to certain lower voltage RTEP facilities approved by PJM prior to February 2013.

FERC did not disturb PJM’s decision to eliminate the Authority’s RTEP responsibility for the BLC project, determining that the relinquishment of HTP’s FTWRs eliminated any cost responsibility for RTEP projects allocated under the solutions-based DFAX method, which applied to projects (including BLC) approved February 2013 or later. But for RTEP projects allocated under VBDFAX, FERC determined the elimination of FTWRs did not alter cost responsibility, and said those RTEP costs had to be reinstated.

In May 2020, PJM informed NYPA that, pursuant to the FERC order, it intended to bill NYPA for the back charges for 2018, 2019 and the first half of 2020 starting in September 2020. PJM’s RTEP charges total approximately \$33 million through the end of 2020, and RTEP charges related to these projects will continue.

NYPA/HTP sought a rehearing of the FERC order, which was denied, but an appeal is pending in the D.C. Circuit Court of Appeals. NYPA and HTP assert the sacrifice of their firm rights and use of only non-firm rights over the HTP facility made PJM initially correct in refusing to assign any further RTEP to NYPA and that the reinstatement of those VBDFAX RTEP charges is contrary to the PJM tariff. A successful appeal would enable NYPA to receive refunds for the RTEP payments made for 2018 and beyond and disallow any future RTEP allocations to NYPA.

It is estimated that the revenues derived from NYPA’s rights under the FTCPA will not be sufficient to cover the Authority’s costs during the 20-year term of the FTCPA.

From June 2013 through August 2020, the Authority has paid approximately \$106 million in PJM RTEP charges for the line. As noted above, the reinstatement of PJM RTEP charges for 2018/2019/2020 will result in NYPA incurring approximately \$33 million in PJM RTEP charges for 2020. In addition, the Authority will accrue approximately \$1.1 million per month effective 2021 through the term of the agreement which ends in 2033.

In August 2020, the Authority estimated its net cost per this order will be an additional \$13 million per year for 2021 through 2033 and HTP inclusive of this amount is now estimated to be approximately \$100 million per year net cost. These net cost estimates were based on projections of the capacity payment obligations, the costs of interconnection and transmission upgrades, and energy revenues.

Purchased Power Expenses

Capacity, energy and ancillary service purchases made on behalf of customers (except for those made through previously approved purchased power agreements) are assumed to be transacted at the market clearing price in the wholesale market. For purposes of developing this Approved Budget and Four-Year Plan, projected energy rates are based on published forward price curves, while capacity rates are based on internally developed capacity curves using external pricing sources such as broker quotes and trading platforms.

Fuel Expenses

Fossil-fuel purchases in this Approved Budget and Four-Year Plan are based on expected net generation levels determined with an economic dispatch model for the Authority's plants and on available forward fuel price curves. Fuel expenses also include the costs associated with emission credit requirements under the Regional Greenhouse Gas Initiative ("RGGI.") RGGI requires the Authority to buy emission credits for its fossil-fuel plants, and the Authority also purchases such credits for the contracted Astoria Energy II plant. The projections for RGGI costs are based on projected emission rates and forecasted consumption of natural gas and oil, with such costs recovered either through specific customer contract pass-through provisions or from the wholesale market.

Wheeling Expenses

Wheeling (i.e., the transmission and/or delivery of power and energy to customers over the lines of a third party) expenses are based on contractual and/or tariff rates of the service provider and are recovered through pass-through provisions in customer contracts.

Canal Corporation

Effective Jan. 1, 2017, the Canal Corporation became a subsidiary of the Authority, and the Authority assumed certain powers and duties relating to the Canal System to be exercised through the Canal Corporation.

The Canal Corporation operates at a loss and is expected to require substantial operating and maintenance support and capital investment. The Canal Corporation's expenses are expected to be funded by transfers of funds from the Authority. Any transfer of funds would be subject to approval by the Authority's Board of Trustees and compliance with the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented. Certain expenses eligible for reimbursement are expected to be reimbursed to the Authority by moneys held in the Canal Development Fund maintained by the State Comptroller and the Commissioner of Taxation and Finance.

Given the age of the Canal System, the Authority expects significant maintenance and capital investments will be required to assure the Canal System's continuing operation. The Authority's budget and financial plan for 2021-2024 includes Canal-related operating expenditures of approximately \$90 million per year and capital expenditures of approximately \$40 million per year. The Authority will continue to evaluate the condition of the Canal System and expects to allocate additional funding if deemed necessary through its annual budgeting process or reduce funding if efficiencies are found.

Reimagine the Canals Initiative

On Jan. 29, 2020, the Board of Trustees authorized an investment of up to \$300 million over five years for the Reimagine the Canals Initiative ("Reimagine the Canals") and approved \$30 million to fund Reimagine the Canals in 2020. Reimagine the Canals encompasses three prongs: (1) \$100 million of funding for economic development projects in communities along the Canal System, (2) \$65 million of funding for projects that will help prevent ice jams and related flooding, and (3) \$135 million of funding for projects related to mitigation of drought impacts on agriculture, expansion of fishing opportunities, flood mitigation, invasive species prevention and ecosystem restoration.

AGILe

The Authority, in collaboration with the State utilities, NYSERDA and NYISO, developed the Advanced Grid Innovation Laboratory for Energy ("AGILe") to create tools to better monitor, control, accommodate and respond to the evolving energy sector. On July 25, 2017, the Board of Trustees authorized capital expenditures of \$20 million for the initial phase of AGILe, which has since commenced.

Costs to the Authority are not expected to exceed \$50 million through final buildout of the facility. Upon completion, operating and maintenance costs are expected to be shared among AGILe participants. As of June 30, 2020, approximately \$4.9 million has been spent.

Electric Vehicle Acceleration Initiative

In May 2018, the Authority's Board of Trustees approved an allocation of up to \$250 million to be used through 2025 for an electric vehicle acceleration initiative called EVolve NY and authorized \$40 million for the first phase of the

initiative. The Authority will own and operate a charging network of 800 DC fast chargers across the state, the first of which became operational in September 2020. As of June 30, 2020, approximately \$3 million has been spent.

Investment Income

Investment of the Authority's funds is administered in accordance with the applicable provisions of the Bond Resolution and with the Authority's investment guidelines. These guidelines comply with the New York State Comptroller's investment guidelines for public authorities and were adopted pursuant to Section 2925 of the New York Public Authorities Law.

The Authority's investments include, but are not limited to (a) collateralized certificates of deposit, (b) direct obligations of or obligations guaranteed by the United States of America or the State of New York, (c) obligations issued or guaranteed by certain specified federal agencies and any agency controlled by or supervised by and acting as an instrumentality of the United States government, and (d) obligations of any state or any political subdivision thereof or any agency, instrumentality or local government unit of any such state or political subdivision which is rated in any of the three highest long-term rating categories, or the highest short-term rating category, by nationally recognized rating agencies.

The Authority's investments in the debt securities of Federal Home Loan Bank rated Aaa by Moody's Investors Services and AA+ by Standard & Poor's; Federal National Mortgage Association, Federal Farm Credit Bank and Federal Home Loan Mortgage Corp. were rated Aaa by Moody's Investors Services, AAA by Fitch Ratings, and AA+ by Standard & Poor's. All of the Authority's investments in U.S. debt instruments are issued or explicitly guaranteed by the United States government.

As part of its Series 2020 financing, NYPA raised over \$1.2 billion, the proceeds of which these 2020 Bonds will be used, together with other available funds, to finance capital expenditures related to the Authority's transmission assets and other capital projects, including reimbursement for prior capital spending, defease to maturity, or call for redemption prior to maturity, a portion of the Authority's Series 2011 A Revenue Bonds, refund a portion of the CP Notes which have been or are being issued to refund certain outstanding Bonds, pay capitalized interest, and pay the costs of issuance of the 2020 Bonds.

Certain proceeds of the 2020 Bonds will be used to reimburse the Authority for capital expenditures. The remaining proceeds from the transaction were used to bolster NYPA's liquidity and restructure near-term debt service, while supporting NYPA's clean energy goals.

In addition to the green aspects of the transaction, the financing was structured to match debt service to the lifespan of the utility's assets, including restructuring existing obligations. The transaction locked in the lowest interest rate in NYPA's history.

Summary of the 2020 Transaction: Summary Information

BOND TYPE	2020A	2020B (Taxable)
Bond Ratings (M/S/F)*:	Aa2 (Stable) / AA (Stable) / AA (Stable)	
Par Amount	\$1,120,610,000	\$114,020,000
Green Bonds:	\$791,620,000	-
All-in Total Interest Cost	3.63%	2.87%
Amortization	2039 – 2060	2034 – 2039
Average Life	31.5 years	17.2 years

* Current rating at the time of this Approved Budget and Four-Year Plan

Operations and Maintenance Expenses

NYPA's O&M plan for 2021-2024 is as follows:

Operations and Maintenance Forecast by Cost Element (In \$ Millions)

NYPA	2021	2022	2023	2024
Payroll:				
Regular Pay	\$243.8	\$250.1	\$256.6	\$263.3
Overtime	12.5	12.8	13.2	13.6
Other Payroll	<u>6.1</u>	<u>6.2</u>	<u>6.3</u>	<u>6.4</u>
Total Payroll	262.4	269.1	276.1	283.3
Benefits:				
Employee Benefits	49.3	50.5	51.8	53.0
Pension	31.8	32.6	33.5	34.3
OPEB	15.0	14.9	14.7	14.6
FICA	<u>18.0</u>	<u>18.5</u>	<u>18.9</u>	<u>19.4</u>
Total Benefits:	114.1	116.5	118.9	121.3
Materials/Supplies	28.0	27.5	27.4	28.1
Fees	10.5	10.8	11.1	11.4
Office & Station	28.9	29.2	29.7	30.5
Maintenance Repair & Service Contracts	141.6	158.5	160.5	165.3
Consultants	48.6	48.9	49.6	51.0
Charges to:				
Outside Agencies	19.0	19.6	20.2	20.6
Capital Programs	<u>(58.4)</u>	<u>(59.9)</u>	<u>(61.4)</u>	<u>(63.0)</u>
Total Charges:	(39.4)	(40.3)	(41.3)	(42.4)
Research & Development	13.2	13.2	13.2	13.2
Total NYPA O&M:	\$607.9	\$633.3	\$645.1	\$661.8

Detailed breakout of 2021 O&M by Facility

Profit Center	Site O&M	HQ	R&D	Total O&M
Niagara	\$64.5	\$52.0	\$3.6	\$120.1
St. Lawrence	31.9	27.8	1.9	61.6
Blenheim-Gilboa	20.4	19.5	1.3	41.2
Small Clean Power Plants	22.6	3.9	0.3	26.8
Flynn	8.3	6.4	0.4	15.1
Small Hydro	9.3	5.7	0.4	15.4
Zeltmann	32.2	17.5	1.2	50.9
Recharge NY	2.6	2.1	0.1	4.8
SENY	26.3	5.9	0.4	32.6
Transmission	55.4	51.7	3.5	110.6
Total Sites, HQ and R&D	\$273.4	\$192.6	\$13.2	\$479.2

Other O&M Categories

CES	\$22.3
NYEM	\$7.3
Nonchargeable Profit Centers*	\$7.5

Total NYPA O&M \$516.4

Total Canals O&M \$91.6

*Nonchargeable profit centers include: Green Power Supply, Reimagine Canals, EV Charging Stations, Large Energy Storage, Large Scale Renewable

Further breakout of NYPA 2021 headquarters expenses

NYPA Total Headquarters - \$192.6M (Corporate & Operations Headquarters)

HUMAN RESOURCES & ADMINISTRATION	\$42.8
INFORMATION TECHNOLOGY	\$28.4
BUSINESS SERVICES	\$17.8
CORPORATE STRATEGY	\$5.5
COMMERCIAL OPERATIONS	\$9.9
EXECUTIVE OFFICES	\$26.1
OPERATIONS HEADQUARTERS	\$62.1

Depreciation and Amortization Expenses

Depreciation of capital assets is generally provided on a straight-line basis over the estimated lives of the various classes of capital assets. The related depreciation provisions on Dec. 31, 2019 expressed as a percentage of average depreciable capital assets was 2.6 percent.

Other Expenses

The Other Expenses category largely reflects various accruals and other miscellaneous expenses (e.g., payments to the NNYED and WNY funds,) some of which require Board of Trustee authorization on a case-by-case basis.

(d) Self-Assessment of Budgetary Risks

Set forth below is a summary of key risks associated with the Authority's assets and operations. The following discussion of risks is intended only as a summary and does not purport to identify all of the risk factors that may affect the Authority's assets and operations. Any one or more of the factors discussed and others could adversely affect the Authority's operations, assets, revenues and expenses to an extent that cannot be determined at this time.

Our business units represent the first line of defense in identifying and mitigating risk within each of their verticals. This is complemented by a robust, ongoing assessment process, overseen by the Authority's Risk group and through legal review.

During the annual budgeting process, the Financial Planning team is responsible for consolidating information received from various departments at NYPA that are inputs into our financial forecast. The team actively engages and challenges all assumptions as we work toward representing the most likely future financial outcome. Additionally, the Board of Trustees authorized an enterprise-wide risk management program and through an established Risk Management group supports the business with the identification, assessment, mitigation and monitoring of risks.

Enterprise Level Risks

Regulatory Environment Risks

On Aug. 1, 2016, the PSC issued an order establishing a Clean Energy Standard (the "CES Order") to implement the clean energy goals of the State Energy Plan. Pursuant to the CES Order, load-serving entities identified in the order are required to purchase ZECs from NYSERDA to support the preservation of existing at-risk zero-emissions nuclear generation. The Authority is not subject to NYPSC jurisdiction for purposes of the CES Order but has assumed an obligation to purchase ZECs consistent with the terms of the CES Order and intends to seek recovery of such costs from the Authority's customers.

On Jan. 31, 2017, the Board of Trustees authorized (a) participation in the NYPSC's ZEC program and (b) execution of an agreement with NYSERDA to purchase ZECs associated with the Authority's applicable share of energy sales. On April 1, 2020, the Authority and NYSERDA executed an agreement under which the Authority committed to purchase ZECs in a quantity based on its proportional load in the New York control area. The agreement is in effect until April 1, 2029.

As of August 2020, the Authority estimates that it will incur ZEC purchase costs associated with participation in the ZEC program of approximately \$268.5 million in aggregate over the 2020-2023 period, of which approximately \$14.4 million is not expected to be recovered under customer contracts that predate the adoption of the CES Order. As of June 30, 2020, the Authority has paid \$167.5 million in ZEC purchase costs.

The Regional Greenhouse Gas Initiative is a cooperative effort by Northeastern and Mid-Atlantic states, including New York, to reduce carbon dioxide emission levels. Participating states have established a regional carbon dioxide emissions cap from the power sector (fossil fuel-fired power plants 25 MW or greater).

The emissions cap reduces by 2.5 percent annually until 2020. Central to this initiative is the implementation of a multi-state cap-and-trade program with a market-based emissions trading system. The program requires electricity generators to hold carbon dioxide allowances in a compliance account in a quantity that matches their total emissions of carbon dioxide for the compliance period.

The Authority's Flynn and Zeltmann plants, and the SCPPs, as well as Astoria Energy II, are subject to RGGI requirements. NYPA has participated in program auctions to acquire carbon dioxide allowances, which the Authority requires to cover operation of its fossil-fueled power plants and the Astoria Energy II plant and expects to recover RGGI costs through its power sales revenues. The number of allowances offered in the auction by RGGI cap and trade program was reduced from allowances covering 165 million tons of carbon dioxide emissions in 2013 to 60.3 million tons in 2018 and will decline by 2.5 percent each year through 2020.

On Dec. 19, 2017, the RGGI states released an updated Model Rule that includes a further decline of 2.275 million tons each year beginning in 2021, resulting in an additional 30 percent regional cap reduction between 2020 and 2030. The Authority is monitoring federal legislation and proposed programs that would impact RGGI.

On June 19, 2019, the United States Environmental Protection Agency ("EPA") released its final Affordable Clean Energy ("ACE") rule. This rule replaces the Clean Power Plan ("CPP") rule. The ACE rule established guidelines for states, including New York, to use for carbon dioxide emissions from coal-fired plants and other regulations for implementation of the Clean Air Act Section 111 (d) for existing power plants.

The CPP Rule was stayed by the U.S. Supreme Court on Feb. 9, 2016 pending disposition of petitions for review before the U.S. Court of Appeals for the District of Columbia Circuit. Thereafter, the D.C. Circuit Court granted EPA's motion to suspend cases challenging the CPP Rule, which the EPA has now rescinded and replaced, and is likely moot pending the D.C. Circuit Court formally ending the litigation.

On Aug. 13, 2019, 22 states, including New York, and seven local governments filed a petition with the U.S. Court of Appeals for the D.C. Circuit challenging the ACE rule (on Aug. 14, 2019, a coalition of health and environmental groups followed suit by filing a petition challenging ACE). On July 18, 2019, Gov. Andrew M. Cuomo signed CLCPA, which sets a goal of net-zero carbon emissions for the entire state, not limited to the energy sector, by 2050 (85 percent reduction of greenhouse gas emissions from 1990 levels and implement measures to offset the remainder), with a requirement for 70 percent of the state's electricity to be from renewable sources by 2030 (see discussion in "New Legislation Affecting the Authority"). The Authority continues to monitor developments in this area.

During 2011, the EPA issued a series of rulings to establish the Cross-State Air Pollution Rule ("CSAPR,") which was updated in 2016. CSAPR establishes emission allowance budgets for sulfur dioxide and nitrogen oxides for eastern states, including New York, and requires power plants in those states to hold allowances to cover their emissions. Certain trading of allowances is authorized under the CSAPR.

In July 2018, a proposed determination published by the EPA found that the 2016 CSAPR Update to the National Ambient Air Quality Standards ("NAAQS") was sufficient to address the good neighbor provisions of the Clean Air Act, and that no further rulemaking is required to address out-of-state emissions, as additional upwind reductions are not required to meet the 2008 ozone NAAQS. The U.S. Court of Appeals for the D.C. Circuit has not yet decided the legality of the CSAPR 2016 update (oral arguments were heard by the Court in October 2018). NYPA continues to operate its fossil-fueled plants within the allocated allowances and anticipates that operation of its fossil-fueled plants will not be impacted by CSAPR.

Congressional, state and regulatory action for the increased regulation of air, water and contaminants is periodically considered, and there are potential legislative and regulatory proposals which may affect the electric utility industry, including the Authority. The impact on the Authority's operations of any such proposals is not predictable or quantifiable.

On July 18, 2019, the state enacted CLCPA as Chapter 106 of the Laws of 2019 ("Chapter 106"). The date upon which most provisions of Chapter 106 will become effective will depend on the date that related legislation becomes effective.

Several provisions of Chapter 106 could potentially impact the Authority's business and operations, such as the following: (1) provisions authorizing the state Department of Environmental Conservation to promulgate regulations establishing limits on statewide greenhouse gas emissions and to ensure compliance with such limits; (2) a requirement that specified state entities, including the Authority, adopt regulations to contribute to achieving statewide GHG emissions; (3) a requirement that state entities, including the Authority, assess and implement strategies to reduce GHG emissions; (4) consideration of whether actions that the Authority would undertake in the course of its operations are consistent with state GHG emission limits that will be established pursuant the enactment; and (5) potential allocation or realignment of resources to support the state's clean energy and energy efficiency goals for disadvantaged communities.

Many of the provisions of Chapter 106 that could impact the Authority are not likely to be implemented for years, based on deadlines established in the enactment. Therefore, the Authority cannot evaluate the impact of any particular provision of Chapter 106 on the Authority's business and operations.

The Authority has flexible rate-setting authority for many of its power sales agreements with customers; however, due to FERC's jurisdiction over the Authority's transmission revenue requirement, NYPA's transmission cost recovery must adhere to FERC standards. In 2017, the Authority filed for a formula rate annual TRR consistent with those standards. The formula rate annual TRR is incorporated into the NYISO Open Access Transmission Tariff ("OATT"). This Approved Budget and Four-Year Plan assumes full recovery of eligible future costs under the provisions of the NYISO OATT.

Legislative Environment Risks

Legislative enactments have called for NYPA to subsidize business customers and the state's general fund. Legislation enacted into law, as part of the 2000-2001 state budget, as amended up to the present time, has authorized the Authority -- as deemed feasible and advisable by the Board of Trustees -- to make a series of voluntary contributions into the state treasury.

In the past, the Authority has, from time to time, made voluntary contributions or payments to the state or as otherwise authorized by legislation. Such payments were authorized by legislation and have been conditional upon the Board of Trustees' determination that such payments are "feasible and advisable." Any such contribution or transfer of funds must (i) be authorized by law (typically, legislation enacted in connection with the state budget), and (ii) satisfy the requirements of the Bond Resolution.

The Bond Resolution requirements to withdraw money "free and clear of the lien and pledge created by the (Bond) Resolution" are as follows: (1) such withdrawal must be for a "lawful corporate purpose as determined by the Authority," and (2) the Authority must determine "taking into account, among other considerations, anticipated future receipt of Revenues or other moneys constituting part of the Trust Estate, that the funds to be so withdrawn are not needed" for (a) payment of reasonable and necessary operating expenses, (b) an Operating Fund reserve for working capital, emergency repairs or replacements, major renewals, or for retirement from service, decommissioning or disposal of facilities, (c) payment of, or accumulation of a reserve for payment of, interest and principal on senior debt, or (d) payment of interest and principal on subordinate debt.

In May 2011, the Board of Trustees adopted a policy statement (Policy Statement) which relates to, among other things, voluntary contributions, transfers or other payments to the state by the Authority after that date. The Policy Statement provides, among other things, that in deciding whether to make such contributions, transfers or payments, NYPA shall use as a reference point the maintenance of a debt service coverage ratio of at least 2.0 (this reference point should not be interpreted as a covenant to maintain any particular coverage ratio), in addition to making the other determinations required by the Bond Resolution. The Policy Statement may at any time be modified or eliminated at the discretion of the Board of Trustees.

The 2020-2021 Enacted State Budget contains a provision authorizing the Authority as deemed "feasible and advisable by its trustees" to transfer to the state treasury to the credit of the general fund \$20 million for the state fiscal year commencing April 1, 2020, the proceeds of which will be utilized to support energy-related state activities. This amount will be accrued by Dec. 31, 2020 but is not expected to be paid by that date.

The Authority cannot predict what additional contributions to the state may be authorized. The Board of Trustees' decision as to whether and to what extent such payments are feasible and advisable will be made based on the exercise of its fiduciary responsibilities and in light of the requirements of the Authority's Bond Resolution, other legal requirements and all the facts and circumstances known to the board at the time of the decision.

In addition to the authorization for the voluntary contributions, as a result of budget legislation enacted in February 2009, the Authority was asked to make certain temporary asset transfers to the state of funds held in reserves. Pursuant to the terms of a Memorandum of Understanding dated February 2009 (the "MOU") between the state, acting by and through the state's director of Budget, and the Authority, NYPA transferred \$215 million associated with its Spent Nuclear Fuel Reserves ("Asset B") in March 2009 and \$103 million of funds set aside for future construction projects ("Asset A") in September 2009.

NYPA subsequently executed amendments to the MOU in 2014 and 2017 that extended the return date for the Asset A and Asset B, respectively, and provided for their return in installments over several years, subject to annual appropriation by the state Legislature. The Authority received cumulative payments of \$103 million with respect to Asset

A through 2018. As of June 30, 2020, NYPA has received cumulative payments of \$86 million on Asset B. Pursuant to the amended MOU, the remaining payments on Asset B of \$129 million are to be made by the state from 2020-2024, subject to annual appropriation by the state Legislature.

Both temporary transfers were authorized by the Board of Trustees and made in 2009.

In lieu of interest payments, the state waived certain future payments from the Authority to the state, including payments to which the state was entitled, pursuant to Public Authorities Law §2975, under a governmental cost recovery process for the costs of central governmental services.

On April 24, 2014, NYPA and the state executed an Amendment to the MOU which provides that the state shall, subject to appropriation by the state Legislature, return the \$103 million (Asset A) in five annual installments through state Fiscal Year 2018-2019. As of Sept. 30, 2018, the Authority has received all installment payments, totaling \$103 million on Asset A.

The Authority and the state executed a Second Amendment to the MOU, dated as of June 30, 2017, that provides for the return to the Authority of the \$215 million (Asset B) in the following amounts and by no later than Sept. 30 of each of the following state fiscal years: (1) \$22 million for 2017-18, (2) \$21 million for 2018-19, (3) \$43 million for 2019-20, (4) \$43 million for 2020-21, (5) \$43 million for 2021-22, and (6) \$43 million for 2022-23.

The obligation of the state to return the money transferred by the Authority to the state is subject to annual appropriation by the state Legislature. As of Oct. 1, 2019, NYPA has received installment payments of \$86 million on Asset B. In the Second Amendment to the MOU, the Authority and the state also agreed to enter into alternative cost recovery agreements for each of state Fiscal Year 2017-18 through state Fiscal Year 2022-23 that the asset transfers have not been fully returned to the Authority.

The alternative cost recovery agreements would relieve NYPA of any obligation to make up to \$5 million in cost recovery assessment payments to the state in each year. If the cost recovery assessment pursuant to Public Authorities Law §2975 for a given year exceeds \$5 million, the assessment due from the Authority would be limited to the difference between the assessment and \$5 million. This Approved Budget and Four-Year Plan assumes no such assessments during the 2021-2024 forecast period.

Section 1011 of the Power Authority Act ("Act") constitutes a pledge of the state to holders of Authority obligations not to limit or alter the rights vested in the Authority by the Act until such obligations together with the interest thereon are fully met and discharged or unless adequate provision is made by law for the protection of the holders thereof. Several bills have been introduced into the state Legislature, some of which propose to limit or restrict the powers, rights and exemption from regulation which the Authority possesses under the Act and other applicable law, or otherwise would affect the Authority's financial condition or its ability to conduct its business, activities, or operations, in the manner presently conducted or contemplated by the Authority.

It is not possible to predict whether any of such bills or other bills of a similar type which may be introduced will be enacted. In addition, from time to time, legislation is enacted into New York State law that purports to impose financial and other obligations on the Authority, either individually or along with other public authorities or governmental entities. The applicability of such provisions to NYPA would depend upon, among other things, the nature of the obligations imposed and the applicability of the pledge of the state set forth in Section 1011 of the Act to such provisions. There can be no assurance that NYPA will be immune from the financial obligations imposed by any such provision.

Actions taken by the state Legislature or the Executive Branch to cause voluntary contributions or other obligation upon the Authority and which attempt to constrain the discretion of or bypass the Board of Trustees could negatively affect net income and possibly harm the Authority's credit ratings.

Hydropower Generation Risk

The Authority's net income is highly dependent upon generation levels at its Niagara and St. Lawrence-FDR power projects. The generation levels are a function of the hydrological conditions prevailing on the Great Lakes; primarily, Lake Erie (Niagara Project) and Lake Ontario (St. Lawrence-FDR Project). Long-term generation level at the two projects is approximately 20.3 terawatt-hours ("TWH") annually. NYPA's hydroelectric generation forecast is 24.5 TWH in 2021, 24.0 TWH in 2022, 23.7 TWH in 2023, and 23.6 TWH in 2024.

Environmental/external factors (e.g., climate change, flooding, ice, storm frequency and duration) can cause hydrological conditions to vary considerably from year to year. Hydropower generation may also face risks due to

transmission line constraints within the region (e.g., spilling extra hydropower flow; high transmission prices) and increased competitiveness of other types of renewable generation.

NYPA conducted high and low hydroelectric generation sensitivities for 2021-2024 that estimated the potential net income that could result over a reasonable range of hydroelectric generation occurrences. The sensitivities were calculated only for merchant generation, as merchant revenues has significant impact on Authority's net income. The effects on estimated net income, assuming all other factors remain unchanged, were as follows:

Year	Low Generation		High Generation	
	Net Merchant Hydroelectric Generation	NYPA Net Income Change	Net Merchant Hydroelectric Generation	NYPA Net Income Change
	(In TWH)	(In \$ Millions)	(In TWH)	(In \$ Millions)
2021	7.6	(\$14.9)	9.2	\$13.2
2022	6.8	(\$26.6)	9.1	\$24.5
2023	6.4	(\$38.9)	9.1	\$28.3
2024	5.9	(\$54.9)	8.3	\$43.6

Sustained Margin Reduction and Commodity Market Volatility Risk

Through its participation in the NYISO and other commodity markets, NYPA is subject to electric energy price, fuel price and electric capacity price risks that impact the revenue and purchased power streams of its facilities and customer market areas. Volatility can have detrimental effects on NYPA's financial condition.

To moderate cost impacts to its customers and itself, NYPA, at times, hedges market risks via the use of financial instruments and physical contracts. Hedges mitigate the cost of energy or related products needed; to mitigate risk related to the price of energy and related products sold by NYPA; to mitigate risk related to electric margins (electric sales versus fuel use) where NYPA owns generation or other capacity; and mitigation of geographic cost differentials of energy procured or sold for transmission or transportation to an ultimate location.

Hedges effectuated on behalf of NYPA's customers are passed through, at cost, as provided for in customer contracts. Commodities able to be hedged include, but are not limited to, natural gas, natural gas basis, electric energy, electric capacity and congestion costs associated with the transmission of electricity.

On July 21, 2010, President Barack Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DF Act") which addresses, among other things, interest rate and energy related commodity swap transactions of the type in which NYPA engages. The requirements and processes are set forth in regulations promulgated by the Commodities Futures Trading Commission ("CFTC"). Pursuant to CFTC rules, the Authority, as a public entity and electric utility which uses swaps solely to manage its risk, is exempted from posting collateral beyond that of any existing credit support annexes in support of its open over-the-counter hedge positions.

These CFTC rules are not anticipated to have significant impact on NYPA's liquidity and/or future risk mitigation activities. CFTC DF Act rules are still being promulgated, and the Authority will continue to monitor their potential impact on its liquidity and/or future risk mitigation activities.

Disruptive Innovation and Customer Energy Choices

Transformative technologies and customer empowerment create uncertainty for the Authority and the electric utility industry that can produce new business opportunities or reduced demand for electric energy. Through its Strategic Planning and Risk Management processes, NYPA regularly evaluates its mission, objectives and customer needs, and seeks to appropriately position itself to effectively meet the challenges of the transforming electric industry. This is done through initiatives such as a long-term asset management strategy and a suite of customer solutions, including new/modified product offerings. The impact on NYPA's operations of any such industry transformation is not predictable or quantifiable.

Attract and Retain a Qualified Workforce

Like many other industries, the power and utility sector is seeing increased competition for, and a general shortage of, talent in high-skilled areas. This is expected to continue and be further impacted by transformations in the industry where new technologies are being developed and deployed.

The Authority recognizes the uncertainty with being able to attract and retain the skills and competencies needed to meet objectives. NYPA regularly evaluates and positions its recruiting, talent development and benefits programs accordingly, through its workforce planning strategic initiative and other ongoing efforts.

Cyber Security

The federal government recognizes the electric utility industry as critical infrastructure and works closely with the industry to ensure awareness of ongoing threats and that appropriate protections are in place against physical and cyber attacks. NYPA constantly assesses the nature of these risks and adjusts its resources to best anticipate and respond to any threats.

With more than 1,400 circuit-miles of high voltage transmission lines and 16 power generation facilities across New York State, NYPA recognizes the critical nature of its assets. Investments to harden physical and cyber assets, and their related infrastructure, are continually needed to minimize potential adverse impacts to the bulk electric system, detect and deter sabotage attempts, and protect the Authority and customer information. NYPA further mitigates its cyber risk through the purchase of insurance.

Business Continuity

A catastrophic natural event such as severe weather, flooding or an earthquake can negatively affect the operations of Authority assets and the bulk electric system. NYPA regularly evaluates the resiliency of its assets. In addition, the Authority has implemented disaster planning programs relating to Emergency Management, Disaster Recovery and Business Continuity. These plans are based on the specific, unique natural threats at each of its generation facilities.

The Authority regularly conducts drills and exercises to ensure advance preparation for these types of events. NYPA maintains close working relationships with local first responders and government agencies to ensure its ongoing preparedness.

An outbreak of disease or similar public health threat, such as the COVID-19 pandemic, or fear of such an event, could have an adverse impact on the Authority's financial condition and operating results.

Canal Corporation

The Authority has identified key risk areas relating to the Canal Corporation and continues to employ and assess risk mitigation options across multiple enterprise risk fronts to manage or reduce potential exposures. As part of the ongoing Canals management strategy, the Authority will adjust and allocate resources accordingly.

COVID-19

The COVID-19 pandemic changed societal and business operation norms and impacted the risk profiles of organizations globally. Despite the uncertainty associated with COVID-19 (i.e. vaccine development, treatment advancements, phase 2 and 3 infection waves) NYPA is mitigating its risk through proactive and robust pandemic responses plans. The Authority is well positioned to address future pandemic and business concerns by employing mitigation strategies such as an Incident Command System, Business Continuity Plans, and Return to Work procedural and physical modifications.

Critical Infrastructure

NYPA is exposed to potential critical infrastructure failure that may lead to service disruption, injury and/or degradation of system reliability, all of which could impact financial results. The Authority engages in several activities to mitigate these risks, including ISO 55001 Asset Management certification, the purchase of insurance, redundancy of major equipment, capital investments and a robust operations maintenance program.

Workforce Health and Safety

NYPA is exposed to a variety of health and safety risks. The health and safety of NYPA's workforce, customers, contractors and the citizens of New York State are of the highest priority to the Authority. NYPA has multiple levels of controls, policies, procedures and training programs in place to reduce and/or eliminate health and safety incidents.

Litigation Risk

St. Regis Litigation

In 1982 and 1989, several groups of Mohawk Indians, including a Canadian Mohawk tribe, filed lawsuits (the St. Regis litigation) against the state, the state's governor, St. Lawrence and Franklin counties, the St. Lawrence Seaway Development Corporation, the Authority and others. The plaintiffs claimed ownership of certain lands in St. Lawrence and Franklin counties and to Barnhart, Long Sault and Croil islands. The islands are within NYPA's St. Lawrence-FDR Power Project and Barnhart Island is the location of significant NYPA facilities. Settlement discussions were held periodically between 1992 and 1998. In 1998, the federal government intervened on behalf of all Mohawk plaintiffs.

The parties agreed to a land claim settlement, dated Feb. 1, 2005, which, if implemented, would have included the payment by the Authority of \$2 million a year for 35 years to the tribal plaintiffs and the provision of up to 9 MW of low-cost NYPA power for use on the reservation. The legislation required to effectuate the settlement was not enacted and the litigation continued.

In 2013, all claims against NYPA were dismissed and the lawsuit against the Authority was concluded. On May 28, 2014, New York State, the St. Regis Mohawk Tribe, St. Lawrence County and the Authority executed a Memorandum of Understanding ("St. Regis MOU") that outlined a framework for the possible settlement of all the St. Regis land claims.

In the St. Regis MOU, the Authority endorses a negotiated settlement that, among other terms and conditions, would require NYPA to pay the tribe \$2 million a year for 35 years and provide up to 9 MW of its hydropower at preference power rates to serve the needs of the tribe's reservation. The St. Regis MOU would require an Act of Congress to forever extinguish all Mohawk land claims prior to such a settlement becoming effective.

Any settlement agreement, including the terms endorsed in the St. Regis MOU, would in the first instance need to be negotiated and agreed upon by all parties to the St. Regis litigation, including parties that did not execute the St. Regis MOU, such as the two other Mohawk groups, the federal government and Franklin County. In addition, before any settlement becomes effective and NYPA would be obligated to make any payments contemplated by the St. Regis MOU, federal and state legislation must be enacted which approves the settlement and extinguishes all Mohawk land claims. NYPA is continuing settlement discussions with some of the parties to the St. Regis litigation.

Long Island Sound Cable Project

In January 2014, one of the Long Island Sound Cable Project's underwater cables was severely impacted by an anchor and/or anchor chain dropped by one or more vessels, causing the entire electrical circuit to fail and the circuit breaker to trip. Dielectric fluid was released into Long Island Sound.

On Dec. 31, 2019 and Dec. 31, 2018, the consolidated statements of net position includes approximately \$19 million and \$18 million, respectively, in other long-term assets, reflecting the cost of damages net of insurance recoveries. The Authority believes it can recover the full amount of its damages through legal proceedings, insurance coverage and contractual obligations.

Helicopter Incident Near the Authority's Transmission Lines in Beekmantown, New York

In April 2014, NYPA contracted with Northline Utilities, LLC ("Northline") to install fiber optic ground wire along the Authority's transmission system. Thereafter, Northline engaged Catalyst Aviation, LLC ("Catalyst") to provide helicopter services. On Oct. 30, 2018, a Catalyst helicopter was destroyed when it collided with a wooden utility pole and power lines near Beekmantown, N.Y. Some members of the helicopter crew were injured, and two died as a result of their injuries.

NYPA has received two notices of claim arising out of this incident. The Authority has pursued insurance coverage under Northline's insurance policies that name NYPA as an additional insured. The Authority tendered its defense of these notices of claim to Northline's insurer and the insurer has accepted the Authority's tender.

NYPA believes there is sufficient insurance coverage to cover these claims. In any event, to the extent that the insurance coverage limitations are insufficient, Northline is responsible under the defense and indemnification provisions of its contract with the Authority.

Miscellaneous

Additional actions or claims against the Authority are pending for the taking of property in connection with its projects, for negligence, for personal injury (including asbestos-related injuries), in contract, and for environmental, employment and other matters. All of such other actions or claims will, in NYPA's opinion, be disposed of within the amounts of the Authority's insurance coverage, where applicable, or the amount which NYPA has available therefore and without any material adverse effect on its business.

Economic Outlook and View on Energy Markets

Energy markets indicate an expectation that in 2021 prices will rebound somewhat from 2020's mild winter and the impact of COVID-19. Achieving long-term CLCPA goals will depress wholesale power prices, so upstate forward power prices are anticipated to be stagnant or decline from 2021 through 2023. Downstate, however, forward markets indicate that in the near-term, wholesale price depression due to CLCPA is not expected to overcome the effects of awaited unit retirements (Indian Point 3, as well as New York City "peaker" plants retiring due to the DEC's new nitrogen oxide rule). Consequently, downstate power prices are expected to mildly rise over the next four years.

Capacity prices are expected to remain low for upstate supply, and to decline off current highs in New York City. Both cases are driven by the quadrennial Demand Curve Reset resulting in lower Reference Points, and by reductions in peak loads due in part to COVID-19 impacts.

Ancillary Services prices are expected to mildly decline over the next few years, as more flexible generation replaces Indian Point, and over the longer term as responsive energy storage comes online. Ancillary Services could rebound beyond the next few years as intermittent renewables represent a larger share of supply.

Revenues from NYISO sales are expected to remain fairly static over the next few years. As always, such a statement is subject to the usual fluctuations due to weather. An additional source of energy market uncertainty is the potential for a more robust carbon dioxide price.

The Regional Greenhouse Gas Initiative (RGGI) is a mature program at this point, but efforts by the NYISO to support decarbonization by assessing a carbon dioxide charge commensurate with the social cost of carbon, or a federal assessment at such levels, could shift wholesale power prices upwards. This represents an opportunity for renewable generators and providers of energy efficiency and energy management services.

Customer expectations are continuously evolving, as the needs for improved service levels and movements toward decarbonization, are growing. These increasingly complex needs are not fully met by current offerings and domestic and international entrants into New York State's energy market are beginning to take share, raising the bar for all players with sophisticated customer solutions.

In addition, through continuous technology improvements, renewable energy sources are becoming more cost-competitive than traditional power sources, such as hydro and gas, and disrupting wholesale markets. New technologies such as electric vehicles, storage and hydrogen are either beginning to scale or starting to emerge and change the landscape. In parallel, players across the power value chain are embracing digitization and automation in pursuit of efficiency and growth, enabling a more decentralized, two-way power ecosystem.

Competition in New York State's ecosystem is taking shape as offshore wind solicitations are gathering momentum and downstream solar and storage are growing rapidly. The large and well-planned expansion of the transmission grid is widely recognized as a critical need and distribution utilities are taking actions to modernize their grids and provide new services, while new entrants are competing for business.

With the adoption of CLCPA, the state has set one of the most ambitious decarbonization agendas in the U.S., with significant implications for all participants in the state's energy and cross-sector ecosystems. The outcome of the 2020 U.S. presidential election could accelerate implementing national decarbonization plans.

Lastly, high uncertainty around a macroeconomic recovery from COVID-19 pandemic remains, while NYPA customers are facing new challenges and financial strains. The ways of working are being redefined and remote working may create substantial value even after COVID-19, in areas such as access to talent and operational efficiencies.

(e) Revised Forecast of 2020 Budget

Revised Forecast of 2020 Budget (In \$ Millions)

	Original Budget 2020	Forecast 2020	Variance Favorable / (Unfavorable) 2020
Operating Revenues:			
Customer Revenues	\$1,785.9	\$1,628.2	(\$157.7)
NYISO Market Revenues	764.2	640.3	(123.9)
Other Revenue	<u>30.1</u>	<u>19.8</u>	<u>(10.3)</u>
Total Operating Revenues	2,580.2	2,288.3	(291.9)
Operating Expenses:			
Purchased Power	681.7	512.6	169.1
Fuel - Oil and Gas	147.7	103.9	43.8
Wheeling Expenses	644.1	647.1	(3.0)
O&M Expenses	590.4	568.8	21.6
Other Expenses	<u>119.8</u>	<u>136.3</u>	<u>(16.5)</u>
Total Operating Expenses	2,183.7	1,968.7	215.0
NET OPERATING INCOME	396.5	319.6	(76.9)
Other Income:			
Investment Income	28.4	29.4	1.0
Other Income	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
Total Other Income	28.4	29.4	1.0
Non-Operating Expenses:			
Depreciation and Amortization	262.5	261.6	0.9
Interest & Other Expenses	<u>120.9</u>	<u>104.9</u>	<u>16.0</u>
Total Non-Operating Expense	383.4	366.5	16.9
NET INCOME:	\$41.5	(\$17.5)	(\$59.0)

(f) Reconciliation of 2020 Budget and 2020 Revised Forecast

The 2020 year-end net income forecast is (\$17.5) million, which is (\$59.0) million below budget. This negative variance is primarily due to lower than budgeted merchant energy prices and lower than budgeted customer margins partially offset by higher than budgeted merchant energy MWh's sold in the market, favorable hedge settlements, and favorable capacity sales. It is additionally driven by higher than budgeted HTP RTEP payments, lower than budgeted Energy Efficiency revenue, an increase to pension expenses and by other expenses related to NYPA's response to COVID-19. This is offset by an reduction to operating expenses driven by underspend in site operations & maintenance expenses, realized gain on sale of securities and lower-than-budgeted depreciation.

(g) Statement of 2019 Financial Performance

Net Income - Actual vs. Budgeted for the Year ended December 31, 2019
(In \$ Millions)

	Actual 2019	Budget 2019	Variance Favorable / (Unfavorable) 2019
Operating Revenues:			
Customer Revenues	\$1,671.2	\$1,825.2	(\$154.0)
NYISO Market Revenues	671.2	762.7	(91.5)
Other Revenue	<u>27.7</u>	<u>20.9</u>	<u>6.8</u>
Total Operating Revenues	2,370.0	2,608.8	(238.7)
Operating Expenses:			
Purchased Power	528.0	696.9	168.9
Fuel Consumed - Oil & Gas	139.8	189.2	49.4
Wheeling	647.0	644.1	(2.9)
Operations & Maintenance	601.2	596.3	(5.0)
Other Expenses	118.3	117.2	(1.2)
Depreciation & Amortization	250.1	244.1	(6.0)
Allocation to Capital	(18.6)	(18.3)	0.3
Asset Impairment Charge	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
Total Operating Expenses	2,265.9	2,469.4	203.6
NET OPERATING INCOME	104.2	139.4	(35.2)
Other Income:			
Investment Income	47.4	30.5	16.9
Other Income	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
Total Other Income	47.4	30.5	16.9
Non-Operating Expenses:			
Interest and Other Expenses	<u>128.6</u>	<u>149.0</u>	<u>20.4</u>
Total Non-Operating Expenses	128.6	149.0	20.4
NET INCOME:	\$23.0	\$20.9	\$2.1

Net Income for the year ended Dec. 31, 2019 was \$23 million, which was \$2.1 million higher than the budget of \$20.9 million. The increase in net income was primarily attributable to higher investment income due to an increase in the market value of NYPA's investment portfolio, lower interest expenses due to lower interest rates, and offset by lower operating income due to lower margins resulting from lower energy prices.

(h) Employee Data – number of employees, full time, FTEs and functional classification

NYPA Headcount Projections 2021-2024

NYPA	2021	2022	2023	2024
Headquarters	857	857	857	857
Power Generation	974	974	974	974
Transmission	203	203	203	203
R&D	14	14	14	14
Total NYPA:	2,048	2,048	2,048	2,048
Canals	482	482	482	482
Total NYPA & CANALS*:	2,530	2,530	2,530	2,530

* Authorized positions including vacancies.

(i) Gap-Closing Initiatives – revenue enhancement or cost-reduction initiatives

When building a multiyear operating plan, NYPA has developed a series of contingency plans to adapt to unforeseen changes in its financial results. The Authority projects positive net income for the 2021-2024 period, constructed upon a level of expenses outlined within this final Budget and Financial Plan. If that net income projection materially changes during the forecast period, NYPA will take actions if deemed appropriate.

The Authority continues to be impacted by the ongoing COVID-19 pandemic, with effects including the shift of the majority of the employee base to a remote work configuration, a halt and subsequent restart of the planned Capital and O&M work portfolio, the temporary sequestration of operations staff to maintain reliable electric service, and increased employee/facility health and safety measures to mitigate any potential infection.

An incremental \$28 million in total costs, both Capital and O&M, is the projected impact to NYPA for costs directly associated with these efforts in the 2020 budget year. However, efforts are underway to recover a significant portion of those expenses (approximately 40 percent) via reimbursement through the Federal Emergency Management Agency.

In addition to the direct financial costs of addressing COVID-19 outlined above, NYPA experienced additional financial impacts related to lower energy prices, which reduced our merchant revenues, and a decline in Energy Efficiency project completions, which reduced revenues for that business line. To lessen the effect of these revenue drops, NYPA undertook a comprehensive approach of reviewing and reducing operating costs throughout the Authority to mitigate the financial impact of the pandemic.

Moving into 2021, the risk of additional COVID-19 “waves” does exist, and could again result in similar actions taken by NYPA. However, it is expected that any impact on finances or operations should be greatly reduced due to the amount of planning conducted in preparation for such an event. This plan does not assume another shutdown within the financial forecast.

(j) Material Non-Recurring Resources – source and amount

Except as discussed elsewhere in this report, there are no material non-recurring resources expected in the 2021-2024 period.

(k) Shift in Material Resources

There are no anticipated shifts in material resources from one year to another.

(I) Debt Service

New York Power Authority Projected Debt Outstanding (FYE) (In \$ Thousands)

NYPA	2021	2022	2023	2024
Revenue Bonds	\$1,624,840	\$1,624,840	\$1,913,416	\$1,897,521
Adjustable Rate Tender Notes	-	-	-	-
Subordinated Notes	\$41,185	\$38,530	\$37,635	\$36,715
Commercial Paper Notes	\$463,012	\$463,012	\$463,012	\$463,012
Grand Total:	\$2,129,038	\$2,126,382	\$2,414,063	\$2,397,248

Debt Service as Percentage of Pledged Revenues (Accrual Based) (In \$ Thousands)

NYPA	2021		2022		2023		2024	
	Debt Service	% of Revenue	Debt Service	% of Revenue	Debt Service	% of Revenue	Debt Service	% of Revenue
Revenue Bonds	\$31,279	1%	\$31,279	1%	\$60,947	2%	\$95,900	3%
Adjustable Rate Tender Notes	\$0	0%	\$0	0%	\$0	0%	\$0	0%
Subordinated Debt	\$2,421	0%	\$4,200	0%	\$2,370	0%	\$2,371	0%
Commercial Paper Notes	\$7,457	0%	\$7,457	0%	\$7,457	0%	\$7,457	0%
Grand Total Debt Service:	\$41,157	2%	\$42,936	2%	\$70,774	3%	\$105,728	4%
Debt Service Coverage Ratio:	10.4X		10.0X		6.7X		4.8X	

Scheduled Debt Service Payments (Accrual Basis) Outstanding (Issued) Debt
(In \$ Thousands)

Year	Principal	Interest	Total
2021	\$855	\$40,302	\$41,157
2022	\$2,655	\$40,281	\$42,936
2023	\$895	\$69,879	\$70,774
2024	\$16,815	\$88,913	\$105,728

Proposed Debt

Year	Principal	Interest	Total
2021	\$0	\$0	\$0
2022	\$0	\$0	\$0
2023	\$0	\$10,495	\$10,495
2024	\$0	\$10,495	\$10,495

Total Debt

Year	Principal	Interest	Total
2021	\$855	\$40,302	\$41,157
2022	\$2,655	\$40,281	\$42,936
2023	\$895	\$80,374	\$81,269
2024	\$16,815	\$99,408	\$116,223

New York Power Authority Planned Use of Debt Issuances
(In \$ Thousands)

TYPE	Amount	Interest Rate	Project / Description
Period January 1, 2021 - December 31, 2021:			
Tax Exempt Commercial Paper	\$0	1%	Energy Efficiency Program
Taxable Commercial Paper	\$0	1%	Energy Efficiency Program
Tax Exempt Revenue Bonds	\$0	4%	Transmission
Taxable Revenue Bonds	\$0	5%	Robert Moses Power Plant / Lewiston Pump Generating Plant
Total Issued 2021	\$0		
Period January 1, 2022 - December 31, 2022:			
Tax Exempt Commercial Paper	\$0	1%	Energy Efficiency Program
Taxable Commercial Paper	\$0	1%	Energy Efficiency Program
Tax Exempt Revenue Bonds	\$0	4%	Transmission
Taxable Revenue Bonds	\$0	5%	Robert Moses Power Plant / Lewiston Pump Generating Plant
Total Issued 2022	\$0		
Period January 1, 2023 - December 31, 2023:			
Tax Exempt Commercial Paper	\$0	1%	Energy Efficiency Program
Taxable Commercial Paper	\$0	1%	Energy Efficiency Program
Tax-Exempt Revenue Bonds	\$249,089	4%	Transmission
Taxable Revenue Bonds	\$39,488	5%	Robert Moses Power Plant / Lewiston Pump Generating Plant
Total Issued 2023	\$288,576		
Period January 1, 2024 - December 31, 2024:			
Tax Exempt Commercial Paper	\$0	1%	Energy Efficiency Program
Taxable Commercial Paper	\$0	1%	Energy Efficiency Program
Tax-Exempt Revenue Bonds	\$0	4%	Transmission
Taxable Revenue Bonds	\$0	5%	Robert Moses Power Plant / Lewiston Pump Generating Plant
Total Issued 2024	\$0		

Note: The full faith and credit of the Authority are pledged for the payment of bonds and notes in accordance with their terms and provisions of their respective resolutions. NYPA does not have taxing power, and its obligations are not debts of New York State or any political subdivision of the state other than the Authority. NYPA's debt does not constitute a pledge of the faith and credit of the state or of any political subdivision thereof, other than the Authority.

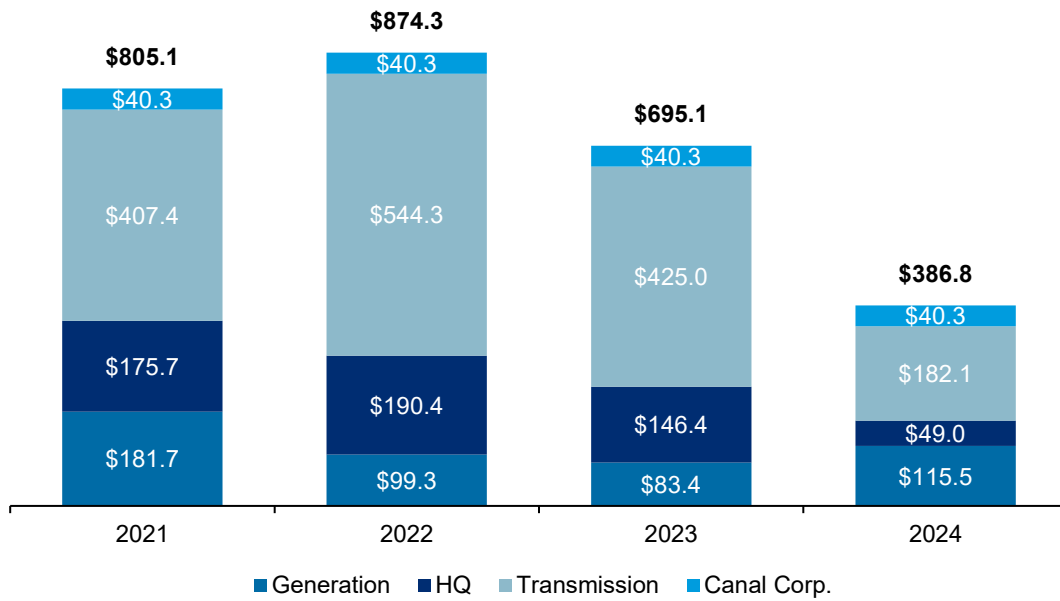
(m) Capital Commitments and Sources of Funding

The Authority's commitments for various capital improvements are approximately \$2.8 billion over the financial period 2021-2024. NYPA anticipates these improvements will be funded with existing construction funds, internally generated funds and additional borrowings. Additionally, the Authority is projecting to spend approximately \$1.2 billion in Energy Services projects for our customers, which will be separately financed. Projected capital commitments during this period include those listed in the table below.

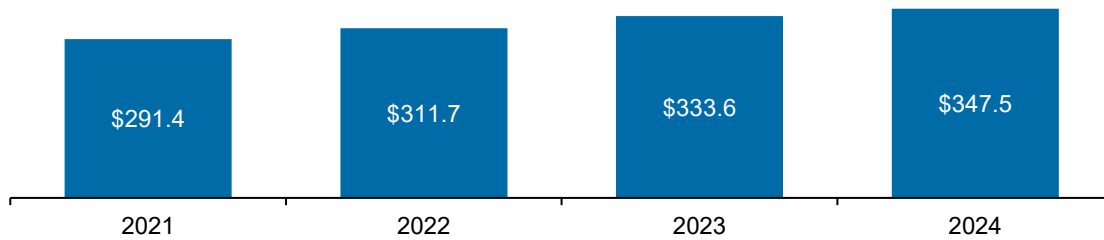
2021-2024 Capital Commitments by Function (In \$ Millions)

NYPA	2021	2022	2023	2024
Generation				
Robert Moses LEM (NextGen Niagara)	\$44.3	\$36.3	\$51.7	\$54.8
Lewiston Pump Generating Plant LEM	\$26.1	\$17.4	\$0.0	\$0.0
Sensor Deployment (Gen)	\$6.6	\$0.0	\$0.0	\$0.0
Other Generation	\$104.8	\$45.6	\$31.7	\$60.7
Transmission				
Northern New York Transmission	\$7.6	\$179.2	\$226.1	\$133.1
Moses Adirondack Upgrade (Smartpath)	\$113.5	\$121.1	\$73.6	\$0.0
Marcy-Scott Yard Upgrade (AC Project)	\$95.3	\$113.4	\$47.8	\$0.0
Transmission Life Extension & Modernization	\$73.4	\$48.4	\$43.9	\$25.6
Communications Backbone	\$53.2	\$26.5	\$21.6	\$0.3
NNY to Ontario Phase Shifter Replacement	\$17.4	\$9.1	\$2.0	\$0.0
Sensor Deployment (Trans)	\$12.8	\$0.0	\$0.0	\$0.0
Other Transmission	\$34.2	\$46.6	\$10.0	\$23.1
HQ				
Digital, Network & Cyber	\$59.2	\$28.7	\$19.6	\$18.8
Reimagine Canals	\$29.7	\$74.8	\$80.2	\$17.9
EVolve	\$33.6	\$49.9	\$16.3	\$0.0
White Plains Office Infrastructure	\$13.7	\$17.9	\$29.3	\$7.9
Customer Digital Experience	\$14.7	\$0.0	\$0.0	\$0.0
Other HQ	\$24.9	\$19.2	\$1.0	\$4.4
Canals				
Canals	\$40.3	\$40.3	\$40.3	\$40.3
Total NYPA & Canals Funded:	\$805.1	\$874.3	\$695.1	\$386.8
Energy Services - Separately Financed:	\$291.4	\$311.7	\$333.6	\$347.5

2021-2024 NYPA & Canals Capital Commitments by Function (In \$ Millions)

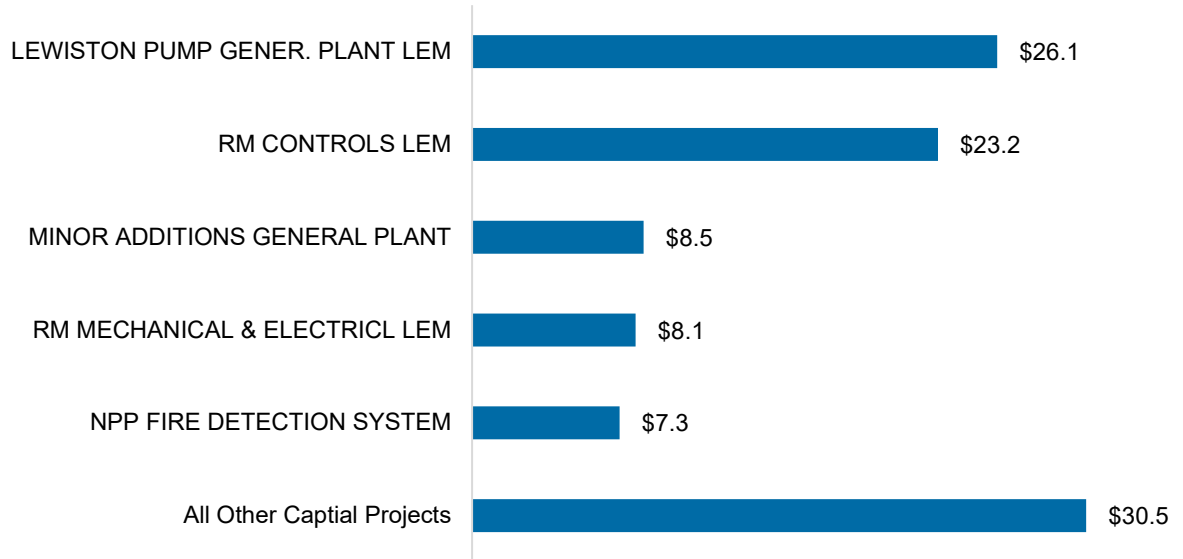


2021-2024 Energy Services Capital Commitments (In \$ Millions)

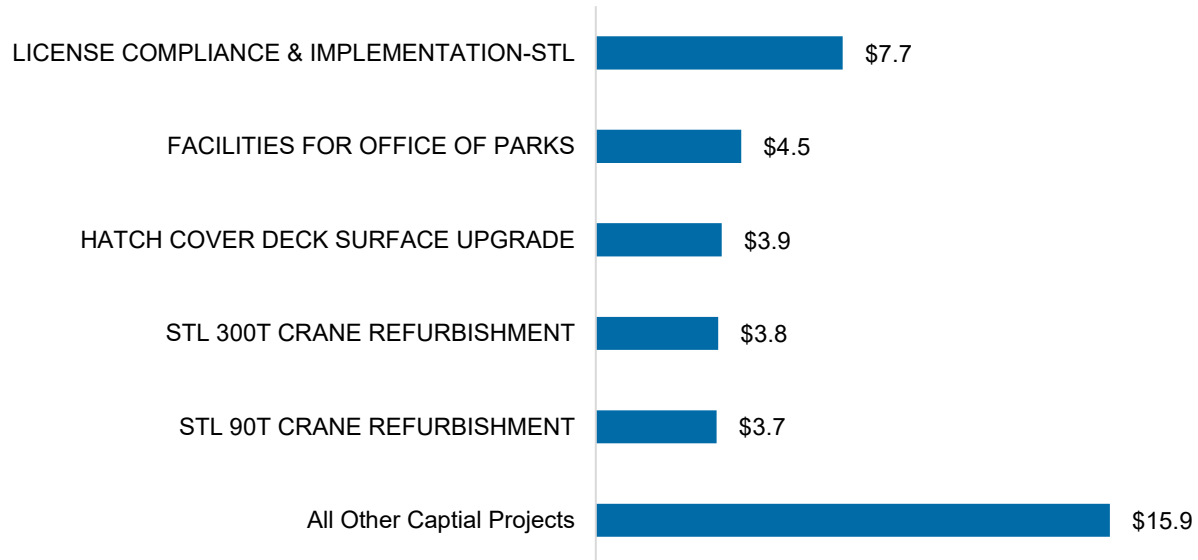


2021 NYPA & Canals Capital Project Detail by Facility

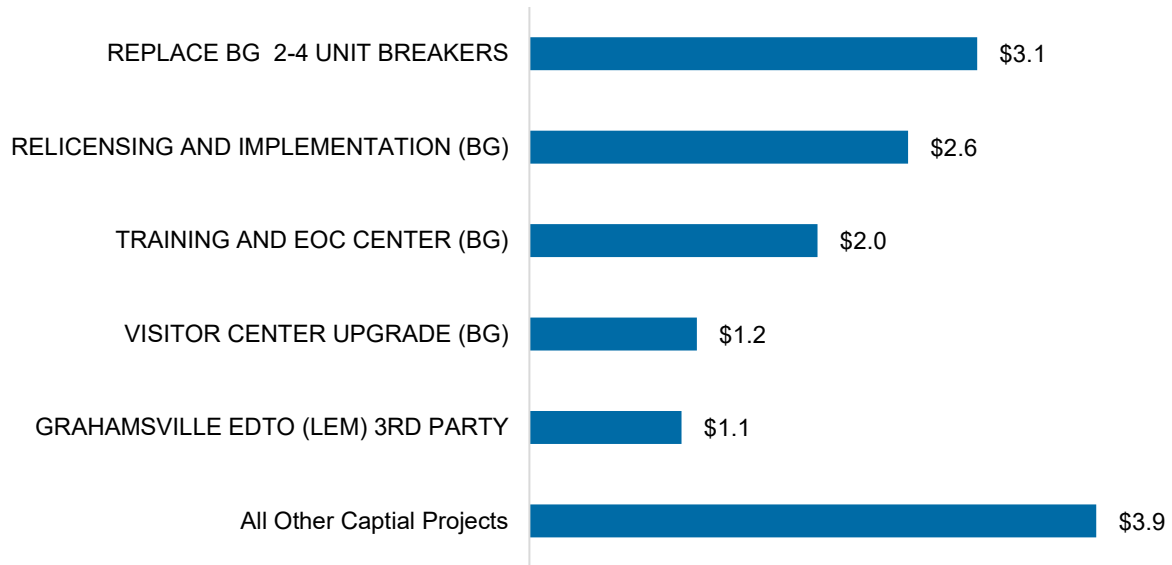
Niagara Capital Projects: \$103.8M



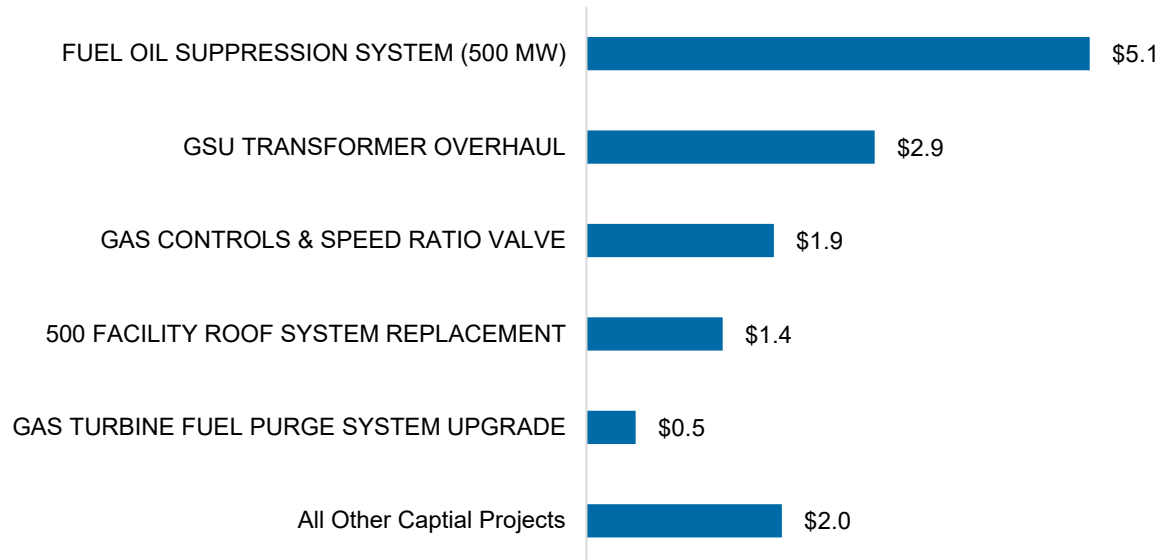
St. Lawrence Capital Projects: \$39.5M



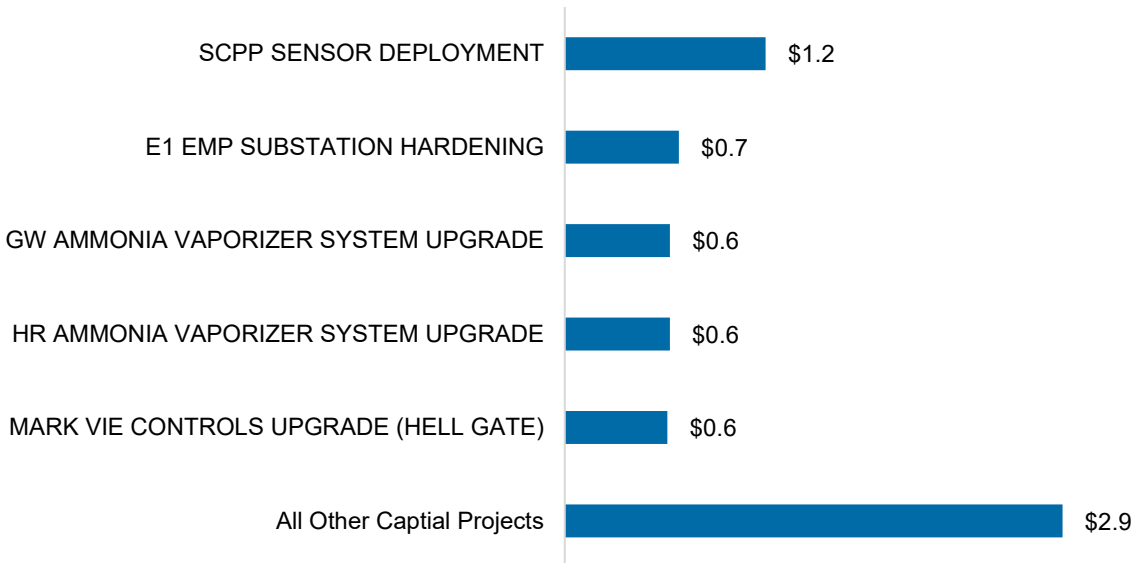
Blenheim-Gilboa Capital Projects: \$13.9M



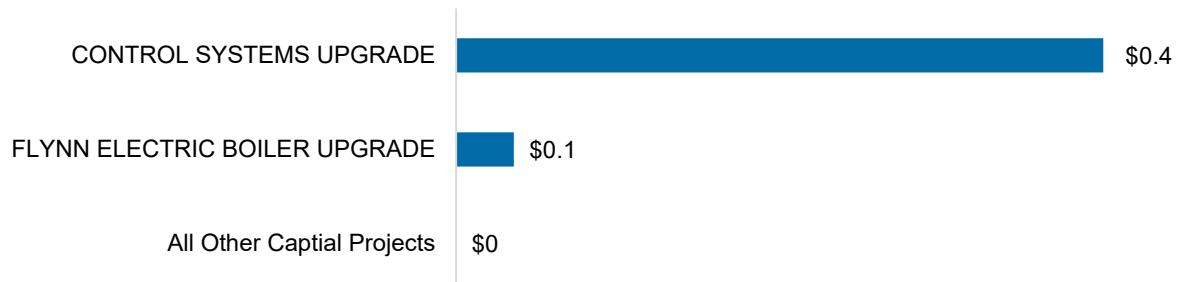
Zeltmann Capital Projects: \$13.8M



SCPP Capital Projects: \$6.5M

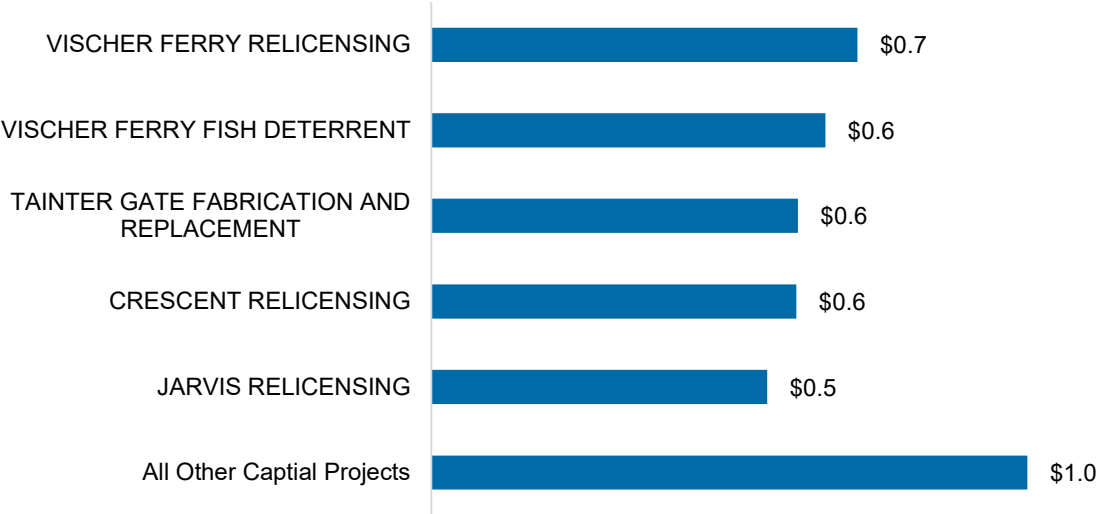


Flynn Capital Projects: \$0.5M

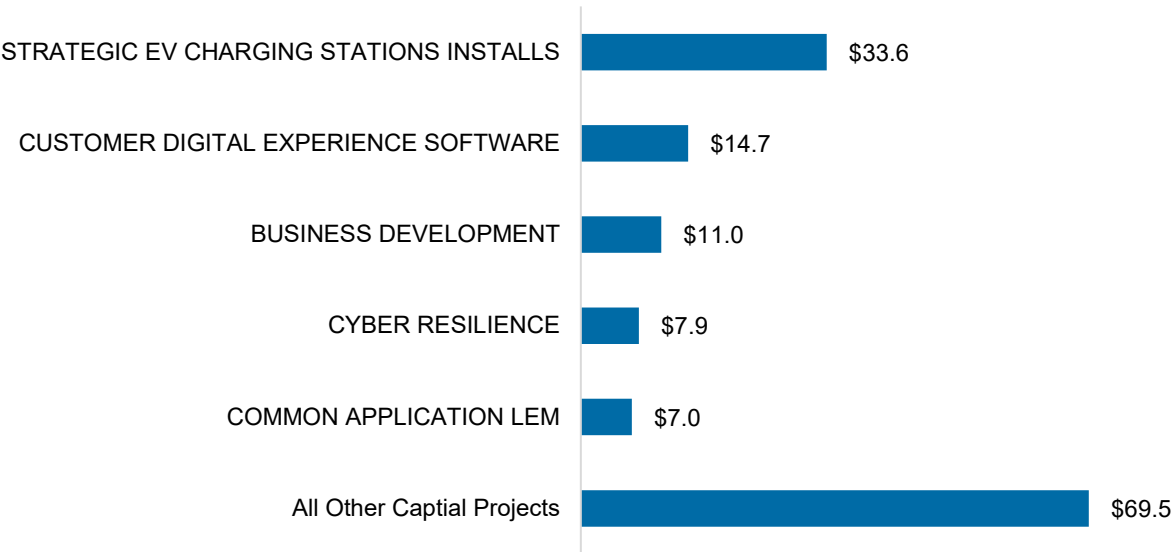




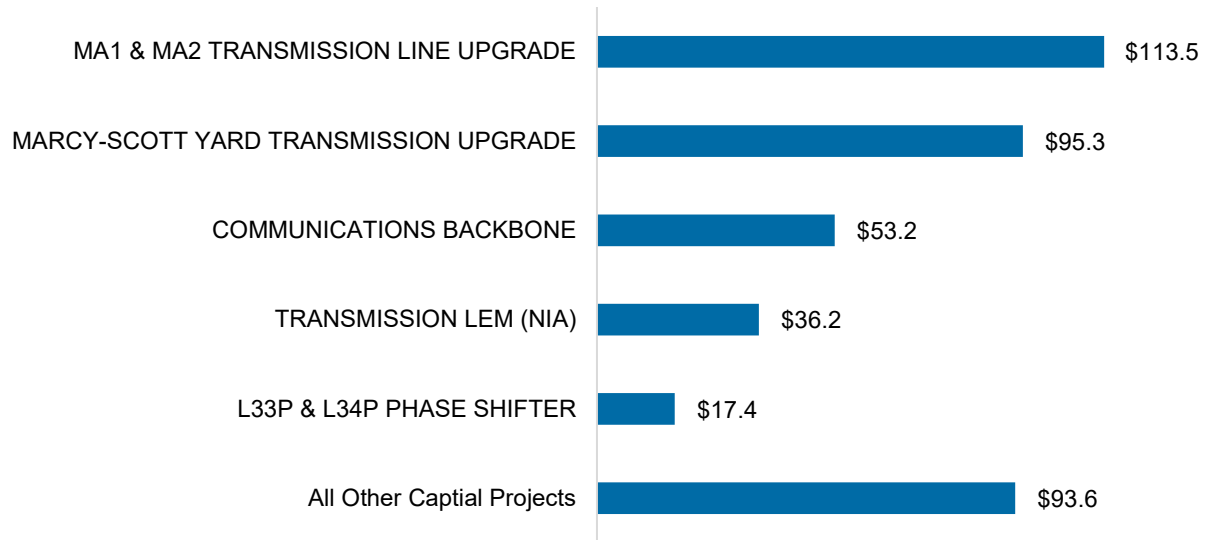
Small Hydros Capital Projects: \$4.1M



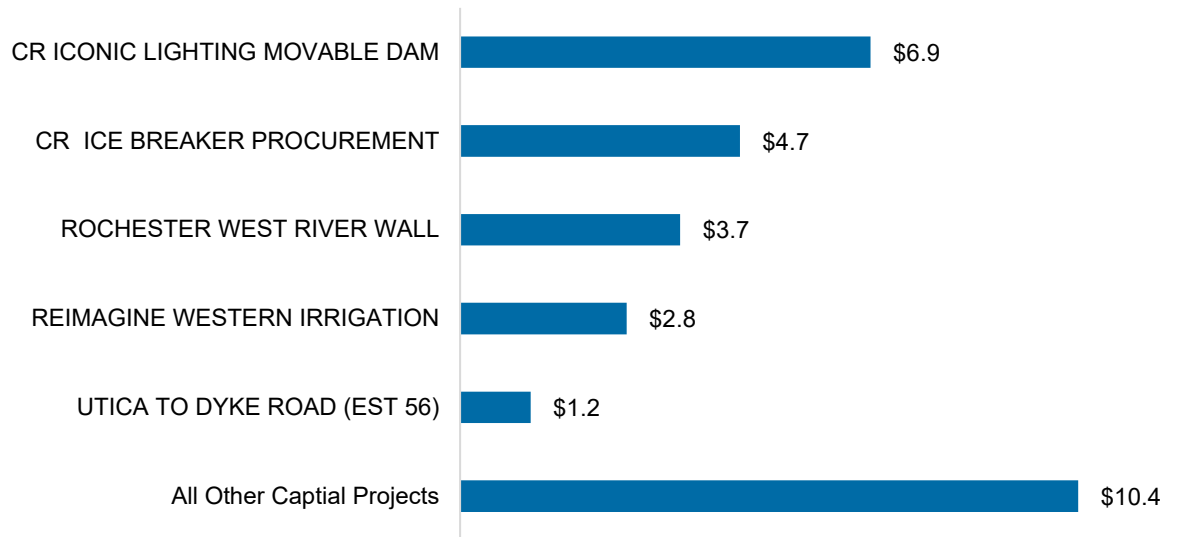
Headquarters Capital Projects: \$143.7M



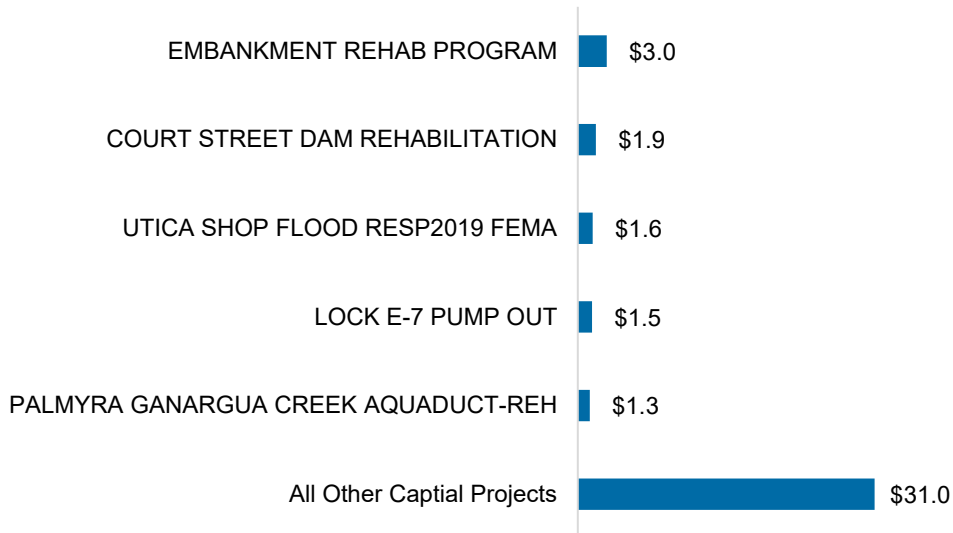
Transmission Capital Projects: \$509.4M



Reimagine Canals Capital Projects: \$29.7M

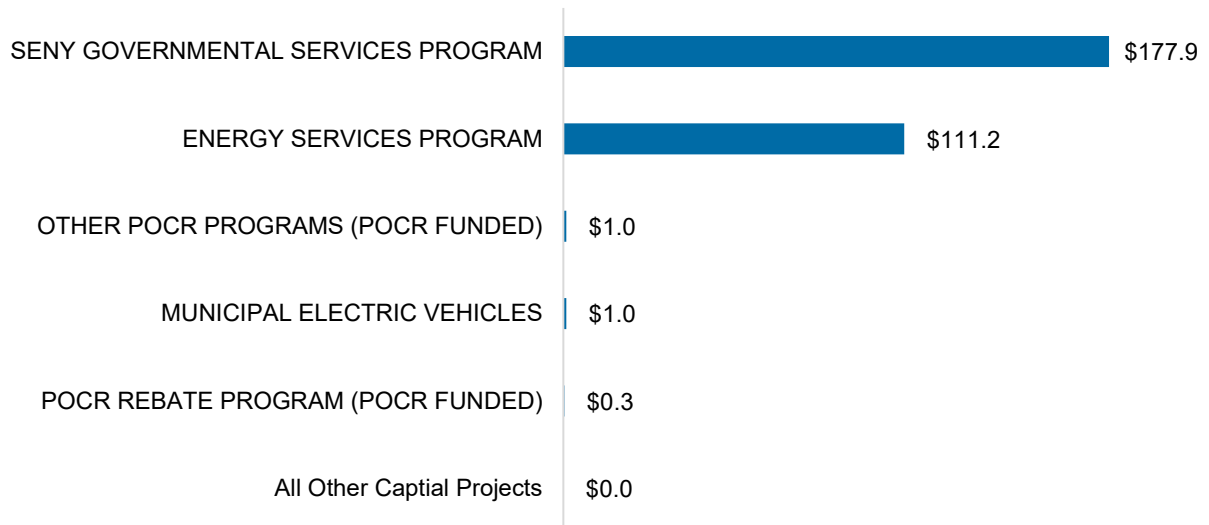


Canals Capital Projects: \$40.3M



2021 Energy Services Detail

Energy Services Capital Projects: \$291.4M



(n) Credit Discussion

Maintaining a strong relationship with the capital markets is critical to how NYPA operates. Fitch Ratings and S&P Global Ratings assign a AA rating to the Authority's long-term bonds, while Moody's Investor Services assigns a Aa2 rating to the Authority's long-term bonds, which is among the highest rating given to public electric utilities. This allows us to borrow money for capital projects at competitive rates, and to continue to offer low-cost financing to qualified customers to help fund impactful energy initiatives.

The Authority's long-term bonds are issued pursuant the "General Resolution Authorizing Revenue Obligations" (as amended and supplemented up to the present time, the Bond Resolution). The Bond Resolution covers all of NYPA's projects, which it defines as any project, facility, system, equipment or material related to or necessary or desirable in connection with the generation, production, transportation, transmission, distribution, delivery, storage, conservation, purchase or use of energy or fuel, whether owned jointly or singly by the Authority, including any output in which NYPA has an interest authorized by the Act or by other applicable state statutory provisions, provided, however, that the term "Project" shall not include any Separately Financed Project as that term is defined in the Bond Resolution.

NYPA has covenanted with bondholders under the Bond Resolution that at all times the Authority shall maintain rates, fees or charges, and any contracts entered into by the Authority for the sale, transmission, or distribution of power shall contain rates, fees or charges sufficient together with other monies available therefor (including the anticipated receipt of proceeds of sale of Obligations, as defined in the Bond Resolution, issued under the Bond Resolution or other bonds, notes or other obligations or evidences of indebtedness of the Authority that will be used to pay the principal of Obligations issued under the Bond Resolution in anticipation of such receipt, but not including any anticipated or actual proceeds from the sale of any Project), to meet the financial requirements of the Bond Resolution.

NYPA's revenues (excluding revenues attributable directly or indirectly to the ownership or operation for Separately Financed Projects and after deductions for operating expenses and reserves, including reserves for working capital, operating expenses or compliance purposes) are applied first to the payment of, or accumulation as a reserve for payment of, interest on and the principal or redemption price of Obligations issued under the Bond Resolution and the payment of Parity Debt issued under the Bond Resolution.

The Bond Resolution also provides for withdrawal for any lawful corporate purpose as determined by NYPA, including but not limited to the retirement of Obligations issued under the Bond Resolution, from amounts in the Operating Fund in excess of the operating expenses, debt service on Obligations and Parity Debt issued under the Bond Resolution, and subordinated debt service requirements.

To support our Aa2/AA/AA bond ratings and all of the advantages it offers the Authority and its customers, NYPA sets certain targets which are consistent with other peer-rated organizations. In May 2011, the Authority's Board of Trustees adopted a policy statement (Policy Statement) which relates to, among other things, voluntary contributions, transfers, or other payments to the State by the Authority after that date.

The Policy Statement provides, among other things, that in deciding whether to make such contributions, transfers, or payments, NYPA shall use as a reference point the maintenance of a debt service coverage ratio of at least 2.0 (this reference point should not be interpreted as a covenant to maintain any particular coverage ratio), in addition to making the other determinations required by the Bond Resolution. The Policy Statement may at any time be modified or eliminated at the discretion of the Board of Trustees.

**Certification of Assumptions and Method of Estimation for
Approved 2021 Budget and 2021-2024 Financial Plan in accordance
with the Comptroller's Regulation § 203.9 Certification**

December 9, 2020

To the Board of Trustees

Power Authority of the State of New York

To the best of my knowledge and belief after reasonable inquiry, I, the undersigned, certify that the "Authority's Method of Estimation of Approved 2021 Budget and 2021-2024 Financial Plan" is based on reasonable assumptions and methods of estimation and that the regulations enumerated in Part 203, "Budget and Financial Plan Format, Supporting Documentation and Monitoring - Public Authorities" have been satisfied.

Joseph Kessler

Chief Operating Officer

Adam Barsky

Chief Financial Officer



123 Main Street
White Plains, NY 10601-3170
www.nypa.gov





Date: December 9, 2020

To: THE CANAL CORPORATION BOARD OF DIRECTORS

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Adoption of the 2021 New York State Canal Corporation Budget

SUMMARY

The Canal Corporation Board of Directors (“Canal Board”) is requested to approve the 2021 Budget for the Canal Corporation, specifically including expenditures for the (i) 2021 Operations and Maintenance (“O&M”) Budget, (ii) 2021 Capital Budget, (iii) 2021 Canal Development Fund Budget (collectively, these items make Exhibit “A” and the “2021 Canal Corporation Budgets”).

The 2021 O&M and Capital Budgets set forth the expected expenses of the Canal Corporation and include the recommended expenditures in the following amounts:

<u>2021 Canal Corporation Budgets</u>	<u>(\$ million)</u>
O&M (Inc. CDF)	\$ 91.6
Capital	\$ 40.3

BACKGROUND

The Canal Corporation is authorized to operate, maintain, construct, reconstruct, improve, develop, finance, and promote the New York State canal system (the ‘Canal System’).

The 2021 Canal Corporation Budgets are intended to provide the Canal Corporation with the resources needed to meet the Canal Corporation’s overall mission and objectives.

DISCUSSION

2021 Canal Corporation O&M Budget

The 2021 O&M Budget of \$91.6 million reflects a concentration on the effective operation and maintenance of the Canal Corporation’s critical investments in the Canal System. This figure is comprised of \$90.1 million in O&M for Canal Corporation in 2021 and \$1.5 million for the Canal Development Fund in 2021.

The 2021 O&M Budget for Operations provides appropriations for baseline, or recurring work, along with programs which have been created to more safely and effectively manage on-going operations. Significant projects in 2021 are: State-Wide Public Safety (\$1.7 million), Fairport Lift Bridge (\$1.0 million), and USGS Department of Interior Gaging (\$0.5 Million).

2021 Canal Development Fund Budget

The 2021 Canal Development Fund Budget totals \$1.5 million, representing ongoing costs associated with the New York State Canal System Development Fund ("Canal Development Fund").

The Canal Development Fund, created by State Finance Law §92-u, is a fund established in the joint custody of the State Comptroller and the Commissioner of Taxation and Finance. The Canal Development Fund consists largely of revenues received from the operation of the Canal System. Monies of the Canal Development Fund, following appropriation by the legislature, is made available to the Power Authority, and may be expended by the Power Authority or the Canal Corporation for the maintenance, construction, reconstruction, development or promotion of the Canal System. In addition, monies of the Canal Development Fund may be used for the purposes of interpretive signage and promotion for appropriate historically significant Erie Canal lands and related sites. Monies from the Canal Development Fund are paid out by the State Comptroller on certificates issued by the Director of the Budget.

2021 Capital Budget

The 2021 Capital Budget totals \$40.3 million, representing on going, and new capital projects. Significant projects in 2021 are Embankment Rehabilitation Program (\$3.0 million), Court Street Dam Rehabilitation (\$1.9 Million), and the Lock E-7 Pump-out (\$1.5 Million).

FISCAL INFORMATION

The Canal Corporation's O&M, Capital and Canal Development Fund expenses are expected to be funded by transfers of funds from the Power Authority. Any transfers of funds from the Power Authority to the Canal Corporation would be subject to approval by the Power Authority's Board of Trustees and compliance with the Power Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented.

Canal Development Fund expenses are expected to be reimbursed to the Power Authority by the State Comptroller with monies held in the Canal Development Fund as discussed above.

RECOMMENDATION

The Chief Financial Officer and the Finance Committee recommends the Canal Board approve the 2021 Canal Corporation Budgets, specifically including the expenditures for (i) 2021 Operations and Maintenance Budget, (ii) 2021 Capital Budget, and (iii) 2021 Canal Development Fund Budget, each as discussed herein.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the Canal Corporation Board of Directors approve the 2021 Canal Corporation Budgets, specifically including the expenditures for the (i) 2021 Operations and Maintenance Budget, (ii) 2021 Capital Budget, and (iii) 2021 Canal Development Fund Budget, each as discussed in the attached memorandum of the President and Chief Executive Officer; and be it further

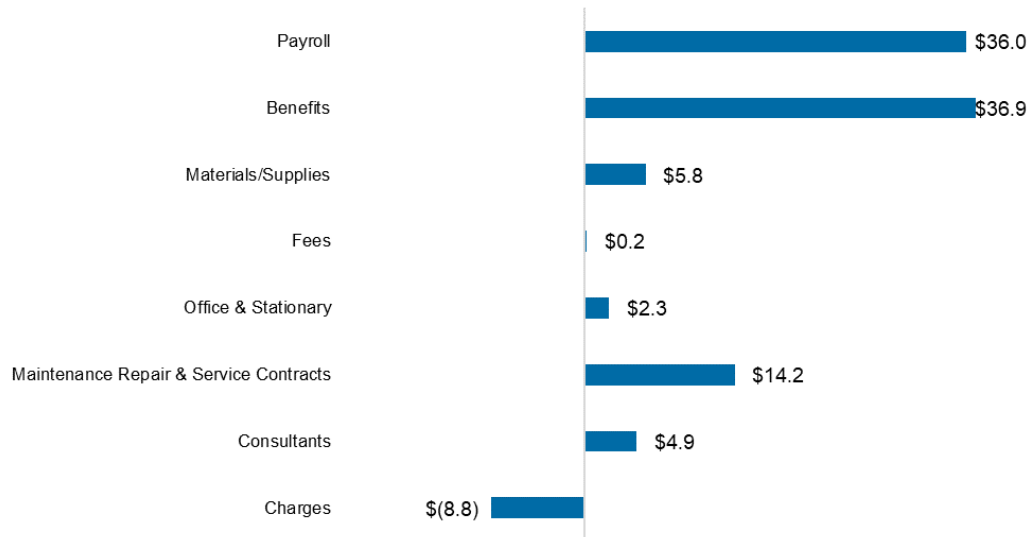
RESOLVED, That the Canal Corporation Board of Directors acknowledges that any transfers of funds from the Power Authority to the Canal Corporation would be subject to approval by the Power Authority's Board of Trustees and compliance with the Power Authority's General Resolution Authorizing Revenue Obligations,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

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



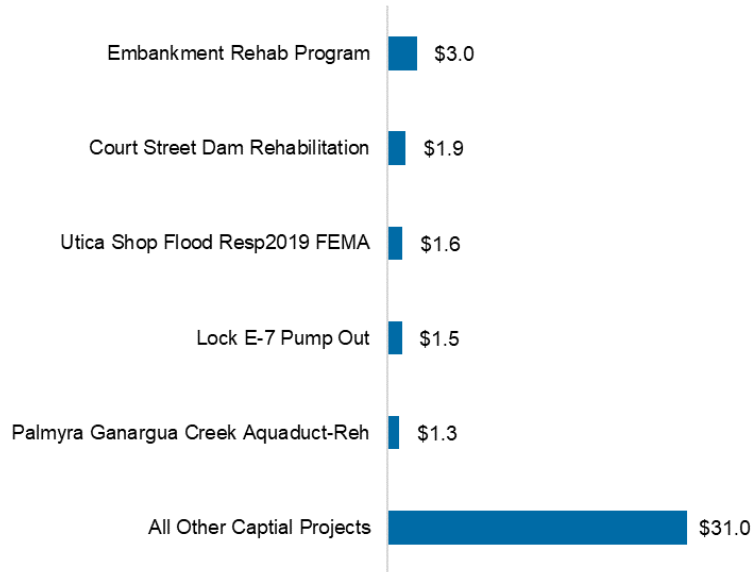
2021 O&M BUDGET FOR CANAL CORPORATION

**Canal Corporation O&M by Cost Element Grouping -
\$91.6M**



2021 CAPITAL BUDGET FOR CANAL CORPORATION

Canals Capital Projects: \$40.3M





Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Release of Funds in Support of the
New York State Canal Corporation

SUMMARY

The Trustees are requested to authorize the release of an additional up to \$22.9 million in funding to the New York State Canal Corporation ("Canal Corporation") to support the operations of the Canal Corporation in calendar year 2021. The amount requested is 25% of the Canal Corporation's 2021 O&M Budget.

The Finance Committee, at its November 17, 2020 meeting, recommended that the Trustees authorize the release of this additional funding.

BACKGROUND

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

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

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

DISCUSSION

With this authorization, the Trustees will have authorized the release of a cumulative \$22.9 million, an amount equal to 25% of the Canal Corporation's 2021 O&M Budget. With regard to Canal Corporation's operating expenses in excess of \$91.6 million in calendar year 2021, staff is not requesting any action at this time, but will return to the Board to request additional releases as needed.

Staff has reviewed the effect of releasing up to an additional \$22.9 million in funding at this time on the Authority's expected financial position and reserve requirements. In accordance with the Board's Policy Statement adopted May 24, 2011, staff calculated the impact of this release, together with the last 12 months releases including (i) the release of \$30 million in Recharge New York Discounts for 2020, (ii) the release of up to \$91.0 million in Canal-related operating expenses for 2020, (iii) the release of up to \$2 million in Western NY Power Proceeds net earnings, and (iv) the release of up to \$1 million in Northern NY Power proceeds net earnings, on the Authority's debt service coverage and determined it would not fall below the 2.0 reference level. Based on the Authority's Four-Year Budget and Financial Plan, the 2.0 reference point level is forecasted to be met at each year-end of the forecast period 2021-2024. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to release such amounts from the trust estate created by the Bond Resolution consistent with the terms thereof.

FISCAL INFORMATION

Staff has determined that sufficient funds are available in the Operating Fund to release an additional up to \$22.9 million in funding to support the operation of the Canal Corporation in calendar year 2021. Staff has further determined that the amounts presently held in reserves in the Operating Fund are adequate for the purposes specified in Section 503.2 of the Authority's Bond Resolution and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution.

The expenses associated with the operations of the Canal Corporation for calendar year 2021 were included in the Canal Corporation's 2021 O&M Budget and the Authority's 2021 Budget.

RECOMMENDATION

The Chief Financial Officer and the Finance Committee recommend that the Trustees authorize the release of an additional up to \$22.9 million in funding to the Canal Corporation to support the operations of the Canal Corporation in calendar year 2021. The Chief Financial Officer further recommends that the Trustees affirm that such release is feasible and advisable, that the amounts presently set aside as reserves in the Operating Fund are adequate for the purposes specified in Section 503.2 of the Authority's Bond Resolution, and that the amount of up to \$22.9 million is not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the Trustees authorize the release of an additional up to \$22.9 million in funding to the Canal Corporation to support operations of the Canal Corporation in calendar year 2021, as discussed in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the amounts presently set aside as reserves in the Operating Fund are adequate for the purposes specified in Section 503.2 of the Authority's Bond Resolution, that the amount of up to \$22.9 million in funding as described in the foregoing report is not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented, and that the release of such amount is feasible and advisable; and be it further

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

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

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



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

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

SUMMARY

The Trustees are requested to approve the release of \$30.0 million in funds during 2021 in support of the monthly Residential Consumer Discount Program created in connection with the Recharge New York ("Recharge NY") Power Program, as authorized by Chapter 60 of the Laws of 2011 ("Chapter 60"). The funds are to be released monthly at a level of \$2.5 million per month. It is estimated that the \$30.0 million authorized for the Residential Discounts in 2021 will be entirely off-set from (1) Recharge NY hydropower allocated and sold to Recharge NY customers, and (2) unallocated Recharge NY hydropower sold into the wholesale market.

The Finance Committee is requested to recommend that the Trustees approve the release of \$30 million in funds during 2021 in support of the Residential Consumer Discount Program.

BACKGROUND

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

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

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

DISCUSSION

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

As part of the Recharge NY Power Program, the Authority, on August 1, 2011, withdrew all 455 MW of the firm hydroelectric power previously sold to certain utility companies for the benefit of their residential consumers. To mitigate the price impacts of this withdrawal on the residential consumers, the Authority was authorized by Chapter 60, as deemed feasible and advisable by the Trustees, to fund monthly “Residential Consumer Discount Program” payments for the benefit of such consumers on a declining schedule. For each of the first three years following the withdrawal, the Authority is authorized to provide \$100 million per year to fund the discounts. In years four and five following the withdrawal, the Authority is authorized to fund discounts of \$70 million and \$50 million, respectively. Beginning in year six following the withdrawal, and for each year thereafter, the Authority is authorized to fund discounts of \$30 million per year.

The Authority is authorized to use the revenues from the sale of the withdrawn power, together with any other funds of the Authority as the Trustees may deem feasible and advisable, to support the Residential Consumer Discount Program. The net cost to the Authority of the Residential Discounts after taking into account the resale of the power following the withdrawal from its prior use to supply certain utility companies for the benefit of their residential consumers, is projected to be entirely off-set from (1) Recharge NY hydropower allocated and sold to Recharge NY customers, and (2) unallocated Recharge NY hydropower sold into the wholesale market during 2021. Given the volatility in market prices, however, there is no assurance that the sale of this power will produce sufficient revenues to cover this amount of the residential discounts.

The Trustees have previously approved the release of funds in support of the Residential Consumer Discount Program, the most recent action being taken at the January 2020 meeting. Under consideration today are payments for 2021. Staff intends to return to the Trustees with a recommendation as to the release of any future amounts related to the Residential Consumer Discount Program based on how the overall program is progressing as well as the financial circumstances of the Authority at the time such payments are to be considered.

Staff has reviewed the effects of the \$30.0 million in anticipated payments of the Residential Consumer Discount Program on the Authority’s projected financial position and reserve requirements. In addition, in accordance with the Board’s Policy Statement, staff calculated the impact of this release, together with the last 12 months’ releases, including (i) the release of up to \$91.0 million in Canal-related operating expenses for 2020, (ii) the release of up to \$24.0 million in Canal-related operating expenses for 2021 authorized on December 9, 2020; (iii) the release of up to \$1 million in Northern NY Power Proceeds net earnings authorized in September 2020, and (iii) the release of up to \$2 million in Western NY Power Proceeds net earnings authorized in September 2020, on the Authority’s debt service coverage ratio and determined it would not fall below the 2.0 reference level. Based on the Authority’s Four-Year Budget and Financial Plan, the 2.0 reference point level is forecasted to be met for each year-end of the forecast period 2021-2024. Given the current financial condition of the Authority, its

estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to provide \$30.0 million of the Residential Consumer Discount Program at this time.

FISCAL INFORMATION

Staff has determined that sufficient funds are available in the Operating Fund to provide \$30.0 million in support for the Residential Consumer Discount Program authorized by Chapter 60 at this time, and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution. The release of \$30.0 million associated with the Residential Consumer Discount Program payments was anticipated and reflected in the Power Authority's 2021 Operating Budget approved by the Trustees at their December 9, 2020 meeting. The net cost to the Authority of the Residential Consumer Discounts, after taking into account the resale of the power following the withdrawal from its prior use to supply certain utility companies for the benefit of their residential consumers, is projected to be entirely off-set from Recharge NY hydropower allocated and sold to Recharge NY customers and unallocated Recharge NY hydropower sold into the wholesale market during 2020. These monthly payments will be recorded as an expense at the time of payment.

RECOMMENDATION

The Chief Financial Officer and the Finance Committee recommend that the Trustees approve that the release of \$30.0 million during 2021 to support the Residential Consumer Discount Program.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the Trustees authorize the release of \$30.0 million from the Operating Fund during 2021 to support the monthly Residential Consumer Discount Program as authorized by Chapter 60 of the Laws of 2011 and as discussed in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the amount of \$30.0 million to be used for the Residential Consumer Discount Program described herein is not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

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

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

December 9, 2020

4f. Governance Committee Report: (Chair Dennis Trainor)

[Oral Report Only]



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Ten-Point Racial Justice and Equity Plan – Authorization

SUMMARY

The Trustees are requested at their December 9, 2020 meeting to approve the Authority's Ten-Point Racial Justice and Equity Plan ("Plan").

The Plan aims to move the Authority towards greater diversity, equity and inclusion in its workforce, supplier base, and community impact through a variety of internal and external initiatives that will ultimately increase the representation of Blacks across NYPA and the energy industry. Through this Plan, NYPA will increase its investment in the Office of Civil Rights and Inclusion, and the Environmental Justice and Supplier Diversity programs from \$5 million to \$22.265 million.

The Governance Committee, at its December 1, 2020 meeting, unanimously agreed and recommended that the Authority's Ten-Point Racial Justice and Equity Plan and incremental investments to achieve the outcomes associated with the Plan be increased from \$22.265 million to \$25million.

BACKGROUND

In 2017, the Authority established the Office of Civil Rights and Inclusion ("OCRI") to lead its diversity, equity and inclusion ("DEI") initiatives. Initially OCRI focused on employee engagement around DEI in order to build a critical mass of champions as a precursor to embedding future DEI programs successfully. The program aligns with industry best practices with focus on three main pillars: Building a Diverse Workforce, Leadership Accountability and Recruitment and Development.

Following the George Floyd murder and the national outrage and dialogue it precipitated on systemic racism in our society, President Quinones engaged with employees through a Special All-Hands Meeting on June 1, and conversations with representatives of NYPA's Multicultural Employee Resource Group. As a result, President Quinones tasked a Working Group comprised of members of the Office of Civil Rights and Inclusion, Environmental Justice & Sustainability, Human Resources and Talent Development, Labor Relations, and the Chief of Staff with developing recommendation for concrete steps that NYPA could take to further racial justice and equity, establishing NYPA as a leader in the public utility industry.

Indeed, from Albany to New York City, historic moments of inclusion have occurred, and New York state has taken concrete steps to address systemic racism and establish social justice:

- Governor Andrew M. Cuomo signed landmark legislation in June to create greater police accountability.
- New York City disbanded its local anti-crime units amid activist complaints that the plainclothes police were undermining trust in the community following a "disproportionate percentage of complaints against them and shootings," according to the city's Police Commissioner.

- Governor Cuomo declared June 19, 2020 “Juneteenth” a State Holiday — The holiday is meant to commemorate the emancipation of 4 million slaves, but particularly the small handful who were not aware that emancipation had come months earlier.

In addition, discussions abounded around the role of corporations in perpetuating the social and economic inequity experienced by Black and other people of color. According to McKinsey, the racial wealth gap in the US is persistent and creates two negative impacts for Black families:

- The first is the human impact – the health and well-being of Black Americans and Black communities as they struggle to have the security needed to thrive in our economy.
- And second, is the economic impact – where it is known that this gap not only affects Black Americans but also impeded growth of the US economy as a whole.

According to the WSJ article – “Your Company Says Diversity Is a Higher Priority, Now What?” “This is a matter of fixing a broken system. Fostering diverse and inclusive workplaces could also boost companies in big ways, including improving financial performance and sparking innovation, research shows. Just 0.8% of Fortune 500 chief executives and 8% of professionals are Black, according to data analyzed by the Center for Talent Innovation.”

Historically, as the largest public utility in the US, the Authority has led by example and served as a model for the energy industry. Following the call to action to address racial inequality and the Governor’s activist lead, the Authority joined with the American Association of Blacks in Energy (“AABE”) and its commitment to increase representation of African Americans in employment, leadership, business contracting and workforce development in the energy sector.

At the September 23, 2020 meeting, Management presented a holistic, Ten-Point Racial Justice and Equity Plan with internal and external facing commitments intended to build a more diverse and equitable workplace, leverage NYPA’s resources and experience to increase the number of MWBEs supporting the clean energy transition, and increase the pipeline of clean energy workers through the expansion of NYPA’s community STEM programs and scholarships that afford students in Environmental Justice communities with opportunities to acquire industry experience. Management provided details of the Plan, a 3-year endeavor with an estimated incremental investment of \$5 million that in effect doubled the investment in Diversity Equity and Inclusion to \$10 million.

However, a fully engaged and committed Governance Committee challenged Management to enhance the Plan i.e. the investment, deliverables, and outcomes necessary, and ensure the undertaking is as aggressive, robust, and bold as possible.

It is important to note that the Office of Civil Rights and Inclusion is not alone in driving the tenets of diversity, equity and inclusion across the Authority. Indeed, key stakeholders such as Talent Development, Employee Relations and other business units, together with people leaders across the Authority drive diversity, equity and inclusion through career development initiatives, targeted training modules, one on one coaching and developing individual contributors. In effect, over 150 staff in cross functional roles drive some 85,000+ hours attributed to developing and expanding the Authority’s pool of inclusive leaders.

We believe the Plan we are presenting for your consideration is aggressive and bold.

DISCUSSION

The Trustees are requested to adopt a Ten-Point Racial Justice and Equity Plan aimed at building a more diverse, equitable and inclusive workforce.

The Plan, now a 5-year program, consists of the following internal and external commitments:

Internal Commitments

1. *Reaffirm NYPA's commitment to building and maintaining a diverse, equitable and inclusive culture.* The Plan will establish DEI as one of NYPA's top priorities and values and will embed it into NYPA's VISION2030 Strategy; create a DEI communications strategy and an organized working group to inform and direct the Authority's overall DEI strategy.
2. *Ensure that NYPA's processes, policies and procedures are transparent and free from bias.* Through benchmarking and data analysis, the Authority will be informed on ways to shape its strategy and recommendations on how to become more diverse and inclusive as well as track progress and drive reports for leadership. Employees will enjoy greater transparency and access to information to better manage their career path and experience in the workplace. For example, the AAO and Employee Relations processes will be amplified, and a training module related thereto established. The ERG governance will be formalized to grant employees greater ownership and direct benefits associated with being an active ERG leader. In addition, job categories, job descriptions and career paths will be re-engineered to create consistency and easily accessible clear career paths across the organization.
3. *Expand ongoing training to NYPA employees on antiracism, unconscious bias, microaggression, and cultural competency.* Ongoing training, expanded to include civility and respect, will build cultural competency and create psychological safety among staff who can engage in courageous conversations about racism and other difficult topics, as well as develop a culture of upstanders against racism and bias. The Plan will also facilitate new hiring and selection processes and training.
4. *Create a Chief Diversity, Inclusion and Equity Officer position, reporting to the President and CEO and to the Chief Human Resources and Administration Officer – and increase investment in the office of Civil Rights and Inclusion.* To ensure the DEI goals of the Plan and NYPA are met, the DEI leader must be empowered with the authority and flexibility to engage at all levels of the organization as the primary advocate for the advancement of diversity, equity and inclusion. Adequate resources, such three additional full-time staff, are critical if the DEI program is to be successfully advanced.
5. *Invest in NYPA's Black employees and create pathways for career development and upward mobility.* The Authority will create specific and measurable development plans for each employee that takes into account current and future opportunities and provides stretch assignments. In addition, strategic partnerships to develop and build management and leadership capabilities and cross-functional knowledge necessary to lead successfully.
6. *Cast a wider net and secure a diverse slate of applicants for vacancies by partnering with professional organizations such as the American Association of Blacks in Energy, Historically Black Colleges and Universities and local and national colleges and universities.* The Authority will design a digital presence with the aim of showcasing NYPA's diverse talent and attracting increased interest and applications from diverse talent.
7. *Partner and support NYPA's employee unions at the national, regional, and local levels and invest in their diversity, equity and inclusion programs and initiatives.*

External Commitments

8. *Leverage NYPA's experience, resources and purchasing power to build capacity and access to MWBE firms.* The Plan will strengthen NYPA's brand as a diverse organization that welcomes and encourages a diverse supply chain with greater opportunities for MWBEs through a new Mentor-

Protégé Program. In addition, the Plan will boost the ability of diverse firms to qualify for secure bonding/capital access and work as Prime Contractors on NYPA/Canals projects. The Authority will be able to monitor increased spending with diverse firms by establishing goals and KPIs for business units to meet. The Supplier Diversity Program advance opportunities for MWBEs by developing a strategic program roadmap, launching an enterprise-wide training program and hosting regional supplier diversity events.

9. *Broaden NYPA's community-based STEM, student internship and mentorship programs to increase the pipeline of utility and clean energy workers of tomorrow – including the creation of a targeted college scholarship program.* The Plan will build a pipeline and develop BIPOC students as employees for tomorrow by establishing NYPA's P-Tech Program for students in Environmental Justice host communities. Building industry and educational partnerships to award regional scholarships to students in Environmental Justice host communities will also boost the pipeline of future NYPA and energy industry employees. Ultimately, the Plan through Environmental Justice will establish 100 paid internships sourced from 10 P-Tech Partner schools as well as 20 annual scholarships with industry and community partners.
10. *Create an enterprise-wide employee service program dedicated to understanding racial justice through our clean energy business, such as community solar for example, and energy sustainability work in environmental justice communities.* The Plan will provide NYPA employees with experience in, and exposure to diverse communities providing firsthand knowledge on how to facilitate, lead and partner with different communities by enhancing the existing Paid Volunteer Policy to include an expanded comprehensive monthly calendar of volunteer opportunities.

FISCAL INFORMATION

The estimated incremental investment for the Plan is approximately \$25,000,000 over five years. Detailed requests and justifications for funding of specific components of the Plan will be presented during future budget proposals. Funding, as may be approved for each of the components, will be provided from the Operating Fund.

RECOMMENDATION

The Chief Diversity, Equity and Inclusion Officer and the Governance Committee recommend that the Trustees approve the Authority's Ten-Point Racial Justice and Equity Plan and incremental investments of \$25 million to achieve the outcomes associated with the Plan as described above.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the Trustees hereby authorize the Authority's Ten-Point Racial Justice and Equity Plan and incremental investments of \$25 million to achieve the outcomes associated with the Plan as recommended in the attached memorandum of the President and Chief Executive Officer; and be it further

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



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: NYPA Guidelines for Procurement Contracts

SUMMARY

The Trustees are requested to approve the changes to NYPA's Guidelines for Procurement Contracts ("Guidelines") dated December 9, 2020 (Exhibit "A"). The Governance Committee at their December 1, 2020 meeting adopted a resolution recommending that the Trustees adopt the Guidelines. An Executive Summary is set forth in Exhibit "A-1".

BACKGROUND

Section 2879 of the Public Authorities Law ("PAL") governs the administration and award of procurement contracts equal to or greater than \$5,000. Section 2879 of the PAL requires public authorities to adopt comprehensive guidelines detailing their operative policy and instructions concerning the use, awarding, monitoring, and reporting of procurement contracts. The Authority's Guidelines were adopted by the Trustees at their meeting of October 31, 1989 and were implemented as of January 1, 1990. The Guidelines have been amended as deemed advisable and necessary, and reviewed and approved annually by the Board since that date, most recently on March 31, 2020.

DISCUSSION

The Guidelines, effective December 9, 2020, are amended in accordance with certain provisions of State Finance Law §§ 139-j and 139-k, New York Public Officers Law § 73(8), and as further set forth in Exhibit "A."

The Guidelines generally describe the Authority's process for soliciting proposals and awarding contracts. Topics detailed in the Guidelines include solicitation requirements, evaluation criteria, contract award process, contract provisions, change orders, Supplier Diversity including Minority- and Women-owned Business Enterprise ("MWBE"), Service-Disabled Veteran-Owned Business Enterprises ("SDVOB"), and NYS Small Business Enterprises ("SBE") requirements, employment of former officers and reporting requirements.

FISCAL INFORMATION

There will be no financial impact on the Authority.

RECOMMENDATION

The Executive Vice President and Chief Financial Officer, the Vice President – Strategic Supply Management and the Governance Committee recommend that the Trustees approve the Authority's Guidelines for Procurement Contracts, as amended.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That pursuant to Section 2879 of the Public Authorities Law and NYPA's Procurement Guidelines, the guidelines for the use, awarding, monitoring and reporting of procurement contracts as amended and attached hereto as Exhibit "A," are hereby approved; 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.

NYPA GUIDELINES FOR PROCUREMENT CONTRACTS

1. PURPOSE

These Guidelines for Procurement Contracts (“Guidelines”) set forth the policy of the Authority regarding the solicitation and awarding of Procurement Contracts. The provisions of Article 4-C of the Economic Development Law, §§ 2879 and 2879-a of the Public Authorities Law, Articles 15-A and 17-B of the Executive Law and §§ 139-j and 139-k of the State Finance Law were considered in developing these Guidelines. Departments and facilities may adopt further procedures to implement these Guidelines.

2. DEFINITIONS

- A. “Capital projects” generally refer to the acquisition or construction of new assets, the replacement and/or betterment of existing assets, equipment, or property (including those of NYPA’s customers, where authorized). Betterment refers to an extension of the useful life or improvement in the efficiency and/or capacity of the asset, equipment, or property.
- B. “Contact” is any oral, written, or electronic communication with the Authority under circumstances where a reasonable person would infer that the communication was intended to influence the Authority’s conduct or decision regarding the procurement.
- C. “Discretionary Purchase” is a procurement made below statutorily established monetary threshold amounts (e.g., not exceeding \$500,000 for the purchase of commodities and/or services from Small Business Enterprises or NYS-certified MWBE firms, and without a dollar cap for SDVOB firms as further set forth in Sections 3.D and 3.K.5-7) and at the discretion of the Authority, without the need for a formal competitive bid process. For the purpose of determining whether a purchase is within the discretionary thresholds, the aggregate amount of all purchases of the same commodities and/or services to be made within the 12-month period commencing on the date of purchase shall be considered. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities and/or services from the same provider within the 12-month period commencing on the date of the first purchase to an amount greater than \$500,000, pursuant to State Finance Law § 163.
- D. “Disadvantaged Business Enterprise” (DBE) is a for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it, pursuant to the definition found in 49 C.F.R Part 26.

- E. "Evaluation of Proposals," as further outlined in Section 4 below, includes evaluating factors the Authority's consideration of a bidder's skill, judgment, and business integrity.
- F. "Goods" include equipment, material and supplies of any kind. Procurement Contracts that include both equipment and services may be classified as Equipment," where 60% or more of the total projected contract value will be for the purchase of equipment, material or supplies.
- G. "Minority- and Women-owned Business Enterprise" ("MWBE") is defined as any New York State-certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans, Asians, Pacific Islanders and/or women, and as further described in the Authority's Supplier Diversity Program Policy and Procedures and Executive Law Article 15-A, and pursuant to the definition found in Executive Law § 310.
- H. "Non-Procurement Contracts" include contracts under \$5,000, contracts for energy with or without environmental attributes included, capacity, renewable energy certificates, ancillary services, transmission, distribution or related services in support of providing service to Authority customers; contracts for differences; financial hedge contracts (including but not limited to swaps, calls, puts or swap options) or credit rating services; certain insurance and healthcare products that do not readily lend themselves to a competitive solicitation. In addition, Non-Procurement Contracts include direct and indirect placement of advertisements with radio, television, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and procurement activities conducted or sponsored by such organizations in which the Authority participates.
- I. "Operation and Maintenance" ("O&M") generally refers to the work or services necessary to keep the plants, transmission lines, and other equipment and facilities to include NYPA customers, where authorized, (collectively referred to generally as an "asset") in optimal operating condition and/or to restore an asset to its productive capacity. This includes the cost of inspecting, testing, analyzing and reporting on the condition of the asset required to determine repairs or replacement, as well as costs associated with the normal operation and administration of NYPA's production/transmission facilities and energy programs.
- J. "Procurement Contracts" are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Authority's White Plains office, facilities, operations and maintenance ("O&M") and capital projects (as defined in Section 2.I. and 2. A., respectively), including but not limited to goods such as office supplies, major electrical

equipment, construction and maintenance work and services as more fully described in Section 2.F and 2.M.

- K. "Purchase Order Release" is a single order issued for goods or services in accordance with the terms and conditions of a Value Contract.
- L. "Relative" is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee's grandparents or the spouse of such descendant, as referred to in Subsection 9.E.1 of these Guidelines. The term Relative may include, but is not limited to, the relationship of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law or son-in-law.
- M. "Services Contracts" are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships, or firms who are not and do not employ officers or employees of the Authority) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services, and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by a consultant for the Authority), and construction management. Non-Personal services include but are not limited to skilled or unskilled temporary personnel, including clerical office staff, technicians, or engineers working under Authority's supervision, maintenance, repairs, and printing services. Construction consists of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient Authority staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of the aforementioned factors.
- N. "Single-Source" is a procurement in which the Authority, upon written findings setting forth material and substantial reasons, may award a contract (or amendment to a contract) to one offeror over another that can supply the goods or services.
- O. "Small Business" (or Small Business Enterprise, "SBE"), pursuant to Executive Law § 310 and as used in these Guidelines, unless otherwise indicated, is a business that has a significant business presence (as defined at 5 NYCRR 140.1) in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.

- P. “Software” includes on-premise applications as well as Software-as-a-Service (SaaS) which is defined as a software distribution model in which a third-party provider hosts application and makes access available to customers over the Internet. “Software” shall be considered “Equipment” where such term is used throughout these Guidelines.
- Q. “Sole Source” is a procurement in which only one offeror is capable of supplying the required goods or services.
- R. “Service-Disabled Veteran-Owned Business” (“SDVOB”) is a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is at least 51% owned by one or more service-disabled veterans; in which such ownership is real, substantial and continuing, and also has and exercises the authority to control independently the day-to-day business decisions of the enterprise; is a Small Business and is certified by the New York State Office of General Services, as further set forth in Article 17-B of the Executive Law.
- S. “Value Contract” Master Service Agreement for goods and services with specific target value and term.

3. SOLICITATION REQUIREMENTS

- A. Preparation of the solicitation of proposals for Procurement Contracts is the joint responsibility of the White Plains Strategic Supply Management (“SSM”) Department, or the facilities’ SSM Departments, and the initiating department. Except as otherwise authorized by these Guidelines, a Request for Proposals (“RFP”) or Request for Quotations (“RFQ”) will be made available to a minimum of three providers and/or firms (if available) for purchases valued under \$50,000 and a minimum of five providers and/or firms (if available) for purchases valued at \$50,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance.
- B. Prospective bidders on Procurement Contracts may be prequalified by invitation advertised in the same manner as an RFP/RFQ (referred to as a Request for Qualifications and/or Request for Information (“RFI”). In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence (including, but not limited to, the bidder’s skill, judgment and business integrity) to supply the particular goods and/or perform the particular services required.
- C. The Authority may withdraw any pending solicitation (including but not limited to RFPs and RFQs) at any time, for cause or no cause. Any person or entity submitting any responsive document to the Authority does so at its own cost or expense and will not be reimbursed by the Authority for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized Authority representative.
- D. In order to promote the use of Minority- and Women-owned Business Enterprises (“MWBEs”), Service-Disabled Veteran-Owned Businesses (“SDVOBs”) and Small Business Enterprises (“SBEs”), the Authority will solicit offers from such firms known to have

experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definitions of NYS-certified MWBE or SDVOB firms and SBEs are set forth in Sections 2.G, 2.R and 2.O, respectively.

To foster increased use of MWBEs and SBEs, a single proposal may be sought, negotiated and accepted for discretionary purchases of goods and/or services not exceeding \$500,000, in the aggregate including all amendments, from a NYS-certified MWBE or an SBE that offers a reasonable price for such goods and/or services. An SDVOB may be awarded on the basis of a single proposal that offers a reasonable price for such goods and/or services without a dollar cap. The award of such proposal requires the written approval of the Vice President, SSM. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall also necessitate the written approval of the Vice President, SSM. Furthermore, the award of such Procurement Contracts will be noticed on the *Contract Reporter* website, as further set forth in Section 3.H.

E. It is the policy of New York State to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. The Authority will endeavor to promote such participation and to comply with the applicable statutory provisions. In furtherance of Public Authorities Law § 2879, the following definitions and actions apply:

1. “New York State Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form of exchange, goods sought by the Authority that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by the Authority that are substantially performed within New York State as further described in Public Authorities Law § 2879.
2. “New York State resident” is a person who maintains a fixed, permanent, and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law § 2879.
3. “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by the Authority that are substantially produced outside New York State, or services other than construction services, sought by the Authority that are substantially performed outside New York State as further described in Public Authorities Law § 2879. For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
4. “Discriminatory Jurisdiction” is any country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business

Enterprise in the procurement of goods and/or services by the same or a non-governmental entity influenced by the same.

5. Pursuant to Public Authorities Law § 2879, the Authority shall not enter into a contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development (“DED”). The provisions of this section may be waived by the Authority’s President and CEO if the CEO determines in writing that it is in the best interests of the Authority to do so, as further set forth in the above-referenced law.
 6. Pursuant to Public Authorities Law § 2879, the Authority will, where feasible, make use of the stock item specification forms of New York State manufacturers, producers and/or assemblers, as made available by the Commissioner of General Services, for any Procurement Contract for the purchase of goods.
- F. Certain goods and/or services may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the State (e.g., the New York State Office of General Services (“OGS”)) or Federal government (e.g., General Services Administration (“GSA”)) or any city or municipality where the White Plains SSM Department, or facility SSM Departments, and the initiating department determine that a reasonable potential exists for cost savings or other benefits to the Authority and have approved the specifications and proposed terms and conditions of such contract.
- Certain Procurement Contracts established by the OGS or GSA require that authorized users conduct a “mini bid” (i.e., an abbreviated supplemental competitive bid procurement process) among prequalified bidders identified in such established contracts. Certain other Procurement Contracts issued by the Authority (e.g., for on-call consulting or contracting services) may also utilize a mini bid process, typically, in cases of a multiple award, where a contract is awarded to more than one bidder that meets the Authority’s bid requirements, in order to satisfy multiple factors and needs as set forth in the bid document. Such mini bids shall be conducted by the Authority’s SSM staff (or on behalf of the Authority by an Implementation Contractor) where applicable and practicable. Within a said multiple award group, work may be assigned to a specific firm without conducting a mini bid, under certain circumstances, including but not limited to: where such firm possesses specialized expertise and is uniquely qualified to perform such work; where time constraints, emergency or other critical conditions exist or geographic location is of primary consideration in order to meet schedule requirements, respond to emergent issues or otherwise meet the Authority’s needs; or when the work scope is below a specified monetary threshold. The decision to assign work without conducting a mini bid shall typically be made jointly by SSM and the initiating departments and shall be documented for the Procurement Record.
- G. Solicitations will include a scope of work that defines the goods required and/or the services to be performed; evaluation criteria (as defined in Section 4.B); milestone dates;

the Authority's Supplier Diversity Program and SDVOB requirements, if applicable; all other applicable Authority requirements and any special methods or limitations that the Authority chooses to govern the work. Telephone solicitation, usually for procurements valued at less than \$50,000, may be used where time constraints do not permit issuance of an RFP, where issuance of an RFP is otherwise impracticable or for goods that are catalog items or do not require a detailed bill of materials or specification. All solicitations made by telephone shall be documented and made part of the Procurement Record.

- H. For all Procurement Contracts with a value equal to or greater than \$50,000 (except for those contracts noted below), the Authority will, prior to soliciting proposals, submit all required information to the Commissioner of the DED to be included on the New York State *Contract Reporter* website, (www.nyscr.ny.gov) (unless such posting would serve no useful purpose). Such information will be submitted to the DED Commissioner in accordance with the schedule set forth by the DED. The due date for bids or proposals will be a minimum of 15 business days after the date of publication of such notice on the *Contract Reporter* website, except where a shorter period is specifically authorized by law. For Procurement Contracts resulting from a Request for Proposal process, the Authority will submit the results of the bid opening, including the names of firms submitting proposals and the name/s of the awardee/s, for inclusion on the *Contract Reporter* website. For all other Procurement Contracts, the name of the awardee will be submitted.

This section 3.H does not apply to (i) Procurement Contracts awarded on an emergency basis as described below in Section 3.M, (ii) Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date, and/or (iii) Procurement Contracts awarded to not-for-profit human services providers. (See Article 4-C, Economic Development Law)

Certain Procurement Contracts may require purchases: (1) on a spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. Such purchases are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the Vice President, SSM, and/or the head of the initiating department that does not complete its procurements through the SSM Department. From time to time or where appropriate, generic notices may be published on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by the Authority.

Notwithstanding the foregoing, submittal of a notice / announcement of award for inclusion on the *Contract Reporter* website is required for Procurement Contracts with a value of \$50,000 or more awarded on a sole source or single source basis, including such discretionary contracts not exceeding \$500,000 awarded to Small Business Enterprises or NYS-certified MWBE firms, or for the purchase of goods and/or technology that are recycled or remanufactured, for discretionary awards on a single or sole source basis to SDVOB's, or for the purchase of food, including milk and milk products that are grown, produced or harvested in New York State, and certain other Procurement Contracts exempt from the general advertising requirement for Procurement Contract bidding

opportunities, in accordance with the afore-referenced law. Such notice shall specify the name of the awardee.

- I. In order to further increase participation of service-disabled veterans in New York State's contracting opportunities, the Service-Disabled Veteran-Owned Business ("SDVOB") Act was signed into law on May 12, 2014. The SDVOB program provides for eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business. The Division of Service-Disabled Veterans' Business Development within the New York State Office of General Services ("OGS") is responsible for certifying eligible SDVOBs, assisting agencies and authorities in complying with the law, and promoting SDVOB participation in the state's procurement activities. Under this program, contracts may be awarded on a non-competitive basis to NYS-certified SDVOBs for discretionary purchases. Alternately, contracts may be competitively bid exclusively among NYS-certified SDVOBs regardless of value, and advertised as such on the *Contract Reporter* website.

- J. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as an Authority representative, a "competitive search" will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The White Plains SSM Department or the appropriate facility SSM Department will work with the initiating department to gather information from potential sources, that will include a description of the consultant/firm's qualifications, résumés of key personnel, past experience and proposed billing rates.

- K. A Procurement Contract may be awarded on a Sole Source, Single Source, or other non-competitive basis where:

1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
3. A sole supplier's item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.

5. The contract is awarded to a Small Business Enterprise or to a NYS-certified MWBE firm for discretionary purchases not exceeding \$500,000, pursuant to Section 3.D and as further set forth in Section 2.C
 6. The contract is awarded to a NYS-certified SDVOB for a discretionary purchase.
 7. The contract is for the discretionary purchase of goods and/or technology that are recycled or remanufactured, in an amount not exceeding \$500,000, as further set forth in Section 2.C and subject to the approvals stated in Section 3.D.
 8. The contract is for the discretionary purchase of commodities that are food, including milk and milk products, which are grown, produced or harvested in New York State, in an amount not exceeding \$500,000, as further set forth in Section 2.C and subject to the approvals stated in Section 3.D.
 9. Services are required on a more expedited basis than the competitive procurement process will allow. Requesting business units must demonstrate the urgency of the project and that awardee is cost-effective and qualified in the subject area. Services shall be for specific scopes of work in an amount not exceeding \$500,000 and are subject to the approvals stated in Section 3.D.
 10. Purchases made on a Sole Source, Single Source, or other non-competitive basis are subject to Public Authorities Law § 2879-a, 2 NYCRR Part 206, entitled “Comptroller Approval of Contracts Made by State Authorities” (“Comptroller Regulations”) and the State Authority Contract Manual.
- L. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Authority may be required to submit certain contracts to the New York State Comptroller for approval that are awarded on a Sole Source, Single Source, or other non-competitive basis for the purchase of goods and/or services in an amount in excess of \$1 million, and shall notify the successful bidder therefor. Such contracts or contract amendments shall not be valid and enforceable unless approved by the Comptroller or until 90 days have elapsed from such submission without action by the Comptroller, as further set forth in the referenced law and regulations.
- M. Subject to the Authority’s Expenditure Authorization Procedures (“EAPs”), and Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, a Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:

1. A threat to the health or safety of the public or Authority employees or workers.
 2. Proper functioning of the Authority facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.
- N. Whenever an initiating department determines that a Procurement Contract should be awarded on a Single Source, Sole Source, or an emergency basis, the department head or other authorized equivalent per the EAPs will provide a written statement explaining the compelling reasons therefor to the White Plains SSM Department or the appropriate facility SSM Department. The award of such Procurement Contracts, regardless of value, requires the written approval of the Vice President, SSM, except as noted in Section 3.H.
- O. Every potential Sole Source or Single Source contract with a value of \$1 million or more must be approved by the President and CEO or the COO prior to processing by the SSM Department.
- P. In furtherance of Public Authorities Law § 2800, when a procurement is made on a non-competitive basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the Chief Executive Officer and Chief Financial Officer of the Authority stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. The following definition shall apply: "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by internal appraisals, industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the Vice President, SSM or authorized designee.
- Q. It is the policy of New York State to discourage improper communications intended to influence a governmental procurement. The Authority will endeavor to control such practices and will comply with the applicable statutory provisions. In furtherance of the State Finance Law §§ 139-j and 139-k, the following shall apply:

The "Restricted Period" is the period of time commencing with the earliest posting, on the Authority's website, in a newspaper of general circulation, or in the Procurement Opportunities Newsletter (i.e., New York State *Contract Reporter*) in accordance with Article 4-C of the Economic Development Law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from offerors (i.e., bidders/con- tractors) intending to result in a Procurement Contract with the Authority and ending with the final contract award and approval by the Authority and, where applicable, the State Comptroller. The "Restricted Period" also applies to a "mini-bid" process that may be utilized in certain established OGS, GSA or Authority multiple award contracts, as provided in Section 3.F.

The Authority shall designate a person or persons who may be contacted, with respect to each Authority procurement. The bidders/contractors or persons acting on their behalf, shall only contact the Authority's designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period.

- R. In furtherance of the Authority's commitment to ensure transparency and accountability of its operations, every member, officer or employee of the Authority who is contacted by a lobbyist is required to make a contemporaneous record of such contact, pursuant to Public Authorities Law § 2987 and as further set forth in the Authority's Company Policy, Lobbying Contacts CP 9-2, regarding this matter.
- S. Project Sunlight (Chapter 399, Part A, Section 4 of the Laws of 2011) requires the Authority to record in a database maintained by the New York State Office of General Services certain appearances between the Authority and individuals, firms or other entities (excluding elected officials and representatives of federal, state and local agencies and authorities) relating to the procurement of a contract, with a value of \$25,000 or more, for real property, goods or services. Appearances are defined as an interaction through an in-person meeting or a video conference between covered individuals. Appearances related to emergency procurements and disposal of property through public auctions are excluded, as are appearances that take place during the formal "Restricted Period." Covered individuals at the Authority means an employee who has the power to exercise discretion in procurement matters or advises someone who exercises such discretion. A covered individual outside of the Authority means both "external" (e.g., a lobbyist) and "internal" (e.g., sales representative) representatives of an entity, individuals appearing on behalf of themselves, advocacy groups or organizations or entities representing the interests or concerns of the organization or entity or of its members. All such appearances must be promptly reported to the Authority's Ethics and Compliance Office for recording in the Project Sunlight database.
- T. Prior to entering into any binding relationship with a third party (e.g., written agreement or memorandum of understanding (MOU)) in pursuit of any joint or collaborative development project, the office of SSM and the Law Department ("Law") must be notified regarding the procurement and on the issue of whether and to what extent the projects falls within the constraints of the Authority's procurement regulations and enabling legislation. SSM and Law should be brought into any such project in the development process.

Provided that the Authority has statutory authority to develop or otherwise participate in a project developed, in whole or in part, in collaboration with a third party, the following minimum criteria must be met:

- (i) the Authority's participation must be in response to a solicitation issued by the State or other public entity pursuant to a competitive selection process; and

- (ii) the construction of any asset to be owned by the Authority must comply with all applicable laws, including but not limited to prevailing wage requirements and goals established for the use of minority enterprises (e.g., minority- and women-owned business enterprise (MWBE), service disabled veteran owned business (SDVOB)); and
- (iii) goods and/or services required to develop and implement the project must be sourced and procured in accordance with, and subject to, either (a) the Authority's Procurement Guidelines; or (b) the requirements of the third party collaborator governing the competitive procurement of goods and services, provided that SSM has been furnished with a copy of such requirements which demonstrate, in SSM's judgement, that a competitive procurement or equivalent has been or will be undertaken.

Prior to execution any underlying agreement (i.e. joint development agreement, MOU, etc.) an internal award recommendation shall be memorialized and approved by the VP SSM and the responsible Business Unit head.

4. EVALUATION OF PROPOSALS

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder (including, but not limited to, the bidder's skill, judgment and business integrity), the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the White Plains SSM Department and/or the appropriate facility SSM Department and appropriate managers as stipulated in the EAPs. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award and (3) negotiating with the low bidder(s), as determined by the Vice President, SSM or designee, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited to: the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued, and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are: previous experience (including applicable experience in

New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the Authority's work and the ability to provide any needed advanced techniques such as simulation and modeling; and overall, the bidder's skill, judgment and business integrity. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet Supplier Diversity Program goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.

Another factor to be considered in evaluating proposals may involve an assessment of the bidder's diversity practices, where applicable. Pursuant to Article 15-A of the Executive Law, diversity practices are the contractor's practices and policies with respect to utilizing NYS-certified MWBEs in contracts as subcontractors and suppliers, and entering into partnerships, joint ventures or other similar arrangements with NYS-certified MWBEs. A contractor's diversity practices may be assessed when: (1) a procurement is awarded on the basis of "Best Value" as described in Section 4.D. (but *not* when a procurement is awarded based upon "lowest price"); (2) the anticipated award is \$250,000 or greater; and (3) such assessment is practicable, feasible and appropriate. Such assessment shall not permit the automatic rejection of a bid or Procurement Contract proposal based on lack of adherence to diversity practices.

- C. For Services Contracts (as defined in Section 2.M of these Guidelines), the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract, provided that the price for performing such work is reasonable and competitive.
- D. For Procurement Contracts for Goods (as defined in Section 2.F of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents. (See also Section 4.F regarding award to "other than low bidder".)

As a best practice and pursuant to State Finance Law § 163, the Authority may award on a "Best Value" basis for awarding contracts to the offeror that optimizes quality, cost and efficiency, among responsive and responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis and may also identify a quantitative factor for offerors that are Small Businesses or NYS-certified SDVOB or MWBE firms.

- E. Pursuant to § 139-k of the State Finance Law, the Authority shall not award a Procurement Contract (as defined in Subsection 3.Q.1 of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder's/contractor's knowing and willful violation of the Authority's policy providing for certain procurement disclosures shall result in a determination of non-responsibility of such bidder/contractor pursuant to State Finance Law §§ 139-j and 139-k only.

More than one determination of non-responsibility due to violations of State Finance Law § 139-k in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to "other than low bidder" can be made only with the approval of appropriate management as stipulated in the EAPs, and should be based on such a proposal providing a clear advantage to the Authority over the lower-priced proposal. Factors justifying an "other than low bidder" award may include, but are not limited to: improved delivery schedules that will reduce outages; longer warranty periods; improved efficiency over the usable life of the equipment; reduced maintenance costs; the bidders' financial resources or the ability to meet or exceed Supplier Diversity Program and SDVOB goals; and overall, the bidder's skill, judgment and business integrity.
- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, the Authority may diverge from the specifications of any solicitation if, after review of the proposals responsive to such solicitation, the Authority deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings.

5. **RECOMMENDATION OF AWARD**

- A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum or e-mail by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:
 - 1. Lump sum and/or unit prices for equipment and construction work.
 - 2. Hourly or daily rates for personnel.
 - 3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
 - 4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.
 - 5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.
- B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but

not limited to payment terms, warranties and bond requirements, if any, as well as Supplier Diversity Program requirements, as applicable.

6. AWARD OF CONTRACT

- A. Services Contracts (which include contracts for Construction, Personal and Non-personal services, as defined in Section 2.M.) valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months are approved and reviewed annually by the Trustees. Services Contracts for a period of less than 12 months are approved by authorized designees in accordance with existing EAPs. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Trustees at the request of the initiating department and will be reviewed by the Trustees annually. Extending a contract for services, that has previously been approved by the Trustees, for a cumulative term of more than 12 months requires further Trustees' approval.
- B. Extending a contract, previously approved by the Trustees, for 12 months or less ("grace period") requires approval by the Vice President of the requesting department or other authorized equivalent or designee in accordance with existing EAPs and concurrence by the Vice President, SSM.
- C. For Services Contracts valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months that must be awarded prior to the next quarterly Trustees' meeting, the initial contract will be issued for the entire intended term of the contract. Based on its total term and value, such contract must be approved in writing by the appropriate management as set forth in the EAPs. Such contract is subject to the Trustees' approval, at the next quarterly Trustees' meeting. If such approval is not granted, the contract will be terminated immediately.
- D. A contract or contract task valued or estimated to be \$5,000 or greater is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any "continuing services" contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Trustee-approved contracts for architect/engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a "Change Order," "Purchase Order" or "Task Number") is considered a separate commitment and must be separately approved in accordance with the EAPs.
- E. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions. However, at the sole discretion of the Vice President of SSM may approve a Business Unit's written justification for a contract term exceeding 5 years or reasonable extension of such a contract.
- F. For construction value contracts purchase order releases maybe issued up to the term limit of the value contract. The term of a construction purchase order release shall be as

required to complete the work assigned. The term of the value contract shall be extended accordingly.

- G. Multiyear contracts for Goods (which include equipment, materials and supplies, as defined in Section 2.F) valued or estimated to be \$5,000 or greater are subject to the management approval thresholds established in the EAPs, and require Trustee approval only once those thresholds are met.
- H. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed the appropriate limit set forth in the EAPs, the Business Unit Head, with the prior concurrence of the Vice President, SSM or equivalent(s) or designee, may authorize extending such contract, subject to the Trustees ratifying such action as soon as practicable.
- I. When the total estimated contract value or the value of the extension exceeds the monetary limits set forth in the EAPs, interim approval by the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Trustees ratifying such action as soon as practicable.
- J. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value exceeds the monetary approval limit for the President and Chief Executive Officer or Chief Operating Officer or equivalent(s), as set forth in the EAPs, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the Vice President, SSM or equivalent(s) or designee, may authorize in writing the commencement of such services. The initial compensation limitation may not exceed the authorization level for the President and Chief Executive Officer or equivalent(s) or Chief Operating Officer or equivalent(s) as set forth in the EAPs. Such contracts will be subject to the Trustees' approval, which will be solicited at their next scheduled Trustee meeting.
- K. The White Plains SSM Department or the facilities' SSM Departments prepare the contract for execution by the Authority and the successful bidder. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution. Authority signatories of such letters must be authorized to approve contract awards pursuant to the EAPs.
- L. Pursuant to Economic Development Law § 143, the Authority shall submit an announcement of the intended contract for inclusion in the procurement opportunities newsletter at the time it enters into a contract. Such announcement shall identify the contract, specify the date of the award of the contract and provide the name of and contact information for each recipient of the contract.
- M. Pursuant to Public Authorities Law § 2879, the Authority shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase

of goods and/or services from a Foreign Business Enterprise (as defined in Subsection 3.E.3 of these Guidelines) in an amount equal to or greater than \$1 million simultaneously with notifying the successful bidder therefor. The Authority shall not enter into the Procurement Contract for said goods and/or services until at least 15 days have elapsed from the notification of the award, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, telephone and facsimile number of the Foreign Business Enterprise, the amount of the proposed Procurement Contract and the name of the individual at the Foreign Business Enterprise or acting on behalf of same who is principally responsible for the proposed Procurement Contract.

7. CONTRACT PROVISIONS

- A. The following standard forms of contracts are available from the White Plains SSM Department: purchase order format (for standard procurements of goods and/or services); furnish-and-deliver format (for major equipment purchases); long form agreements (for consulting services) and maintenance agreement formats; contract work orders (for construction work of small magnitude); construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services.

Authority departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the SSM Department, which, along with the facilities' SSM Departments, is solely responsible for requesting proposals.

- B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.
1. Schedule of Services or Specifications
 2. Time of Completion
 3. Compensation or Itemized Proposals
 4. Relationship of Parties
 5. Delays
 6. Termination
 7. Changes in the Work
 8. Claims and Disputes
 9. Warranty
 10. Insurance

11. Records, Accounts, Inspection and Audit
12. Assignment
13. Notices
14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Testimony
18. MWBE requirements
19. SDVOB requirements
20. Entire Agreement

Contract Attachments

1. Compensation Schedule
2. Schedule of Services or Specifications
3. Appendix "A" (Miscellaneous Statutory Provisions)
4. Appendix "B" (Prompt Payment Provisions)
5. Appendix "C" (Minority- and Women-owned Business Enterprise (MWBE) Participation Goal Requirement)
6. Appendix "D" (Background Security Screening for Authority Contractors)
7. Appendix "E" (Omnibus Procurement Act of 1992 Requirements)
8. Appendix "F" (Computer Aided Design Requirements For New York Power Authority Drawings)
9. Appendix "G" (Equal Employment Opportunities Requirements)
10. Appendix "H" (Tax Law Requirements)
11. Appendix "I" (New York Power Authority (NYPA) North American Electric Reliability Corporation Critical Infrastructure Protection (NERC CIP) Cyber Access And/or Unescorted Physical Access Training Requirements)
12. Appendix "J" (Bidder/Contractor Compliance with State Finance Law §§ 139-j and 139-k Providing for Certain Procurement Disclosures)
13. Appendix "K" (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act (Pub. L. No. 111-5 Stat. 2009) ("ARRA") Funded Projects) - inactive
14. Appendix "L" (DOE Federal Contract Provisions) - inactive
15. Appendix "M" (Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology ("BART") for Heavy Duty Vehicles)
16. Appendix "N" (The New York State Iran Divestment Act of 2012 – Iranian Energy Sector Divestment)
17. Appendix "O" (Encouraging Use of New York State Businesses in Contract Performance) – inactive
18. Appendix "P" (Non Bulk Electric System (BES)) (Information Security Requirements for Vendors and External Partners non Bulk Electric System)
19. Appendix "P" for BES (Information Security Requirements for Vendors and External Partners for Bulk Electric System)

- C. If a vendor (firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services.

Furthermore, any firm, person or other entity retained by the Authority to provide conceptual studies, designs or specifications is prohibited from being awarded future phases of work, including implementation, related to the original work.

The above restrictions shall not apply where:

1. The vendor is the sole source or single source of the product or service;
2. More than one vendor has been involved in preparing the specifications for a procurement proposal;
3. There is no qualified response to the solicitation for future phases of work, including implementation; or
4. The originating Authority Business Unit determines in writing that the restrictions are not in the best interests of the Authority. Such originating Business Unit shall obtain the approval of the applicable Business Unit Head or equivalent(s), Vice President, SSM or equivalent(s) or designee, Assistant General Counsel or equivalent(s) and President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) to waive this restriction on a case-by-case basis.

8. CHANGE ORDERS

- A. Change Orders to existing contracts are justified in the following cases:
1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
 2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;
 3. To accommodate emergency conditions, defined in Section 3.M herein, that require the immediate performance of work by a firm already under contract;
 4. When rebidding would not be practical or in the best interests of the Authority's customers; and
 5. To meet the Authority's Supplier Diversity and SDVOB Program goals in accordance with Executive Law Articles 15-A and 17-B, respectively.
- B. All Change Orders must be approved in accordance with the Authority's EAPs, and should include specific schedules for completion of work at the earliest possible time.
- C. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Authority may be required to submit certain Change Orders to the New York State Comptroller for filing or approval where the aggregate value

of the contract as amended is in excess of \$1 million and the original contract was awarded on the basis of a competitive procurement, but the modification was neither contemplated nor provided for in the solicitation for such competitive procurement.

9. CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES

- A. Former Authority officers and employees may be eligible to be considered for direct engagement as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines; their engagement is not barred by New York Public Officers Law § 73(8); they obtain an opinion by the New York State Joint Commission on Public Ethics that such engagement is permissible; and upon approval of the President and Chief Executive Officer, as well as the Chairman of the Board of Trustees.
- B. Pursuant to the provisions of New York Public Officers Law § 73(8):
 - 1. No Authority officer or employee is eligible, within a period of two years after the termination of Authority service to appear or practice before the Authority or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before the Authority.
 - 2. No Authority officer or employee is eligible, at any time after the termination of Authority service, to appear, practice, communicate or otherwise render services before the Authority or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of service, or which was under his or her active consideration.
 - 3. Pursuant to the provisions of New York Public Officers Law § 73(8-b), notwithstanding the provisions of 1. and 2. above, a former Authority officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to the Authority, if, prior to engaging in such service, the Chairman of the Board of Trustees certifies in writing to the New York State Joint Commission on Public Ethics that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the Authority's needs and is otherwise unavailable at a comparable cost. Where approval of the contract is required under § 112 of the New York State Finance Law, the Comptroller shall review and consider the reasons for such certification. The New York State Joint Commission on Public Ethics must review and approve all such certifications.
- C. No Authority employee who is involved in the award of Authority grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected

official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.

- D. No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- E. No Authority employee may take part in any contracting process or decision: (i) to a Relative; or (ii) to any entity in which the Authority employee or a Relative of such Authority employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section 9.E, then the employee must advise in writing his or her supervisor and the Office of Ethics and Compliance of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

For purposes of this Section 9.E, the term "Relative" is defined in Definitions, Section 2.L of these Guidelines.

10. SUPPLIER DIVERSITY PROGRAM REQUIREMENTS

The Authority strives to continue to foster the development of business opportunities on Authority contracts for MWBEs. Article 15-A of the Executive Law established the NYS Office (now Division) of Minority and Women's Business Development ("DMWBD") that is responsible for developing rules and regulations for implementation of this statute, certifying MWBEs and reviewing and monitoring goal plans, compliance reports and contract provisions to be included in all non-construction contracts for more than \$25,000 and construction contracts for more than \$100,000. The definition of an MWBE is included in Section 2.G of these Guidelines. The Authority aims to solicit proposals from NYS-certified MWBEs that are qualified to perform the required work. In addition, specific goals may be included in certain contracts for consulting work, construction and procurement of goods and other services requiring the contractor/vendor to subcontract a portion of the work to NYS-certified MWBEs as required by law. Bidders' proposals will include a completed preliminary Utilization Plan Form for MWBEs, as well as applicable EEO and Diversity Practices Forms, where required. Such bidders' failure to meet these requirements may be grounds for rejection of the proposal, or cancellation of the contract if a contractor did not make a good faith effort to meet its goals after contract award. Final MWBE Utilization Plans for Construction contracts valued at more than \$100,000 shall be provided and posted on the Authority's procurement website by the successful vendor within ten business days of contract signing.

Pursuant to § 2879 of the Public Authorities Law and as further set forth in the Authority's Supplier Diversity Program documents, the following guidelines apply:

1. Identify those areas or types of contracts for which MWBEs may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises.
2. Provide notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve MWBEs providing the types of services procured by the Authority.
3. Maintain lists of qualified NYS-certified MWBEs, including professional firms that have expressed an interest in doing business with the Authority and ensuring that such lists are updated regularly. The Authority shall also consult the lists of NYS-certified MWBEs maintained by the DED pursuant to Executive Law Article 15-A.
4. Establish appropriate goals for participation by MWBEs in Procurement Contracts awarded by the Authority and for the utilization of MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the Authority. Statewide numerical participation target goals shall be established by the Authority based on the criteria set forth in Public Authorities Law § 2879.
5. Conduct procurements in a manner that will enable the Authority to achieve the maximum feasible portion of the goals established pursuant to Subdivision 4 of this Section and that eliminates barriers to participation by MWBEs in the Authority's procurements.
6. Designate one or more senior staff of the Authority to oversee the Authority's programs established to promote and assist participation by and utilization of NYS-certified MWBEs.

11. SERVICE-DISABLED VETERAN-OWNED BUSINESS ("SDVOB") PROGRAM REQUIREMENTS

The Authority also strives to foster the development of business opportunities for NYS-certified SDVOBs and to further increase participation by SDVOBs in Authority contracts, as set forth in Sections 2.R and 3.I of these Guidelines and pursuant to Article 17-B of the Executive Law. One tool is the use of SDVOB discretionary purchasing, as further described in Sections 3.D, 3.I, and 3.K.6 of these Guidelines. Another tool authorized by the law is the use of set-asides, which permit the reservation in whole or in part of certain procurements by state agencies and authorities when more than one NYS-certified SDVOB is available and can provide the necessary goods or services to meet the Authority's form, function and utility. The same dollar limits apply to SDVOB contracts as those set forth for MWBEs in Article 10 of these Guidelines.

Pursuant to Article 17-B of the Executive Law, the following guidelines apply:

1. Identify contracts where SDVOBs may best perform and/or where SDVOB goals are practical, feasible and appropriate for the purpose of increasing the utilization of SDVOB participation on Authority contracts. Submit regular reports with respect to SDVOB Program activity, including but not limited to, utilization reporting and contract monitoring and compliance.

2. Achieve an overall goal of six percent for SDVOB participation on Authority contracts.

12. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM REQUIREMENTS ON PROJECTS THAT ARE FEDERALLY FUNDED

The Authority strives to foster the development of business opportunities for NYS certified DBEs and to further increase their participation in NYPA Federally funded contracts. The Authority aims to solicit proposals from DBEs for procurements that will be partially or fully federally funded. The Authority follows the DBE guidelines as set out by The Federal Department of Transportation (“DOT”). NYS DOT is tasked with certifying eligible small businesses as DBEs in New York State.

The Authority is committed to promoting participation of DBEs in NYPA contracting opportunities in accordance with federal law and regulations and seeks to achieve the following objectives:

1. To ensure nondiscrimination in the award and administration of Federally funded contracts;
2. To create a level playing field on which DBEs can compete fairly for Federally funded contracts;
3. To ensure that the Authority’s DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this Federal eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in Federally funded contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

13. PROCUREMENT RECORD AND REPORTING

A. Procurement Record

The White Plains SSM Department maintains records of Procurement Contracts. In addition to bid- and contract award-related documents for the goods provided and/or services performed, the Procurement Record includes, but is not limited to, documentation of the decisions made and the approach taken in the procurement process. Such records are transmitted to the Digital Warehouse for electronic storage and retrieval. At the facilities, such records are currently maintained and stored by the facilities’ SSM Departments.

B. Procurement Report

After the end of each calendar year, the Vice President, SSM or equivalent(s) will prepare and submit an annual report to the Trustees for their approval that will include:

1. A copy of the Guidelines;
 2. An explanation of the Guidelines and any amendments thereto since the last annual report;
 3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
 4. A list of fees, commissions or other charges paid;
 5. A description of work performed, the contract number, the date of the contract and its duration, the name, address and NYS-certified MWBE designation of the awardees, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of open Procurement Contracts during the report year;
 6. The type of contract (equipment, services, personal services or construction);
 7. The method of awarding the contract (e.g., competitive bidding, Sole Source, Single Source or competitive search);
 8. The reasons why any procurements with a value equal to or greater than \$50,000 were not noticed in the Contract Reporter;
 9. The number of bids received and
 10. All referrals made and all penalties imposed, if any, pursuant to § 316 of the Executive Law.
- C. Such annual report, as approved by the Trustees, shall be submitted to the New York State Division of the Budget within 90 days of the end of such calendar year, and copies thereof shall be distributed to the New York State Department of Audit and Control, the DED, the New York State Senate Finance Committee, and the New York State Assembly Ways and Means Committee and any other entity as may be required by law. The annual procurement report is posted on the Authority's website and copies shall be made available to the public upon reasonable written request therefor.
- D. State Finance Law §§ 139-j and 139-k
1. A statement describing the basis for a determination of a bidder's/contractor's non-responsibility (per State Finance Law §§ 139-j and 139-k only) and the Authority's decision not to award a bidder/contractor the Procurement Contract must be included in the Procurement Record.
 2. The Authority shall notify the New York State Office of General Services of bidders/contractors who have been determined to be non-responsible bidders (per State Finance Law §§ 139-j and 139-k only) or debarred due to violations of § 139-j of the State Finance Law.

3. All forms entitled "Record of Contact" shall be included in the respective Procurement Record.
 4. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the Procurement Record.
- E. The Authority may be called upon periodically to submit information regarding the procurement of goods and/or services to organizations implementing the PAAA or other statutes regulating the procurement of goods and services, such as the Authorities Budget Office through the Public Authorities Reporting Information System ("PARIS").
- F. The Vice President, SSM or equivalent(s) will also prepare Annual Goal Plans for the MWBE and SDVOB programs and will submit them by January 15 of each year to Empire State Development - Division of Minority and Women Business Development and the New York State Office of General Services - Division of Service-Disabled Veterans' Business Development, respectively. Quarterly Utilization / Activity Reports for each program will also be prepared and submitted to the aforementioned respective state entities by the 15th day of July, October, January and April.

14. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS

- A. These Guidelines are intended for the guidance of officers and employees of the Authority only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.

NYPA GUIDELINES FOR PROCUREMENT CONTRACTS

1. PURPOSE

These Guidelines for Procurement Contracts (“Guidelines”) set forth the policy of the Authority regarding the solicitation and awarding of Procurement Contracts. The provisions of Article 4-C of the Economic Development Law, §§ 2879 and 2879-a of the Public Authorities Law, Articles 15-A and 17-B of the Executive Law and §§ 139-j and 139-k of the State Finance Law were considered in developing these Guidelines. Departments and facilities may adopt further procedures to implement these Guidelines.

2. DEFINITIONS

- A. “Capital projects” generally refer to the acquisition or construction of new assets, the replacement and/or betterment of existing assets, equipment, or property (including those of NYPA’s customers, where authorized). Betterment refers to an extension of the useful life or improvement in the efficiency and/or capacity of the asset, equipment, or property.
- B. “Contact” is any oral, written, or electronic communication with the Authority under circumstances where a reasonable person would infer that the communication was intended to influence the Authority’s conduct or decision regarding the procurement.
- C. “Discretionary Purchase” is a procurement made below statutorily established monetary threshold amounts (e.g., not exceeding \$500,000 for the purchase of commodities and/or services from Small Business Enterprises or NYS-certified MWBE firms, and without a dollar cap for SDVOB firms as further set forth in Sections 3.D and 3.K.5-7) and at the discretion of the Authority, without the need for a formal competitive bid process. For the purpose of determining whether a purchase is within the discretionary thresholds, the aggregate amount of all purchases of the same commodities and/or services to be made within the 12-month period commencing on the date of purchase shall be considered. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities and/or services from the same provider within the 12-month period commencing on the date of the first purchase to an amount greater than \$500,000, pursuant to State Finance Law § 163.
- D. “Disadvantaged Business Enterprise” (DBE) is a for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it, pursuant to the definition found in 49 C.F.R Part 26.

- E. "Evaluation of Proposals," as further outlined in Section 4 below, includes evaluating factors the Authority's consideration of a bidder's skill, judgment, and business integrity.
- F. "Goods" include equipment, material and supplies of any kind. Procurement Contracts that include both equipment and services may be classified as Equipment," where 60% or more of the total projected contract value will be for the purchase of equipment, material or supplies.
- G. "Minority- and Women-owned Business Enterprise" ("MWBE") is defined as any New York State-certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans, Asians, Pacific Islanders and/or women, and as further described in the Authority's Supplier Diversity Program Policy and Procedures and Executive Law Article 15-A, and pursuant to the definition found in Executive Law § 310.
- H. "Non-Procurement Contracts" include contracts under \$5,000, contracts for energy with or without environmental attributes included, capacity, renewable energy certificates, ancillary services, transmission, distribution or related services in support of providing service to Authority customers; contracts for differences; financial hedge contracts (including but not limited to swaps, calls, puts or swap options) or credit rating services; certain insurance and healthcare products that do not readily lend themselves to a competitive solicitation. In addition, Non-Procurement Contracts include direct and indirect placement of advertisements with radio, television, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and procurement activities conducted or sponsored by such organizations in which the Authority participates.
- I. "Operation and Maintenance" ("O&M") generally refers to the work or services necessary to keep the plants, transmission lines, and other equipment and facilities to include NYPA customers, where authorized, (collectively referred to generally as an "asset") in optimal operating condition and/or to restore an asset to its productive capacity. This includes the cost of inspecting, testing, analyzing and reporting on the condition of the asset required to determine repairs or replacement, as well as costs associated with the normal operation and administration of NYPA's production/transmission facilities and energy programs.
- J. "Procurement Contracts" are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Authority's White Plains office, facilities, operations and maintenance ("O&M") and capital projects (as defined in Section 2.1. and 2.A., respectively), including but not limited to goods such as office supplies, major electrical

equipment, construction and maintenance work and services as more fully described in Section 2.F and 2.M.

K. “Purchase Order Release” is a single order issued for goods or services in accordance with the terms and conditions of a Value Contract.

K.L. “Relative” is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee’s grandparents or the spouse of such descendant, as referred to in Subsection 9.E.1 of these Guidelines. The term Relative may include, but is not limited to, the relationship of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law or son-in-law.

L.M. “Services Contracts” are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships, or firms who are not and do not employ officers or employees of the Authority) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services, and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by a consultant for the Authority), and construction management. Non-Personal services include but are not limited to skilled or unskilled temporary personnel, including clerical office staff, technicians, or engineers working under Authority’s supervision, maintenance, repairs, and printing services. Construction consists of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient Authority staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of the aforementioned factors.

M.N. “Single-Source” is a procurement in which the Authority, upon written findings setting forth material and substantial reasons, may award a contract (or amendment to a contract) to one offeror over another that can supply the goods or services.

N.O. “Small Business” (or Small Business Enterprise, “SBE”), pursuant to Executive Law § 310 and as used in these Guidelines, unless otherwise indicated, is a business that has a significant business presence (as defined at 5 NYCRR 140.1) in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.

~~Q-P.~~ “Software” includes on-premise applications as well as Software-as-a-Service (SaaS) which is defined as a software distribution model in which a third-party provider hosts application and makes access available to customers over the Internet. “Software” shall be considered “Equipment” where such term is used throughout these Guidelines.

~~P-Q.~~ “Sole Source” is a procurement in which only one offeror is capable of supplying the required goods or services.

~~Q-R.~~ “Service-Disabled Veteran-Owned Business” (“SDVOB”) is a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is at least 51% owned by one or more service-disabled veterans; in which such ownership is real, substantial and continuing, and also has and exercises the authority to control independently the day-to-day business decisions of the enterprise; is a Small Business and is certified by the New York State Office of General Services, as further set forth in Article 17-B of the Executive Law.

~~S.~~ “Value Contract” Master Service Agreement for goods and services with specific target value and term.

3. **SOLICITATION REQUIREMENTS**

- A. Preparation of the solicitation of proposals for Procurement Contracts is the joint responsibility of the White Plains Strategic Supply Management (“SSM”) Department, or the facilities’ SSM Departments, and the initiating department. Except as otherwise authorized by these Guidelines, a Request for Proposals (“RFP”) or Request for Quotations (“RFQ”) will be made available to a minimum of three providers and/or firms (if available) for purchases valued under \$50,000 and a minimum of five providers and/or firms (if available) for purchases valued at \$50,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance.
- B. Prospective bidders on Procurement Contracts may be prequalified by invitation advertised in the same manner as an RFP/RFQ (referred to as a Request for Qualifications and/or Request for Information (“RFI”). In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence (including, but not limited to, the bidder’s skill, judgment and business integrity) to supply the particular goods and/or perform the particular services required.
- C. The Authority may withdraw any pending solicitation (including but not limited to RFPs and RFQs) at any time, for cause or no cause. Any person or entity submitting any responsive document to the Authority does so at its own cost or expense and will not be reimbursed by the Authority for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized Authority representative.
- D. In order to promote the use of Minority- and Women-owned Business Enterprises (“MWBEs”), Service-Disabled Veteran-Owned Businesses (“SDVOBs”) and Small Business Enterprises (“SBEs”), the Authority will solicit offers from such firms known to have

experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definitions of NYS-certified MWBE or SDVOB firms and SBEs are set forth in Sections 2.~~H~~G, 2.~~L~~R and 2.~~I~~O, respectively.

To foster increased use of MWBEs and SBEs, a single proposal may be sought, negotiated and accepted for discretionary purchases of goods and/or services not exceeding \$500,000, in the aggregate including all amendments, from a NYS-certified MWBE or an SBE that offers a reasonable price for such goods and/or services. An SDVOB may be awarded on the basis of a single proposal that offers a reasonable price for such goods and/or services without a dollar cap. The award of such proposal requires the written approval of the Vice President, SSM. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall also necessitate the written approval of the Vice President, SSM. Furthermore, the award of such Procurement Contracts will be noticed on the *Contract Reporter* website, as further set forth in Section 3.H.

E. It is the policy of New York State to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. The Authority will endeavor to promote such participation and to comply with the applicable statutory provisions. In furtherance of Public Authorities Law § 2879, the following definitions and actions apply:

1. “New York State Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form of exchange, goods sought by the Authority that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by the Authority that are substantially performed within New York State as further described in Public Authorities Law § 2879.
2. “New York State resident” is a person who maintains a fixed, permanent, and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law § 2879.
3. “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by the Authority that are substantially produced outside New York State, or services other than construction services, sought by the Authority that are substantially performed outside New York State as further described in Public Authorities Law § 2879. For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
4. “Discriminatory Jurisdiction” is any country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business

Enterprise in the procurement of goods and/or services by the same or a non-governmental entity influenced by the same.

5. Pursuant to Public Authorities Law § 2879, the Authority shall not enter into a contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development (“DED”). The provisions of this section may be waived by the Authority’s President and CEO if the CEO determines in writing that it is in the best interests of the Authority to do so, as further set forth in the above-referenced law.
 6. Pursuant to Public Authorities Law § 2879, the Authority will, where feasible, make use of the stock item specification forms of New York State manufacturers, producers and/or assemblers, as made available by the Commissioner of General Services, for any Procurement Contract for the purchase of goods.
- F. Certain goods and/or services may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the State (e.g., the New York State Office of General Services (“OGS”)) or Federal government (e.g., General Services Administration (“GSA”)) or any city or municipality where the White Plains SSM Department, or facility SSM Departments, and the initiating department determine that a reasonable potential exists for cost savings or other benefits to the Authority and have approved the specifications and proposed terms and conditions of such contract.
- Certain Procurement Contracts established by the OGS or GSA require that authorized users conduct a “mini bid” (i.e., an abbreviated supplemental competitive bid procurement process) among prequalified bidders identified in such established contracts. Certain other Procurement Contracts issued by the Authority (e.g., for on-call consulting or contracting services) may also utilize a mini bid process, typically, in cases of a multiple award, where a contract is awarded to more than one bidder that meets the Authority’s bid requirements, in order to satisfy multiple factors and needs as set forth in the bid document. Such mini bids shall be conducted by the Authority’s SSM staff (or on behalf of the Authority by an Implementation Contractor) where applicable and practicable. Within a said multiple award group, work may be assigned to a specific firm without conducting a mini bid, under certain circumstances, including but not limited to: where such firm possesses specialized expertise and is uniquely qualified to perform such work; where time constraints, emergency or other critical conditions exist or geographic location is of primary consideration in order to meet schedule requirements, respond to emergent issues or otherwise meet the Authority’s needs; or when the work scope is below a specified monetary threshold. The decision to assign work without conducting a mini bid shall typically be made jointly by SSM and the initiating departments and shall be documented for the Procurement Record.
- G. Solicitations will include a scope of work that defines the goods required and/or the services to be performed; evaluation criteria (as defined in Section 4.B); milestone dates;

the Authority's Supplier Diversity Program and SDVOB requirements, if applicable; all other applicable Authority requirements and any special methods or limitations that the Authority chooses to govern the work. Telephone solicitation, usually for procurements valued at less than \$50,000, may be used where time constraints do not permit issuance of an RFP, where issuance of an RFP is otherwise impracticable or for goods that are catalog items or do not require a detailed bill of materials or specification. All solicitations made by telephone shall be documented and made part of the Procurement Record.

- H. For all Procurement Contracts with a value equal to or greater than \$50,000 (except for those contracts noted below), the Authority will, prior to soliciting proposals, submit all required information to the Commissioner of the DED to be included on the New York State *Contract Reporter* website, (www.nyscr.ny.gov) (unless such posting would serve no useful purpose). Such information will be submitted to the DED Commissioner in accordance with the schedule set forth by the DED. The due date for bids or proposals will be a minimum of 15 business days after the date of publication of such notice on the *Contract Reporter* website, except where a shorter period is specifically authorized by law. For Procurement Contracts resulting from a Request for Proposal process, the Authority will submit the results of the bid opening, including the names of firms submitting proposals and the name/s of the awardee/s, for inclusion on the *Contract Reporter* website. For all other Procurement Contracts, the name of the awardee will be submitted.

This section 3.H does not apply to (i) Procurement Contracts awarded on an emergency basis as described below in Section 3.M, (ii) Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date, and/or (iii) Procurement Contracts awarded to not-for-profit human services providers. (See Article 4-C, Economic Development Law)

Certain Procurement Contracts may require purchases: (1) on a spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. Such purchases are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the Vice President, SSM, and/or the head of the initiating department that does not complete its procurements through the SSM Department. From time to time or where appropriate, generic notices may be published on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by the Authority.

Notwithstanding the foregoing, submittal of a notice / announcement of award for inclusion on the *Contract Reporter* website is required for Procurement Contracts with a value of \$50,000 or more awarded on a sole source or single source basis, including such discretionary contracts not exceeding \$500,000 awarded to Small Business Enterprises or NYS-certified MWBE firms, or for the purchase of goods and/or technology that are recycled or remanufactured, for discretionary awards on a single or sole source basis to SDVOB's, or for the purchase of food, including milk and milk products that are grown, produced or harvested in New York State, and certain other Procurement Contracts exempt from the general advertising requirement for Procurement Contract bidding

opportunities, in accordance with the afore-referenced law. Such notice shall specify the name of the awardee.

- I. In order to further increase participation of service-disabled veterans in New York State's contracting opportunities, the Service-Disabled Veteran-Owned Business ("SDVOB") Act was signed into law on May 12, 2014. The SDVOB program provides for eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business. The Division of Service-Disabled Veterans' Business Development within the New York State Office of General Services ("OGS") is responsible for certifying eligible SDVOBs, assisting agencies and authorities in complying with the law, and promoting SDVOB participation in the state's procurement activities. Under this program, contracts may be awarded on a non-competitive basis to NYS-certified SDVOBs for discretionary purchases. Alternately, contracts may be competitively bid exclusively among NYS-certified SDVOBs regardless of value, and advertised as such on the *Contract Reporter* website.

- J. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as an Authority representative, a "competitive search" will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The White Plains SSM Department or the appropriate facility SSM Department will work with the initiating department to gather information from potential sources, that will include a description of the consultant/firm's qualifications, résumés of key personnel, past experience and proposed billing rates.

- K. A Procurement Contract may be awarded on a Sole Source, Single Source, or other non-competitive basis where:

1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
3. A sole supplier's item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.

5. The contract is awarded to a Small Business Enterprise or to a NYS-certified MWBE firm for discretionary purchases not exceeding \$500,000, pursuant to Section 3.D and as further set forth in Section 2.C
 6. The contract is awarded to a NYS-certified SDVOB for a discretionary purchase.
 7. The contract is for the discretionary purchase of goods and/or technology that are recycled or remanufactured, in an amount not exceeding \$500,000, as further set forth in Section 2.C and subject to the approvals stated in Section 3.D.
 8. The contract is for the discretionary purchase of commodities that are food, including milk and milk products, which are grown, produced or harvested in New York State, in an amount not exceeding \$500,000, as further set forth in Section 2.C and subject to the approvals stated in Section 3.D.
 9. Services are required on a more expedited basis than the competitive procurement process will allow. Requesting business units must demonstrate the urgency of the project and that awardee is cost-effective and qualified in the subject area. Services shall be for specific scopes of work in an amount not exceeding \$500,000 and are subject to the approvals stated in Section 3.D.
 - 9.10. Purchases made on a Sole Source, Single Source, or other non-competitive basis are subject to Public Authorities Law § 2879-a, 2 NYCRR Part 206, entitled “Comptroller Approval of Contracts Made by State Authorities” (“Comptroller Regulations”) and the State Authority Contract Manual.
- L. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Authority may be required to submit certain contracts to the New York State Comptroller for approval that are awarded on a Sole Source, Single Source, or other non-competitive basis for the purchase of goods and/or services in an amount in excess of \$1 million, and shall notify the successful bidder therefor. Such contracts or contract amendments shall not be valid and enforceable unless approved by the Comptroller or until 90 days have elapsed from such submission without action by the Comptroller, as further set forth in the referenced law and regulations.
- M. Subject to the Authority’s Expenditure Authorization Procedures (“EAPs”), and Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, a Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:

1. A threat to the health or safety of the public or Authority employees or workers.
 2. Proper functioning of the Authority facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.
- N. Whenever an initiating department determines that a Procurement Contract should be awarded on a Single Source, Sole Source, or an emergency basis, the department head or other authorized equivalent per the EAPs will provide a written statement explaining the compelling reasons therefor to the White Plains SSM Department or the appropriate facility SSM Department. The award of such Procurement Contracts, regardless of value, requires the written approval of the Vice President, SSM, except as noted in Section 3.H.
- O. Every potential Sole Source or Single Source contract with a value of \$1 million or more must be approved by the President and CEO or the COO prior to processing by the SSM Department.
- P. In furtherance of Public Authorities Law § 2800, when a procurement is made on a non-competitive basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the Chief Executive Officer and Chief Financial Officer of the Authority stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. The following definition shall apply: "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by internal appraisals, industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the Vice President, SSM or authorized designee.
- Q. It is the policy of New York State to discourage improper communications intended to influence a governmental procurement. The Authority will endeavor to control such practices and will comply with the applicable statutory provisions. In furtherance of the State Finance Law §§ 139-j and 139-k, the following shall apply:

The "Restricted Period" is the period of time commencing with the earliest posting, on the Authority's website, in a newspaper of general circulation, or in the Procurement Opportunities Newsletter (i.e., New York State *Contract Reporter*) in accordance with Article 4-C of the Economic Development Law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from offerors (i.e., bidders/con- tractors) intending to result in a Procurement Contract with the Authority and ending with the final contract award and approval by the Authority and, where applicable, the State Comptroller. The "Restricted Period" also applies to a "mini-bid" process that may be utilized in certain established OGS, GSA or Authority multiple award contracts, as provided in Section 3.F.

The Authority shall designate a person or persons who may be contacted, with respect to each Authority procurement. The bidders/contractors or persons acting on their behalf, shall only contact the Authority's designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period.

- R. In furtherance of the Authority's commitment to ensure transparency and accountability of its operations, every member, officer or employee of the Authority who is contacted by a lobbyist is required to make a contemporaneous record of such contact, pursuant to Public Authorities Law § 2987 and as further set forth in the Authority's Company Policy, Lobbying Contacts CP 9-2, regarding this matter.

- S. Project Sunlight (Chapter 399, Part A, Section 4 of the Laws of 2011) requires the Authority to record in a database maintained by the New York State Office of General Services certain appearances between the Authority and individuals, firms or other entities (excluding elected officials and representatives of federal, state and local agencies and authorities) relating to the procurement of a contract, with a value of \$25,000 or more, for real property, goods or services. Appearances are defined as an interaction through an in-person meeting or a video conference between covered individuals. Appearances related to emergency procurements and disposal of property through public auctions are excluded, as are appearances that take place during the formal "Restricted Period." Covered individuals at the Authority means an employee who has the power to exercise discretion in procurement matters or advises someone who exercises such discretion. A covered individual outside of the Authority means both "external" (e.g., a lobbyist) and "internal" (e.g., sales representative) representatives of an entity, individuals appearing on behalf of themselves, advocacy groups or organizations or entities representing the interests or concerns of the organization or entity or of its members. All such appearances must be promptly reported to the Authority's Ethics and Compliance Office for recording in the Project Sunlight database.

- T. Prior to entering into any binding relationship with a third party (e.g., written agreement or memorandum of understanding (MOU)) in pursuit of any joint or collaborative development project, the office of SSM and the Law Department ("Law") must be notified regarding the procurement and on the issue of whether and to what extent the projects falls within the constraints of the Authority's procurement regulations and enabling legislation. SSM and Law should be brought into any such project in the development process.

Provided that the Authority has statutory authority to develop or otherwise participate in a project developed, in whole or in part, in collaboration with a third party, the following minimum criteria must be met:

- (i) the Authority's participation must be in response to a solicitation issued by the State or other public entity pursuant to a competitive selection process; and

- (ii) the construction of any asset to be owned by the Authority must comply with all applicable laws, including but not limited to prevailing wage requirements and goals established for the use of minority enterprises (e.g., minority- and women-owned business enterprise (MWBE), service disabled veteran owned business (SDVOB)); and
- (iii) goods and/or services required to develop and implement the project must be sourced and procured in accordance with, and subject to, either (a) the Authority's Procurement Guidelines; or (b) the requirements of the third party collaborator governing the competitive procurement of goods and services, provided that SSM has been furnished with a copy of such requirements which demonstrate, in SSM's judgement, that a competitive procurement or equivalent has been or will be undertaken.

Prior to execution any underlying agreement (i.e. joint development agreement, MOU, etc.) an internal award recommendation shall be memorialized and approved by the VP SSM and the responsible Business Unit head.

4. **EVALUATION OF PROPOSALS**

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder (including, but not limited to, the bidder's skill, judgment and business integrity), the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the White Plains SSM Department and/or the appropriate facility SSM Department and appropriate managers as stipulated in the EAPs. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award and (3) negotiating with the low bidder(s), as determined by the Vice President, SSM or designee, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited to: the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued, and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are: previous experience (including applicable experience in

New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the Authority's work and the ability to provide any needed advanced techniques such as simulation and modeling; and overall, the bidder's skill, judgment and business integrity. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet Supplier Diversity Program goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.

Another factor to be considered in evaluating proposals may involve an assessment of the bidder's diversity practices, where applicable. Pursuant to Article 15-A of the Executive Law, diversity practices are the contractor's practices and policies with respect to utilizing NYS-certified MWBEs in contracts as subcontractors and suppliers, and entering into partnerships, joint ventures or other similar arrangements with NYS-certified MWBEs. A contractor's diversity practices may be assessed when: (1) a procurement is awarded on the basis of "Best Value" as described in Section 4.D. (but *not* when a procurement is awarded based upon "lowest price"); (2) the anticipated award is \$250,000 or greater; and (3) such assessment is practicable, feasible and appropriate. Such assessment shall not permit the automatic rejection of a bid or Procurement Contract proposal based on lack of adherence to diversity practices.

- C. For Services Contracts (as defined in Section 2.M of these Guidelines), the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract, provided that the price for performing such work is reasonable and competitive.
- D. For Procurement Contracts for Goods (as defined in Section 2.F of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents. (See also Section 4.F regarding award to "other than low bidder".)

As a best practice and pursuant to State Finance Law § 163, the Authority may award on a "Best Value" basis for awarding contracts to the offeror that optimizes quality, cost and efficiency, among responsive and responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis and may also identify a quantitative factor for offerors that are Small Businesses or NYS-certified SDVOB or MWBE firms.

- E. Pursuant to § 139-k of the State Finance Law, the Authority shall not award a Procurement Contract (as defined in Subsection 3.Q.1 of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder's/contractor's knowing and willful violation of the Authority's policy providing for certain procurement disclosures shall result in a determination of non-responsibility of such bidder/contractor pursuant to State Finance Law §§ 139-j and 139-k only.

More than one determination of non-responsibility due to violations of State Finance Law § 139-k in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to "other than low bidder" can be made only with the approval of appropriate management as stipulated in the EAPs, and should be based on such a proposal providing a clear advantage to the Authority over the lower-priced proposal. Factors justifying an "other than low bidder" award may include, but are not limited to: improved delivery schedules that will reduce outages; longer warranty periods; improved efficiency over the usable life of the equipment; reduced maintenance costs; the bidders' financial resources or the ability to meet or exceed Supplier Diversity Program and SDVOB goals; and overall, the bidder's skill, judgment and business integrity.
- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, the Authority may diverge from the specifications of any solicitation if, after review of the proposals responsive to such solicitation, the Authority deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings.

5. **RECOMMENDATION OF AWARD**

- A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum or e-mail by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:
 - 1. Lump sum and/or unit prices for equipment and construction work.
 - 2. Hourly or daily rates for personnel.
 - 3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
 - 4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.
 - 5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.
- B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but

not limited to payment terms, warranties and bond requirements, if any, as well as Supplier Diversity Program requirements, as applicable.

6. AWARD OF CONTRACT

- A. Services Contracts (which include contracts for Construction, Personal and Non-personal services, as defined in Section 2.M.) valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months are approved and reviewed annually by the Trustees. Services Contracts for a period of less than 12 months are approved by authorized designees in accordance with existing EAPs. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Trustees at the request of the initiating department and will be reviewed by the Trustees annually. Extending a contract for services, that has previously been approved by the Trustees, for a cumulative term of more than 12 months requires further Trustees' approval.
- B. Extending a contract, previously approved by the Trustees, for 12 months or less ("grace period") requires approval by the Vice President of the requesting department or other authorized equivalent or designee in accordance with existing EAPs and concurrence by the Vice President, SSM.
- C. For Services Contracts valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months that must be awarded prior to the next quarterly Trustees' meeting, the initial contract will be issued for the entire intended term of the contract. Based on its total term and value, such contract must be approved in writing by the appropriate management as set forth in the EAPs. Such contract is subject to the Trustees' approval, at the next quarterly Trustees' meeting. If such approval is not granted, the contract will be terminated immediately.
- D. A contract or contract task valued or estimated to be \$5,000 or greater is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any "continuing services" contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Trustee-approved contracts for architect/engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a "Change Order," "Purchase Order" or "Task Number") is considered a separate commitment and must be separately approved in accordance with the EAPs.
- E. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions. However, at the sole discretion of the Vice President of SSM may approve a Business Unit's written justification for a contract term exceeding 5 years or reasonable extension of such a contract.
- F. For construction value contracts purchase order releases maybe issued up to the term limit of the value contract. The term of a construction purchase order release shall be as

required to complete the work assigned. The term of the value contract shall be extended accordingly.

- E.G. Multiyear contracts for Goods (which include equipment, materials and supplies, as defined in Section 2.F) valued or estimated to be \$5,000 or greater are subject to the management approval thresholds established in the EAPs, and require Trustee approval only once those thresholds are met.
- F.H. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed the appropriate limit set forth in the EAPs, the Business Unit Head, with the prior concurrence of the Vice President, SSM or equivalent(s) or designee, may authorize extending such contract, subject to the Trustees ratifying such action as soon as practicable.
- G.I. When the total estimated contract value or the value of the extension exceeds the monetary limits set forth in the EAPs, interim approval by the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Trustees ratifying such action as soon as practicable.
- H.J. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value exceeds the monetary approval limit for the President and Chief Executive Officer or Chief Operating Officer or equivalent(s), as set forth in the EAPs, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the Vice President, SSM or equivalent(s) or designee, may authorize in writing the commencement of such services. The initial compensation limitation may not exceed the authorization level for the President and Chief Executive Officer or equivalent(s) or Chief Operating Officer or equivalent(s) as set forth in the EAPs. Such contracts will be subject to the Trustees' approval, which will be solicited at their next scheduled Trustee meeting.
- I.K. The White Plains SSM Department or the facilities' SSM Departments prepare the contract for execution by the Authority and the successful bidder. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution. Authority signatories of such letters must be authorized to approve contract awards pursuant to the EAPs.
- J.L. Pursuant to Economic Development Law § 143, the Authority shall submit an announcement of the intended contract for inclusion in the procurement opportunities newsletter at the time it enters into a contract. Such announcement shall identify the contract, specify the date of the award of the contract and provide the name of and contact information for each recipient of the contract.
- K.M. Pursuant to Public Authorities Law § 2879, the Authority shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase

of goods and/or services from a Foreign Business Enterprise (as defined in Subsection 3.E.3 of these Guidelines) in an amount equal to or greater than \$1 million simultaneously with notifying the successful bidder therefor. The Authority shall not enter into the Procurement Contract for said goods and/or services until at least 15 days have elapsed from the notification of the award, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, telephone and facsimile number of the Foreign Business Enterprise, the amount of the proposed Procurement Contract and the name of the individual at the Foreign Business Enterprise or acting on behalf of same who is principally responsible for the proposed Procurement Contract.

7. CONTRACT PROVISIONS

- A. The following standard forms of contracts are available from the White Plains SSM Department: purchase order format (for standard procurements of goods and/or services); furnish-and-deliver format (for major equipment purchases); long form agreements (for consulting services) and maintenance agreement formats; contract work orders (for construction work of small magnitude); construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services.

Authority departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the SSM Department, which, along with the facilities' SSM Departments, is solely responsible for requesting proposals.

- B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.
1. Schedule of Services or Specifications
 2. Time of Completion
 3. Compensation or Itemized Proposals
 4. Relationship of Parties
 5. Delays
 6. Termination
 7. Changes in the Work
 8. Claims and Disputes
 9. Warranty
 10. Insurance

11. Records, Accounts, Inspection and Audit
12. Assignment
13. Notices
14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Testimony
18. MWBE requirements
19. SDVOB requirements
20. Entire Agreement

Contract Attachments

1. Compensation Schedule
2. Schedule of Services or Specifications
3. Appendix "A" (Miscellaneous Statutory Provisions)
4. Appendix "B" (Prompt Payment Provisions)
5. Appendix "C" (Minority- and Women-owned Business Enterprise (MWBE) Participation Goal Requirement)
6. Appendix "D" (Background Security Screening for Authority Contractors)
7. Appendix "E" (Omnibus Procurement Act of 1992 Requirements)
8. Appendix "F" (Computer Aided Design Requirements For New York Power Authority Drawings)
9. Appendix "G" (Equal Employment Opportunities Requirements)
10. Appendix "H" (Tax Law Requirements)
11. Appendix "I" (New York Power Authority (NYPA) North American Electric Reliability Corporation Critical Infrastructure Protection (NERC CIP) Cyber Access And/or Unescorted Physical Access Training Requirements)
12. Appendix "J" (Bidder/Contractor Compliance with State Finance Law §§ 139-j and 139-k Providing for Certain Procurement Disclosures)
13. Appendix "K" (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act (Pub. L. No. 111-5 Stat. 2009) ("ARRA") Funded Projects) - inactive
14. Appendix "L" (DOE Federal Contract Provisions) - inactive
15. Appendix "M" (Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology ("BART") for Heavy Duty Vehicles)
16. Appendix "N" (The New York State Iran Divestment Act of 2012 – Iranian Energy Sector Divestment)
17. Appendix "O" (Encouraging Use of New York State Businesses in Contract Performance) – inactive
18. Appendix "P" (Non Bulk Electric System (BES)) (Information Security Requirements for Vendors and External Partners non Bulk Electric System)
19. Appendix "P" for BES (Information Security Requirements for Vendors and External Partners for Bulk Electric System)

- C. If a vendor (firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services.

Furthermore, any firm, person or other entity retained by the Authority to provide conceptual studies, designs or specifications is prohibited from being awarded future phases of work, including implementation, related to the original work.

The above restrictions shall not apply where:

1. The vendor is the sole source or single source of the product or service;
2. More than one vendor has been involved in preparing the specifications for a procurement proposal;
3. There is no qualified response to the solicitation for future phases of work, including implementation; or
4. The originating Authority Business Unit determines in writing that the restrictions are not in the best interests of the Authority. Such originating Business Unit shall obtain the approval of the applicable Business Unit Head or equivalent(s), Vice President, SSM or equivalent(s) or designee, Assistant General Counsel or equivalent(s) and President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) to waive this restriction on a case-by-case basis.

8. **CHANGE ORDERS**

- A. Change Orders to existing contracts are justified in the following cases:
1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
 2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;
 3. To accommodate emergency conditions, defined in Section 3.M herein, that require the immediate performance of work by a firm already under contract;
 4. When rebidding would not be practical or in the best interests of the Authority's customers; and
 5. To meet the Authority's Supplier Diversity and SDVOB Program goals in accordance with Executive Law Articles 15-A and 17-B, respectively.
- B. All Change Orders must be approved in accordance with the Authority's EAPs, and should include specific schedules for completion of work at the earliest possible time.
- C. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Authority may be required to submit certain Change Orders to the New York State Comptroller for filing or approval where the aggregate value

of the contract as amended is in excess of \$1 million and the original contract was awarded on the basis of a competitive procurement, but the modification was neither contemplated nor provided for in the solicitation for such competitive procurement.

9. CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES

- A. Former Authority officers and employees may be eligible to be considered for direct engagement as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines; their engagement is not barred by New York Public Officers Law § 73(8); they obtain an opinion by the New York State Joint Commission on Public Ethics that such engagement is permissible; and upon approval of the President and Chief Executive Officer, as well as the Chairman of the Board of Trustees.
- B. Pursuant to the provisions of New York Public Officers Law § 73(8):
 - 1. No Authority officer or employee is eligible, within a period of two years after the termination of Authority service to appear or practice before the Authority or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before the Authority.
 - 2. No Authority officer or employee is eligible, at any time after the termination of Authority service, to appear, practice, communicate or otherwise render services before the Authority or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of service, or which was under his or her active consideration.
 - 3. Pursuant to the provisions of New York Public Officers Law § 73(8-b), notwithstanding the provisions of 1. and 2. above, a former Authority officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to the Authority, if, prior to engaging in such service, the Chairman of the Board of Trustees certifies in writing to the New York State Joint Commission on Public Ethics that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the Authority's needs and is otherwise unavailable at a comparable cost. Where approval of the contract is required under § 112 of the New York State Finance Law, the Comptroller shall review and consider the reasons for such certification. The New York State Joint Commission on Public Ethics must review and approve all such certifications.
- C. No Authority employee who is involved in the award of Authority grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected

official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.

- D. No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- E. No Authority employee may take part in any contracting process or decision: (i) to a Relative; or (ii) to any entity in which the Authority employee or a Relative of such Authority employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section 9.E, then the employee must advise in writing his or her supervisor and the Office of Ethics and Compliance of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

For purposes of this Section 9.E, the term "Relative" is defined in Definitions, Section 2.
L of these Guidelines.

10. **SUPPLIER DIVERSITY PROGRAM REQUIREMENTS**

The Authority strives to continue to foster the development of business opportunities on Authority contracts for MWBEs. Article 15-A of the Executive Law established the NYS Office (now Division) of Minority and Women's Business Development ("DMWBD") that is responsible for developing rules and regulations for implementation of this statute, certifying MWBEs and reviewing and monitoring goal plans, compliance reports and contract provisions to be included in all non-construction contracts for more than \$25,000 and construction contracts for more than \$100,000. The definition of an MWBE is included in Section 2.-G of these Guidelines. The Authority aims to solicit proposals from NYS-certified MWBEs that are qualified to perform the required work. In addition, specific goals may be included in certain contracts for consulting work, construction and procurement of goods and other services requiring the contractor/vendor to subcontract a portion of the work to NYS-certified MWBEs as required by law. Bidders' proposals will include a completed preliminary Utilization Plan Form for MWBEs, as well as applicable EEO and Diversity Practices Forms, where required. Such bidders' failure to meet these requirements may be grounds for rejection of the proposal, or cancellation of the contract if a contractor did not make a good faith effort to meet its goals after contract award. Final MWBE Utilization Plans for Construction contracts valued at more than \$100,000 shall be provided and posted on the Authority's procurement website by the successful vendor within ten business days of contract signing.

Pursuant to § 2879 of the Public Authorities Law and as further set forth in the Authority's Supplier Diversity Program documents, the following guidelines apply:

1. Identify those areas or types of contracts for which MWBEs may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises.
2. Provide notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve MWBEs providing the types of services procured by the Authority.
3. Maintain lists of qualified NYS-certified MWBEs, including professional firms that have expressed an interest in doing business with the Authority and ensuring that such lists are updated regularly. The Authority shall also consult the lists of NYS-certified MWBEs maintained by the DED pursuant to Executive Law Article 15-A.
4. Establish appropriate goals for participation by MWBEs in Procurement Contracts awarded by the Authority and for the utilization of MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the Authority. Statewide numerical participation target goals shall be established by the Authority based on the criteria set forth in Public Authorities Law § 2879.
5. Conduct procurements in a manner that will enable the Authority to achieve the maximum feasible portion of the goals established pursuant to Subdivision 4 of this Section and that eliminates barriers to participation by MWBEs in the Authority's procurements.
6. Designate one or more senior staff of the Authority to oversee the Authority's programs established to promote and assist participation by and utilization of NYS-certified MWBEs.

11. SERVICE-DISABLED VETERAN-OWNED BUSINESS ("SDVOB") PROGRAM REQUIREMENTS

The Authority also strives to foster the development of business opportunities for NYS-certified SDVOBs and to further increase participation by SDVOBs in Authority contracts, as set forth in Sections 2.~~R~~ and 3.I of these Guidelines and pursuant to Article 17-B of the Executive Law. One tool is the use of SDVOB discretionary purchasing, as further described in Sections 3.D, 3.I~~2~~, and 3.K.6 of these Guidelines. Another tool authorized by the law is the use of set-asides, which permit the reservation in whole or in part of certain procurements by state agencies and authorities when more than one NYS-certified SDVOB is available and can provide the necessary goods or services to meet the Authority's form, function and utility. The same dollar limits apply to SDVOB contracts as those set forth for MWBEs in Article 10 of these Guidelines.

Pursuant to Article 17-B of the Executive Law, the following guidelines apply:

- ~~1.~~ Identify contracts where SDVOBs may best perform and/or where SDVOB goals are practical, feasible and appropriate for the purpose of increasing the utilization of SDVOB participation on Authority contracts.
- ~~2.1.~~ Submit regular reports with respect to SDVOB Program activity, including but not limited to, utilization reporting and contract monitoring and compliance.

- 3.2. Achieve an overall goal of six percent for SDVOB participation on Authority contracts.

12. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM REQUIREMENTS ON PROJECTS THAT ARE FEDERALLY FUNDED

The Authority strives to foster the development of business opportunities for NYS certified DBEs and to further increase their participation in NYPA Federally funded contracts. The Authority aims to solicit proposals from DBEs for procurements that will be partially or fully federally funded. The Authority follows the DBE guidelines as set out by The Federal Department of Transportation (“DOT”). NYS DOT is tasked with certifying eligible small businesses as DBEs in New York State.

The Authority is committed to promoting participation of DBEs in NYPA contracting opportunities in accordance with federal law and regulations and seeks to achieve the following objectives:

1. To ensure nondiscrimination in the award and administration of Federally funded contracts;
2. To create a level playing field on which DBEs can compete fairly for Federally funded contracts;
3. To ensure that the Authority’s DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this Federal eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in Federally funded contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

13. PROCUREMENT RECORD AND REPORTING

A. Procurement Record

The White Plains SSM Department maintains records of Procurement Contracts. In addition to bid- and contract award-related documents for the goods provided and/or services performed, the Procurement Record includes, but is not limited to, documentation of the decisions made and the approach taken in the procurement process. Such records are transmitted to the Digital Warehouse for electronic storage and retrieval. At the facilities, such records are currently maintained and stored by the facilities’ SSM Departments.

A.B. Procurement Report

After the end of each calendar year, the Vice President, SSM or equivalent(s) will prepare and submit an annual report to the Trustees for their approval that will include:

1. A copy of the Guidelines;
2. An explanation of the Guidelines and any amendments thereto since the last annual report;
3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
4. A list of fees, commissions or other charges paid;
5. A description of work performed, the contract number, the date of the contract and its duration, the name, address and NYS-certified MWBE designation of the awardees, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of open Procurement Contracts during the report year;
6. The type of contract (equipment, services, personal services or construction);
7. The method of awarding the contract (e.g., competitive bidding, Sole Source, Single Source or competitive search);
8. The reasons why any procurements with a value equal to or greater than \$50,000 were not noticed in the Contract Reporter;
9. The number of bids received and
10. All referrals made and all penalties imposed, if any, pursuant to § 316 of the Executive Law.

B.C. Such annual report, as approved by the Trustees, shall be submitted to the New York State Division of the Budget within 90 days of the end of such calendar year, and copies thereof shall be distributed to the New York State Department of Audit and Control, the DED, the New York State Senate Finance Committee, and the New York State Assembly Ways and Means Committee and any other entity as may be required by law. The annual procurement report is posted on the Authority's website and copies shall be made available to the public upon reasonable written request therefor.

C.D. State Finance Law §§ 139-j and 139-k

1. A statement describing the basis for a determination of a bidder's/contractor's non-responsibility (per State Finance Law §§ 139-j and 139-k only) and the Authority's decision not to award a bidder/contractor the Procurement Contract must be included in the Procurement Record.
2. The Authority shall notify the New York State Office of General Services of bidders/contractors who have been determined to be non-responsible bidders (per State Finance Law §§ 139-j and 139-k only) or debarred due to violations of § 139-j of the State Finance Law.

3. All forms entitled "Record of Contact" shall be included in the respective Procurement Record.
4. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the Procurement Record.

D.E. The Authority may be called upon periodically to submit information regarding the procurement of goods and/or services to organizations implementing the PAAA or other statutes regulating the procurement of goods and services, such as the Authorities Budget Office through the Public Authorities Reporting Information System ("PARIS").

F. The Vice President, SSM or equivalent(s) will also prepare Annual Goal Plans for the MWBE and SDVOB programs and will submit them by January 15 of each year to Empire State Development - Division of Minority and Women Business Development and the New York State Office of General Services - Division of Service-Disabled Veterans' Business Development, respectively. Quarterly Utilization / Activity Reports for each program will also be prepared and submitted to the aforementioned respective state entities by the 15th day of July, October, January and April.

14. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS

- A. These Guidelines are intended for the guidance of officers and employees of the Authority only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.

POWER AUTHORITY OF THE STATE OF NEW YORK
GUIDELINES FOR PROCUREMENT CONTRACTS

EXECUTIVE SUMMARY

The Power Authority of the State of New York (the “Authority”) is a corporate municipal instrumentality and political subdivision of the State of New York. The Authority generates, transmits and sells electric power and energy principally at wholesale. The Authority’s primary customers are municipal and investor-owned utilities and rural electric cooperatives located throughout New York State, high-load-factor industries and other businesses, various public corporations located within the metropolitan area of New York City and certain out-of-state customers. The Authority does not use tax revenues or State funds or credit. It finances construction of its projects through bond and note sales to private investors and repays the debt holders with proceeds from operations.

The Authority requires the services of outside firms for accounting, engineering, legal, public relations, surveying and other work of a consulting, professional or technical nature to supplement its own staff, as well as to furnish varied goods and services and perform construction work. Many of these contracts are associated with the construction, maintenance and operation of the Authority's electric generating and transmission facilities, transmission lines, as well as for support of Energy Solutions (“ES”) and Energy Efficiency (“EE”) programs.

PROCUREMENT GUIDELINES (Exhibit “A”)

In compliance with the applicable provisions of § 2879 of the Public Authorities Law (“PAL”), as amended, the Authority has established comprehensive Guidelines detailing its operative policy and instructions concerning the use, awarding, monitoring and reporting of procurement contracts. The Guidelines describe the Authority’s process for soliciting proposals and awarding contracts. Topics detailed in the Guidelines include solicitation requirements, evaluation criteria, contract award process, contract provisions, change orders, Minority- and Women-owned Business Enterprise (“MWBE”) and Service-Disabled Veteran-Owned Business (“SDVOB”) requirements, employment of former officers and reporting requirements. These Guidelines, approved by the Authority’s Trustees, were initially implemented on January 1, 1990, and have been amended as deemed advisable and necessary, and reviewed and approved by the Board annually since that date, the last approval was on March 31, 2020.

Staff has reviewed the Procurement Guidelines and recommends several changes to make them more consistent with the law or to improve or clarify the Authority's procurement process. These amended Guidelines, as reviewed by the Governance Committee on December 1, 2020, are now presented to the full Board of Trustees for review and approval at their meeting of the same date. The approved Guidelines will become effective on December 9, 2020 and will be posted on the Authority's internet website.



Canal Corporation

Date: December 9, 2020

To: THE CANAL CORPORATION BOARD OF DIRECTORS

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Canal Corporation Guidelines for Procurement Contracts

SUMMARY

The Board of Directors ("Board") are requested to approve the changes to the Canal Corporation's ("Canal") Guidelines for Procurement Contracts ("Guidelines") dated December 9, 2020 (Exhibit "A"). The Governance Committee at their December 1, 2020 meeting adopted a resolution recommending that the Board adopt the Guidelines. An Executive Summary is set forth in Exhibit "A-1".

BACKGROUND

Section 2879 of the Public Authorities Law ("PAL") governs the administration and award of procurement contracts equal to or greater than \$5,000. Section 2879 of the PAL requires public authorities to adopt comprehensive guidelines detailing their operative policy and instructions concerning the use, awarding, monitoring, and reporting of procurement contracts. The Canal Guidelines were initially approved by the Board on March 20, 2018. The Canal Guidelines have been amended as deemed advisable and necessary, and reviewed and approved by the Board, most recently on March 31, 2020.

DISCUSSION

The Guidelines, effective December 9, 2020, are amended in accordance with certain provisions of State Finance Law §§ 139-j and 139-k, New York Public Officers Law § 73(8), and as further set forth in Exhibit "A."

The Guidelines generally describe Canal's process for soliciting proposals and awarding contracts. Topics detailed in the Guidelines include solicitation requirements, evaluation criteria, contract award process, contract provisions, change orders, Supplier Diversity including Minority- and Women-owned Business Enterprise ("MWBE"), Service-Disabled Veteran-Owned Business Enterprises ("SDVOB"), and NYS Small Business Enterprises ("SBE") requirements, employment of former officers and reporting requirements.

FISCAL INFORMATION

There will be no financial impact on the organization.

RECOMMENDATION

The Executive Vice President and Chief Financial Officer, the Vice President – Strategic Supply Management and the Governance Committee recommend that the Board of Directors approve the Canal Corporation's Guidelines for Procurement Contracts, as amended.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That pursuant to Section 2879 of the Public Authorities Law and the Canal Corporation's Procurement Guidelines, the guidelines for the use, awarding, monitoring and reporting of procurement contracts as amended and attached hereto as Exhibit "A," are hereby approved; 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.

CANAL CORPORATION GUIDELINES FOR PROCUREMENT CONTRACTS

1. PURPOSE

These Guidelines for Procurement Contracts (“Guidelines”) set forth the policy of Canal Corporation regarding the solicitation and awarding of Procurement Contracts. The provisions of Article 4-C of the Economic Development Law, §§ 2879 and 2879-a of the Public Authorities Law, Articles 15-A and 17-B of the Executive Law and §§ 139-j and 139-k of the State Finance Law were considered in developing these Guidelines. Departments and facilities may adopt further procedures to implement these Guidelines.

2. DEFINITIONS

- A. “Capital projects” generally refer to the acquisition or construction of new assets, the replacement and/or betterment of existing assets, equipment, or property (including those of NYPA’s customers, where authorized). Betterment refers to an extension of the useful life or improvement in the efficiency and/or capacity of the asset, equipment, or property.
- B. “Contact” is any oral, written, or electronic communication with the Authority under circumstances where a reasonable person would infer that the communication was intended to influence the Authority’s conduct or decision regarding the procurement.
- C. “Discretionary Purchase” is a procurement made below statutorily established monetary threshold amounts (e.g., not exceeding \$500,000 for the purchase of commodities and/or services from Small Business Enterprises or NYS-certified MWBE firms, and without a dollar cap for SDVOB firms as further set forth in Sections 3.D and 3.K.5-7) and at the discretion of the Authority, without the need for a formal competitive bid process. For the purpose of determining whether a purchase is within the discretionary thresholds, the aggregate amount of all purchases of the same commodities and/or services to be made within the 12-month period commencing on the date of purchase shall be considered. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities and/or services from the same provider within the 12-month period commencing on the date of the first purchase to an amount greater than \$500,000, pursuant to State Finance Law § 163.
- D. “Disadvantaged Business Enterprise” (DBE) is a for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it, pursuant to the definition found in 49 C.F.R Part 26.
- E. “Evaluation of Proposals,” as further outlined in Section 4 below, includes evaluating factors the Authority’s consideration of a bidder’s skill, judgment, and business integrity.
- F. “Goods” include equipment, material and supplies of any kind. Procurement Contracts that include both equipment and services may be classified as Equipment,” where 60% or more of the total projected contract value will be for the purchase of equipment, material or supplies.

- G. “Minority- and Women-owned Business Enterprise” (“MWBE”) is defined as any New York State-certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans, Asians, Pacific Islanders and/or women, and as further described in the Authority’s Supplier Diversity Program Policy and Procedures and Executive Law Article 15-A, and pursuant to the definition found in Executive Law § 310.
- H. “Non-Procurement Contracts” include contracts under \$5,000, contracts for energy with or without environmental attributes included, capacity, renewable energy certificates, ancillary services, transmission, distribution or related services in support of providing service to Authority customers; contracts for differences; financial hedge contracts (including but not limited to swaps, calls, puts or swap options) or credit rating services; certain insurance and healthcare products that do not readily lend themselves to a competitive solicitation. In addition, Non-Procurement Contracts include direct and indirect placement of advertisements with radio, television, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and procurement activities conducted or sponsored by such organizations in which the Authority participates.
- I. “Operation and Maintenance” (“O&M”) generally refers to the work or services necessary to keep the plants, transmission lines, and other equipment and facilities to include NYPA customers, where authorized, (collectively referred to generally as an “asset”) in optimal operating condition and/or to restore an asset to its productive capacity. This includes the cost of inspecting, testing, analyzing and reporting on the condition of the asset required to determine repairs or replacement, as well as costs associated with the normal operation and administration of NYPA’s production/transmission facilities and energy programs.
- J. “Procurement Contracts” are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Authority’s White Plains office, facilities, operations and maintenance (“O&M”) and capital projects (as defined in Section 2.I. and 2. A., respectively), including but not limited to goods such as office supplies, major electrical equipment, construction and maintenance work and services as more fully described in Section 2.F and 2.M.
- K. “Purchase Order Release” is a single order issued for goods or services in accordance with the terms and conditions of a Value Contract.
- L. “Relative” is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee’s grandparents or the spouse of such descendant, as referred to in Subsection 9.E.1 of these Guidelines. The term Relative may include, but is not limited to, the relationship of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law or son-in-law.

- M. “Services Contracts” are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships, or firms who are not and do not employ officers or employees of the Authority) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services, and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by a consultant for the Authority), and construction management. Non-Personal services include but are not limited to skilled or unskilled temporary personnel, including clerical office staff, technicians, or engineers working under Authority’s supervision, maintenance, repairs, and printing services. Construction consists of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services
- Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient Authority staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of the aforementioned factors.
- N. “Single-Source” is a procurement in which the Authority, upon written findings setting forth material and substantial reasons, may award a contract (or amendment to a contract) to one offeror over another that can supply the goods or services.
- O. “Small Business” (or Small Business Enterprise, “SBE”), pursuant to Executive Law § 310 and as used in these Guidelines, unless otherwise indicated, is a business that has a significant business presence (as defined at 5 NYCRR 140.1) in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.
- P. “Software” includes on-premises applications as well as Software-as-a-Service (SaaS) which is defined as a software distribution model in which a third-party provider hosts application and makes access available to customers over the Internet. “Software” shall be considered “Equipment” where such term is used throughout these Guidelines.
- Q. “Sole Source” is a procurement in which only one offeror is capable of supplying the required goods or services.
- R. “Service-Disabled Veteran-Owned Business” (“SDVOB”) is a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is at least 51% owned by one or more service-disabled veterans; in which such ownership is real, substantial and continuing, and also has and exercises the authority to control independently the day-to-day business decisions of the enterprise; is a Small Business and is certified by the New York State Office of General Services, as further set forth in Article 17-B of the Executive Law.
- S. “Value Contract” Master Service Agreement for goods and services with specific target value and term.

3. SOLICITATION REQUIREMENTS

- A. Preparation of the solicitation of proposals for Procurement Contracts is the joint responsibility of the White Plains Strategic Supply Management (“SSM”) Department, or the Canal Corporation SSM Department, and the initiating department. Except as otherwise authorized by these Guidelines, a Request for Proposals (“RFP”) or Request for Quotations (“RFQ”) will be made available to a minimum of three providers and/or firms (if available) for purchases valued under \$50,000 and a minimum of five providers and/or firms (if available) for purchases valued at \$50,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance.
- B. Prospective bidders on Procurement Contracts may be prequalified by invitation advertised in the same manner as an RFP/RFQ (referred to as a Request for Qualifications and/or Request for Information (“RFI”). In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence (including, but not limited to, the bidder’s skill, judgment and business integrity) to supply the particular goods and/or perform the particular services required.
- C. The Canal Corporation may withdraw any pending solicitation (including but not limited to RFPs and RFQs) at any time, for cause or no cause. Any person or entity submitting any responsive document to the Canal Corporation does so at its own cost or expense and will not be reimbursed by the Canal Corporation for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized Canal Corporation representative.
- D. In order to promote the use of Minority- and Women-owned Business Enterprises (“MWBEs”), Service-Disabled Veteran-Owned Businesses (“SDVOBs”) and Small Business Enterprises (“SBEs”), the Canal Corporation will solicit offers from such firms known to have experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definitions of NYS-certified MWBE or SDVOB firms and SBEs are set forth in Sections 2.H, 2.L and 2.I, respectively. To foster increased use of MWBEs and SBEs, a single proposal may be sought, negotiated and accepted for discretionary purchases of goods and/or services not exceeding \$500,000, in the aggregate including all amendments, from a NYS-certified MWBE or an SBE that offers a reasonable price for such goods and/or services. An SDVOB may be awarded on the basis of a single proposal that offers a reasonable price for such goods and/or services without a dollar cap. The award of such proposal requires the written approval of the Vice President, SSM. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall also necessitate the written approval of the Vice President, SSM. Furthermore, the award of such Procurement Contracts will be noticed on the *Contract Reporter* website, as further set forth in Section 3.H.
- E. It is the policy of New York State to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. The Canal Corporation will endeavor to promote such

participation and to comply with the applicable statutory provisions. In furtherance of Public Authorities Law § 2879, the following definitions and actions apply:

1. “New York State Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form of exchange, goods sought by the Canal Corporation that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by the Canal Corporation that are substantially performed within New York State as further described in Public Authorities Law § 2879.
 2. “New York State resident” is a person who maintains a fixed, permanent and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law § 2879.
 3. “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by the Canal Corporation that are substantially produced outside New York State, or services other than construction services, sought by the Canal Corporation that are substantially performed outside New York State as further described in Public Authorities Law § 2879. For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
 4. “Discriminatory Jurisdiction” is any country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business Enterprise in the procurement of goods and/or services by the same or a non-governmental entity influenced by the same.
 5. Pursuant to Public Authorities Law § 2879, the Canal Corporation shall not enter into a contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development (“DED”). The provisions of this section may be waived by the NYPA’s President and CEO if the CEO determines in writing that it is in the best interests of the Canal Corporation to do so, as further set forth in the above-referenced law.
 6. Pursuant to Public Authorities Law § 2879, the Canal Corporation will, where feasible, make use of the stock item specification forms of New York State manufacturers, producers and/or assemblers, as made available by the Commissioner of General Services, for any Procurement Contract for the purchase of goods.
- F. Certain goods and/or services may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the State (e.g., the New York State Office of General Services (“OGS”)) or Federal government (e.g.,

General Services Administration ("GSA")) or any city or municipality where the White Plains SSM Department, or Canal Corporation SSM Department, and the initiating department determine that a reasonable potential exists for cost savings or other benefits to the Canal Corporation and have approved the specifications and proposed terms and conditions of such contract.

Certain Procurement Contracts established by the OGS or GSA require that authorized users conduct a "mini-bid" (i.e., an abbreviated supplemental competitive bid procurement process) among prequalified bidders identified in such established contracts. Certain other Procurement Contracts issued by the Canal Corporation (e.g., for on-call consulting or contracting services) may also utilize a mini-bid process, typically, in cases of a multiple award, where a contract is awarded to more than one bidder that meets the Canal Corporation bid requirements, in order to satisfy multiple factors and needs as set forth in the bid document. Such mini bids shall be conducted by the Canal's Corporation SSM staff (or on behalf of the Canal Corporation by an Implementation Contractor) where applicable and practicable. Within a said multiple award group, work may be assigned to a specific firm without conducting a mini-bid, under certain circumstances, including but not limited to: where such firm possesses specialized expertise and is uniquely qualified to perform such work; where time constraints, emergency or other critical conditions exist or geographic location is of primary consideration in order to meet schedule requirements, respond to emergent issues or otherwise meet the Canal's Corporation needs; or when the work scope is below a specified monetary threshold. The decision to assign work without conducting a mini bid shall typically be made jointly by the Canal Corporation SSM Department and initiating departments and shall be documented for the Procurement Record.

- G. Solicitations will include a scope of work that defines the goods required and/or the services to be performed; evaluation criteria (as defined in Section 4.B.); milestone dates; the Canal Corporation Supplier Diversity Program and SDVOB requirements, if applicable; all other applicable Canal Corporation requirements and any special methods or limitations that the Canal Corporation chooses to govern the work. Telephone solicitation, usually for procurements valued at less than \$50,000, may be used where time constraints do not permit issuance of an RFP, where issuance of an RFP is otherwise impracticable or for goods that are catalog items or do not require a detailed bill of materials or specification. All solicitations made by telephone shall be documented and made part of the Procurement Record.
- H. For all Procurement Contracts with a value equal to or greater than \$50,000 (except for those contracts noted below), the Canal Corporation will, prior to soliciting proposals, submit all required information to the Commissioner of the DED to be included on the New York State *Contract Reporter* website, (www.nyscr.ny.gov) (unless such posting would serve no useful purpose). Such information will be submitted to the DED Commissioner in accordance with the schedule set forth by the DED. The due date for bids or proposals will be a minimum of 15 business days after the date of publication of such notice on the *Contract Reporter* website, except where a shorter period is specifically authorized by law. For Procurement Contracts resulting from a Request for Proposal process, the Canal Corporation will submit the results of the bid opening, including the names of firms submitting proposals and the name/s of the awardee/s, for inclusion on

the *Contract Reporter* website. For all other Procurement Contracts, the name of the awardee will be submitted.

This section 3.H does not apply to (i) Procurement Contracts awarded on an emergency basis as described below in Section 3.M, (ii) Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date, and/or (iii) Procurement Contracts awarded to not-for-profit human services providers. (See Article 4-C, Economic Development Law)

Certain Procurement Contracts may require purchases: (1) on a spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. Such purchases are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the NYPA Vice President of Strategic Supply Management (SSM), and/or the head of the initiating department that does not complete its procurements through NYPA SSM or the Canal Corporation SSM Department. From time to time or where appropriate, generic notices may be published on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by the Canal Corporation.

Notwithstanding the foregoing, submittal of a notice / announcement of award for inclusion on the *Contract Reporter* website is required for Procurement Contracts with a value of \$50,000 or more awarded on a sole source or single source basis, including such discretionary contracts not exceeding \$500,000 awarded to Small Business Enterprises (SBEs) or MWBE firms, or for the purchase of goods and/or technology that are recycled or remanufactured, for discretionary awards on a single or sole source basis to SDVOB's, or for the purchase of food, including milk and milk products that are grown, produced or harvested in New York State, and certain other Procurement Contracts exempt from the general advertising requirement for Procurement Contract bidding opportunities, in accordance with the afore-referenced law. Such notice shall specify the name of the awardee.

- I. In order to further increase participation of service-disabled veterans in New York State's contracting opportunities, the Service-Disabled Veteran-Owned Business ("SDVOB") Act was signed into law on May 12, 2014. The SDVOB program provides for eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business. The Division of Service-Disabled Veterans' Business Development within the New York State Office of General Services ("OGS") is responsible for certifying eligible SDVOBs, assisting agencies and authorities in complying with the law, and promoting SDVOB participation in the state's procurement activities. Under this program, contracts may be awarded on a non-competitive basis to NYS-certified SDVOBs for discretionary purchases. Alternately, contracts may be competitively bid exclusively among NYS-certified SDVOBs regardless of value and advertised as such on the *Contract Reporter* website.
- J. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as a Canal Corporation representative, a “competitive search” will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The NYPA SSM Department or the Canal Corporation SSM Department staff will work with the initiating department to gather information from potential sources, that will include a description of the consultant/firm’s qualifications, résumés of key personnel, past experience and proposed billing rates.

- K. A Procurement Contract may be awarded on a Sole Source, Single Source, or other non-competitive basis where:
1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
 2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
 3. A sole supplier’s item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
 4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.
 5. The contract is awarded to a Small Business Enterprise or to a NYS-certified MWBE firm for discretionary purchases not exceeding \$500,000, pursuant to Section 3.D and as further set forth in Section 2.C.
 6. The contract is awarded to a NYS-certified SDVOB for a discretionary purchase
 7. The contract is for the discretionary purchase of goods and/or technology that are recycled or remanufactured, in an amount not exceeding \$500,000, as further set forth in Section 2.C and subject to the approvals stated in Section 3.D.
 8. The contract is for the discretionary purchase of commodities that are food, including milk and milk products, which are grown, produced or harvested in New York State, in an amount not exceeding \$500,000, as further set forth in Section 2.C and subject to the approvals stated in Section 3.D.
 9. Services are required on a more expedited basis than the competitive procurement process will allow. Requesting business units must demonstrate the urgency of the project and that awardee is cost-effective and qualified in the subject area. Services shall be for specific scopes of work in an amount not exceeding \$500,000 and are subject to the approvals stated in Section 3.D.
 10. Purchases made on a Sole Source, Single Source, or other non-competitive basis are subject to Public Authorities Law § 2879-a, 2 NYCRR Part 206, entitled “Comptroller Approval of Contracts Made by State Authorities” (“Comptroller Regulations”) and the State Authority Contract Manual.
- L. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Canal Corporation may be required to submit certain contracts to the New York State Comptroller for approval that are awarded on a Sole

Source, Single Source, or other non-competitive basis for the purchase of goods and/or services in an amount in excess of \$1 million, and shall notify the successful bidder therefor. Such contracts or contract amendments shall not be valid and enforceable unless approved by the Comptroller or until 90 days have elapsed from such submission without action by the Comptroller, as further set forth in the referenced law and regulations.

- M. Subject to the Canal Corporation Expenditure Authorization Procedures (“EAPs”), and Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, a Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:
1. A threat to the health or safety of the public or Canal Corporation employees or workers.
 2. Proper functioning of the Canal Corporation facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.
- N. Whenever an initiating department determines that a Procurement Contract should be awarded on a Single Source, Sole Source, or an emergency basis, the department head or other authorized equivalent per the EAPs will provide a written statement explaining the compelling reasons therefor to the NYPA Vice President, SSM. The award of such Procurement Contracts, regardless of value, requires the written approval of the NYPA Vice President, SSM, except as noted in Section 3.H.
- O. Every potential Sole Source or Single Source contract with a value of \$1 million or more must be approved by the NYPA President and CEO or the COO prior to processing by the NYPA SSM Department or Canal Corporation SSM Department.
- P. In furtherance of Public Authorities Law § 2800, when a procurement is made on a non-competitive basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the NYPA Chief Executive Officer and Chief Financial Officer stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. The following definition shall apply: “Fair Market Value” shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by internal appraisals, industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the NYPA Vice President, SSM or authorized designee.
- Q. It is the policy of New York State to discourage improper communications intended to influence a governmental procurement. The Canal Corporation will endeavor to control such practices and will comply with the applicable statutory provisions. In furtherance of the State Finance Law §§ 139-j and 139-k, the following shall apply:

The “Restricted Period” is the period of time commencing with the earliest posting, on the Canal Corporation website, in a newspaper of general circulation, or in the Procurement Opportunities Newsletter (i.e., New York State *Contract Reporter*) in accordance with Article 4-C of the Economic Development Law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from offerors (i.e., bidders/contractors) intending to result in a Procurement Contract with the Canal Corporation and ending with the final contract award and approval by the Canal Corporation and, where applicable, the State Comptroller. The “Restricted Period” also applies to a “mini-bid” process that may be utilized in certain established OGS, GSA or Canal Corporation multiple award contracts, as provided in Section 3.F.

The Canal Corporation shall designate a person or persons who may be contacted, with respect to each Canal Corporation procurement. The bidders/contractors or persons acting on their behalf, shall only contact the Canal Corporation’s designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period.

- R. In furtherance of the Canal Corporation commitment to ensure transparency and accountability of its operations, every member, officer or employee of the Canal Corporation who is contacted by a lobbyist is required to make a contemporaneous record of such contact, pursuant to Public Authorities Law § 2987.
- S. Project Sunlight (Chapter 399, Part A, Section 4 of the Laws of 2011) requires the Canal Corporation to record in a database maintained by the New York State Office of General Services certain appearances between the Canal Corporation and individuals, firms or other entities (excluding elected officials and representatives of federal, state and local agencies and authorities) relating to the procurement of a contract, with a value of \$25,000 or more, for real property, goods or services. Appearances are defined as an interaction through an in-person meeting or a video conference between covered individuals. Appearances related to emergency procurements and disposal of property through public auctions are excluded, as are appearances that take place during the formal “Restricted Period.” Covered individuals at the Canal Corporation means an employee who has the power to exercise discretion in procurement matters or advises someone who exercises such discretion. A covered individual outside of the Canal Corporation means both “external” (e.g., a lobbyist) and “internal” (e.g., sales representative) representatives of an entity, individuals appearing on behalf of themselves, advocacy groups or organizations or entities representing the interests or concerns of the organization or entity or of its members. All such appearances must be promptly reported to the Canal Corporation Ethics and Compliance Office for recording in the Project Sunlight database.
- T. Prior to entering into any binding relationship with a third party (e.g., written agreement or memorandum of understanding (MOU)) in pursuit of any joint or collaborative development project, the office of SSM and the Law Department (“Law”) must be notified regarding the procurement and on the issue of whether and to what extent the projects falls within the constraints of the Authority’s procurement

regulations and enabling legislation. SSM and Law should be brought into any such project in the development process.

Provided that the Authority has statutory authority to develop or otherwise participate in a project developed, in whole or in part, in collaboration with a third party, the following minimum criteria must be met:

- (i) the Authority's participation must be in response to a solicitation issued by the State or other public entity pursuant to a competitive selection process; and
- (ii) the construction of any asset to be owned by the Authority must comply with all applicable laws, including but not limited to prevailing wage requirements and goals established for the use of minority enterprises (e.g., minority- and women-owned business enterprise (MWBE), service disabled veteran owned business (SDVOB)); and
- (iii) goods and/or services required to develop and implement the project must be sourced and procured in accordance with, and subject to, either (a) the Authority's Procurement Guidelines; or (b) the requirements of the third party collaborator governing the competitive procurement of goods and services, provided that SSM has been furnished with a copy of such requirements which demonstrate, in SSM's judgement, that a competitive procurement or equivalent has been or will be undertaken.

Prior to execution any underlying agreement (i.e. joint development agreement, MOU, etc.) an internal award recommendation shall be memorialized and approved by the VP SSM and the responsible Business Unit head.

4. EVALUATION OF PROPOSALS

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder (including, but not limited to, the bidder's skill, judgment and business integrity), the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the Canal Corporation SSM Department and appropriate managers as stipulated in the EAPs. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award and (3) negotiating with the low bidder(s), as determined by the NYPA Vice President, SSM or designee, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited to: the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued,

and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are: previous experience (including applicable experience in New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the Canal Corporation work and the ability to provide any needed advanced techniques such as simulation and modeling; and overall, the bidder's skill, judgment and business integrity. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet Supplier Diversity Program goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.

Another factor to be considered in evaluating proposals may involve an assessment of the bidder's diversity practices, where applicable. Pursuant to Article 15-A of the Executive Law, diversity practices are the contractor's practices and policies with respect to utilizing NYS-certified MWBEs in contracts as subcontractors and suppliers, and entering into partnerships, joint ventures or other similar arrangements with NYS-certified MWBEs. A contractor's diversity practices may be assessed when: (1) a procurement is awarded on the basis of "Best Value" as described in Section 4.D. (but *not* when a procurement is awarded based upon "lowest price"); (2) the anticipated award is \$250,000 or greater; and (3) such assessment is practicable, feasible and appropriate. Such assessment shall not permit the automatic rejection of a bid or Procurement Contract proposal based on lack of adherence to diversity practices.

- C. For Services Contracts (as defined in Section 2.M of these Guidelines), the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract, provided that the price for performing such work is reasonable and competitive.
- D. For Procurement Contracts for Goods (as defined in Section 2.F of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents. (See also Section 4.F regarding award to "other than low bidder".)

As a best practice and pursuant to State Finance Law § 163, the Canal Corporation may award on a "Best Value" basis for awarding contracts to the offeror that optimizes quality, cost and efficiency, among responsive and responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis and may also identify a quantitative factor for offerors that are Small Businesses or NYS-certified SDVOB or MWBE firms.

- E. Pursuant to § 139-k of the State Finance Law, the Canal Corporation shall not award a Procurement Contract (as defined in Subsection 3.Q.1 of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder's/contractor's knowing and willful violation of the Canal Corporation policy providing for certain procurement disclosures shall result in a determination of non-responsibility of such bidder/contractor pursuant to State Finance Law §§ 139-j and 139-k only.

More than one determination of non-responsibility due to violations of State Finance Law § 139-k in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to "other than low bidder" can be made only with the approval of appropriate management as stipulated in the EAPs, and should be based on such a proposal providing a clear advantage to the Canal Corporation over the lower-priced proposal. Factors justifying an "other than low bidder" award may include, but are not limited to: improved delivery schedules that will reduce outages; longer warranty periods; improved efficiency over the usable life of the equipment; reduced maintenance costs; the bidders' financial resources or the ability to meet or exceed Supplier Diversity Program and SDVOB goals; and overall, the bidder's skill, judgment and business integrity.
- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, the Canal Corporation may diverge from the specifications of any solicitation if, after review of the proposals responsive to such solicitation, the Canal Corporation deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings.

5. RECOMMENDATION OF AWARD

- A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum or e-mail by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:
1. Lump sum and/or unit prices for equipment and construction work.
 2. Hourly or daily rates for personnel.
 3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
 4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.
 5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.

- B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but not limited to payment terms, warranties and bond requirements, if any, as well as Supplier Diversity Program requirements, as applicable.

6. AWARD OF CONTRACT

- A. Services Contracts (which include contracts for Construction, Personal and Non-personal services, as defined in Section 2.M.) valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months are approved and reviewed annually by the Canal Corporation Board of Directors. Services Contracts for a period of less than 12 months are approved by authorized designees in accordance with existing EAPs. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Canal Corporation Board of Directors at the request of the initiating department and will be reviewed by the Canal Corporation Board of Directors annually. Extending a contract for services, that has previously been approved by the Canal Corporation Board of Directors, for a cumulative term of more than 12 months requires further Canal Corporation Board of Director approval.
- B. Extending a contract, previously approved by the Canal Corporation Board of Directors, for 12 months or less ("grace period") requires approval by the NYPA Vice President, SSM of the requesting department or other authorized equivalent or designee in accordance with existing EAPs and concurrence by the NYPA Vice President, SSM.
- C. For Services Contracts valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months that must be awarded prior to the next quarterly Canal Corporation Board of Directors meeting, the initial contract will be issued for the entire intended term of the contract. Based on its total term and value, such contract must be approved in writing by the appropriate management as set forth in the EAPs. Such contract is subject to the Canal Corporation Board of Directors' approval, at the next quarterly Canal Corporation Board of Directors' meeting. If such approval is not granted, the contract will be terminated immediately.
- D. A contract or contract task valued or estimated to be \$5,000 or greater is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any "continuing services" contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Canal Corporation Board of Directors-approved contracts for architect/ engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a "Change Order," "Purchase Order" or "Task Number") is considered a separate commitment and must be separately approved in accordance with the EAPs.
- E. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions. However, at the sole discretion of the Vice President of SSM may approve a Business Unit's written justification for a contract term exceeding 5 years or reasonable extension of such a contract.

- F. For construction value contracts purchase order releases maybe issued up to the term limit of the value contract. The term of a construction purchase order release shall be as required to complete the work assigned. The term of the value contract shall be extended accordingly.
- G. Multiyear contracts for Goods (which include equipment, materials and supplies, as defined in Section 2F) valued or estimated to be \$5,000 or greater are subject to the management approval thresholds established in the EAPs, and require Trustee approval only once those thresholds are exceeded.
- H. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed the appropriate limit set forth in the EAPs, the Department Head, with the prior concurrence of the NYPA Vice President, SSM or equivalent(s) or designee, may authorize extending such contract, subject to the Canal Corporation Board of Directors ratifying such action as soon as practicable.
- I. When the total estimated contract value or the value of the extension exceeds the monetary limits set forth in the EAPs, interim approval by the NYPA President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Canal Corporation Board of Directors ratifying such action as soon as practicable.
- J. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value exceeds the monetary approval limit for the President and Chief Executive Officer or Chief Operating Officer or equivalent(s), as set forth in the EAPs, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the NYPA Vice President, SSM or equivalent(s) or designee, may authorize in writing the commencement of such services. The initial compensation limitation may not exceed the authorization level for the NYPA President and Chief Executive Officer or equivalent(s) or Chief Operating Officer or equivalent(s) as set forth in the EAPs. Such contracts will be subject to the Canal Corporation Board of Directors approval, which will be solicited at their next scheduled Canal Corporation Board of Directors meeting.
- K. The NYPA SSM or the Canal Corporation SSM Department prepares the contract for execution by the Canal Corporation and the successful bidder. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution. Canal Corporation signatories of such letters must be authorized to approve contract awards pursuant to the EAPs.
- L. Pursuant to Economic Development Law § 143, the Authority shall submit an announcement of the intended contract for inclusion in the procurement opportunities newsletter at the time it enters into a contract. Such announcement shall identify the contract, specify the date of the award of the contract and provide the name of and contact information for each recipient of the contract.

- M. Pursuant to Public Authorities Law § 2879, the Canal Corporation shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase of goods and/or services from a Foreign Business Enterprise (as defined in Subsection 3.E.3 of these Guidelines) in an amount equal to or greater than \$1 million simultaneously with notifying the successful bidder therefor. The Canal Corporation shall not enter into the Procurement Contract for said goods and/or services until at least 15 days have elapsed from the notification of the award, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, telephone and facsimile number of the Foreign Business Enterprise, the amount of the proposed Procurement Contract and the name of the individual at the Foreign Business Enterprise or acting on behalf of same who is principally responsible for the proposed Procurement Contract.

7. CONTRACT PROVISIONS

- A. The following standard forms of contracts are available from the NYPA SSM Department or Canal Corporation SSM Department: purchase order format (for standard procurements of goods and/or services); furnish-and-deliver format (for major equipment purchases); long form agreements (for consulting services) and maintenance agreement formats; contract work orders (for construction work of small magnitude); construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services.

Canal Corporation departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the NYPA SSM Department and the Canal Corporation SSM Department, which are responsible for requesting proposals.

- B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.

1. Schedule of Services or Specifications
2. Time of Completion
3. Compensation or Itemized Proposals
4. Relationship of Parties
5. Delays
6. Termination
7. Changes in the Work
8. Claims and Disputes
9. Warranty
10. Insurance
11. Records, Accounts, Inspection and Audit

12. Assignment
13. Notices
14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Testimony
18. MWBE requirements
19. SDVOB requirements
20. Entire Agreement

Contract Attachments

1. Compensation Schedule
2. Schedule of Services or Specifications
3. Appendix "A" (Miscellaneous Statutory Provisions)
4. Appendix "B" (Prompt Payment Provisions)
5. Appendix "C" (Minority- and Women-owned Business Enterprise (MWBE) Participation Goal Requirement)
6. Appendix "D" (Background Security Screening for Authority Contractors)
7. Appendix "E" (Omnibus Procurement Act of 1992 Requirements)
8. Appendix "F" (Computer Aided Design Requirements For New York Power Authority Drawings)
9. Appendix "G" (Equal Employment Opportunities Requirements)
10. Appendix "H" (Tax Law Requirements)
11. Appendix "I" (New York Power Authority (NYPA) North American Electric Reliability Corporation Critical Infrastructure Protection (NERC CIP) Cyber Access And/or Unescorted Physical Access Training Requirements)
12. Appendix "J" (Bidder/Contractor Compliance with State Finance Law §§ 139-j and 139-k Providing for Certain Procurement Disclosures)
13. Appendix "K" (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act (Pub. L. No. 111-5 Stat. 2009) ("ARRA") Funded Projects) - inactive
14. Appendix "L" (DOE Federal Contract Provisions) - inactive
15. Appendix "M" (Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology ("BART") for Heavy Duty Vehicles)
16. Appendix "N" (The New York State Iran Divestment Act of 2012 – Iranian Energy Sector Divestment)
17. Appendix "O" (Encouraging Use of New York State Businesses in Contract Performance) – inactive
18. Appendix "P" (Information Security Requirements for Vendors and External Partners)

- C. If a vendor (firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services.

Furthermore, any firm, person or other entity retained by the Canal Corporation to provide conceptual studies, designs or specifications is prohibited from being awarded future phases of work, including implementation, related to the original work.

The above restrictions shall not apply where:

1. The vendor is the sole source or single source of the product or service;
2. More than one vendor has been involved in preparing the specifications for a procurement proposal;
3. There is no qualified response to the solicitation for future phases of work, including implementation; or
4. The originating Canal Corporation Department determines in writing that the restrictions are not in the best interests of the Canal Corporation. Such originating Department shall obtain the approval of the applicable Department Head or equivalent(s), NYPA Vice President, SSM or equivalent(s) or designee, NYPA Assistant General Counsel or equivalent(s) and NYPA President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) to waive this restriction on a case-by-case basis.

8. CHANGE ORDERS

- A. Change Orders to existing contracts are justified in the following cases:
 1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
 2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;
 3. To accommodate emergency conditions, defined in Section 3.M herein, that require the immediate performance of work by a firm already under contract;
 4. When rebidding would not be practical or in the best interests of the Canal Corporation customers; and
 5. To meet the Canal Corporation Supplier Diversity and SDVOB Program goals in accordance with Executive Law Articles 15-A and 17-B, respectively.
- B. All Change Orders must be approved in accordance with the Canal Corporation EAPs, and should include specific schedules for completion of work at the earliest possible time.
- C. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Canal Corporation may be required to submit certain Change Orders to the New York State Comptroller for filing or approval where the aggregate value of the contract as amended is in excess of \$1 million and the original contract was awarded on the basis of a competitive procurement, but the modification was neither contemplated nor provided for in the solicitation for such competitive procurement.

9. CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES

- A. Former Canal Corporation officers and employees may be eligible to be considered for direct engagement as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines; their

engagement is not barred by New York Public Officers Law § 73(8); they obtain an opinion by the New York State Joint Commission on Public Ethics that such engagement is permissible; and upon approval of the NYPA President and Chief Executive Officer, as well as the Chairman of the Canal Corporation Board.

- B. Pursuant to the provisions of New York Public Officers Law § 73(8):
1. No Canal Corporation officer or employee is eligible, within a period of two years after the termination of Canal Corporation service to appear or practice before the Canal Corporation or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before the Canal Corporation.
 2. No Canal Corporation officer or employee is eligible, at any time after the termination of Canal Corporation service, to appear, practice, communicate or otherwise render services before the Canal Corporation or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of service, or which was under his or her active consideration.
 3. Pursuant to the provisions of New York Public Officers Law § 73(8-b), notwithstanding the provisions of 1. and 2. above, a former Canal Corporation officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to the Canal Corporation, if, prior to engaging in such service, the Chairman of the Board of Directors certifies in writing to the New York State Joint Commission on Public Ethics that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the Canal Corporation needs and is otherwise unavailable at a comparable cost. Where approval of the contract is required under § 112 of the New York State Finance Law, the Comptroller shall review and consider the reasons for such certification. The New York State Joint Commission on Public Ethics must review and approve all such certifications.
- C. No Canal Corporation employee who is involved in the award of Canal Corporation grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- D. No Canal Corporation employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- E. No Canal Corporation employee may take part in any contracting process or decision: (i) to a Relative; or (ii) to any entity in which the Canal Corporation employee or a Relative

of such Canal Corporation employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section 9.E, then the employee must advise in writing his or her supervisor and the Office of Ethics and Compliance of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

1. For purposes of this Section 9.E, the term “Relative” is defined in Definitions, Section 2.L of these Guidelines.

10. SUPPLIER DIVERSITY PROGRAM REQUIREMENTS

The Canal Corporation strives to continue to foster the development of business opportunities on Canal Corporation contracts for MWBEs. Article 15-A of the Executive Law established the NYS Office (now Division) of Minority and Women’s Business Development (“DMWBD”) that is responsible for developing rules and regulations for implementation of this statute, certifying MWBEs and reviewing and monitoring goal plans, compliance reports and contract provisions to be included in all non-construction contracts for more than \$25,000 and construction contracts for more than \$100,000. The definition of an MWBE is included in Section 2.G of these Guidelines. The Canal Corporation aims to solicit proposals from NYS-certified MWBEs that are qualified to perform the required work. In addition, specific goals may be included in certain contracts for consulting work, construction and procurement of goods and other services requiring the contractor/vendor to subcontract a portion of the work to NYS-certified MWBEs as required by law. Bidders’ proposals will include a completed preliminary Utilization Plan Form for MWBEs, as well as applicable EEO and Diversity Practices Forms, where required. Such bidders’ failure to meet these requirements may be grounds for rejection of the proposal, or cancellation of the contract if a contractor did not make a good faith effort to meet its goals after contract award. Final MWBE Utilization Plans for Construction contracts valued at more than \$100,000 shall be provided and posted on the procurement website by the successful vendor within ten business days of contract signing.

Pursuant to § 2879 of the Public Authorities Law and as further set forth in the Canal’s Corporation Supplier Diversity Program documents, the following guidelines apply:

1. Identify those areas or types of contracts for which MWBEs may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises.
2. Provide notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve MWBEs providing the types of services procured by the Canal Corporation.
3. Maintain lists of qualified NYS-certified MWBEs, including professional firms that have expressed an interest in doing business with the Canal Corporation and ensuring that such lists are updated regularly. The Canal Corporation shall also consult the lists of NYS-certified MWBEs maintained by the DED pursuant to Executive Law Article 15-A.
4. Establish appropriate goals for participation by MWBEs in Procurement Contracts awarded by the Canal Corporation and for the utilization of MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the

Canal Corporation. Statewide numerical participation target goals shall be established by the Canal Corporation based on the criteria set forth in Public Authorities Law § 2879.

5. Conduct procurements in a manner that will enable the Canal Corporation to achieve the maximum feasible portion of the goals established pursuant to Subdivision 4 of this Section and that eliminates barriers to participation by MWBEs in the Canal's Corporation procurements.
6. Designate one or more senior staff of the Canal Corporation to oversee the Canal's Corporation programs established to promote and assist participation by and utilization of NYS-certified MWBEs.

11. SERVICE-DISABLED VETERAN-OWNED BUSINESS ("SDVOB") PROGRAM REQUIREMENTS

The Canal Corporation also strives to foster the development of business opportunities for NYS-certified SDVOBs and to further increase participation by SDVOBs in Canal Corporation contracts, as set forth in Sections 2.R and 3.I of these Guidelines and pursuant to Article 17-B of the Executive Law. One tool is the use of SDVOB discretionary purchasing, as further described in Sections 3.D, I and K of these Guidelines. Another tool authorized by the law is the use of set-asides, which permit the reservation in whole or in part of certain procurements by state agencies and authorities when more than one NYS-certified SDVOB is available and can provide the necessary goods or services to meet the Canal Corporation form, function and utility. The same dollar limits apply to SDVOB contracts as those set forth for MWBEs in Article 10 of these Guidelines.

Pursuant to Article 17-B of the Executive Law, the following guidelines apply:

1. Identify contracts where SDVOBs may best perform and/or where SDVOB goals are practical, feasible and appropriate for the purpose of increasing the utilization of SDVOB participation on Canal Corporation contracts.
2. Submit regular reports with respect to SDVOB Program activity, including but not limited to, utilization reporting and contract monitoring and compliance.
3. Achieve an overall goal of six percent for SDVOB participation on Canal Corporation contracts.

12. DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM REQUIREMENTS ON PROJECTS THAT ARE FEDERALLY FUNDED

The Canal Corporation ("Canals") strives to foster the development of business opportunities for NYS certified DBEs and to further increase their participation in Canals Federally funded contracts. The Canals aims to solicit proposals from DBEs for procurements that will be partially or fully federally funded. The Canals follows the DBE guidelines as set out by The Federal Department of Transportation ("DOT"). NYS DOT is tasked with certifying eligible small businesses as DBEs in New York State.

The Canals is committed to promoting participation of DBEs in Canals contracting opportunities in accordance with federal law and regulations and seeks to achieve the following objectives:

1. To ensure nondiscrimination in the award and administration of Federally funded contracts in the canals and waterways;
2. To create a level playing field on which DBEs can compete fairly for Federally funded contracts;
3. To ensure that the Canals' DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this Federal eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in Federally funded contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

13. PROCUREMENT RECORD AND REPORTING

A. Procurement Record

The NYPA SSM Department or the Canal Corporation SSM Department maintains records of Procurement Contracts. In addition to bid- and contract award-related documents for the goods provided and/or services performed, the Procurement Record includes, but is not limited to, documentation of the decisions made and the approach taken in the procurement process. Such records may be transmitted to a digital warehouse for electronic storage and retrieval.

B. Procurement Report

After the end of each calendar year, the NYPA Vice President, SSM or equivalent(s) will prepare and submit an annual report to the Canal Corporation Board of Directors for their approval that will include:

1. A copy of the Guidelines;
2. An explanation of the Guidelines and any amendments thereto since the last annual report;
3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
4. A list of fees, commissions or other charges paid;
5. A description of work performed, the contract number, the date of the contract and its duration, the name, address and NYS-certified MWBE designation of the awardees, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of open Procurement Contracts during the report year;
6. The type of contract (equipment, services, personal services or construction);

7. The method of awarding the contract (e.g., competitive bidding, Sole Source, Single Source or competitive search);
 8. The reasons why any procurements with a value equal to or greater than \$50,000 were not noticed in the Contract Reporter;
 9. The number of bids received and
 10. All referrals made and all penalties imposed, if any, pursuant to § 316 of the Executive Law.
- C. Such annual report, as approved by the Canal Corporation Board of Directors, shall be submitted to the New York State Division of the Budget within 90 days of the end of such calendar year, and copies thereof shall be distributed to the New York State Department of Audit and Control, the DED, the New York State Senate Finance Committee, and the New York State Assembly Ways and Means Committee and any other entity as may be required by law. The annual procurement report is posted on the Canal Corporation website and copies shall be made available to the public upon reasonable written request therefor.
- D. State Finance Law §§ 139-j and 139-k
1. A statement describing the basis for a determination of a bidder's/contractor's non-responsibility (per State Finance Law §§ 139-j and 139-k only) and the Canal Corporation decision not to award a bidder/contractor the Procurement Contract must be included in the Procurement Record.
 2. The Canal Corporation shall notify the New York State Office of General Services of bidders/contractors who have been determined to be non-responsible bidders (per State Finance Law §§ 139-j and 139-k only) or debarred due to violations of § 139-j of the State Finance Law.
 3. All forms entitled "Record of Contact" shall be included in the respective Procurement Record.
 4. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the Procurement Record.
- E. The Canal Corporation may be called upon periodically to submit information regarding the procurement of goods and/or services to organizations implementing the PAAA or other statutes regulating the procurement of goods and services, such as Canal Corporation's Budget Office through the Public Authorities Reporting Information System ("PARIS").
- F. The NYPA Vice President, SSM or equivalent(s) will also prepare Annual Goal Plans for the MWBE and SDVOB programs and will submit them by January 15 of each year to Empire State Development - Division of Minority and Women Business Development and the New York State Office of General Services - Division of Service-Disabled Veterans' Business Development, respectively. Quarterly Utilization / Activity Reports for each program will also be prepared and submitted to the aforementioned respective state entities by the 15th day of July, October, January and April.

14. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS

- A. These Guidelines are intended for the guidance of officers and employees of the Canal Corporation only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.

CANAL CORPORATION GUIDELINES FOR PROCUREMENT CONTRACTS

1. PURPOSE

These Guidelines for Procurement Contracts (“Guidelines”) set forth the policy of Canal Corporation regarding the solicitation and awarding of Procurement Contracts. The provisions of Article 4-C of the Economic Development Law, §§ 2879 and 2879-a of the Public Authorities Law, Articles 15-A and 17-B of the Executive Law and §§ 139-j and 139-k of the State Finance Law were considered in developing these Guidelines. Departments and facilities may adopt further procedures to implement these Guidelines.

2. DEFINITIONS

- A. “Capital projects” generally refer to the acquisition or construction of new assets, the replacement and/or betterment of existing assets, equipment, or property (including those of NYPA’s customers, where authorized). Betterment refers to an extension of the useful life or improvement in the efficiency and/or capacity of the asset, equipment, or property.
- B. “Contact” is any oral, written, or electronic communication with the Authority under circumstances where a reasonable person would infer that the communication was intended to influence the Authority’s conduct or decision regarding the procurement.
- C. “Discretionary Purchase” is a procurement made below statutorily established monetary threshold amounts (e.g., not exceeding \$500,000 for the purchase of commodities and/or services from Small Business Enterprises or NYS-certified MWBE firms, and without a dollar cap for SDVOB firms as further set forth in Sections 3.D and 3.K.5-7) and at the discretion of the Authority, without the need for a formal competitive bid process. For the purpose of determining whether a purchase is within the discretionary thresholds, the aggregate amount of all purchases of the same commodities and/or services to be made within the 12-month period commencing on the date of purchase shall be considered. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities and/or services from the same provider within the 12-month period commencing on the date of the first purchase to an amount greater than \$500,000, pursuant to State Finance Law § 163.
- D. “Disadvantaged Business Enterprise” (DBE) is a for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it, pursuant to the definition found in 49 C.F.R Part 26.
- E. “Evaluation of Proposals,” as further outlined in Section 4 below, includes evaluating factors the Authority’s consideration of a bidder’s skill, judgment, and business integrity.
- F. “Goods” include equipment, material and supplies of any kind. Procurement Contracts that include both equipment and services may be classified as Equipment,” where 60% or more of the total projected contract value will be for the purchase of equipment, material or supplies.

- G. “Minority- and Women-owned Business Enterprise” (“MWBE”) is defined as any New York State-certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans, Asians, Pacific Islanders and/or women, and as further described in the Authority’s Supplier Diversity Program Policy and Procedures and Executive Law Article 15-A, and pursuant to the definition found in Executive Law § 310.
- H. “Non-Procurement Contracts” include contracts under \$5,000, contracts for energy with or without environmental attributes included, capacity, renewable energy certificates, ancillary services, transmission, distribution or related services in support of providing service to Authority customers; contracts for differences; financial hedge contracts (including but not limited to swaps, calls, puts or swap options) or credit rating services; certain insurance and healthcare products that do not readily lend themselves to a competitive solicitation. In addition, Non-Procurement Contracts include direct and indirect placement of advertisements with radio, television, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and procurement activities conducted or sponsored by such organizations in which the Authority participates.
- I. “Operation and Maintenance” (“O&M”) generally refers to the work or services necessary to keep the plants, transmission lines, and other equipment and facilities to include NYPA customers, where authorized, (collectively referred to generally as an “asset”) in optimal operating condition and/or to restore an asset to its productive capacity. This includes the cost of inspecting, testing, analyzing and reporting on the condition of the asset required to determine repairs or replacement, as well as costs associated with the normal operation and administration of NYPA’s production/transmission facilities and energy programs.
- J. “Procurement Contracts” are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Authority’s White Plains office, facilities, operations and maintenance (“O&M”) and capital projects (as defined in Section 2.I. and 2. A., respectively), including but not limited to goods such as office supplies, major electrical equipment, construction and maintenance work and services as more fully described in Section 2.F and 2.M.
- K. “Purchase Order Release” is a single order issued for goods or services in accordance with the terms and conditions of a Value Contract.
- ~~K.L.~~ “Relative” is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee’s grandparents or the spouse of such descendant, as referred to in Subsection 9.E.1 of these Guidelines. The term Relative may include, but is not limited to, the relationship of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law or son-in-law.

L.M. “Services Contracts” are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships, or firms who are not and do not employ officers or employees of the Authority) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services, and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by a consultant for the Authority), and construction management. Non-Personal services include but are not limited to skilled or unskilled temporary personnel, including clerical office staff, technicians, or engineers working under Authority’s supervision, maintenance, repairs, and printing services. Construction consists of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient Authority staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of the aforementioned factors.

M.N. “Single-Source” is a procurement in which the Authority, upon written findings setting forth material and substantial reasons, may award a contract (or amendment to a contract) to one offeror over another that can supply the goods or services.

N.O. “Small Business” (or Small Business Enterprise, “SBE”), pursuant to Executive Law § 310 and as used in these Guidelines, unless otherwise indicated, is a business that has a significant business presence (as defined at 5 NYCRR 140.1) in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.

O.P. “Software” includes ~~on-premise~~on-premises applications as well as Software-as-a-Service (SaaS) which is defined as a software distribution model in which a third-party provider hosts application and makes access available to customers over the Internet. “Software” shall be considered “Equipment” where such term is used throughout these Guidelines.

P.Q. “Sole Source” is a procurement in which only one offeror is capable of supplying the required goods or services.

Q.R. “Service-Disabled Veteran-Owned Business” (“SDVOB”) is a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is at least 51% owned by one or more service-disabled veterans; in which such ownership is real, substantial and continuing, and also has and exercises the authority to control independently the day-to-day business decisions of the enterprise; is a Small Business and is certified by the New York State Office of General Services, as further set forth in Article 17-B of the Executive Law.

S. “Value Contract” Master Service Agreement for goods and services with specific target value and term.

3. SOLICITATION REQUIREMENTS

- A. Preparation of the solicitation of proposals for Procurement Contracts is the joint responsibility of the White Plains Strategic Supply Management (“SSM”) Department, or the Canal Corporation SSM Department, and the initiating department. Except as otherwise authorized by these Guidelines, a Request for Proposals (“RFP”) or Request for Quotations (“RFQ”) will be made available to a minimum of three providers and/or firms (if available) for purchases valued under \$50,000 and a minimum of five providers and/or firms (if available) for purchases valued at \$50,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance.
- B. Prospective bidders on Procurement Contracts may be prequalified by invitation advertised in the same manner as an RFP/RFQ (referred to as a Request for Qualifications and/or Request for Information (“RFI”). In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence (including, but not limited to, the bidder’s skill, judgment and business integrity) to supply the particular goods and/or perform the particular services required.
- C. The Canal Corporation may withdraw any pending solicitation (including but not limited to RFPs and RFQs) at any time, for cause or no cause. Any person or entity submitting any responsive document to the Canal Corporation does so at its own cost or expense and will not be reimbursed by the Canal Corporation for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized Canal Corporation representative.
- D. In order to promote the use of Minority- and Women-owned Business Enterprises (“MWBEs”), Service-Disabled Veteran-Owned Businesses (“SDVOBs”) and Small Business Enterprises (“SBEs”), the Canal Corporation will solicit offers from such firms known to have experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definitions of NYS-certified MWBE or SDVOB firms and SBEs are set forth in Sections 2.H, 2.L and 2.I, respectively. To foster increased use of MWBEs and SBEs, a single proposal may be sought, negotiated and accepted for discretionary purchases of goods and/or services not exceeding \$500,000, in the aggregate including all amendments, from a NYS-certified MWBE or an SBE that offers a reasonable price for such goods and/or services. An SDVOB may be awarded on the basis of a single proposal that offers a reasonable price for such goods and/or services without a dollar cap. The award of such proposal requires the written approval of the Vice President, SSM. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall also necessitate the written approval of the Vice President, SSM. Furthermore, the award of such Procurement Contracts will be noticed on the *Contract Reporter* website, as further set forth in Section 3.H.
- E. It is the policy of New York State to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. The Canal Corporation will endeavor to promote such

participation and to comply with the applicable statutory provisions. In furtherance of Public Authorities Law § 2879, the following definitions and actions apply:

1. “New York State Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form of exchange, goods sought by the Canal Corporation that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by the Canal Corporation that are substantially performed within New York State as further described in Public Authorities Law § 2879.
 2. “New York State resident” is a person who maintains a fixed, permanent and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law § 2879.
 3. “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by the Canal Corporation that are substantially produced outside New York State, or services other than construction services, sought by the Canal Corporation that are substantially performed outside New York State as further described in Public Authorities Law § 2879. For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
 4. “Discriminatory Jurisdiction” is any country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business Enterprise in the procurement of goods and/or services by the same or a non-governmental entity influenced by the same.
 5. Pursuant to Public Authorities Law § 2879, the Canal Corporation shall not enter into a contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development (“DED”). The provisions of this section may be waived by the NYPA’s President and CEO if the CEO determines in writing that it is in the best interests of the Canal Corporation to do so, as further set forth in the above-referenced law.
 6. Pursuant to Public Authorities Law § 2879, the Canal Corporation will, where feasible, make use of the stock item specification forms of New York State manufacturers, producers and/or assemblers, as made available by the Commissioner of General Services, for any Procurement Contract for the purchase of goods.
- F. Certain goods and/or services may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the State (e.g., the New York State Office of General Services (“OGS”)) or Federal government (e.g.,

General Services Administration ("GSA")) or any city or municipality where the White Plains SSM Department, or Canal Corporation SSM Department, and the initiating department determine that a reasonable potential exists for cost savings or other benefits to the Canal Corporation and have approved the specifications and proposed terms and conditions of such contract.

Certain Procurement Contracts established by the OGS or GSA require that authorized users conduct a "mini-bid" (i.e., an abbreviated supplemental competitive bid procurement process) among prequalified bidders identified in such established contracts. Certain other Procurement Contracts issued by the Canal Corporation (e.g., for on-call consulting or contracting services) may also utilize a mini-bid process, typically, in cases of a multiple award, where a contract is awarded to more than one bidder that meets the Canal Corporation bid requirements, in order to satisfy multiple factors and needs as set forth in the bid document. Such mini bids shall be conducted by the Canal's Corporation SSM staff (or on behalf of the Canal Corporation by an Implementation Contractor) where applicable and practicable. Within a said multiple award group, work may be assigned to a specific firm without conducting a mini-bid, under certain circumstances, including but not limited to: where such firm possesses specialized expertise and is uniquely qualified to perform such work; where time constraints, emergency or other critical conditions exist or geographic location is of primary consideration in order to meet schedule requirements, respond to emergent issues or otherwise meet the Canal's Corporation needs; or when the work scope is below a specified monetary threshold. The decision to assign work without conducting a mini bid shall typically be made jointly by the Canal Corporation SSM Department and initiating departments and shall be documented for the Procurement Record.

- G. Solicitations will include a scope of work that defines the goods required and/or the services to be performed; evaluation criteria (as defined in Section 4.B.); milestone dates; the Canal Corporation Supplier Diversity Program and SDVOB requirements, if applicable; all other applicable Canal Corporation requirements and any special methods or limitations that the Canal Corporation chooses to govern the work. Telephone solicitation, usually for procurements valued at less than \$50,000, may be used where time constraints do not permit issuance of an RFP, where issuance of an RFP is otherwise impracticable or for goods that are catalog items or do not require a detailed bill of materials or specification. All solicitations made by telephone shall be documented and made part of the Procurement Record.
- H. For all Procurement Contracts with a value equal to or greater than \$50,000 (except for those contracts noted below), the Canal Corporation will, prior to soliciting proposals, submit all required information to the Commissioner of the DED to be included on the New York State *Contract Reporter* website, (www.nyscr.ny.gov) (unless such posting would serve no useful purpose). Such information will be submitted to the DED Commissioner in accordance with the schedule set forth by the DED. The due date for bids or proposals will be a minimum of 15 business days after the date of publication of such notice on the *Contract Reporter* website, except where a shorter period is specifically authorized by law. For Procurement Contracts resulting from a Request for Proposal process, the Canal Corporation will submit the results of the bid opening, including the names of firms submitting proposals and the name/s of the awardee/s, for inclusion on

the *Contract Reporter* website. For all other Procurement Contracts, the name of the awardee will be submitted.

This section 3.H does not apply to (i) Procurement Contracts awarded on an emergency basis as described below in Section 3.M, (ii) Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date, and/or (iii) Procurement Contracts awarded to not-for-profit human services providers. (See Article 4-C, Economic Development Law)

Certain Procurement Contracts may require purchases: (1) on a spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. Such purchases are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the NYPA Vice President of Strategic Supply Management (SSM), and/or the head of the initiating department that does not complete its procurements through NYPA SSM or the Canal Corporation SSM Department. From time to time or where appropriate, generic notices may be published on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by the Canal Corporation.

Notwithstanding the foregoing, submittal of a notice / announcement of award for inclusion on the *Contract Reporter* website is required for Procurement Contracts with a value of \$50,000 or more awarded on a sole source or single source basis, including such discretionary contracts not exceeding \$500,000 awarded to Small Business Enterprises (SBEs) or MWBE firms, or for the purchase of goods and/or technology that are recycled or remanufactured, for discretionary awards on a single or sole source basis to SDVOB's, or for the purchase of food, including milk and milk products that are grown, produced or harvested in New York State, and certain other Procurement Contracts exempt from the general advertising requirement for Procurement Contract bidding opportunities, in accordance with the afore-referenced law. Such notice shall specify the name of the awardee.

- I. In order to further increase participation of service-disabled veterans in New York State's contracting opportunities, the Service-Disabled Veteran-Owned Business ("SDVOB") Act was signed into law on May 12, 2014. The SDVOB program provides for eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business. The Division of Service-Disabled Veterans' Business Development within the New York State Office of General Services ("OGS") is responsible for certifying eligible SDVOBs, assisting agencies and authorities in complying with the law, and promoting SDVOB participation in the state's procurement activities. Under this program, contracts may be awarded on a non-competitive basis to NYS-certified SDVOBs for discretionary purchases. Alternately, contracts may be competitively bid exclusively among NYS-certified SDVOBs regardless of ~~value, and~~ value and advertised as such on the *Contract Reporter* website.
- J. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as a Canal Corporation representative, a “competitive search” will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The NYPA SSM Department or the Canal Corporation SSM Department staff will work with the initiating department to gather information from potential sources, that will include a description of the consultant/firm’s qualifications, résumés of key personnel, past experience and proposed billing rates.

- K. A Procurement Contract may be awarded on a Sole Source, Single Source, or other non-competitive basis where:
1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
 2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
 3. A sole supplier’s item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
 4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.
 5. The contract is awarded to a Small Business Enterprise or to a NYS-certified MWBE firm for discretionary purchases not exceeding \$500,000, pursuant to Section 3.D and as further set forth in Section 2.C.
 6. The contract is awarded to a NYS-certified SDVOB for a discretionary purchase
 7. The contract is for the discretionary purchase of goods and/or technology that are recycled or remanufactured, in an amount not exceeding \$500,000, as further set forth in Section 2.C and subject to the approvals stated in Section 3.D.
 8. The contract is for the discretionary purchase of commodities that are food, including milk and milk products, which are grown, produced or harvested in New York State, in an amount not exceeding \$500,000, as further set forth in Section 2.C and subject to the approvals stated in Section 3.D.
 9. Services are required on a more expedited basis than the competitive procurement process will allow. Requesting business units must demonstrate the urgency of the project and that awardee is cost-effective and qualified in the subject area. Services shall be for specific scopes of work in an amount not exceeding \$500,000 and are subject to the approvals stated in Section 3.D.
 - 8-10. Purchases made on a Sole Source, Single Source, or other non-competitive basis are subject to Public Authorities Law § 2879-a, 2 NYCRR Part 206, entitled “Comptroller Approval of Contracts Made by State Authorities” (“Comptroller Regulations”) and the State Authority Contract Manual.
- L. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Canal Corporation may be required to submit certain contracts to the New York State Comptroller for approval that are awarded on a Sole

Source, Single Source, or other non-competitive basis for the purchase of goods and/or services in an amount in excess of \$1 million, and shall notify the successful bidder therefor. Such contracts or contract amendments shall not be valid and enforceable unless approved by the Comptroller or until 90 days have elapsed from such submission without action by the Comptroller, as further set forth in the referenced law and regulations.

- M. Subject to the Canal Corporation Expenditure Authorization Procedures (“EAPs”), and Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, a Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:
1. A threat to the health or safety of the public or Canal Corporation employees or workers.
 2. Proper functioning of the Canal Corporation facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.
- N. Whenever an initiating department determines that a Procurement Contract should be awarded on a Single Source, Sole Source, or an emergency basis, the department head or other authorized equivalent per the EAPs will provide a written statement explaining the compelling reasons therefor to the NYPA Vice President, SSM. The award of such Procurement Contracts, regardless of value, requires the written approval of the NYPA Vice President, SSM, except as noted in Section 3.H.
- O. Every potential Sole Source or Single Source contract with a value of \$1 million or more must be approved by the NYPA President and CEO or the COO prior to processing by the NYPA SSM Department or Canal Corporation SSM Department.
- P. In furtherance of Public Authorities Law § 2800, when a procurement is made on a non-competitive basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the NYPA Chief Executive Officer and Chief Financial Officer stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. The following definition shall apply: “Fair Market Value” shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by internal appraisals, industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the NYPA Vice President, SSM or authorized designee.
- Q. It is the policy of New York State to discourage improper communications intended to influence a governmental procurement. The Canal Corporation will endeavor to control such practices and will comply with the applicable statutory provisions. In furtherance of the State Finance Law §§ 139-j and 139-k, the following shall apply:

The “Restricted Period” is the period of time commencing with the earliest posting, on the Canal Corporation website, in a newspaper of general circulation, or in the Procurement Opportunities Newsletter (i.e., New York State *Contract Reporter*) in accordance with Article 4-C of the Economic Development Law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from offerors (i.e., bidders/contractors) intending to result in a Procurement Contract with the Canal Corporation and ending with the final contract award and approval by the Canal Corporation and, where applicable, the State Comptroller. The “Restricted Period” also applies to a “mini-bid” process that may be utilized in certain established OGS, GSA or Canal Corporation multiple award contracts, as provided in Section 3.F.

The Canal Corporation shall designate a person or persons who may be contacted, with respect to each Canal Corporation procurement. The bidders/contractors or persons acting on their behalf, shall only contact the Canal Corporation’s designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period.

- R. In furtherance of the Canal Corporation commitment to ensure transparency and accountability of its operations, every member, officer or employee of the Canal Corporation who is contacted by a lobbyist is required to make a contemporaneous record of such contact, pursuant to Public Authorities Law § 2987.
- S. Project Sunlight (Chapter 399, Part A, Section 4 of the Laws of 2011) requires the Canal Corporation to record in a database maintained by the New York State Office of General Services certain appearances between the Canal Corporation and individuals, firms or other entities (excluding elected officials and representatives of federal, state and local agencies and authorities) relating to the procurement of a contract, with a value of \$25,000 or more, for real property, goods or services. Appearances are defined as an interaction through an in-person meeting or a video conference between covered individuals. Appearances related to emergency procurements and disposal of property through public auctions are excluded, as are appearances that take place during the formal “Restricted Period.” Covered individuals at the Canal Corporation means an employee who has the power to exercise discretion in procurement matters or advises someone who exercises such discretion. A covered individual outside of the Canal Corporation means both “external” (e.g., a lobbyist) and “internal” (e.g., sales representative) representatives of an entity, individuals appearing on behalf of themselves, advocacy groups or organizations or entities representing the interests or concerns of the organization or entity or of its members. All such appearances must be promptly reported to the Canal Corporation Ethics and Compliance Office for recording in the Project Sunlight database.
- T. Prior to entering into any binding relationship with a third party (e.g., written agreement or memorandum of understanding (MOU)) in pursuit of any joint or collaborative development project, the office of SSM and the Law Department (“Law”) must be notified regarding the procurement and on the issue of whether and to what extent the projects falls within the constraints of the Authority’s procurement

regulations and enabling legislation. SSM and Law should be brought into any such project in the development process.

Provided that the Authority has statutory authority to develop or otherwise participate in a project developed, in whole or in part, in collaboration with a third party, the following minimum criteria must be met:

- (i) the Authority's participation must be in response to a solicitation issued by the State or other public entity pursuant to a competitive selection process; and
- (ii) the construction of any asset to be owned by the Authority must comply with all applicable laws, including but not limited to prevailing wage requirements and goals established for the use of minority enterprises (e.g., minority- and women-owned business enterprise (MWBE), service disabled veteran owned business (SDVOB)); and
- (iii) goods and/or services required to develop and implement the project must be sourced and procured in accordance with, and subject to, either (a) the Authority's Procurement Guidelines; or (b) the requirements of the third party collaborator governing the competitive procurement of goods and services, provided that SSM has been furnished with a copy of such requirements which demonstrate, in SSM's judgement, that a competitive procurement or equivalent has been or will be undertaken.

Prior to execution any underlying agreement (i.e. joint development agreement, MOU, etc.) an internal award recommendation shall be memorialized and approved by the VP SSM and the responsible Business Unit head.

4. EVALUATION OF PROPOSALS

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder (including, but not limited to, the bidder's skill, judgment and business integrity), the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the Canal Corporation SSM Department and appropriate managers as stipulated in the EAPs. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award and (3) negotiating with the low bidder(s), as determined by the NYPA Vice President, SSM or designee, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited to: the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued,

and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are: previous experience (including applicable experience in New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the Canal Corporation work and the ability to provide any needed advanced techniques such as simulation and modeling; and overall, the bidder's skill, judgment and business integrity. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet Supplier Diversity Program goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.

Another factor to be considered in evaluating proposals may involve an assessment of the bidder's diversity practices, where applicable. Pursuant to Article 15-A of the Executive Law, diversity practices are the contractor's practices and policies with respect to utilizing NYS-certified MWBEs in contracts as subcontractors and suppliers, and entering into partnerships, joint ventures or other similar arrangements with NYS-certified MWBEs. A contractor's diversity practices may be assessed when: (1) a procurement is awarded on the basis of "Best Value" as described in Section 4.D. (but *not* when a procurement is awarded based upon "lowest price"); (2) the anticipated award is \$250,000 or greater; and (3) such assessment is practicable, feasible and appropriate. Such assessment shall not permit the automatic rejection of a bid or Procurement Contract proposal based on lack of adherence to diversity practices.

- C. For Services Contracts (as defined in Section 2.M of these Guidelines), the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract, provided that the price for performing such work is reasonable and competitive.
- D. For Procurement Contracts for Goods (as defined in Section 2.C-F of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents. (See also Section 4.F regarding award to "other than low bidder".)

As a best practice and pursuant to State Finance Law § 163, the Canal Corporation may award on a "Best Value" basis for awarding contracts to the offeror that optimizes quality, cost and efficiency, among responsive and responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis and may also identify a quantitative factor for offerors that are Small Businesses or NYS-certified SDVOB or MWBE firms.

- E. Pursuant to § 139-k of the State Finance Law, the Canal Corporation shall not award a Procurement Contract (as defined in Subsection 3.Q.1 of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder's/contractor's knowing and willful violation of the Canal Corporation policy providing for certain procurement disclosures shall result in a determination of non-responsibility of such bidder/contractor pursuant to State Finance Law §§ 139-j and 139-k only.

More than one determination of non-responsibility due to violations of State Finance Law § 139-k in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to "other than low bidder" can be made only with the approval of appropriate management as stipulated in the EAPs, and should be based on such a proposal providing a clear advantage to the Canal Corporation over the lower-priced proposal. Factors justifying an "other than low bidder" award may include, but are not limited to: improved delivery schedules that will reduce outages; longer warranty periods; improved efficiency over the usable life of the equipment; reduced maintenance costs; the bidders' financial resources or the ability to meet or exceed Supplier Diversity Program and SDVOB goals; and overall, the bidder's skill, judgment and business integrity.
- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, the Canal Corporation may diverge from the specifications of any solicitation if, after review of the proposals responsive to such solicitation, the Canal Corporation deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings.

5. RECOMMENDATION OF AWARD

- A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum or e-mail by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:
1. Lump sum and/or unit prices for equipment and construction work.
 2. Hourly or daily rates for personnel.
 3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
 4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.
 5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.

- B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but not limited to payment terms, warranties and bond requirements, if any, as well as Supplier Diversity Program requirements, as applicable.

6. AWARD OF CONTRACT

- A. Services Contracts (which include contracts for Construction, Personal and Non-personal services, as defined in Section 2.M.) valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months are approved and reviewed annually by the Canal Corporation Board of Directors. Services Contracts for a period of less than 12 months are approved by authorized designees in accordance with existing EAPs. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Canal Corporation Board of Directors at the request of the initiating department and will be reviewed by the Canal Corporation Board of Directors annually. Extending a contract for services, that has previously been approved by the Canal Corporation Board of Directors, for a cumulative term of more than 12 months requires further Canal Corporation Board of Director approval.
- B. Extending a contract, previously approved by the Canal Corporation Board of Directors, for 12 months or less ("grace period") requires approval by the NYPA Vice President, SSM of the requesting department or other authorized equivalent or designee in accordance with existing EAPs and concurrence by the NYPA Vice President, SSM.
- C. For Services Contracts valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months that must be awarded prior to the next quarterly Canal Corporation Board of Directors meeting, the initial contract will be issued for the entire intended term of the contract. Based on its total term and value, such contract must be approved in writing by the appropriate management as set forth in the EAPs. Such contract is subject to the Canal Corporation Board of Directors' approval, at the next quarterly Canal Corporation Board of Directors' meeting. If such approval is not granted, the contract will be terminated immediately.
- D. A contract or contract task valued or estimated to be \$5,000 or greater is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any "continuing services" contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Canal Corporation Board of Directors-approved contracts for architect/ engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a "Change Order," "Purchase Order" or "Task Number") is considered a separate commitment and must be separately approved in accordance with the EAPs.
- E. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions. However, at the sole discretion of the Vice President of SSM may approve a Business Unit's written justification for a contract term exceeding 5 years or reasonable extension of such a contract.

- F. For construction value contracts purchase order releases maybe issued up to the term limit of the value contract. The term of a construction purchase order release shall be as required to complete the work assigned. The term of the value contract shall be extended accordingly.
- E-G. Multiyear contracts for Goods (which include equipment, materials and supplies, as defined in Section 2-F) valued or estimated to be \$5,000 or greater are subject to the management approval thresholds established in the EAPs, and require Trustee approval only once those thresholds are exceeded.
- F-H. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed the appropriate limit set forth in the EAPs, the Department Head, with the prior concurrence of the NYPA Vice President, SSM or equivalent(s) or designee, may authorize extending such contract, subject to the Canal Corporation Board of Directors ratifying such action as soon as practicable.
- G-I. When the total estimated contract value or the value of the extension exceeds the monetary limits set forth in the EAPs, interim approval by the NYPA President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Canal Corporation Board of Directors ratifying such action as soon as practicable.
- H-J. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value exceeds the monetary approval limit for the President and Chief Executive Officer or Chief Operating Officer or equivalent(s), as set forth in the EAPs, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the NYPA Vice President, SSM or equivalent(s) or designee, may authorize in writing the commencement of such services. The initial compensation limitation may not exceed the authorization level for the NYPA President and Chief Executive Officer or equivalent(s) or Chief Operating Officer or equivalent(s) as set forth in the EAPs. Such contracts will be subject to the Canal Corporation Board of Directors approval, which will be solicited at their next scheduled Canal Corporation Board of Directors meeting.
- I-K. The NYPA SSM or the Canal Corporation SSM Department prepares the contract for execution by the Canal Corporation and the successful bidder. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution. Canal Corporation signatories of such letters must be authorized to approve contract awards pursuant to the EAPs.
- J-L. Pursuant to Economic Development Law § 143, the Authority shall submit an announcement of the intended contract for inclusion in the procurement opportunities newsletter at the time it enters into a contract. Such announcement shall identify the contract, specify the date of the award of the contract and provide the name of and contact information for each recipient of the contract.

~~K.M.~~ Pursuant to Public Authorities Law § 2879, the Canal Corporation shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase of goods and/or services from a Foreign Business Enterprise (as defined in Subsection 3.E.3 of these Guidelines) in an amount equal to or greater than \$1 million simultaneously with notifying the successful bidder therefor. The Canal Corporation shall not enter into the Procurement Contract for said goods and/or services until at least 15 days have elapsed from the notification of the award, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, telephone and facsimile number of the Foreign Business Enterprise, the amount of the proposed Procurement Contract and the name of the individual at the Foreign Business Enterprise or acting on behalf of same who is principally responsible for the proposed Procurement Contract.

7. CONTRACT PROVISIONS

- A. The following standard forms of contracts are available from the NYPA SSM Department or Canal Corporation SSM Department: purchase order format (for standard procurements of goods and/or services); furnish-and-deliver format (for major equipment purchases); long form agreements (for consulting services) and maintenance agreement formats; contract work orders (for construction work of small magnitude); construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services.

Canal Corporation departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the NYPA SSM Department and the Canal Corporation SSM Department, which are responsible for requesting proposals.

- B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.

1. Schedule of Services or Specifications
2. Time of Completion
3. Compensation or Itemized Proposals
4. Relationship of Parties
5. Delays
6. Termination
7. Changes in the Work
8. Claims and Disputes
9. Warranty
10. Insurance
11. Records, Accounts, Inspection and Audit

12. Assignment
13. Notices
14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Testimony
18. MWBE requirements
19. SDVOB requirements
20. Entire Agreement

Contract Attachments

1. Compensation Schedule
2. Schedule of Services or Specifications
3. Appendix "A" (Miscellaneous Statutory Provisions)
4. Appendix "B" (Prompt Payment Provisions)
5. Appendix "C" (Minority- and Women-owned Business Enterprise (MWBE) Participation Goal Requirement)
6. Appendix "D" (Background Security Screening for Authority Contractors)
7. Appendix "E" (Omnibus Procurement Act of 1992 Requirements)
8. Appendix "F" (Computer Aided Design Requirements For New York Power Authority Drawings)
9. Appendix "G" (Equal Employment Opportunities Requirements)
10. Appendix "H" (Tax Law Requirements)
11. Appendix "I" (New York Power Authority (NYPA) North American Electric Reliability Corporation Critical Infrastructure Protection (NERC CIP) Cyber Access And/or Unescorted Physical Access Training Requirements)
12. Appendix "J" (Bidder/Contractor Compliance with State Finance Law §§ 139-j and 139-k Providing for Certain Procurement Disclosures)
13. Appendix "K" (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act (Pub. L. No. 111-5 Stat. 2009) ("ARRA") Funded Projects) - inactive
14. Appendix "L" (DOE Federal Contract Provisions) - inactive
15. Appendix "M" (Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology ("BART") for Heavy Duty Vehicles)
16. Appendix "N" (The New York State Iran Divestment Act of 2012 – Iranian Energy Sector Divestment)
17. Appendix "O" (Encouraging Use of New York State Businesses in Contract Performance) – inactive
18. Appendix "P" (Information Security Requirements for Vendors and External Partners)

- C. If a vendor (firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services.

Furthermore, any firm, person or other entity retained by the Canal Corporation to provide conceptual studies, designs or specifications is prohibited from being awarded future phases of work, including implementation, related to the original work.

The above restrictions shall not apply where:

1. The vendor is the sole source or single source of the product or service;
2. More than one vendor has been involved in preparing the specifications for a procurement proposal;
3. There is no qualified response to the solicitation for future phases of work, including implementation; or
4. The originating Canal Corporation Department determines in writing that the restrictions are not in the best interests of the Canal Corporation. Such originating Department shall obtain the approval of the applicable Department Head or equivalent(s), NYPA Vice President, SSM or equivalent(s) or designee, NYPA Assistant General Counsel or equivalent(s) and NYPA President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) to waive this restriction on a case-by-case basis.

8. CHANGE ORDERS

- A. Change Orders to existing contracts are justified in the following cases:
 1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
 2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;
 3. To accommodate emergency conditions, defined in Section 3.M herein, that require the immediate performance of work by a firm already under contract;
 4. When rebidding would not be practical or in the best interests of the Canal Corporation customers; and
 5. To meet the Canal Corporation Supplier Diversity and SDVOB Program goals in accordance with Executive Law Articles 15-A and 17-B, respectively.
- B. All Change Orders must be approved in accordance with the Canal Corporation EAPs, and should include specific schedules for completion of work at the earliest possible time.
- C. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Canal Corporation may be required to submit certain Change Orders to the New York State Comptroller for filing or approval where the aggregate value of the contract as amended is in excess of \$1 million and the original contract was awarded on the basis of a competitive procurement, but the modification was neither contemplated nor provided for in the solicitation for such competitive procurement.

9. CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES

- A. Former Canal Corporation officers and employees may be eligible to be considered for direct engagement as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines; their

engagement is not barred by New York Public Officers Law § 73(8); they obtain an opinion by the New York State Joint Commission on Public Ethics that such engagement is permissible; and upon approval of the NYPA President and Chief Executive Officer, as well as the Chairman of the Canal Corporation Board.

- B. Pursuant to the provisions of New York Public Officers Law § 73(8):
1. No Canal Corporation officer or employee is eligible, within a period of two years after the termination of Canal Corporation service to appear or practice before the Canal Corporation or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before the Canal Corporation.
 2. No Canal Corporation officer or employee is eligible, at any time after the termination of Canal Corporation service, to appear, practice, communicate or otherwise render services before the Canal Corporation or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of service, or which was under his or her active consideration.
 3. Pursuant to the provisions of New York Public Officers Law § 73(8-b), notwithstanding the provisions of 1. and 2. above, a former Canal Corporation officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to the Canal Corporation, if, prior to engaging in such service, the Chairman of the Board of Directors certifies in writing to the New York State Joint Commission on Public Ethics that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the Canal Corporation needs and is otherwise unavailable at a comparable cost. Where approval of the contract is required under § 112 of the New York State Finance Law, the Comptroller shall review and consider the reasons for such certification. The New York State Joint Commission on Public Ethics must review and approve all such certifications.
- C. No Canal Corporation employee who is involved in the award of Canal Corporation grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- D. No Canal Corporation employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- E. No Canal Corporation employee may take part in any contracting process or decision: (i) to a Relative; or (ii) to any entity in which the Canal Corporation employee or a Relative

of such Canal Corporation employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section 9.E, then the employee must advise in writing his or her supervisor and the Office of Ethics and Compliance of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

1. For purposes of this Section 9.E, the term “Relative” is defined in Definitions, Section 2.L of these Guidelines.

10. SUPPLIER DIVERSITY PROGRAM REQUIREMENTS

The Canal Corporation strives to continue to foster the development of business opportunities on Canal Corporation contracts for MWBEs. Article 15-A of the Executive Law established the NYS Office (now Division) of Minority and Women’s Business Development (“DMWBD”) that is responsible for developing rules and regulations for implementation of this statute, certifying MWBEs and reviewing and monitoring goal plans, compliance reports and contract provisions to be included in all non-construction contracts for more than \$25,000 and construction contracts for more than \$100,000. The definition of an MWBE is included in Section 2.G of these Guidelines. The Canal Corporation aims to solicit proposals from NYS-certified MWBEs that are qualified to perform the required work. In addition, specific goals may be included in certain contracts for consulting work, construction and procurement of goods and other services requiring the contractor/vendor to subcontract a portion of the work to NYS-certified MWBEs as required by law. Bidders’ proposals will include a completed preliminary Utilization Plan Form for MWBEs, as well as applicable EEO and Diversity Practices Forms, where required. Such bidders’ failure to meet these requirements may be grounds for rejection of the proposal, or cancellation of the contract if a contractor did not make a good faith effort to meet its goals after contract award. Final MWBE Utilization Plans for Construction contracts valued at more than \$100,000 shall be provided and posted on the procurement website by the successful vendor within ten business days of contract signing.

Pursuant to § 2879 of the Public Authorities Law and as further set forth in the Canal’s Corporation Supplier Diversity Program documents, the following guidelines apply:

1. Identify those areas or types of contracts for which MWBEs may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises.
2. Provide notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve MWBEs providing the types of services procured by the Canal Corporation.
3. Maintain lists of qualified NYS-certified MWBEs, including professional firms that have expressed an interest in doing business with the Canal Corporation and ensuring that such lists are updated regularly. The Canal Corporation shall also consult the lists of NYS-certified MWBEs maintained by the DED pursuant to Executive Law Article 15-A.
4. Establish appropriate goals for participation by MWBEs in Procurement Contracts awarded by the Canal Corporation and for the utilization of MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the

Canal Corporation. Statewide numerical participation target goals shall be established by the Canal Corporation based on the criteria set forth in Public Authorities Law § 2879.

5. Conduct procurements in a manner that will enable the Canal Corporation to achieve the maximum feasible portion of the goals established pursuant to Subdivision 4 of this Section and that eliminates barriers to participation by MWBEs in the Canal's Corporation procurements.
6. Designate one or more senior staff of the Canal Corporation to oversee the Canal's Corporation programs established to promote and assist participation by and utilization of NYS-certified MWBEs.

11. SERVICE-DISABLED VETERAN-OWNED BUSINESS ("SDVOB") PROGRAM REQUIREMENTS

The Canal Corporation also strives to foster the development of business opportunities for NYS-certified SDVOBs and to further increase participation by SDVOBs in Canal Corporation contracts, as set forth in Sections 2.-R and 3.I of these Guidelines and pursuant to Article 17-B of the Executive Law. One tool is the use of SDVOB discretionary purchasing, as further described in Sections 3.D, I and K of these Guidelines. Another tool authorized by the law is the use of set-asides, which permit the reservation in whole or in part of certain procurements by state agencies and authorities when more than one NYS-certified SDVOB is available and can provide the necessary goods or services to meet the Canal Corporation form, function and utility. The same dollar limits apply to SDVOB contracts as those set forth for MWBEs in Article 10 of these Guidelines.

Pursuant to Article 17-B of the Executive Law, the following guidelines apply:

1. Identify contracts where SDVOBs may best perform and/or where SDVOB goals are practical, feasible and appropriate for the purpose of increasing the utilization of SDVOB participation on Canal Corporation contracts.
2. Submit regular reports with respect to SDVOB Program activity, including but not limited to, utilization reporting and contract monitoring and compliance.
3. Achieve an overall goal of six percent for SDVOB participation on Canal Corporation contracts.

12. DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM REQUIREMENTS ON PROJECTS THAT ARE FEDERALLY FUNDED

The Canal Corporation ("Canals") strives to foster the development of business opportunities for NYS certified DBEs and to further increase their participation in Canals Federally funded contracts. The Canals aims to solicit proposals from DBEs for procurements that will be partially or fully federally funded. The Canals follows the DBE guidelines as set out by The Federal Department of Transportation ("DOT"). NYS DOT is tasked with certifying eligible small businesses as DBEs in New York State.

The Canals is committed to promoting participation of DBEs in Canals contracting opportunities in accordance with federal law and regulations and seeks to achieve the following objectives:

1. To ensure nondiscrimination in the award and administration of Federally funded contracts in the canals and waterways;
2. To create a level playing field on which DBEs can compete fairly for Federally funded contracts;
3. To ensure that the Canals' DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this Federal eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in Federally funded contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

13. PROCUREMENT RECORD AND REPORTING

A. Procurement Record

The NYPA SSM Department or the Canal Corporation SSM Department maintains records of Procurement Contracts. In addition to bid- and contract award-related documents for the goods provided and/or services performed, the Procurement Record includes, but is not limited to, documentation of the decisions made and the approach taken in the procurement process. Such records may be transmitted to a digital warehouse for electronic storage and retrieval.

B. Procurement Report

After the end of each calendar year, the NYPA Vice President, SSM or equivalent(s) will prepare and submit an annual report to the Canal Corporation Board of Directors for their approval that will include:

1. A copy of the Guidelines;
2. An explanation of the Guidelines and any amendments thereto since the last annual report;
3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
4. A list of fees, commissions or other charges paid;
5. A description of work performed, the contract number, the date of the contract and its duration, the name, address and NYS-certified MWBE designation of the awardees, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of open Procurement Contracts during the report year;
6. The type of contract (equipment, services, personal services or construction);

7. The method of awarding the contract (e.g., competitive bidding, Sole Source, Single Source or competitive search);
 8. The reasons why any procurements with a value equal to or greater than \$50,000 were not noticed in the Contract Reporter;
 9. The number of bids received and
 10. All referrals made and all penalties imposed, if any, pursuant to § 316 of the Executive Law.
- C. Such annual report, as approved by the Canal Corporation Board of Directors, shall be submitted to the New York State Division of the Budget within 90 days of the end of such calendar year, and copies thereof shall be distributed to the New York State Department of Audit and Control, the DED, the New York State Senate Finance Committee, and the New York State Assembly Ways and Means Committee and any other entity as may be required by law. The annual procurement report is posted on the Canal Corporation website and copies shall be made available to the public upon reasonable written request therefor.
- D. State Finance Law §§ 139-j and 139-k
1. A statement describing the basis for a determination of a bidder's/contractor's non-responsibility (per State Finance Law §§ 139-j and 139-k only) and the Canal Corporation decision not to award a bidder/contractor the Procurement Contract must be included in the Procurement Record.
 2. The Canal Corporation shall notify the New York State Office of General Services of bidders/contractors who have been determined to be non-responsible bidders (per State Finance Law §§ 139-j and 139-k only) or debarred due to violations of § 139-j of the State Finance Law.
 3. All forms entitled "Record of Contact" shall be included in the respective Procurement Record.
 4. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the Procurement Record.
- E. The Canal Corporation may be called upon periodically to submit information regarding the procurement of goods and/or services to organizations implementing the PAAA or other statutes regulating the procurement of goods and services, such as Canal Corporation's Budget Office through the Public Authorities Reporting Information System ("PARIS").
- F. The NYPA Vice President, SSM or equivalent(s) will also prepare Annual Goal Plans for the MWBE and SDVOB programs and will submit them by January 15 of each year to Empire State Development - Division of Minority and Women Business Development and the New York State Office of General Services - Division of Service-Disabled Veterans' Business Development, respectively. Quarterly Utilization / Activity Reports for each program will also be prepared and submitted to the aforementioned respective state entities by the 15th day of July, October, January and April.

14. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS

- A. These Guidelines are intended for the guidance of officers and employees of the Canal Corporation only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.

**CANAL CORPORATION OF THE STATE OF NEW YORK
GUIDELINES FOR PROCUREMENT CONTRACTS**

EXECUTIVE SUMMARY

The Canal Corporation (Canals) runs the New York State Canal System, which includes the Erie, Champlain, Oswego and Cayuga-Seneca canals. Spanning 524 miles, the waterway links the Hudson River with the Great Lakes, the Finger Lakes and Lake Champlain. In 2017, the Canal Corporation celebrated the 200th anniversary of the groundbreaking for the Erie Canal, which occurred in the city of Rome on July 4, 1817. The Canal System includes the Erie Canalway Trail, a multi-use trail designed to accommodate pedestrians, bicyclists, and cross-country skiers. Together, the canals and trail create a world-class recreation way that is a vibrant, scenic and unique New York resource.

The Canal Corporation is fully integrated into the NYPA procurement process and all related contracts for goods and services.

PROCUREMENT GUIDELINES (Exhibit “A”)

In compliance with the applicable provisions of § 2879 of the Public Authorities Law (“PAL”), as amended, the Authority has established comprehensive Guidelines for Canals detailing its operative policy and instructions concerning the use, awarding, monitoring and reporting of procurement contracts. The Guidelines describe the Canal’s process for soliciting proposals and awarding contracts. Topics detailed in the Guidelines include solicitation requirements, evaluation criteria, contract award process, contract provisions, change orders, Minority- and Women-owned Business Enterprise (“MWBE”) and Service-Disabled Veteran-Owned Business (“SDVOB”) requirements, employment of former officers and reporting requirements. These Guidelines mirror the Authority’s Guidelines. The Canal Guidelines which are approved by the Board, were initially approved on March 20, 2018, amended as deemed advisable and necessary, and reviewed and approved by the Board annually since that date, most recently on March 31, 2020.

Staff has reviewed the Procurement Guidelines and recommends several changes to make them more consistent with the law or to improve or clarify the Canal’s procurement process. These Guidelines, as reviewed by the Governance Committee on December 1, 2020, are now presented to the full Board for review and approval at this meeting of the same date. The approved Guidelines will become effective on December 9, 2020 and will be posted on the Canal’s internet website.



Date: December 9, 2020

To: THE TRUSTEES AND CANAL BOARD OF DIRECTORS

From: VICE PRESIDENT AND CORPORATE SECRETARY

Subject: Proposed 2021 Schedule of Meetings

The following schedule of meetings for the year 2021 is recommended:

Date	Boards/Committees	Venue
January 19 (Tuesday)	Finance Committee	Video
January 26 (Tuesday)	Cyber Committee	Video
	NYPA/Canal Board	Video
March 18 (Thursday)	Audit Committee	Video
	Finance Committee	Video
March 30 (Tuesday)	Governance Committee	Video
	NYPA/Canal Board	Video
May 12 (Wednesday)	Finance Committee	Video
May 25 (Tuesday)	NYPA/Canal Board	Video
July 15 (Thursday)	Audit Committee	Video
	Finance Committee	Video
July 27 (Tuesday)	Cyber Committee	WPO
	NYPA/Canal Board	WPO
September 21 (Tuesday)	Finance Committee	Video
September 30 (Thursday)	Governance Committee	WPO
	NYPA/Canal Board	WPO
November 16 (Tuesday)	Finance Committee	Video
December 7 (Tuesday)	Board Training	WPO
December 8 (Wednesday)	Audit Committee	WPO
	NYPA/Canal Board	WPO

RECOMMENDATION

The President and Chief Executive Officer and I support the proposed 2021 meeting schedule as set forth in the foregoing memorandum.

I recommend the approval of the proposed schedule by adoption of the resolution below.

Karen Delince
Vice President & Corporate Secretary

RESOLUTION

RESOLVED, That the 2021 meeting schedule, as set forth in the foregoing memorandum of the Vice President and Corporate Secretary, be, and hereby is, approved.



Date: December 9, 2020

To: THE TRUSTEES AND CANAL CORPORATION BOARD OF DIRECTORS

From: THE CHAIRMAN

Subject: Committee Appointments

SUMMARY

The Authority's Board of Trustees and the Canal Corporation's Board of Directors are requested to adopt the committee appointments as indicated below. These appointments were reviewed by the Governance Committee at its December 1, 2020 meeting.

BACKGROUND and DISCUSSION

The recommended membership of the joint Authority and Canal Committees follows:

Audit Committee

John R. Koelmel, Eugene L. Nicandri (Chair), Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor

Finance Committee

John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben (Chair), Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor

Governance Committee

John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor (Chair)

Cyber and Physical Security Committee

John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni (Chair), Dennis G. Trainor

RECOMMENDATION

I recommend the approval of the above-requested action by adoption of the resolution below.

John R. Koelmel
Authority and Canal Corporation Chair

RESOLUTION

RESOLVED, That the members of the Audit Committee shall be: John R. Koelmel, Eugene L. Nicandri (Chair), Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor

RESOLVED, That the members of the Finance Committee shall be: John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben (Chair), Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor; and be it further

RESOLVED, That the members of the Governance Committee shall be: John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor (Chair); and be it further

RESOLVED, That the members of the Cyber and Physical Security Committee shall be: John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni (Chair), Dennis G. Trainor.

December 9, 2020

4g. Audit Committee Report: (Chair Eugene Nicandri)

[Oral Report Only]



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Recharge New York Power – New, Extended and Modified Allocations

SUMMARY

The Trustees are requested to:

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

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

All the above actions have been recommended by the Economic Development Power Allocation Board (“EDPAB”) at its December 7, 2020 meeting.

BACKGROUND

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

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

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

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

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

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

In arriving at recommendations for EDPAB's consideration, Staff, among other things, attempted to maximize the economic benefits of low-cost NYPA hydropower, the critical state

asset at the core of the RNY Power Program, while attempting to ensure that each recipient receives a meaningful RNY Power allocation.

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

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

RNY Power allocations pertaining to new applicants have been awarded by the Trustees on twenty-nine prior occasions spanning from April 2012 through September 2020. Of the 200 MW block of RNY Power made available pursuant to Chapter 60 for business “expansion” purposes, 91.1 MW remain unallocated. Of the 100 MW block of RNY Power that is set aside for not-for-profit corporations and small businesses pursuant to Chapter 60, 1.8 MW remain unallocated. Of the remaining RNY Power made available pursuant to Chapter 60, 134.2 MW remain unallocated. These figures reflect Trustee actions on RNY Power applications taken prior to any actions the Trustees take today.

EDPAB, at its meeting held on December 7, 2020, recommended that:

- (a) the Trustees approve extensions for the 6 RNY Power allocations that are listed in Exhibit “A” for a term of 7 years;
- (b) each of the applicants identified in Exhibits “B”, “C”, and “D” be awarded an RNY Power allocation in the amount indicated for a term of 7 years; and
- (c) the Trustees approve the modifications related to the RNY Power allocation listed in Exhibit “E” for the reasons discussed in Exhibit “E”.¹

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

- (1) provisions for effective periodic audits of the recipient of an allocation for the purpose of determining contract and program compliance, and for the partial or complete withdrawal of an allocation if the recipient fails to maintain commitments, relating to such things as employment levels, power utilization, capital investments, and/or energy efficiency measures;

¹ EDPAB did not recommend an RNY Power allocation for the applicant listed in Exhibit “F” for the reasons discussed in Exhibit “F”. EDPAB also recommended termination of the application review process for the applicant listed in Exhibit “G” for the reasons discussed in Exhibit “G”. No action is required by the Trustees on these matters.

- (2) requirements for an agreement by the recipient of an allocation undertake at its own expense an energy audit of its facilities at which the allocation is consumed modified by the Authority on a showing of good cause by the recipient, and that the recipient provide the Authority with a copy of any such audit or a report describing the results of such audit;
- (3) a requirement for an agreement by the recipient of an allocation to make its facilities available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform; and
- (4) a recommendation shall require that if the actual metered load at the facility where the allocation is utilized is less than the allocation, such allocation will be reduced accordingly.

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

DISCUSSION

1. Extension of Existing RNY Power Allocations

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

In summary, the businesses listed on Exhibit "A" which are located throughout the State bring valuable benefits to the State. In total, the allocations listed in Exhibit "A" are supporting the retention of nearly 700 jobs and more than \$10.8 million in capital investments throughout New York State, and the Authority will require customers to commit to the same or substantially similar supplemental commitments for jobs and capital investments that are summarized in Exhibit "A" for the Extended Term.

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

- (a) The sale of any allocation extended as proposed herein will be governed by the RNY Power contract form that was approved by the Trustees on March 26, 2019, and Authority Service Tariff RNY-1.
- (b) In order to receive an extension of its allocation, the customer must agree, for the Extended Term, to provide the supplemental commitments for jobs and capital investments that are the same or substantially similar to those that are summarized generally in Exhibit "A" (subject to adjustments described above), through the incorporation of such supplemental commitments in the final contract that is executed by the parties. With respect to capital investments, RNY Power customers who do not have current project/expansion capital investment commitments would be

expected to meet a minimum capital investment commitment which may be satisfied through capital expenditures made over a five-year period.

- (c) Unless otherwise noted in Exhibit “A”, the customer is in compliance with its contractual obligations to the Authority under its Current RNY Power Agreement.

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

2. Retention-Based RNY Power Allocations

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

Consistent with the evaluation process as described above, EDPAB recommended, at its December 7, 2020 meeting, that RNY Power retention allocations be awarded to the 5 businesses listed in Exhibit “B.” Each business has committed to retain jobs in New York State and to make capital investments at their facilities in exchange for the recommended RNY Power allocations.

Staff recommends that the Trustees accept EDPAB’s recommendations and award RNY Power allocations to each of the businesses listed on Exhibit “B” in the amounts and terms indicated therein.

3. Expansion-Based RNY Power Allocations

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

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

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

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

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

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

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

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

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

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

At its meeting held on December 7, 2020, EDPAB recommended that the Trustees approve modifications relating to the RNY Power allocation listed on Exhibit "E" for Akoustis, Inc. ("Akoustis").

Akoustis was previously approved for an expansion-based RNY Power allocation totaling 366 kilowatts ("kW") with an associated expansion project cost of \$50 million. After the approval, the customer determined it had failed to properly account for the project timeframe, and miscalculated its proposed expansion-related capital investment.

As a result, the company has requested to modify its expansion project cost to \$26 million. Staff reviewed this request and is recommending that the company's contract be modified to accommodate the expansion-related adjustment to a \$26 million capital investment commitment.

Staff has no objection to the requested modification, and therefore recommends that the Trustees approve the modification listed in Exhibit "E".

6. Applicants Not Recommended for RNY Power

At its meeting on December 7, 2020, EDPAB determined not to recommend the applicant listed on Exhibit "F" for an RNY Power allocation for the reasons listed on Exhibit "F". No action by the Trustees is required on this matter.

7. Termination of Application/Review Process

At its meeting on December 7, 2020, EDPAB terminated the application review process for the applicant listed on Exhibit "G" for the reasons listed on Exhibit "G". No action by the Trustees is required on this matter. In the past, some applicants in these circumstances refiled if able to advance a more complete RNY Power application.

FISCAL INFORMATION

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

RECOMMENDATION

The Senior Vice President, Clean Energy Solutions recommends that the Trustees accept the recommendations of EDPAB and:

- (1) authorize the extension of each of the existing 6 allocations of RNY Power in the manner described above for the customers listed on Exhibit "A" for a term of 7 years to commence on the expiration of the allocation, or commencing on a date to be agreed upon by the parties for a term not to exceed 7 years, subject to the conditions described above;
- (2) award the new allocations of RNY Power for retention purposes to the 5 businesses listed in Exhibit "B" as indicated therein;
- (3) award the new allocations of RNY Power for expansion purposes to the businesses listed in Exhibit "C" as indicated therein;
- (4) award the new allocations of RNY Power to the small business and/or not-for-profit applicants identified in Exhibit "D" for retention and/or expansion purposes as indicated therein; and
- (5) approve the modifications related to the allocations and/or supplemental commitments described in Exhibit "E" for the reasons discussed above and in Exhibit "E".

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

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

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

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the new RNY Power allocations for retention purposes to the applicants listed in Exhibit

“B” in the amounts indicated therein for the reasons indicated in the Memorandum and Exhibit “B”; and

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the new RNY Power allocations for expansion purposes to the applicants listed in Exhibit “C” in the amounts indicated therein for the reasons indicated in the Memorandum and Exhibit “C”;

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

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the modifications/adjustments to the supplemental commitments described in Exhibit “E” for the reasons indicated in the Memorandum and Exhibit “E”; and

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

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

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

Retention-Based Allocations

	Company	City	County	Economic Development Region	IOU	Description	Current kW Amount	Recommended kW Amount	Job Commitments	Capital Investment Commitment (\$)		Contract Term (years)
1	Tompkins Metal Finishing, Inc.	Batavia	Genesee	Finger Lakes	NGRID	Manufacturer of industrial metal products	300	300	72	\$500,000		7
	Finger Lakes Region Sub-totals:						300	300	72	\$500,000		
2	Big Apple Sign Corporation	Islandia	Suffolk	Long Island	LIPA	Sign manufacturing facility	100	100	97	\$100,000		7
3	Pall Corporation	Hauppauge	Suffolk	Long Island	LIPA	Manufacturer of filtration & separation products	580	580	86	\$3,500,000		7
4	Pall Corporation	Port Washington	Nassau	Long Island	LIPA	Manufacturer of filtration & separation products	226	226	200	\$500,000	(1)	7
	Long Island Region Sub-totals:						906	906	383	\$4,100,000		
5	DeLorío Foods, Inc.	Utica	Oneida	Mohawk Valley	NGRID	Manufacturer of frozen dough products	910	910	200	\$1,250,000		7
	Mohawk Valley Region Sub-totals:						910	910	200	\$1,250,000		
6	Niagara Specialty Metals, Inc.	Akron	Erie	Western New York	NGRID	Manufacturer of steel & metal products	750	750	39	\$5,000,000		7
	Western New York Region Sub-totals:						750	750	39	\$5,000,000		

Totals

2,866	2,866	694	\$10,850,000

(1) The company's extension-related job commitment is below the evaluation threshold as compared to their original employment commitment. However, at this time, a reduction to the extension kW amount is not being recommended.

New York Power Authority
Recommendations - RNY Power Allocations for Retention Purposes

Exhibit "B"
December 9, 2020

Line	Company	City	County	Economic Development Region	IOU	Description	kW Request	kW Recommendation	Jobs Retained	Jobs Created	Capital Investment (\$)		Contract Term (years)
1	NexGen Power Systems, Inc.	East Syracuse	Onondaga	Central New York	NGRID	Manufacturer of power transistors	907	450	43	0	\$10,000,000	(1)	7
	Central New York Region Sub-totals:							450	43	0	\$10,000,000		
2	AAR Allen Services, Inc.	Garden City	Nassau	Long Island	LIPA	Repair & overhaul of aircraft components	913	456	110	5	\$2,000,000		7
3	Renaissance Technologies LLC	East Setauket	Suffolk	Long Island	LIPA	Quantitative investment management firm	2,475	1,236	150	0	\$73,575,000		7
4	Whitsons Food Service (Bronx) Corp.	Bohemia, Islandia, & Oceanside	Nassau & Suffolk	Long Island	LIPA	Manufacturer & distributor of prepared meals	488	240	100	0	\$150,000	(1), (2)	7
	Long Island Region Sub-totals:							1,932	360	5	\$75,725,000		
5	Russell Farms, Inc.	Appleton & Burt	Niagara	Western New York	NGRID	Fruit & vegetable farm	446	200	2	0	\$50,000	(2)	7
	Western New York Region Sub-totals:							200	2	0	\$50,000		

Totals

2,582	405	5	\$85,775,000

- (1) This company is also recommended for an expansion-related allocation of RNY for separate and distinct job creation and capital investment commitments associated with the proposed business expansion.
- (2) The recommendation and associated commitments will apply to multiple facilities/addresses. This configuration will be implemented accordingly in the customer's power contract.

Line	Company	City	County	Economic Development Region	IOU	Description	kW Request	kW Recommendation (1)	Base Employment (2)	Job Creation Commitment	Project Capital Investment (\$)		Contract Term (years)
1	NexGen Power Systems, Inc.	East Syracuse	Onondaga	Central New York	NGRID	Manufacturer of power transistors	2,670	1,866	43	25	\$10,000,000	(3)	7
	Central New York Region Sub-totals:							1,866	0	25	\$10,000,000		
2	Whitsons Food Service (Bronx) Corp.	Bohemia, Islandia, & Oceanside	Nassau & Suffolk	Long Island	LIPA	Manufacturer & distributor of prepared meals	950	666	100	36	\$7,500,000	(3), (4)	7
	Long Island Region Sub-totals:							666	0	36	\$7,500,000		
Totals								2,532	0	61	\$17,500,000		

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

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

(3) This company is also being recommended for a retention-based RNY Power allocation associated with separate and distinct contractual commitments relating to such matters as job retention, capital investment spending, and power utilization associated with an existing business.

(4) The recommendation and associated commitments will apply to multiple facilities/addresses. This configuration will be implemented accordingly in the customer's power contract.

Retention-Based Allocations

Line	Company	City	County	Economic Development Region	IOU	Description	kW Request	kW Recommendation	Jobs Retained	Jobs Created	Capital Investment (\$)		Contract Term (years)
1	New York Hemp Oil, LLC	Cortland	Cortland	Central New York	NGRID	Hemp extraction & product distribution	50	26	10	0	\$750,000	(1)	7
	Central New York Region Sub-totals:							26	10	0	\$750,000		
2	Posillico Materials East LLC	Holtsville	Suffolk	Long Island	LIPA	Manufacturer of construction materials	386	190	12	0	\$2,500,000		7
3	Tully Environmental Inc.	Bay Shore	Suffolk	Long Island	LIPA	Wastewater treatment facility	44	20	15	0	\$1,500,000	(1)	7
	Long Island Region Sub-totals:							210	27	0	\$4,000,000		

Retention-Based Totals

236	37	0	\$4,750,000

Expansion-Based Allocations

Line	Company	City	County	Economic Development Region	IOU	Description	kW Request	kW Recommendation (2)	Base Employment	Job Creation Commitment	Project Capital Investment (\$)		Contract Term (years)
4	New York Hemp Oil, LLC	Cortland	Cortland	Central New York	NGRID	Hemp extraction & product distribution	70	36	10	10	\$2,750,000	(1), (3)	7
	Central New York Region Sub-totals:							36	0	10	\$2,750,000		
5	Tully Environmental Inc.	Bay Shore	Suffolk	Long Island	LIPA	Wastewater treatment facility	100	50	15	5	\$2,000,000	(1), (3)	7
	Long Island Region Sub-totals:							50	0	5	\$2,000,000		

Expansion-Based Totals

86	0	15	\$4,750,000

Retention & Expansion-Based Totals

322	37	15	\$9,500,000

- (1) The applicants are being recommended for both RNY retention and expansion-based allocations.
- (2) All expansion-based RNY Power allocations are recommended to be "up to" the amount indicated pending the applicant's compliance with contractual commitments, including commitments relating to job creation, capital investment spending, and power utilization.
- (3) The number of new jobs committed will be above a base employment level specified in the applicant's retention-based allocation recommendation.

Expansion-Based Allocations

Line	Company	City	County	Economic Development Region	IOU	Description	Recommended kW Amount	Final Job Retention Commitments	Final Job Creation Commitments	Final Project Capital Investment (\$)	Contract Term (years)
1	Akoustis, Inc.	Canandaigua	Ontario	Finger Lakes	RGE	Manufacturer of bulk acoustic filters	366	40	40	\$26,000,000 ⁽¹⁾	7

- (1) Represents modified/corrected project capital investment amount. The customer was previously approved for an RNY Power allocation with an expansion project capital investment of \$50 million. Due to an error in determining the appropriate timeframe for the expansion-related investment, the customer has requested to correct its project capital investment to \$26 million. The revised project capital investment will be implemented in the customer's power contract.

New York Power Authority
ReCharge New York Power Program
Informational Item - Applicants/Applications Not Recommended for RNY Power Allocation

Exhibit "F"
December 9, 2020

Line	Company	City	County	Economic Development Region	IOU	Description	Reason ⁽¹⁾
1	Akmazio LLC	Albany	Albany	Capital District	NGRID	Development of software products	The facility lacks demand metering preventing RNY Power delivery and billing.

(1) Given the disposition of this application, EDPAB has not considered the eligibility of this applicant for an RNY Power allocation.

New York Power Authority
ReCharge New York Power Program
Informational Item - Terminate Application/Review Process

Exhibit "G"
December 9, 2020

Line	Company	City	County	Economic Development Region	IOU	Description	Reason
1	Johnson, Spivey and Spivey, Inc.	Rochester	Monroe	Finger Lakes	RGE	Medical transportation services	Applicant has been unresponsive to requests by staff for additional information, preventing a complete analysis of the application.

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



Date: December 9, 2020
To: THE TRUSTEES
From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER
Subject: Transfer of RNY Power and Replacement Power Allocations

SUMMARY

The Trustees are requested to approve the transfer of the following power allocations awarded by the New York Power Authority ("Authority"):

1. Transfer of a 150 kilowatt ("kW") Recharge New York ("RNY") Power allocation awarded to Air Stream Corp. ("Air Stream") for its use at its facility at 3400 Lawson Boulevard, Oceanside, New York, to an affiliated company, Food Authority, Inc. ("Food Authority"), for its use at its facility at 430 Wireless Boulevard, Hauppauge, New York, to address organizational changes.
2. Transfer of a 640 kW RNY Power allocation awarded to International Fiber Corporation ("International Fiber"), for use at its 50 Bridge Street, North Tonawanda, New York facilities, to J. Rettenmaier USA LP ("Rettenmaier"), to address organizational changes.
3. Transfer of a 2,850 kW portion of a 3,000 kW RNY Power allocation awarded to mindSHIFT Technologies, Inc. ("MST") for use at its 500 Commack Road, Commack, New York facilities, to 365 Data Centers NY One LLC ("365 Data"), to address organizational changes.
4. Transfer of a 10,000 kW RNY Power allocation awarded to SABIC Innovative Plastics US LLC ("SABIC"), for use at its 1 Noryl Avenue, Selkirk, New York facilities, to SHPP US LLC ("SHPP"), to address organizational changes.
5. Transfer of 200 kW, 250 kW, and 250 kW Replacement Power ("RP") allocations and a pending 200 kW RP allocation awarded to Time Release Sciences, Inc. ("TRS") for use at its facility located at 205 Dingens Street, Buffalo, New York to a facility located at 6 Dona Street, Lackawanna, New York.

The Economic Development Power Allocation Board ("EDPAB"), at its December 7, 2020 meeting, approved the transfer of the RNY Power allocations. Transfers of RNY Power are subject to EDPAB review and approval.

The Trustees have previously approved transfers of Authority power allocations in similar circumstances.



DISCUSSION

The following discussion describes the facts relating to the recommended transfers.

1) Air Stream Corp.

Air Stream has a 150 kW RNY Power allocation for use at its facility in Oceanside, NY, where it manufactures and/or distributes fresh and frozen produce, juices, groceries, and dairy products. Air Stream's affiliate, Food Authority, operates the same type of business as Air Stream, but with a different customer base, in Hauppauge, NY. In 2018, Air Stream transferred a then-pending (i.e., not yet in service) 106 kW RNY Power allocation that was awarded to support construction of a new facility and operations at the Oceanside location, to Food Authority in Hauppauge, where the new facility was constructed.

Air Stream recently closed its facility at the Oceanside location and is in the process of consolidating its business alongside Food Authority at the Hauppauge location. Both Air Stream and Food Authority request the transfer of Air Stream's 150 kW RNY Power allocation to Food Authority. Food Authority would take the transfer of the RNY Power allocation subject to the terms and conditions that are applicable to the original award to Air Stream.

2) International Fiber Corporation

International Fiber was awarded a 640 kW RNY Power allocation for use at its facilities at 50 Broad Street, North Tonawanda. This facility produces cellulose and other insoluble fiber products for functional food and industrial applications.

In 2017, International Fiber changed its name to Solvaira Specialties Inc. Solvaira Specialty LP, a subsidiary of Rettenmaier, purchased Solvaira Specialties Inc. and then merged into Rettenmaier.

Considering the merger, the companies have asked that the 640 kW RNY Power allocation be transferred to Rettenmaier. The merger has not resulted in changes to operations at the North Tonawanda facility, and Rettenmaier has indicated that it will honor all terms and commitments made by International Fiber under its RNY Power sale agreement with the Authority if the transfer is approved.

3) mindSHIFT Technologies, Inc.

MST built an IT and cloud services business including a state-of-the-art data center located at 500 Commack Road, Commack, New York. The company has a 3,000 kW RNY Power allocation. MST sold its data center to 365 Data. Due to the sale of the data center, MST's remaining IT and cloud services business now only requires 150 kW of the 3,000 kW allocation.

Both MST and 365 Data request that 2,850 kW of the original 3,000 kW RNY Power allocation be transferred to 365 Data for use at the 500 Commack Road data center. The Authority has determined the commitments that would be applicable to 365 Data and to MST based on the proposed apportionment of the 3,000 kW allocation between the companies, and



365 Data has agreed to honor all commitments associated with the transferred portion of the RNY Power allocation including employment, power utilization, capital investment and energy efficiency commitments. MST will continue to honor all the commitments the Authority associated with the remaining 150 kW portion of allocation.

4) SABIC Innovative Plastics US LLC

SABIC was awarded a 10,000 kW RNY Power allocation for use at its facilities at 1 Noryl Avenue, Selkirk, New York where it manufactures, sells and distributes engineering thermoplastic resins used in water, electrical and automotive products. SABIC refers to this as its "Specialties" business. In addition to engineering thermoplastic resins, it manufactures petrochemicals, industrial polymers and fertilizers.

SABIC separated its Specialties business from the rest of its business and effectuated this separation by creating an affiliated corporation for the Specialties business called SHPP US LLC. SHPP US LLC will operate at the Selkirk facilities where SABIC's Specialties business has been located.

Both companies have asked that the 10,000 kW RNY Power allocation be transferred to SHPP. The creation of SHPP will not result in changes to operations at the Selkirk facility, and SHPP has indicated it will honor all terms and commitments made by SABIC under its RNY Power sale agreement with the Authority.

5) Time Release Sciences, Inc.

TRS was awarded a total of 900 kW of RP, consisting of three in service allocations (200 kW, 250 kW and 250 kW) and a pending 200 kW allocation, for use at its facilities at 205 Dingens Street, Buffalo. TRS uses this facility to manufacture Mr. Clean Magic Erasers for Proctor & Gamble. TRS needs more space to handle growing business.

TRS intends to relocate this business to another facility at 6 Dona Street, Lackawanna.

TRS requests that the four RP allocations be transferred to the 6 Dona Street facility. The company will honor all commitments including employment, power utilization, and capital investment commitments associated with the four RP allocations.

RECOMMENDATION

Staff recommends that the Board approve the transfers discussed above, subject to the following conditions: (1) there be no material reductions in the base employment level or capital investment commitment associated with the allocations that would be transferred; and (2) the transfers are addressed in contract documents containing such terms and conditions determined by the Authority to be appropriate to effectuate the transfers.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the transfer of the 150 kilowatt ("kW") Recharge New York Power ("RNY") allocation awarded to Air Stream Corp., for use at its facilities at 3400 Lawson Boulevard, Oceanside, New York, to Food Authority, Inc., for use at its facilities at 430 Wireless Boulevard, Hauppauge, New York, as described in the foregoing memorandum of the President and Chief Executive Officer ("Memorandum") be, and hereby is, approved subject to (i) such terms and conditions as are set forth in the foregoing Memorandum, and (ii) such terms and conditions as are required by the Authority in contract documents prepared by the Authority in order to effectuate the transfer; and be it further

RESOLVED, That the transfer of a 640 kW RNY Power allocation awarded to International Fiber Corporation, for use at its facilities located at 50 Bridge Street, North Tonawanda, New York to J. Rettenmaier USA LP, for use at the same facilities, as described in the foregoing Memorandum be, and hereby is, approved subject to (i) such terms and conditions as are set forth in the foregoing Memorandum, and (ii) such terms and conditions as are required by the Authority in contract documents prepared by the Authority in order to effectuate the transfer; and be it further

RESOLVED, That the transfer of a 2,850 kW portion of the 3,000 kW RNY Power allocation awarded to mindSHIFT Technologies, Inc. for its use at its facility at 500 Commack Road, Commack, New York, to 365 Data Centers NY One LLC, for use at the same facility, as described in the foregoing Memorandum be, and hereby is, approved subject to (i) such terms and conditions as are set forth in the foregoing Memorandum, and (ii) such terms and conditions

as are contained in contract documents prepared by the Authority to effectuate the transfer and appropriate apportionment of the allocation between the companies as described in the Memorandum; and be it further

RESOLVED, That the transfer of the 10,000 kW RNY Power allocation awarded to SABIC Innovative Plastics US LLC for use at its facility at 1 Noryl Avenue, Selkirk, New York, to SHPP US LLC for use at the same facility, as described in the foregoing Memorandum be, and hereby is, approved subject to (i) such terms and conditions as are set forth in the foregoing Memorandum, and (ii) such terms and conditions as are contained in contract documents prepared by the Authority to effectuate the transfer; and be it further

RESOLVED, That the transfer of the 200 kW, 250 kW and 250 kW Replacement Power ("RP") allocation and pending 200 kW RP allocation awarded to Time Release Sciences, Inc. for use at its facility at 305 Dingens Street, Buffalo, New York, for use at a facility located at 6 Dona Street, Lackawanna, New York, as described in the foregoing Memorandum be, and hereby is, approved subject to (i) such terms and conditions as are set forth in the foregoing Memorandum, and (ii) such terms and conditions as are contained in contract documents prepared by the Authority to effectuate the transfer; 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.



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Expansion Power Allocations

SUMMARY

The Trustees are requested to:

1. Approve: (a) an allocation of 180 kilowatts ("kW") of Expansion Power ("EP") to Mono-Systems, Inc. ("Mono-Systems") to support the company's proposed expansion at its facility located at 180 Hopkins Street, Buffalo (Erie County); and (b) an allocation of 700 kW of EP to Niagara Specialty Metals, Inc. ("NSM") to support the company's proposed expansion at its facility located at 12600 Clarence Center Road, Akron (Erie County). These projects are discussed in more detail below and in Exhibits "A" and "B".
2. Authorize a public hearing, in accordance with Public Authorities Law ("PAL") § 1009, on a proposed form of contracts ("Proposed Contract") with Mono-Systems and NSM that would, along with Authority Service Tariff No. WNY-2 ("ST WNY-2"), apply to the sale of EP to Mono-Systems and NSM. Copies of the Proposed Contract and ST WNY-2 are attached as Exhibits "A-1" and "B-1".

BACKGROUND

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

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

The Authority works closely with business associations, local distribution companies, and economic development entities to gauge support for the projects that would be supported with allocations of Authority hydropower. Discussions routinely occur with National Grid, New

York State Electric & Gas, Empire State Development, Invest Buffalo Niagara, the Niagara County Center for Economic Development, and the Erie County Industrial Development Agency (collectively, the “Economic Development Entities”) to coordinate other economic development incentives that may help bring economic development to New York State. Staff confers with the Economic Development Entities to help maximize the value of hydropower to improve the economy of Western New York and the State of New York. Each organization has expressed support for today’s recommended EP allocations.

At this time, 63,595 kW of unallocated EP and 90,836 kW of unallocated RP is available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).

DISCUSSION

Mono-Systems, Inc.

Mono-Systems is a manufacturer of wire and cable solutions primarily used by electrical engineers and contractors. The company has operated for nearly 50 years and produces various products including cable trays, power poles, and surface raceways.

Mono Systems is proposing to expand the manufacturing capabilities at its Buffalo facility. The project would allow the company to produce extruded polyvinyl chloride (“PVC”) which it currently purchases from China.

Mono-Systems’ expansion project would involve a capital investment expenditure of at least \$420,000. This includes the purchase of PVC extrusion machinery (a capital investment expenditure of at least \$250,000) and the installation of a new roof to accommodate the new PVC equipment (a capital investment expenditure of at least \$170,000).

Mono-Systems is planning to complete the PVC extrusion line installation by the end of this year. The company would commit to the creation of 15 new, permanent, full-time jobs that would be located at the Buffalo facility. The average compensation/benefits are estimated to be \$64,700 per job.

The company applied for 288 kW of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 180 kW for a term of ten years.

The job creation ratio for the proposed allocation of 180 kW is 83 new jobs per MW. This ratio is above the historic average of 66 new jobs per MW based on allocations previously awarded. The total investment of at least \$420,000 would result in a capital investment ratio of \$2.3 million per MW. This ratio is below the historic average of \$17.4 million per MW.

The Economic Development Entities have expressed support for the recommended allocation to Mono-Systems.

Niagara Specialty Metals, Inc.

Founded in 1982, NSM is manufacturer of steel and metal products. The company initially converted steel into sheets and plates. Over the years, NSM has evolved into processing aerospace, cutlery, medical, and nuclear alloys.

NSM is proposing to expand the manufacturing capabilities at its Akron facility. The project would allow the company to initially process rolled alloys utilizing current mills, while installing a new rolling mill for the production of alloys.

NSM's expansion project would involve a capital investment expenditure of at least \$12.85 million. This includes the purchase of processing equipment such as electric annealing furnaces, milling machines, flatterers, and bandsaws. In addition, this includes the purchase and installation of a new rolling mill to produce alloys. The new processing equipment would represent a capital investment expenditure of at least \$6.85 million. The purchase and installation of the new rolling mill would represent a capital investment expenditure of at least \$6 million.

NSM is planning to begin the first phase of the expansion project in 2021 with a second phase expected to commence in 2023. The company would commit to the creation of 5 new, permanent, full-time jobs that would be located at the Akron facility. The average compensation/benefits are estimated to be \$180,350 per job.

The company applied for 1,500 kW of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 700 kW for a term of ten years.

The job creation ratio for the proposed allocation of 700 kW is 7 new jobs per MW. This ratio is below the historic average of 66 new jobs per MW based on allocations previously awarded. The total investment of at least \$12.85 million would result in a capital investment ratio of \$18.4 million per MW. This ratio is above the historic average of \$17.4 million per MW.

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

CONTRACT INFORMATION

The following is a summary of some of the matters that would be addressed in ST WNY-2 and the Proposed Contracts with Mono-Systems and NSM:

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

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

Staff intends to discuss the form of the Proposed Contracts with Mono-Systems and NSM and anticipates reaching agreement on a contract substantially similar to the form attached as Exhibits "A-1" and "B-1". Accordingly, the Trustees are requested to authorize a public hearing, pursuant to PAL §1009, on the form of the Proposed Contracts attached as Exhibits "A-1" and "B-1". The form of the Proposed Contracts is consistent with recently approved contracts for the sale of EP and RP.

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

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

FISCAL INFORMATION

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

RECOMMENDATION

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

1. Approve an allocation of 180 kW of EP to Mono-Systems as described herein and in Exhibit "A" for a term of ten years; and approve an allocation of 700 kW of EP to NSM as described herein and in Exhibit "B" for a term of ten years; and
2. Authorize a public hearing, in accordance with PAL § 1009, on the Proposed Contracts with Mono-Systems and NSM attached as Exhibits "A-1" and "B-1".

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That an allocation of 180 kilowatts of Expansion Power (“EP”) be awarded to Mono-Systems, Inc. for a term of 10 years as detailed in the foregoing memorandum of the President and Chief Executive Officer (“Memorandum”) and Exhibit “A”, be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That an allocation of 700 kilowatts of EP be awarded to Niagara Specialty Metals, Inc. for a term of 10 years as detailed in the foregoing Memorandum and Exhibit “B”, be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing pursuant to Public Authorities Law (“PAL”) §1009 on the terms of the proposed form of the direct sale contract with Mono-Systems, Inc. and Niagara Specialty Metals, Inc. for the sale of the EP allocations (the “Contract”), the current form of which is attached as Exhibits “A-1” and “B-1”; and be it further

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

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

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

APPLICATION SUMMARY
Expansion Power (“EP”)

Company:	Mono-Systems, Inc. (“Mono-Systems”)
Location:	Buffalo, NY
County:	Erie County
IOU:	National Grid
Business Activity:	The company is a manufacturer of wire and cable solutions primarily used by electrical engineers and contractors.
Project Description:	Mono-Systems is proposing to expand the manufacturing capabilities at its Buffalo facility. The project would allow the company to produce PVC which it currently purchases from China.
Existing Allocation(s):	None
Power Request:	288 kW of EP
Power Recommended:	180 kW of EP
Job Commitment:	
Base:	80
New:	At least 15 jobs
New Jobs/Power Ratio:	83 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$64,700
Capital Investment:	At least \$420,000
Capital Investment/MW:	\$2.3 million/MW
Other ED Incentives:	(1) Erie County Industrial Development Agency and (2) Empire State Development via the Excelsior Jobs Program
Summary:	Mono-Systems is proposing to expand its manufacturing capabilities to produce extruded PVC at its Buffalo facility. The company currently purchases extruded PVC from China. The project would allow Mono-Systems to produce this material in-house supporting the creation of at least 15 new jobs. In addition to the purchase of PVC extrusion machinery, the project includes the installation of a new roof to accommodate the new equipment within the facility. An allocation of low-cost hydropower, along with other support offered for this project, could incentivize Mono-Systems to consider additional expansion opportunities at the Buffalo facility in the future.

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

Mono-Systems, 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 Mono-Systems, Inc. (“Customer”) with offices and principal place of business at 180 Hopkins Street, Buffalo, NY 14220. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

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

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

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

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

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

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

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

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

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

ELECTRIC SERVICE

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

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

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

ARTICLE III

RATES, TERMS AND CONDITIONS

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

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

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

ARTICLE IV

SUPPLEMENTAL COMMITMENTS

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

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

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

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

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

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

c. Notice of Completion; Commencement of Electric Service.

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

d. Other Rights and Remedies Unaffected.

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

ARTICLE V
ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES

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

ARTICLE VI
SERVICE TARIFF; CONFLICTS

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

ARTICLE VII
TRANSMISSION AND DELIVERY

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

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

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

ARTICLE VIII

BILLING AND BILLING METHODOLOGY

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

ARTICLE IX

HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

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

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

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

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

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

ARTICLE X

EFFECTIVENESS, TERM AND TERMINATION

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

ARTICLE XI

EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

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

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

ARTICLE XII

NOTICES

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

To: The Authority

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

Email:

Facsimile: _____

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Mono-Systems, Inc.
180 Hopkins Street
Buffalo, NY 14220

Email:

Facsimile:

Attention:

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

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

ARTICLE XIII

SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER

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

ARTICLE XIV

MISCELLANEOUS

1. Choice of Law

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

2. Venue

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

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

3. Previous Agreements; Modifications; and Interpretation

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

4. Waiver

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

5. Severability and Voidability

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

ARTICLE XV
EXECUTION

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

MONO-SYSTEMS, INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A
EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Mono-Systems, Inc.				
Type of Allocation	Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
EP	180 kW	180 Hopkins Street Buffalo, New York 14220	December 9, 2020	Ten (10) years from the date of commencement of Electric Service

SCHEDULE B
SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER
COMMITMENTS

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments

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

2. Capital Investment Commitments

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

3. Power Utilization

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

4. Energy Efficiency and Conservation Program

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

ARTICLE II
RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

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

2. Capital Investments

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

3. Power Usage

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

4. Energy Efficiency and Conservation Program

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

5. Facility Access

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

ARTICLE III

COMPLIANCE ACTION BY THE AUTHORITY

1. Employment

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

2. Capital Investment Commitment

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

3. Power Utilization Level

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

4. Additional Compliance Action

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

5. Notice of Intent to Reduce Contract Demand

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 95 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. **Annual Capital Investment Commitment** (if applicable, as specified below)
 - a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.
 - b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.
 - c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.
2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)
 - a. The Customer shall make a minimum capital investment of \$420,000 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:

DESCRIPTION	EXPENDITURE
Purchase of PVC extrusion machinery and equipment	\$250,000
Installation of a new roof to accommodate the PVC extrusion machinery and equipment within the facility	\$170,000
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$420,000</u>

Total Expansion Project Capital Investment Commitment:

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than December 9, 2023 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

SCHEDULE C
TAKEDOWN SCHEDULE

SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. ZEC CHARGE

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

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

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

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

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

SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. MONTHLY REC CHARGE

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

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

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

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

III. ALTERNATIVE REC COMPLIANCE PROGRAM

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

APPLICATION SUMMARY
Expansion Power (“EP”)

Company:	Niagara Specialty Metals, Inc. (“NSM”)
Location:	Akron, NY
County:	Erie County
IOU:	National Grid
Business Activity:	The company is a manufacturer of various steel and metal products.
Project Description:	NSM is proposing to expand the manufacturing capabilities at its Akron facility. The project would allow the company to initially process rolled alloys utilizing current mills, while installing a new rolling mill for the production of alloys.
Existing Allocation(s):	750 kW of Recharge New York (“RNY”) Power
Power Request:	1,500 kW of Authority hydropower
Power Recommended:	700 kW of EP
Job Commitment:	
Base:	39
New:	At least 5 jobs
New Jobs/Power Ratio:	7 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$180,350
Capital Investment:	At least \$12.85 million
Capital Investment/MW:	\$18.4 million/MW
Other ED Incentives:	National Fuel Gas Company incentives including high pressured gas lines and fixed furnaces
Summary:	NSM is proposing to expand its manufacturing capabilities related to the production of rolled alloys at its Akron facility. The company would initially purchase new equipment to process rolled alloys utilizing current mills. A second phase of the project would result in the purchase and installation of a new rolling mill to produce alloys. The project would support the creation of 5 new jobs and at least \$12.85 million in capital spending. An allocation of low-cost hydropower, along with other support offered for the project, could incentivize NSM to consider additional expansion opportunities at the Akron facility in the future.

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

Niagara Specialty Metals, Inc.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Niagara Specialty Metals, Inc. (“Customer”) with offices and principal place of business at 12600 Clarence Center Road, Akron, NY 14001. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

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

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

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

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

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

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

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

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

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

ELECTRIC SERVICE

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

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

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

ARTICLE III

RATES, TERMS AND CONDITIONS

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

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

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

ARTICLE IV **SUPPLEMENTAL COMMITMENTS**

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

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

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

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

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

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

c. Notice of Completion; Commencement of Electric Service.

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

d. Other Rights and Remedies Unaffected.

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

ARTICLE V
ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES

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

ARTICLE VI
SERVICE TARIFF; CONFLICTS

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

ARTICLE VII
TRANSMISSION AND DELIVERY

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

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

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

ARTICLE VIII

BILLING AND BILLING METHODOLOGY

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

ARTICLE IX

HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

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

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

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

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

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

ARTICLE X

EFFECTIVENESS, TERM AND TERMINATION

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

ARTICLE XI

EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

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

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

ARTICLE XII

NOTICES

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

To: The Authority

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

Email:

Facsimile: _____

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Niagara Specialty Metals, Inc.
12600 Clarence Center Road
Akron, NY 14001

Email:

Facsimile:

Attention:

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

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

ARTICLE XIII

SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER

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

ARTICLE XIV

MISCELLANEOUS

1. Choice of Law

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

2. Venue

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

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

3. Previous Agreements; Modifications; and Interpretation

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

4. Waiver

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

5. Severability and Voidability

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

ARTICLE XV
EXECUTION

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

NIAGARA SPECIALTY METALS, INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A
EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Niagara Specialty Metals, Inc.				
Type of Allocation	Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
EP	700 kW	12600 Clarence Center Road Akron, New York 14001	December 9, 2020	Ten (10) years from the date of commencement of Electric Service

SCHEDULE B
SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER
COMMITMENTS

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments

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

2. Capital Investment Commitments

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

3. Power Utilization

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

4. Energy Efficiency and Conservation Program

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

ARTICLE II
RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

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

2. Capital Investments

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

3. Power Usage

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

4. Energy Efficiency and Conservation Program

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

5. Facility Access

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

ARTICLE III

COMPLIANCE ACTION BY THE AUTHORITY

1. Employment

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

2. Capital Investment Commitment

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

3. Power Utilization Level

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

4. Additional Compliance Action

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

5. Notice of Intent to Reduce Contract Demand

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 44 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. **Annual Capital Investment Commitment** (if applicable, as specified below)
 - a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.
 - b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.
 - c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.
2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)
 - a. The Customer shall make a minimum capital investment of \$12,850,000 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:

DESCRIPTION	EXPENDITURE
Purchase of processing equipment including electric annealing furnaces, milling machines, flatterers, and bandsaws	\$6,850,000
Purchase and installation of a new rolling mill for alloy production	\$6,000,000
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$12,850,000</u>

Total Expansion Project Capital Investment Commitment:

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than December 9, 2023 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

SCHEDULE C
TAKEDOWN SCHEDULE

SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. ZEC CHARGE

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

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

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

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

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

SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. MONTHLY REC CHARGE

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

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

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

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

III. ALTERNATIVE REC COMPLIANCE PROGRAM

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



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: **Contracts for the Sale of Preservation Power –
Final Approval and Transmittal to the Governor**

SUMMARY

The Trustees are requested to:

1. Approve final contracts ("Contracts") for the sale of 670 kilowatts ("kW") of Preservation Power ("PP") to EZ STAK, LLC ("EZ STAK") and 1,850 kW of PP to Upstate Niagara Cooperative, Inc. ("Upstate Niagara"). Copies of these Contracts, along with the applicable service tariff, Service Tariff No 20 ("ST 20"), are attached as Exhibits "A" and "B" respectively.
2. Authorize transmittal of the Contracts to the Governor for his review and requested authorization for the New York Power Authority (the "Authority") to execute the Contracts pursuant to Public Authorities Law ("PAL") §1009.

BACKGROUND

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.

DISCUSSION

At their meeting on March 31, 2020, the Trustees made a 670 kW allocation of PP to EZ STAK for a term of ten years to support an expansion project, located in Watertown, New York, that will grow manufacturing capabilities for its business of making interior vehicle storage systems, mainly used by municipalities and large corporations in the utility, telecommunications

and construction industries. EZ STAK has committed to make a capital investment of at least \$6,200,000 and employ at least 15 full-time, permanent employees at the facilities for the term of the allocation (“Supplemental Commitments”).

At their meeting on July 28, 2020, the Trustees extended a 1,850 kW PP allocation for a term through June 30, 2030 to Upstate Niagara to support production of cultured dairy products including Greek-style yogurt at its North Lawrence location sold mostly to retailers and food institutions in New York and the Northeast. Upstate Niagara’s Supplemental Commitments include an agreement to make a capital investment at its facilities of \$2,000,000 per year and employ at least 80 full-time, permanent employees for the term of the allocation.

The following is a summary of some of the pertinent provisions of the Contracts and ST 20 related to these allocations:

- The term of the PP allocation for EZ STAK is for ten years and the term of the allocation extension for Upstate Niagara is through June 30, 2030, subject to termination/cancellation as provided for in the Contracts.
- The PP allocations would be sold to the customers under a direct sale arrangement.
- The PP allocations would be sold at rates provided for in the Contracts and ST 20.
- The Contracts subject the customers to monthly charges which are intended to support compliance programs that the Authority is implementing for the purpose of complying with state energy and environmental policies.
- The Contracts have the customers agree to supplemental commitments which include a capital investment commitment, an employment commitment at the facility receiving the PP allocation, and an obligation to perform an energy audit at the facility at least twice during the term of the allocation.
- The Contracts contain provisions for the procurement of substitute energy in the event of hydro curtailments.

The Authority is continuing to provide electric service to Upstate Niagara on an interim basis based on its current contract and Service Tariff No. ST-10 pending a decision on the customer’s extension application and completion of the PAL § 1009 process.

PUBLIC HEARING

In accordance with PAL § 1009, a public hearing was held on the Contracts at the St. Lawrence County IDA, Ernest J. LaBaff Industrial Building, 19 Commerce Lane, Suite 1, Canton, New York on October 19, 2020. A copy of the official transcript of the public hearing is attached as Exhibit “C”.

FISCAL INFORMATION

EZ STAK’s PP allocation is new and Upstate Niagara’s PP allocation is an extension of its previous allocation. The sale of both allocations will produce revenues for the Authority.

RECOMMENDATION

The Senior Vice President – Clean Energy Solutions recommends that the Trustees approve the Contracts, 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.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the contracts for the sale of 670 kilowatts (“kW”) of Preservation Power (“PP”) to EZ STAK, LLC and 1,850 kW of PP to Upstate Niagara Cooperative, Inc. (collectively, the “Contracts”), are in the public interest and hereby approved, and in accordance with Public Authorities Law § 1009, the Contracts should be submitted to the Governor for his review and to seek his authorization for the Authority to execute the Contracts, and that a copy of such Contracts, along with the record of the public hearing thereon, be forwarded to the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee; and be it further

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

RESOLVED, That the Senior Vice President – Clean Energy Solutions, or his designee, be, and hereby is, authorized, subject to the approval of the form thereof by the Executive Vice President and General Counsel, to negotiate and execute any and all documents necessary or desirable to implement the Contracts as set forth in the foregoing memorandum 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.

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

SERVICE TARIFF NO. 20

EZ STAK 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 Sale of Preservation Power and Energy (“Agreement”) with EZ STAK LLC (“Customer”) having offices at 20400 Old Rome State Road, Watertown, New York 13061. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the 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, the Customer applied for an allocation of PP or an extension of an existing PP allocation for use at its facilities defined in this Agreement as the “Facility”;

WHEREAS, the Customer has offered to make specific commitments relating to, among other things, the creation and retention of jobs, capital investments, power usage and energy efficiency measures at the Facility, in exchange for an allocation of PP;

WHEREAS, the Authority’s Board of Trustees approved an allocation of PP to the Customer;

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

WHEREAS, the Parties have reached an agreement on the terms and conditions applicable for the sale of the Allocation for a term as provided in this Agreement;

WHEREAS, electric service hereunder shall be subject to the rates and other terms and conditions contained in the Service Tariff as further provided in this Agreement; and

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

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

ARTICLE I **DEFINITIONS**

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

Agreement shall have the meanings set forth in such schedules or appendices. All other capitalized terms and abbreviations used in this Agreement but not defined in this Section or other provisions of this Agreement or its schedules or appendices shall have the same meaning as set forth in the Service Tariff.

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

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

“Allocation” refers to the allocation(s) of PP awarded to the Customer as specified in Schedule A.

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

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

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

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

“Contract Demand” is as defined in applicable Service Tariff.

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

“Electric Service” is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, the Service Tariff and the Rules.

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

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

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

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

“Firm Power” is as defined in the Service Tariff.

“Firm Energy” is as defined in the Service Tariff.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

measures for improving energy efficiency; (d) a listing of potential capital improvements for improving energy consumption; and (e) an initial assessment of potential costs and savings from such measures and improvements.

“Preservation Power” (or “PP”) consists of 490 megawatts (“MW”) of firm hydroelectric power and associated energy produced by the Authority’s St. Lawrence-FDR Power Project.

“Prior Agreement” has the meaning set forth in the recitals to this Agreement.

“Project” means the Authority’s St. Lawrence-FDR Power Project, FERC Project No. 2000.

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

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

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

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

“Service Tariff” means the Authority’s Service Tariff No. WNY-20, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.

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

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

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

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

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

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

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

“Taxes” is as defined in the Service Tariff.

“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.

“Utility Tariff” means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC that is applicable to the delivery of PP.

ARTICLE II **ELECTRIC SERVICE**

1. The Authority will make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, the Service Tariff and the Rules. The Customer is not be entitled to receive Electric Service under this Agreement for any PP allocation unless such PP allocation is identified in Schedule A.
2. The Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation specified in Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
3. 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.
4. The provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and the delivery of the Allocation. The Customer acknowledges and agrees that Customer’s local electric utility, not the Authority, is responsible for the delivery of the Allocation to the Facility in accordance with applicable Utility Tariff(s).
5. 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 PP 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 PP customers receiving Electric Service under the Service Tariff, as applicable, based on the terms of such ruling, order, or decision.
6. The Contract Demand may not exceed the Allocation.

7. The Customer's Facility must be metered by the Customer's local electric utility in a manner that is satisfactory to the Authority, or another metering arrangement satisfactory to the Authority must be provided (collectively, "Metering Arrangement"). A Metering Arrangement that is not satisfactory to the Authority shall be grounds, after notice to the Customer, for the Authority to modify, withhold, suspend, or terminate Electric Service to the Customer. If a Metering Arrangement is not made to conform to the Authority's requirements within thirty (30) days of a determination that it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days' prior written notice to the Customer. After commencement of Electric Service, the Customer shall notify the Authority in writing within thirty (30) days of any alteration to the Facility's Metering Arrangement, and provide any information requested by the Authority (including Facility access) to enable the Authority to determine whether the Metering Arrangement remains satisfactory. If an altered Metering Arrangement is not made to conform to the Authority's requirements within thirty (30) days of a determination it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days' prior written notice to the Customer. The Authority may, in its discretion, waive any of the requirements provided for in this Section in whole or in part where in the Authority's judgment, another mechanism satisfactory to the Authority can be implemented to enable the Authority to receive pertinent, timely and accurate information relating to the Customer's energy consumption and demand and render bills to the Customer for all fees, assessments and charges that become due in accordance with this Agreement, the Service Tariff, and the Rules.
8. The Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of the Allocation to the Customer at the Facility, the proper and efficient implementation of the PP program, billing related to Electric Service, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents that the Authority determines are necessary to effectuate such exchanges of information.
9. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer's local electric utility providing for the delivery of the Allocation on terms and conditions that are acceptable to the Authority.
10. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, execute consents, and provide information (collectively, "Service Information") that the Authority determines is necessary for the provision of Electric Service, the delivery of the Allocation, billing related to Electric Service, the effective administration of the 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 Service Information on a timely basis shall be grounds for the Authority in its discretion to modify, withhold, suspend, or terminate Electric Service to the Customer.

ARTICLE III
RATES, TERMS AND CONDITIONS

1. Electric Service shall be sold to the Customer in accordance with the rates, terms and conditions provided for in this Agreement, the Service Tariff and the Rules.
2. The Service Tariff and the Rules may be amended from time to time by the Authority and, if revised, the revised provisions thereof will apply under this Agreement with the same force and effect as if set forth herein. The Authority shall provide at least thirty (30) days prior written notice to the Customer of any proposed change in the Service Tariff or the Rules. No 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.
3. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.
4. In addition to all other fees, assessments and charges provided for in the Agreement, the Service Tariff and the Rules, the Customer shall be responsible for payment of the Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge provided for in Schedule D and Schedule E, respectively, of this Agreement.

ARTICLE IV
SUPPLEMENTAL COMMITMENTS

1. Supplemental Commitments. Schedule B sets forth the Customer's "Supplemental Preservation Power Commitments" ("Supplemental Commitments"). The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's timely compliance with the Supplemental Commitments described in Schedule B as further provided in this Agreement. The Customer's Supplemental Commitments are in addition to all other commitments and obligations provided in this Agreement.

2. Special Provisions Relating to a New or Expanded Facility.

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

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

b. Proposed New or Expanded Facility; Partial Performance.

If the Expansion Project results in a completed Facility that is only partially operational, or is materially different than the Expansion Project agreed to in Schedule B (as measured by such factors as size, capital investment expenditures, capital improvements, employment levels, estimated energy demand and/or other criteria determined by the Authority to be relevant), the Authority may, in its discretion, on its own initiative or at the Customer’s request, make a permanent reduction to the Allocation and Contract Demand to an amount that the Authority determines to fairly correspond to the completed Facility.

c. Notice of Completion; Commencement of Electric Service.

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

d. Other Rights and Remedies Unaffected.

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

ARTICLE V
ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES

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

ARTICLE VI
SERVICE TARIFF; CONFLICTS

1. A copy of the Service Tariff is attached to this Agreement as Exhibit 1 and shall apply under this Agreement with the same force and effect as if fully set forth herein. The Customer consents to the application of the Service Tariff.
2. 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 or the Rules, the provisions of this Agreement shall govern.

ARTICLE VII
TRANSMISSION AND DELIVERY

1. The Customer shall be responsible for:
 - a. complying with all requirements of its local electric utility (including any other interconnecting utilities) that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff;
 - b. paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff, and if the Authority incurs any charges associated with such delivery service, reimbursing the Authority for all such charges; and
 - c. obtaining any consents and agreements from any other person that are necessary for the delivery of the Allocation to the Facility, and complying with the requirements of any such person, provided that any such consents, agreements and requirements shall be subject to the Authority's approval.

2. The 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 the Service Tariff or any successor service tariff, regardless of whether such NYISO Charges are transmission-related.

ARTICLE VIII

BILLING AND BILLING METHODOLOGY

1. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
2. Except as otherwise provided in this Agreement, all other provisions with respect to billing are set forth in the Service Tariff and the Rules.
3. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

ARTICLE IX

HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

1. In the event of an Adverse Water Condition, the Authority will have the right in its discretion to implement Hydropower Curtailments. The Authority will implement Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
2. In the event of a Hydropower Curtailment, the Authority will provide Substitute Energy to the Customer and the Customer shall pay for such Substitute Energy. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO.
3. For each kilowatt-hour of Substitute Energy provided by the Authority during a Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Hydropower Curtailments shall be governed by the provisions of the Service Tariff relating to the rendition and payment of bills for Electric Service.
4. The Authority shall be under no obligation to deliver, and will not deliver, any such curtailed energy to the Customer in later billing periods.

5. The Authority may require the Customer to enter into a separate agreement relating to the provision and sale of Substitute Energy. The provisions of this Agreement will remain in effect notwithstanding the existence of any such separate agreement.

ARTICLE X

EFFECTIVENESS, TERM AND TERMINATION

1. This Agreement shall become effective and legally binding on the Parties on the Effective Date.
2. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (a) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (b) termination by the Authority pursuant to this Agreement, the Service Tariff, or the Rules; or (c) expiration of the Allocation by its own term as specified in Schedule A.
3. The Customer may exercise a partial termination of the Allocation upon at least sixty (60) days' prior written notice to the Authority. The Authority will effectuate the partial termination as soon as practicable after receipt of such notice taking account of the Authority's internal procedures and requirements of the Customer's local electric utility.
4. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, the Service Tariff, or the Rules.

ARTICLE XI

EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

1. The Customer may apply to the Authority for an extension of the term of the Allocation identified in Schedule A:
 - a. during the thirty-six (36) month period immediately preceding the scheduled expiration of the Allocation;
 - b. pursuant to any other process that the Authority establishes; or
 - c. with the Authority's written consent.
2. Upon proper application by the Customer, the Authority may in accordance with applicable law and Authority procedures award additional allocations of PP at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (a) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (b) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified

Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.

3. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for extension of the Allocation or additional allocations and consider the terms and conditions that should be applicable of any extension or additional allocations.

ARTICLE XII

NOTICES

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

To: The Authority

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

Email:

Facsimile: _____

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

EZ STAK LLC
20400 Old Rome State Road
Watertown, New York 13601

Email:

Facsimile:

Attention:

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

ARTICLE XIII
SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER

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

ARTICLE XIV
MISCELLANEOUS

1. Choice of Law

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

2. Venue

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

3. Previous Agreements; Modifications; and Interpretation

- a. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of the Allocation and the subject matter of the Agreement, and

supersedes all previous communications and agreements between the Parties, oral or written, with reference to the sale of the Allocation.

- b. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.
- c. No provision shall be construed against a Party on the basis that such Party drafted such provision.

4. Waiver

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

5. Severability and Voidability

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

ARTICLE XV
EXECUTION

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement as a PDF or similar file type transmitted via electronic mail, cloud based server, e-signature technology or similar electronic means shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

EZ STAK LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: John R. Koelmel, Chairman

Date: _____

SCHEDULE A
PRESERVATION POWER ALLOCATIONS

Customer: EZ STAK LLC				
Type of Allocation	Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
Preservation Power	670 kW	20400 Old Rome State Road Watertown, New York 13601	March 31, 2020	Ten (10) years from the date of commencement of Electric Service

SCHEDULE B
SUPPLEMENTAL PRESERVATION POWER COMMITMENTS

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments

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

2. Capital Investment Commitments

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

3. Power Utilization

For each month the Authority provides Electric Service to the Customer, the Customer shall utilize the entire Allocation, as represented by the Billing Demand (as such term is described in the Service Tariff), provided, however, that if only part of the Allocation is being utilized in accordance with Schedule C, the Customer shall utilize such partial amount of the Allocation.

4. Energy Efficiency and Conservation Program

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

ARTICLE II
RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

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

2. Capital Investments

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

3. Power Usage

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

4. Energy Efficiency and Conservation Program

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

5. Facility Access

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the

Authority deems necessary to determine the Customer's compliance with the Customer's Supplemental Commitments specified in this Schedule B.

ARTICLE III
COMPLIANCE ACTION BY THE AUTHORITY

1. Employment

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in the Appendix to this Schedule B for the subject calendar year, the Authority may reduce the Contract Demand in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

2. Capital Investment Commitment

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

3. Power Utilization Level

If the average of the Customer's six (6) highest Billing Demands (as such term is described in the Service Tariff) for Preservation Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to in accordance with the procedures provide in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

4. Additional Compliance Action

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

5. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to Sections III.1, III.2, or III.3 of this Schedule B, the Authority shall provide the Customer with at least thirty (30) days prior written notice of the proposed reduction, specifying the amount and reason for the reduction. Before implementing any reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance, Facility upgrade periods, and the business cycle. If, at the end of the thirty (30) day notice period, the Authority determines that a reduction is warranted, it shall provide the Customer with notice of such determination and provide the Customer with sixty (60) days to present a proposed plan with actionable milestones to cure the deficiency. The Authority shall respond to the Customer concerning the acceptability of any proposed plan that is provided in accordance with this Section III.5 within thirty (30) days of the Authority's receipt of such proposed plan. It shall be within the Authority's discretion whether or not to accept the Customer's proposed plan, require a different plan, or implement the reduction of the Contract Demand.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 37 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility within three (3) years of commencement of Electric Service. The Base Employment Level shall be maintained thereafter for the term of the Allocation through the Allocation Expiration Date specified in Schedule A in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. **Annual Capital Investment Commitment** (if applicable, as specified below)
 - a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than \$ N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.
 - b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.
 - c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.
2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)
 - a. The Customer shall make a minimum capital investment of \$6,200,000 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:

\$1,250,000 – New Building Acquisition

\$2,500,000 – Machinery and Equipment

\$2,450,000 – Building Renovations

\$6,200,000 – Minimum Expansion Project Capital Investment
Commitment

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than March 31, 2023 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

SCHEDULE C
TAKEDOWN SCHEDULE

SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

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

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

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

“PP Program ZEC Costs” has the meaning provided in Section II.4.b of this Schedule D.

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

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

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

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

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

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

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

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

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

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

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

II. ZEC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of the Service Tariff or the Rules, the Customer shall be subject to a ZEC Charge as provided in this Schedule D. The ZEC Charge shall be in addition to all other charges, fees and assessments provided for in the Agreement, the Service Tariff and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the ZEC Charge.
2. As provided in the CES Order, the Public Service Commission, as part of the CES and Tier 3 of the Renewable Energy Standard, imposed an obligation on Load Serving Entities that are subject to the CES Order (“Affected LSEs”) to purchase Zero Emission Credits from NYSERDA in an amount representing the Affected LSE’s proportional share of ZECs calculated on the basis of the amount of electric load the LSE serves in relation to the total electric load served by all Load Serving Entities in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes in the State (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
3. The ZEC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of supporting the CES and Tier 3 of the RES and implementing the PP power program in a manner that is consistent with the New York State Energy Plan. The Authority will comply with the CES and Tier 3 of the RES by applying a form of ZEC Purchase Obligation to the end-user load for which the Authority serves as a load serving entity, including the load that the Authority serves under the PP power program.
4. The ZEC Charge, which is intended to recover from the Customer costs that the Authority incurs for purchasing ZECs in quantities that are attributable to the Customer’s PP load served under this Agreement, will be determined and assessed to the Customer as follows:
 - a. The cost of the total ZEC Purchase Obligation for all LSEs in the New York Control Area, including the Authority as a participating load serving entity, will be assessed pursuant to the methodology provided in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA based on the proportion of the forecasted total kilowatt-hours load served by the Authority (i.e., total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as

provided in the CES Order. The ZEC Purchase Obligations may be based on initial load forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.

- b. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as load serving entity, including the PP load that it serves (the “PP Program ZEC Costs”). 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 each ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of ZEC Purchase Obligations will be allocated to the PP power program based on the proportion of the actual annual kilowatt-hours load served under such programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).
 - c. The Authority will allocate a portion of the PP Program ZEC Costs 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 power program (i.e., PP Program level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation referenced above will be passed through to the Customer based on the proportion of the Customer’s annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the PP power program by the Authority (PP Program level load). The ZEC Charge assessed to the Customer shall not include any costs resulting from the Authority’s inability to collect a ZEC Charge from any other Authority customer.
5. The Authority may, in its discretion, include the ZEC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the ZEC Charge pursuant to another Authority-established procedure.
6. The Authority may, in its discretion, modify the methodology used for determining the ZEC Charge and the procedures used to implement such ZEC Charge on a nondiscriminatory basis among affected PP customers, upon consideration of such matters as Public Service Commission orders modifying or implementing the CES Order, guidance issued by the New York Department of Public Service, and other information that the Authority reasonably determines to be appropriate to the determination of such methodology. The Authority shall provide Customer with reasonable notice of any modifications to the methodology or procedures used to determine and implement the ZEC Charge.
7. Nothing in this Schedule shall limit or otherwise affect the Authority’s right to charge or collect from the Customer any rate, charge, fee, assessment, or tax

provided for under any other provision of the Agreement, or any provision of the Service Tariff, or the Rules.

8. If the ZEC Purchase Obligation is modified or terminated by the Public Service Commission or other controlling governmental authority (collectively, "Government Action"), the Authority shall modify or terminate the ZEC Charge, and assess any additional charges or provide any credits to the Customer, to the extent that the Authority determines such actions to be appropriate based on such Government Action.

SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. MONTHLY REC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of the Service Tariff, or the Rules, the Customer shall be subject to a Monthly REC Charge as provided in this Schedule E. The Monthly REC Charge is in addition to all other charges, fees and assessments provided in the Agreement, the Service Tariff and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the Monthly REC Charge.
2. The Monthly REC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of complying with the CES and Tier 1 of the RES and implementing the PP power program in a manner that is consistent with the New York State Energy Plan, pursuant to which the Authority will invest in new renewable generation resources to serve its PP customers. Such investments will be made through the procurement of RECs through REC Compliance Measures in quantities that are intended to address the annual Mandatory Minimum Percentage Proportions as applied by the Authority to the total PP load that the Authority will serve each calendar year (the “Annual REC Percentage Target”) for the purpose of ultimately meeting the RES.
3. The Monthly REC Charge, which is intended to recover from the Customer costs that the Authority incurs for implementing REC Compliance Measures that are attributable to the Customer’s PP load served under this Agreement, will be determined and assessed to the Customer as follows:

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

6. Notwithstanding the provisions of Section II.3 of this Schedule E, if Electric Service for the Allocation is commenced after the Authority has implemented REC Compliance Measures for the year in which such Electric Service is commenced, and as a result the Customer's load cannot be accounted for in such REC Compliance Measures, the Authority may in its discretion implement separate REC Compliance Measures in order to meet the Annual REC Percentage Target for Customer's load for the year, and bill the Customer for the costs associated with such separate REC Compliance Measures.
7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of the Service Tariff, or the Rules.

III. ALTERNATIVE REC COMPLIANCE PROGRAM

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



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

Schedule of Rates for Sale of Firm Power Service to
Preservation Power Customers
(Local Electric Utility Delivery)

Service Tariff No. 20

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Preservation Power made directly to a qualified business Customer for firm power service that is delivered by the Customer's local electric utility.

II. Abbreviations and Terms

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

Agreement: An executed written agreement between the Authority and the Customer for the sale of Preservation Power to the Customer.

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

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

Customer: A business entity that (1) has received an Allocation of Preservation Power, (2) purchases such Preservation Power directly from the Authority, and (3) receives delivery of the Preservation Power from a local electric utility.

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

Firm Power: Hydropower 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 Factor Sharing or LFS: A type of billing methodology applicable to a Customer's Allocation which determines how a Customer's total Native System Load is apportioned between the power and energy supplied by the Allocation and the Customer's other source of electricity supply, if any. LFS is used to determine the amount of Firm Energy supplied and billed on the basis of the Customer's actual total Native System Load per the monthly billing cycle as follows:

1. When the Maximum Metered Demand is less than (<) the Contract Demand, then the Customer's entire load will be supplied by Firm Energy.
2. When the Maximum Metered Demand is greater than (>) the Contract Demand, then the Customer's portion of Firm Energy supply will be determined as follows:
 - a. For Hourly Billing: $\sum (\text{Contract Demand} \div \text{Maximum Metered Demand} \times \text{the in-hour demand of Customer's total Native System Load for all hours})$.
 - b. For Monthly Billing: $(\text{Contract Demand} \div \text{Maximum Metered Demand} \times \text{the total consumed energy by the Customer within the bill cycle})$.

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

Maximum Metered Demand: The highest 15 or 30-minute integrated demand, as determined by the local electric utility, during each Billing Period recorded on the meter that is used by the Customer in accordance with this Service Tariff and the Agreement.

Native System Load: The total consumption of the Customer's electric system, as determined by the Authority's revenue-grade metering equipment, without the offset of Customer's behind the meter generation. It is represented as the sum of all incoming power, plus internal generation behind the system meter, minus power exports to the bulk electric system.

Preservation Power or PP: 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), and that is delivered by the Customer's local electric utility.

Project: The Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.

Rate Year or RY: The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

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

Service Tariff: This Service Tariff No. 20.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A. Preservation Power (PP) Base Rates

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

Rate Year	Billing Period	Demand (\$/kW)	Energy (\$/MWh)
2018	July 2018 – June 2019	7.90	13.50

B. PP Rates No Lower than Rural/Domestic Rate

At all times the applicable PP base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for PP 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 rate specified in Section III.A 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, and any other charges provided in this Service Tariff, the Agreement or the Rules.

E. Estimated Billing

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

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on a load factor sharing billing methodology as follows:

- The estimated demand amount (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 amount (kW) for the Estimated Bill 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 a load factor sharing billing methodology as follows:

- 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 amount (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.

If an alternative billing methodology is applicable to the Customer, the demand charge and energy charge for rendering an Estimated Bill shall be calculated in a manner appropriate to such alternative billing methodology as determined by the Authority.

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

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

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

F. Adjustments to Charges

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

G. Billing Period

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

H. Billing Demand

Billing Demand shall be determined by applying the applicable billing methodology to total Native System Load meter readings during the Billing Period. See Section IV.E, below.

I. Billing Energy

Billing Energy shall be determined by applying the applicable billing methodology to total Native System Load meter readings during the Billing Period. See Section IV.E, below.

J. Contract Demand

The Contract Demand will be the amount of Preservation Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy and responsibility for payment of costs associated therewith, will be governed by the Agreement.

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology

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

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing ("LFS") in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer's local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer's local electric utility provides its consent if the Authority determines that such consent is necessary.
2. Billing Energy - The LFS methodology will be applied against the Customer's Native System Load during the Billing Period to determine the amount of Firm Energy (kWh) attributable to the Allocation (Billing Energy) to be billed to the Customer and charged at the applicable PP Rate. All energy quantities will be adjusted for losses.
3. Billing Demand – The LFS methodology will be applied against the Customer's Maximum Metered Load during the Billing Period to determine the amount of Firm Power (kW) attributable to the Allocation (Billing Demand) to be billed to the Customer and charged at the applicable PP Rate. Billing Demand may not exceed the amount of the Contract Demand. All demand quantities will be adjusted for losses.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

- a. The demand rate 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 rate 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

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

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

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Other Charges

The Customer shall pay the Authority for all other charges provided for in the Agreement.

7. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

8. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the twentieth (20th) calendar day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.
2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.
4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

H. Adjustment of Charges – Distribution Losses

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

I. Conflicts

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

B. Sample Computation of the AAF (hypothetical values for July 1, 2017 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 (2016)	Measuring Year - 1 (2015)
January	205.3	167.8
February	204.3	167.6
March	204.5	168.2
April	202.4	168.6
May	206.3	171.6
June	220.4	180.1
July	226.2	182.7
August	227.3	179.2
September	228.1	181.8
October	214.9	170.2
November	211.3	168.8
December	211.7	166.6
Average	213.6	223.7
Ratio of MY/MY-1		0.95

- 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 (2015)</u>			
CT	444,588	3,432,002	
MA	1,068,927	7,892,165	
ME	290,360	3,208,045	
NH	252,331	1,981,028	
NJ	778,985	7,320,398	
NY	1,140,573	18,079,200	
OH	3,548,736	50,556,675	
PA	3,411,815	47,404,272	
RI	109,866	798,532	
VT	146,022	1,421,601	
TOTAL	11,192,203	142,093,918	7.88
<u>Measuring Year -1 (2014)</u>			
CT	453,958	3,514,798	
MA	1,014,262	7,960,941	
ME	300,412	3,357,486	
NH	234,900	1,969,064	
NJ	855,757	7,516,616	
NY	1,184,255	18,002,976	
OH	3,440,919	50,829,251	
PA	3,580,990	48,317,693	
RI	114,111	887,150	
VT	145,111	1,417,994	
TOTAL	11,324,673	143,773,969	7.88
Ratio of MY/MY-1			1.00

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

	Measuring Year <u>(2016)</u>	Measuring Year -1 <u>(2015)</u>
January	191.9	196.0
February	191.8	195.4
March	192.1	195.0
April	192.8	194.8
May	193.4	194.9
June	193.7	195.2
July	193.7	194.9
August	194.0	193.9
September	193.9	193.1
October	194.3	192.9
November	194.9	192.3
December	195.6	191.9
Average	193.5	194.2
Ratio of MY/MY-1		1.00

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	0.95	0.35	0.334
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.00	0.25	<u>0.249</u>
AAF			0.983

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	8.03	13.73
New Rate Year Base Rate	7.90	13.50

Date of Issue: January 1, 2020

Date Effective: January 1, 2020

Issued by Keith T. Hayes, Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

POWER AUTHORITY
OF THE
STATE OF NEW YORK

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

AGREEMENT FOR THE SALE OF
PRESERVATION POWER AND ENERGY

SERVICE TARIFF NO. 20

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 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 Sale of Preservation Power and Energy (“Agreement”) with Upstate Niagara Cooperative, Inc. (“Customer”) having offices at 22 County Route 52, North Lawrence, NY 12967. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the 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, the Customer applied for an allocation of PP or an extension of an existing PP allocation for use at its facilities defined in this Agreement as the “Facility”;

WHEREAS, the Customer has offered to make specific commitments relating to, among other things, the creation and retention of jobs, capital investments, power usage and energy efficiency measures at the Facility, in exchange for an allocation of PP;

WHEREAS, the Authority’s Board of Trustees approved an allocation of PP to the Customer;

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

WHEREAS, the Parties have reached an agreement on the terms and conditions applicable for the sale of the Allocation for a term as provided in this Agreement;

WHEREAS, electric service hereunder shall be subject to the rates and other terms and conditions contained in the Service Tariff as further provided in this Agreement; and

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

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

ARTICLE I **DEFINITIONS**

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

capitalization, whether singular or plural, terms defined in schedules or appendices to this Agreement shall have the meanings set forth in such schedules or appendices. All other capitalized terms and abbreviations used in this Agreement but not defined in this Section or other provisions of this Agreement or its schedules or appendices shall have the same meaning as set forth in the Service Tariff.

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

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

“Allocation” refers to the allocation(s) of PP awarded to the Customer as specified in Schedule A.

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

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

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

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

“Contract Demand” is as defined in the Service Tariff.

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

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

“Electric Service” is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, the Service Tariff and the Rules.

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

“Expansion Project” has the meaning set forth in Section IV.2.a of this Agreement.

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

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

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

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

“Firm Energy” is as defined in the Service Tariff.

“Firm Power” is as defined in the Service Tariff.

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

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

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

“Metering Arrangement” has the meaning set forth in Section II.7 of this Agreement.

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

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

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

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

“NYISO Charges” has the meaning set forth in Section VII.2 of this Agreement.

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

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

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

“Preservation Power” (or “PP”) consists of 490 megawatts (“MW”) of firm hydroelectric power and associated energy produced by the Authority’s St. Lawrence-FDR Power Project.

“Prior Agreement” has the meaning set forth in the recitals to this Agreement.

“Project” means the Authority’s St. Lawrence-FDR Power Project, FERC Project No. 2000.

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

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

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

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

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

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

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

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

“Service Information” has the meaning set forth in Section II.10 of this Agreement.

“Service Tariff” means the Authority’s Service Tariff No. 20, 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.

“Substitute Energy” means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy not supplied to the Customer in accordance with Article IX.

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

“Taxes” is as defined in the Service Tariff.

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

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

“Utility Tariff” means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC that is applicable to the delivery of PP.

ARTICLE II

ELECTRIC SERVICE

1. The Authority will make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, the Service Tariff and the Rules. The Customer is not be entitled to receive Electric Service under this Agreement for any PP allocation unless such PP allocation is identified in Schedule A.
2. The Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation specified in Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
3. 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.
4. The provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and the delivery of the Allocation. The Customer acknowledges

and agrees that Customer's local electric utility, not the Authority, is responsible for the delivery of the Allocation to the Facility in accordance with applicable Utility Tariff(s).

5. 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 PP 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 PP customers receiving Electric Service under the Service Tariff, as applicable, based on the terms of such ruling, order, or decision.
6. The Contract Demand may not exceed the Allocation.
7. The Customer's Facility must be metered by the Customer's local electric utility in a manner that is satisfactory to the Authority, or another metering arrangement satisfactory to the Authority must be provided (collectively, "Metering Arrangement"). A Metering Arrangement that is not satisfactory to the Authority shall be grounds, after notice to the Customer, for the Authority to modify, withhold, suspend, or terminate Electric Service to the Customer. If a Metering Arrangement is not made to conform to the Authority's requirements within thirty (30) days of a determination that it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days' prior written notice to the Customer. After commencement of Electric Service, the Customer shall notify the Authority in writing within thirty (30) days of any alteration to the Facility's Metering Arrangement, and provide any information requested by the Authority (including Facility access) to enable the Authority to determine whether the Metering Arrangement remains satisfactory. If an altered Metering Arrangement is not made to conform to the Authority's requirements within thirty (30) days of a determination it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days' prior written notice to the Customer. The Authority may, in its discretion, waive any of the requirements provided for in this Section in whole or in part where in the Authority's judgment, another mechanism satisfactory to the Authority can be implemented to enable the Authority to receive pertinent, timely and accurate information relating to the Customer's energy consumption and demand and render bills to the Customer for all fees, assessments and charges that become due in accordance with this Agreement, the Service Tariff, and the Rules.
8. The Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of the Allocation to the Customer at the Facility, the proper and efficient implementation of the PP program, billing related to Electric Service, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents that the Authority determines are necessary to effectuate such exchanges of information.
9. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer's local electric utility providing for the delivery of the Allocation on terms and conditions that are acceptable to the Authority.

10. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, execute consents, and provide information (collectively, “Service Information”) that the Authority determines is necessary for the provision of Electric Service, the delivery of the Allocation, billing related to Electric Service, the effective administration of the 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 Service Information on a timely basis shall be grounds for the Authority in its discretion to modify, withhold, suspend, or terminate Electric Service to the Customer.

ARTICLE III

RATES, TERMS AND CONDITIONS

1. Electric Service shall be sold to the Customer in accordance with the rates, terms and conditions provided for in this Agreement, the Service Tariff and the Rules.
2. The Service Tariff and the Rules may be amended from time to time by the Authority and, if revised, the revised provisions thereof will apply under this Agreement with the same force and effect as if set forth herein. The Authority shall provide at least thirty (30) days prior written notice to the Customer of any proposed change in the Service Tariff or the Rules. No 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.
3. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority’s competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority’s bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.
4. In addition to all other fees, assessments and charges provided for in the Agreement, the Service Tariff and the Rules, the Customer shall be responsible for payment of the Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge provided for in Schedule D and Schedule E, respectively, of this Agreement.

ARTICLE IV
SUPPLEMENTAL COMMITMENTS

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

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

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

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

If the Expansion Project results in a completed Facility that is only partially operational, or is materially different than the Expansion Project agreed to in Schedule B (as measured by such factors as size, capital investment expenditures, capital improvements, employment levels, estimated energy demand and/or other criteria determined by the Authority to be relevant), the Authority may, in its discretion, on its own initiative or at the Customer's request, make a permanent reduction to the Allocation and Contract Demand to an amount that the Authority determines to fairly correspond to the completed Facility.

- c. Notice of Completion; Commencement of Electric Service.

- (i) The Customer shall give the Authority not less than ninety (90) days' advance written notice of the anticipated date of completion of an Expansion Project. The Authority will inspect the Expansion Project for the purpose of verifying the status of the Expansion Project and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time subject to the other provisions of this Agreement based on applicable operating procedures of the Authority, Customer's local electric utility and NYISO.
- (ii) In the event of an Expansion Project being completed in multiple phases, at the Customer's request the Authority may, in its discretion, allow commencement of part of the Allocation upon completion of any such phase, provided the Authority will similarly inspect the Expansion Project for the purpose of verifying the status of the completed phase of the Expansion Project. Upon such verification by the

Authority of any such completed phase, the Authority, in its discretion, will determine an amount of kW that fairly corresponds to the completed phase of the Expansion Project, taking into account relevant criteria such as any capital expenditures, increased employment levels, and/or increased electrical demand associated with the completed phase of the Expansion Project.

d. Other Rights and Remedies Unaffected.

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

ARTICLE V
ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES

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

ARTICLE VI
SERVICE TARIFF; CONFLICTS

1. A copy of the Service Tariff is attached to this Agreement as Exhibit 1 and shall apply under this Agreement with the same force and effect as if fully set forth herein. The Customer consents to the application of the Service Tariff.
2. 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 or the Rules, the provisions of this Agreement shall govern.

ARTICLE VII
TRANSMISSION AND DELIVERY

1. The Customer shall be responsible for:
 - a. complying with all requirements of its local electric utility (including any other interconnecting utilities) that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff;
 - b. paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff, and if the Authority incurs any charges associated with such delivery service, reimbursing the Authority for all such charges; and

- c. obtaining any consents and agreements from any other person that are necessary for the delivery of the Allocation to the Facility, and complying with the requirements of any such person, provided that any such consents, agreements and requirements shall be subject to the Authority's approval.
2. The 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 the Service Tariff or any successor service tariff, regardless of whether such NYISO Charges are transmission-related.

ARTICLE VIII

BILLING AND BILLING METHODOLOGY

1. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
2. Except as otherwise provided in this Agreement, all other provisions with respect to billing are set forth in the Service Tariff and the Rules.
3. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

ARTICLE IX

HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

1. The Customer shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Customer-Arranged Energy, for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment. The Customer shall make its election in accordance with the time period and other requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.
2. The Customer may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Customer intends such change to become effective. Such change shall be effective on the first day of January following the Authority's receipt the Customer's notice and shall remain in effect unless it is changed in accordance with the provisions of Section IX.1.

3. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Customer with advance notice of Planned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer no later than the tenth business day of the month prior to the month in which the Planned Hydropower Curtailment is expected to occur unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.
4. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.
5. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.
6. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer's failure to provide such notice.
7. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.
8. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond. The Authority will give the Customer notice of any Unplanned Hydropower Curtailments that the Authority believes are likely to exceed forty-eight (48) continuous hours in duration.

9. Notwithstanding the Customer's election pursuant to Section IX.1, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments.
10. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for Firm Energy as provided for in this Agreement; and (2) any NYISO Charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. 20 relating to the rendition and payment of bills for Electric Service.
11. The Customer shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff No. 20 relating to the rendition and payment of bills for Electric Service.
12. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.
13. The Customer shall not be entitled to power and energy sourced from another Authority power facility, including another Authority hydropower project, as Substitute Energy.

ARTICLE X

EFFECTIVENESS, TERM AND TERMINATION

1. This Agreement shall become effective and legally binding on the Parties on the Effective Date.
2. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (a) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (b) termination by the Authority pursuant to this Agreement, the Service Tariff, or the Rules; or (c) expiration of the Allocation by its own term as specified in Schedule A.
3. The Customer may exercise a partial termination of the Allocation upon at least sixty (60) days' prior written notice to the Authority. The Authority will effectuate the partial termination as soon as practicable after receipt of such notice taking account of the Authority's internal procedures and requirements of the Customer's local electric utility.
4. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC

or its successor agency); or (2) as otherwise provided in this Agreement, the Service Tariff, or the Rules.

ARTICLE XI
EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

1. The Customer may apply to the Authority for an extension of the term of the Allocation identified in Schedule A:
 - a. during the thirty-six (36) month period immediately preceding the scheduled expiration of the Allocation;
 - b. pursuant to any other process that the Authority establishes; or
 - c. with the Authority's written consent.
2. Upon proper application by the Customer, the Authority may in accordance with applicable law and Authority procedures award additional allocations of PP at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (a) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (b) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
3. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for extension of the Allocation or additional allocations and consider the terms and conditions that should be applicable of any extension or additional allocations.

ARTICLE XII
NOTICES

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

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email: BPAC@nypa.gov
Facsimile: (914) 390-8156
Telephone: (914) 681-6200
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Upstate Niagara Cooperative, Inc.
22 County Route 52
North Lawrence, NY 12967
Email:
Facsimile:
Attention:

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

ARTICLE XIII

SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER

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

ARTICLE XIV

MISCELLANEOUS

1. Choice of Law

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

2. Venue

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

3. Previous Agreements; Modifications; and Interpretation

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

4. Waiver

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

5. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof. Notwithstanding the preceding sentence, if any provision of this Agreement is rendered void

or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

ARTICLE XV **EXECUTION**

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement as a PDF or similar file type transmitted via electronic mail, cloud based server, e-signature technology or similar electronic means shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

Upstate Niagara Cooperative, Inc.

By: _____

Name: _____

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.	Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
Type of Allocation				
Preservation Power	1,850	22 County Route 52 North Lawrence, NY 12967	7/28/2020	June 30, 2030

SCHEDULE B
SUPPLEMENTAL PRESERVATION POWER COMMITMENTS

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments

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

2. Capital Investment Commitments

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

3. Power Utilization

For each month the Authority provides Electric Service to the Customer, the Customer shall utilize the entire Allocation, as represented by the Billing Demand (as such term is described in the Service Tariff), provided, however, that if only part of the Allocation is being utilized in accordance with Schedule C, the Customer shall utilize such partial amount of the Allocation.

4. Energy Efficiency and Conservation Program

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

ARTICLE II
RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

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

2. Capital Investments

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

3. Power Usage

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

4. Energy Efficiency and Conservation Program

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

5. Facility Access

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the

Authority deems necessary to determine the Customer's compliance with the Customer's Supplemental Commitments specified in this Schedule B.

ARTICLE III
COMPLIANCE ACTION BY THE AUTHORITY

1. Employment

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in the Appendix to this Schedule B for the subject calendar year, the Authority may reduce the Contract Demand in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

2. Capital Investment Commitment

The Authority may reduce the Contract Demand as provided in the Appendix to this Schedule B if the Customer does not comply with the capital investments provided for in Schedule B.

3. Power Utilization Level

If the average of the Customer's six (6) highest Billing Demands (as such term is described in the Service Tariff) for Preservation Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to in accordance with the procedures provide in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

4. Additional Compliance Action

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

5. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to Sections III.1, III.2, or III.3 of this Schedule B, the Authority shall provide the Customer with at least thirty (30) days prior written notice of the proposed reduction, specifying the amount and reason for the reduction. Before implementing any reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance, Facility upgrade periods, and the business cycle. If, at the end of the thirty (30) day notice period, the Authority determines that a reduction is warranted, it shall provide the Customer with notice of such determination and provide the Customer with sixty (60) days to present a proposed plan with actionable milestones to cure the deficiency. The Authority shall respond to the Customer concerning the acceptability of any proposed plan that is provided in accordance with this Section III.5 within thirty (30) days of the Authority's receipt of such proposed plan. It shall be within the Authority's discretion whether or not to accept the Customer's proposed plan, require a different plan, or implement the reduction of the Contract Demand.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 80 full-time employees (“Base Employment Level”) at the Customer’s Facility from the commencement of Electric Service. The Base Employment Level shall be maintained thereafter for the term of the Allocation through the Allocation Expiration Date specified in Schedule A in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

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

\$ – Line Item 1
\$ – Line Item 2
\$ – Line Item 3
\$ _____ – Line Item 4

\$ N/A Total Expansion Project Capital Investment Commitment

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

SCHEDULE C
TAKEDOWN SCHEDULE

SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. 20, or in the Rules.

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

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

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

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

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

“PP Program ZEC Costs” has the meaning provided in Section II.4.b of this Schedule D.

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

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

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

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

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

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

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

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

II. ZEC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of the Service Tariff or the Rules, the Customer shall be subject to a ZEC Charge as provided in this Schedule D. The ZEC Charge shall be in addition to all other charges, fees and assessments provided for in the Agreement, the Service Tariff and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the ZEC Charge.
2. As provided in the CES Order, the Public Service Commission, as part of the CES and Tier 3 of the Renewable Energy Standard, imposed an obligation on Load Serving Entities that are subject to the CES Order (“Affected LSEs”) to purchase Zero Emission Credits from NYSERDA in an amount representing the Affected LSE’s proportional share of ZECs calculated on the basis of the amount of electric load the LSE serves in relation to the total electric load served by all Load Serving Entities in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes in the State (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
3. The ZEC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of supporting the CES and Tier 3 of the RES and implementing the PP power program in a manner that is consistent with the New York State Energy Plan. The Authority will comply with the CES and Tier 3 of the RES by applying a form of ZEC Purchase Obligation to the end-user load for which the Authority serves as a load serving entity, including the load that the Authority serves under the PP power program.
4. The ZEC Charge, which is intended to recover from the Customer costs that the Authority incurs for purchasing ZECs in quantities that are attributable to the Customer’s PP load served under this Agreement, will be determined and assessed to the Customer as follows:
 - a. The cost of the total ZEC Purchase Obligation for all LSEs in the New York Control Area, including the Authority as a participating load serving entity, will be assessed pursuant to the methodology provided in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA based on the proportion of the forecasted total kilowatt-hours load served by the

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

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

7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of the Service Tariff, or the Rules.
8. If the ZEC Purchase Obligation is modified or terminated by the Public Service Commission or other controlling governmental authority (collectively, "Government Action"), the Authority shall modify or terminate the ZEC Charge, and assess any additional charges or provide any credits to the Customer, to the extent that the Authority determines such actions to be appropriate based on such Government Action.

SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in the Service Tariff No. 20, or in the Rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. MONTHLY REC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of the Service Tariff, or the Rules, the Customer shall be subject to a Monthly REC Charge as provided in this Schedule E. The Monthly REC Charge is in addition to all other charges, fees and assessments provided in the Agreement, the Service Tariff and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the Monthly REC Charge.
2. The Monthly REC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of complying with the CES and Tier 1 of the RES and implementing the PP power program in a manner that is consistent with the New York State Energy Plan, pursuant to which the Authority will invest in new renewable generation resources to serve its PP customers. Such investments will be made through the procurement of RECs through REC Compliance Measures in quantities that are intended to address the annual Mandatory Minimum Percentage Proportions as applied by the Authority to the total PP load that the Authority will serve each calendar year (the “Annual REC Percentage Target”) for the purpose of ultimately meeting the RES.

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

will issue a credit, or an adjusted final charge for the year, as appropriate, based on the results of such reconciliation process. Any such final charge shall be payable within the time frame applicable to the Authority's bills for Electric Service under this Agreement or pursuant to any other procedure established by the Authority pursuant to Section II.4 of this Schedule E.

6. Notwithstanding the provisions of Section II.3 of this Schedule E, if Electric Service for the Allocation is commenced after the Authority has implemented REC Compliance Measures for the year in which such Electric Service is commenced, and as a result the Customer's load cannot be accounted for in such REC Compliance Measures, the Authority may in its discretion implement separate REC Compliance Measures in order to meet the Annual REC Percentage Target for Customer's load for the year, and bill the Customer for the costs associated with such separate REC Compliance Measures.
7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of the Service Tariff, or the Rules.

III. ALTERNATIVE REC COMPLIANCE PROGRAM

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



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

Schedule of Rates for Sale of Firm Power Service to
Preservation Power Customers
(Local Electric Utility Delivery)

Service Tariff No. 20

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Preservation Power made directly to a qualified business Customer for firm power service that is delivered by the Customer's local electric utility.

II. Abbreviations and Terms

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

Agreement: An executed written agreement between the Authority and the Customer for the sale of Preservation Power to the Customer.

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

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

Customer: A business entity that (1) has received an Allocation of Preservation Power, (2) purchases such Preservation Power directly from the Authority, and (3) receives delivery of the Preservation Power from a local electric utility.

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

Firm Power: Hydropower 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 Factor Sharing or LFS: A type of billing methodology applicable to a Customer's Allocation which determines how a Customer's total Native System Load is apportioned between the power and energy supplied by the Allocation and the Customer's other source of electricity supply, if any. LFS is used to determine the amount of Firm Energy supplied and billed on the basis of the Customer's actual total Native System Load per the monthly billing cycle as follows:

1. When the Maximum Metered Demand is less than (<) the Contract Demand, then the Customer's entire load will be supplied by Firm Energy.
2. When the Maximum Metered Demand is greater than (>) the Contract Demand, then the Customer's portion of Firm Energy supply will be determined as follows:
 - a. For Hourly Billing: $\sum (\text{Contract Demand} \div \text{Maximum Metered Demand} \times \text{the in-hour demand of Customer's total Native System Load for all hours})$.
 - b. For Monthly Billing: $(\text{Contract Demand} \div \text{Maximum Metered Demand} \times \text{the total consumed energy by the Customer within the bill cycle})$.

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

Maximum Metered Demand: The highest 15 or 30-minute integrated demand, as determined by the local electric utility, during each Billing Period recorded on the meter that is used by the Customer in accordance with this Service Tariff and the Agreement.

Native System Load: The total consumption of the Customer's electric system, as determined by the Authority's revenue-grade metering equipment, without the offset of Customer's behind the meter generation. It is represented as the sum of all incoming power, plus internal generation behind the system meter, minus power exports to the bulk electric system.

Preservation Power or PP: 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), and that is delivered by the Customer's local electric utility.

Project: The Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.

Rate Year or RY: The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

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

Service Tariff: This Service Tariff No. 20.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A. Preservation Power (PP) Base Rates

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

Rate Year	Billing Period	Demand (\$/kW)	Energy (\$/MWh)
2018	July 2018 – June 2019	7.90	13.50

B. PP Rates No Lower than Rural/Domestic Rate

At all times the applicable PP base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for PP 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 rate specified in Section III.A 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, and any other charges provided in this Service Tariff, the Agreement or the Rules.

E. Estimated Billing

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

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on a load factor sharing billing methodology as follows:

- The estimated demand amount (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 amount (kW) for the Estimated Bill 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 a load factor sharing billing methodology as follows:

- 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 amount (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.

If an alternative billing methodology is applicable to the Customer, the demand charge and energy charge for rendering an Estimated Bill shall be calculated in a manner appropriate to such alternative billing methodology as determined by the Authority.

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

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

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

F. Adjustments to Charges

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

G. Billing Period

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

H. Billing Demand

Billing Demand shall be determined by applying the applicable billing methodology to total Native System Load meter readings during the Billing Period. See Section IV.E, below.

I. Billing Energy

Billing Energy shall be determined by applying the applicable billing methodology to total Native System Load meter readings during the Billing Period. See Section IV.E, below.

J. Contract Demand

The Contract Demand will be the amount of Preservation Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy and responsibility for payment of costs associated therewith, will be governed by the Agreement.

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology

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

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing ("LFS") in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer's local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer's local electric utility provides its consent if the Authority determines that such consent is necessary.
2. Billing Energy - The LFS methodology will be applied against the Customer's Native System Load during the Billing Period to determine the amount of Firm Energy (kWh) attributable to the Allocation (Billing Energy) to be billed to the Customer and charged at the applicable PP Rate. All energy quantities will be adjusted for losses.
3. Billing Demand – The LFS methodology will be applied against the Customer's Maximum Metered Load during the Billing Period to determine the amount of Firm Power (kW) attributable to the Allocation (Billing Demand) to be billed to the Customer and charged at the applicable PP Rate. Billing Demand may not exceed the amount of the Contract Demand. All demand quantities will be adjusted for losses.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

- a. The demand rate 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 rate 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

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

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

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Other Charges

The Customer shall pay the Authority for all other charges provided for in the Agreement.

7. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

8. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the twentieth (20th) calendar day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.
2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.
4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

H. Adjustment of Charges – Distribution Losses

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

I. Conflicts

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

B. Sample Computation of the AAF (hypothetical values for July 1, 2017 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>(2016)</u>	Measuring Year - 1 <u>(2015)</u>
January	205.3	167.8
February	204.3	167.6
March	204.5	168.2
April	202.4	168.6
May	206.3	171.6
June	220.4	180.1
July	226.2	182.7
August	227.3	179.2
September	228.1	181.8
October	214.9	170.2
November	211.3	168.8
December	211.7	166.6
Average	213.6	223.7
Ratio of MY/MY-1		0.95

- 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 (2015)</u>			
CT	444,588	3,432,002	
MA	1,068,927	7,892,165	
ME	290,360	3,208,045	
NH	252,331	1,981,028	
NJ	778,985	7,320,398	
NY	1,140,573	18,079,200	
OH	3,548,736	50,556,675	
PA	3,411,815	47,404,272	
RI	109,866	798,532	
VT	146,022	1,421,601	
TOTAL	11,192,203	142,093,918	7.88
<u>Measuring Year -1 (2014)</u>			
CT	453,958	3,514,798	
MA	1,014,262	7,960,941	
ME	300,412	3,357,486	
NH	234,900	1,969,064	
NJ	855,757	7,516,616	
NY	1,184,255	18,002,976	
OH	3,440,919	50,829,251	
PA	3,580,990	48,317,693	
RI	114,111	887,150	
VT	145,111	1,417,994	
TOTAL	11,324,673	143,773,969	7.88
Ratio of MY/MY-1			1.00

Date of Issue: January 1, 2020

Date Effective: January 1, 2020

Issued by Keith T. Hayes, Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

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

	Measuring Year <u>(2016)</u>	Measuring Year -1 <u>(2015)</u>
January	191.9	196.0
February	191.8	195.4
March	192.1	195.0
April	192.8	194.8
May	193.4	194.9
June	193.7	195.2
July	193.7	194.9
August	194.0	193.9
September	193.9	193.1
October	194.3	192.9
November	194.9	192.3
December	195.6	191.9
Average	193.5	194.2
Ratio of MY/MY-1		1.00

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	0.95	0.35	0.334
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.00	0.25	<u>0.249</u>
AAF			0.983

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	8.03	13.73
New Rate Year Base Rate	7.90	13.50

Date of Issue: January 1, 2020

Date Effective: January 1, 2020

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Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207



**NEW YORK POWER AUTHORITY
HYDROELECTRIC PROJECTS
PRESERVATION POWER RATES
Effective July 1, 2019**

Step 1. Determine the Index Value for the Measuring Year and Measuring Year - 1 for Each Index

Index 1.

PRODUCER PRICE INDEX - INDUSTRIAL POWER PPI 0543		
	Measuring Year	Measuring Year -1
	<u>2018</u>	<u>2017</u>
January	243.4	231.8
February	245.3	232.9
March	241.0	234.2
April	237.7	234.3
May	241.3	237.1
June	255.2	251.0
July	258.8	253.4
August	258.7	251.2
September	255.4	249.0
October	246.6	238.7
November	240.2	236.8
December	241.0	237.4
Average	247.1	240.7
Ratio of MY/MY-1	1.03	

Index 2.

EIA INDUSTRIAL RATE			
STATE	Revenues	Sales	Avg. Rate
	(\$000)	MWh	(cents/kwh)
<u>Measuring Year (2017)</u>			
CT	424,986	3,243,615	
MA	952,295	6,859,215	
ME	244,676	2,658,353	
NH	241,347	1,955,926	
NJ	742,874	7,343,012	
NY	1,055,297	17,811,455	
OH	3,503,104	50,650,671	
PA	3,241,741	47,889,117	
RI	105,708	725,767	
VT	145,424	1,423,644	
TOTAL	10,657,452	140,560,775	7.58
<u>Measuring Year -1 (2016)</u>			
CT	431,744	3,370,068	
MA	1,004,205	7,507,380	
ME	257,723	2,876,638	
NH	246,798	2,000,357	
NJ	741,084	7,293,070	
NY	1,067,777	17,709,218	
OH	3,508,525	50,290,693	
PA	3,262,271	47,127,932	
RI	103,047	764,295	
VT	147,875	1,446,003	
TOTAL	10,771,048	140,385,654	7.67
Ratio of MY/MY-1	0.99		

WPU03T15M05

Index 3.

PRODUCER PRICE INDEX - INDUSTRIAL COMMODITIES LESS FUEL		
	Measuring Year	Measuring Year -1
	<u>2018</u>	<u>2017</u>
January	203.0	196.8
February	203.8	197.8
March	204.8	198.7
April	205.4	199.3
May	206.3	199.2
June	207.0	199.4
July	207.4	199.2
August	207.6	199.7
September	207.9	200.0
October	208.7	200.9
November	208.5	201.5
December	207.8	201.7
Average	206.5	199.5
Ratio of MY/MY-1	1.04	



**NEW YORK POWER AUTHORITY
HYDROELECTRIC PROJECTS
PRESERVATION POWER RATES
Effective July 1, 2019**

Step 2. Determine Annual Adjustment Factor by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.359
EIA Industrial Rate	0.99	0.40	0.395
PPI Industrial Commodities less fuel	1.04	0.25	<u>0.259</u>
Annual Adjustment Factor			1.0134

Step 3. Apply Annual Adjustment Factor to Calculate Adjusted Base Rate

	<u>Demand \$/kw</u>	<u>Energy \$/mwh</u>
<u>Preservation Power</u>		
Current Rate Year Base Rate	7.90	13.50
New Rate Year Base Rate	8.01	13.68

1. Economic Development Power Programs – Customer Assistance Program

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve two temporary measures to provide financial relief to customers in the Authority's Economic Development Power Programs, that are subject to the Annual Adjustment Factor ('AAF'), described below: (1) suspension of the AAF which is otherwise scheduled under applicable tariffs to be applied to energy and demand rates annually on July 1st, for a period of one year from July 1, 2020 through June 30, 2021; and (2) provision to such customers of the option to defer payment of energy bills to the Authority, beginning with the April 2020 invoice, for up to 6 months, with repayment of deferred amounts to occur in equal installments over the subsequent 18-month period.

BACKGROUND

Several programs at the Authority utilize low-cost hydroelectric power as an incentive to spur economic growth throughout the state for commercial and industrial customers. These programs include the Authority's Recharge New York, Western New York, Expansion Power & Replacement Power, and Preservation Power programs. Each of these programs requires a commitment from the recipients of job growth within their business, job retention and/or capital commitment.

Under the applicable tariffs for these programs (the 'Economic Development Power Programs'), energy and demand rates are subject to adjustment based on the AAF. The AAF is based upon a weighted average of three economic indices: 1) BLS Industrial Power Price (35% weight); 2) EIA Average Industrial Power Price (40% weight); and 3) BLS Industrial Commodities Price Less Fuel (25% weight). The AAF, whether it represents an increase or decrease, is normally applied to program base rates annually on July 1st, in accordance with the applicable tariffs.

DISCUSSION

Based upon the current economic conditions relating to COVID-19, the Authority has explored options to help its Economic Development Power Program customers through these fiscally difficult times. Staff has developed a two-part plan to ease the financial strain being experienced by many throughout the State in the hope that businesses will be able to endure the slowdown and retain employees to the extent possible.

The first phase of this new initiative is the suspension, for a period of one year, of the AAF under applicable tariffs to energy and demand rates for customers in the Authority's Economic Development Power Programs, beginning with the adjustment that would have taken effect on July 1, 2020.

The second phase of the assistance program, designed to provide immediate cash relief to eligible customers in such programs, is the option to defer payment of energy bills to the Authority for up to 6 months, beginning with the April 2020 invoices. Participants would then make up those deferred payments in equal installments over the subsequent 18-month period, free from any interest or penalties.

Under this initiative, eligible customers would be required to inform the Authority, under procedures to be developed by staff, of their interest in taking part in the program. For customers that opt in the program, utility bills would continue to be issued on their normal monthly schedule, giving these businesses the ability to budget for future cash needs. After the end of the payment suspension period, the total deferred amount would be calculated for each account, and one-eighteenth of that deferred amount would be included in every bill for the succeeding 18 months.

FISCAL INFORMATION

Though final data used to calculate the AAF is not yet available, based on current information, the Authority estimates that the AAF for the July 1, 2020 – June 30, 2021 period would have resulted in an approximately 0.5% increase to rates and generated an additional approximately \$800,000 in revenues for all Economic Development Power Programs over the same period.

RECOMMENDATION

The President and Chief Executive Officer recommends that the Trustees approve two temporary measures to provide financial relief to customers in the Authority's Economic Development Power Programs: (1) suspension of the Annual Adjustment Factor, which would otherwise be scheduled under applicable tariffs to be applied to energy and demand rates annually on July 1st, for a period of one year from July 1, 2020 through June 30, 2021; and (2) provision to such customers of the option to defer payment of energy bills to the Authority, beginning with the April 2020 invoice, for up to 6 months of energy bills, with repayment of deferred amounts to occur in equal installments over the subsequent 18-month period.

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

Ms. Sarah Salati, Chief Commercial Officer, provided highlights of the request to the Board.

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

RESOLVED, that the Trustees hereby approve the following temporary measures to provide financial relief to customers in the Authority's Economic Development Power Programs, each as described in more detail in the foregoing report: (1) suspension of the Annual Adjustment Factor, which would otherwise be scheduled under applicable tariffs to be applied to energy and demand rates annually on July 1, for a period of one year from July 1, 2020 through June 30, 2021; and (2) provision to such customers of the option to defer payment of energy bills to the Authority, beginning with the April 2020 invoice, for up to 6 months, with repayment of deferred amounts to occur in equal installments over the subsequent 18-month period; 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.

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PUBLIC HEARING

PROPOSED CONTRACT FOR THE SALE OF PRESERVATION POWER TO
EZ STAK LLC AND UPSTATE NIAGARA COOPERATIVE, INC.

19 Commerce Lane
Canton, New York 13617

OCTOBER 19, 2020

present:

Patricia Wilson, North County Economic Development Manager
Karen Delince, VP & Corporate Secretary (via
videoconference)
Lorna Johnson, Sr. Associate Corporate Secretary (via
videoconference)
Joseph Rivera, IT (via videoconference)
Glenn Martinez, IT (via videoconference)

1 MS. DELINCE: Good afternoon. This is a
2 public hearing required by law and authorized
3 by the New York Power Authority's Board of
4 Trustees on the proposed Customer Contracts for
5 the sale of hydropower to EZ STAK, LLC and
6 Niagara -- Upstate Niagara Cooperative, Inc.

7 My name is Karen Delince and I'm the
8 Authority's Corporate Secretary.

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

13 First, prior to the hearing, it requires
14 that notice of the hearing be provided.

15 Therefore, a notice was sent to:

16 The Governor, the Senate's President Pro
17 Temp, the Senate Minority Leader, the Senate
18 Finance Committee chair, the Assembly Speaker,
19 the Assembly Minority Leader and the Assembly
20 Ways and Means Committee Chair.

21 In addition, notices appeared once a
22 week, for the four weeks leading up to this
23 hearing, in the following newspaper:

1 Albany Times Union, Massena Daily
2 Courier-Observer, Buffalo News, Plattsburgh
3 Press-Republican, Syracuse Post-Standard and
4 Watertown Daily Times.

5 The public was also given access to the
6 proposed contracts on the Authority's website
7 at WWW.nypa.gov during the 30-day period prior
8 to today's hearing.

9 After the hearing, the public will be
10 given access to the hearing transcript, once it
11 is completed, on the Authority's website.

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

16 Once the Trustees have completed their
17 final review, the contracts will be forwarded
18 to the Governor for his consideration and
19 approval.

20 If you plan to make an oral statement at
21 this hearing, I ask that you so indicate on the
22 sign-in sheet. Also, if you have a written
23 statement, please give a copy to Patricia

1 Wilson and one to the reporter. Written
2 statements may be of any length and will appear
3 in the record of the hearing in addition to
4 oral statements. The record of the hearing
5 will remain open for additional comments
6 through close of business, Tuesday
7 October 20th, 2020. Additional comments
8 should be mailed or emailed to the Corporate
9 Secretary at 123 Main Street, 9-B, White
10 Plains, New York 10601 or
11 secretarys.office@nypa.gov.

12 At this point, I would like to introduce
13 Patricia Wilson, the Authority's Economic
14 Development Manager for the North Country, who
15 will provide additional details of the proposed
16 Customer Contracts.

17 Thank you, Ms. Wilson.

18 MS. WILSON: Thank you, Ms. Delince.
19 Good afternoon. My name is Patricia Wilson and
20 I am NYPA's Economic Development Manager for
21 the North Country.

22 I'm here today present a summary of two
23 proposed contracts for the sale of hydropower

1 generated at the St.~Lawrence Power Project.
2 Under Public Authority Law section 1005(13)(a)
3 of the New York Power Authority also know as
4 NYPA or Authority may allocate and sell 490
5 megawatts of Preservation Power to businesses
6 in Franklin, Jefferson and St.~Lawrence
7 counties, pursuant to statutory criteria that
8 also apply to allocations of Replacement Power
9 and Expansion Power.

10 At their March 31st, 2020, meeting, the
11 NYPA Trustees approved a 670-kw Preservation
12 Power allocation to EZ STAK for a 10-year term,
13 starting from the date electric service first
14 commences, for use by EZ STAK at its facilities
15 in Watertown, Jefferson County, EZ STAK is a
16 manufacturer of interior vehicle storage
17 systems and its products are used extensively
18 by municipalities as well as large corporations
19 in the utility, telecommunication and
20 construction industries.

21 The allocation will support an expansion
22 to enable EZ STAK to increase parts
23 manufacturing related to its assembly of

1 material and upfitting of vehicles. The
2 expansion project includes the purchase and
3 renovation of a building in Watertown to
4 accommodate large-scale manufacturing,
5 assembling and installation services. The
6 project will result in the creation of at least
7 15 new, permanent full-time jobs and a capital
8 investment of at least 6.2 million.

9 At their July 28, 2020 meeting the NYPA
10 Trustees approved an extension of Upstate
11 Niagara's existing 1850 kW Preservation Power
12 allocation for a term extending through
13 June 30th, 2030. Upstate Niagara uses the
14 allocation at its dairy facility in North
15 Lawrence, St.~Lawrence County. The Facility
16 primarily produces cultured dairy products sold
17 mostly to retailers and food institutions in
18 New York and the Northeast. All milk products
19 used by Upstate Niagara in its process come
20 from local dairy farmers.

21 The extension of the current allocation
22 enables Upstate Niagara to maintain this
23 essential business at its current level of

1 production and continue to invest in the
2 Facility allowing for future growth, which
3 would continue to support jobs in the regional
4 economy. The extension of the 1850 kW
5 allocations will help support more than 80
6 full-time jobs.

7 The following is a summary of the
8 provisions addressed in the Contracts and
9 Service Tariff No. 20:

10 The term of both contracts is for 10
11 years. Transmission and delivery service would
12 be provided by EZ STAK, LLC and Upstate Niagara
13 Cooperative Inc.'s local utility in accordance
14 with the utility's Public Service
15 Commission-approved delivery service tariff.
16 The contract would provide for the direct
17 billing of all production charges such as
18 demand and energy as well as all New York
19 Independent System Operator, Inc. charges, plus
20 taxes or any other required assessments. The
21 contract includes the provision of substitute
22 energy in the event of hydropower curtailments
23 caused by adverse water conditions that impact

1 power project operations.

2 The contract provides for collection of a
3 Zero Emission Credit Charge and a Renewable
4 Energy Credit Charge to allow the Authority to
5 recover cost it incurs relating to its purchase
6 of Zero Emission Credits and Renewable Energy
7 Credits attributable to Upstate Niagara and EZ
8 STAK's loads. The contract also provides for
9 certain supplemental commitments related to job
10 creation or retention or capital investments
11 that would be found in other hydropower
12 contracts.

13 As Ms. Delince stated earlier, the
14 Authority will accept you comments on the
15 proposed contracts until the close of business
16 on October 20, 2020.

17 I will now turn the hearing back to
18 Ms. Delince.

19 MS. DELINCE: Thank you, Ms. Wilson. At
20 this point I would like to call on the speakers
21 who have signed in.

22 Ms. Wilson, are any speakers present at
23 your location who wish to provide a statement?

1 MS. WILSON: There are not.

2 MS. DELINCE: In that case, we will
3 recess now and reconvene when speakers arrive.

4 (A recess was taken 2:10 to 6:00 PM)

5 MS. DELINCE: The October 19, 2020,
6 public hearing for the proposed Customer
7 Contracts for the sale of hydropower to EZ
8 STAK, LLC and Upstate Niagara Cooperative, Inc.
9 is now officially closed. As previously stated
10 the record of the hearing shall remain open for
11 additional comments to the close of business to
12 Tuesday October 20th, 2020. Thank you and
13 good night.

14 (The hearing concluded at 6:00 PM)

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1 STATE OF NEW YORK)

2 COUNTY OF ST. LAWRENCE)

3 I, Mary Elizabeth Burnham, a Court Reporter in the
4 state of New York, do hereby certify that the foregoing
5 public hearing was taken before me, in the cause, at the
6 time and place as in the caption hereto, at Page 1
7 hereof; that the foregoing typewritten transcription of
8 the public hearing, consisting of pages number 2 to 8,
9 inclusive, was produced to the best of my ability of all
10 proceedings had at the session at which said public
11 hearing was taken.

12 IN WITNESS WHEREOF, I have hereunto subscribed my
13 name, this the 22nd day of October 2020.

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Mary E. Burnham, Court Reporter

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Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: **Contracts for the Sale of Hydropower –
Final Approval and Transmittal to the Governor**

SUMMARY

The Trustees are requested to:

1. Approve final contracts ("Contracts") for the sale of 500 kilowatts ("kW") of Expansion Power ("EP") to Petri Baking Products, Inc. ("Petri"), and 100 kW of EP to Premium PPE, LLC ("Premium"). Copies of these Contracts, along with the applicable service tariff, Service Tariff No. WNY-2 ("ST WNY-2"), are attached as Exhibits "A" and "B", respectively.
2. Authorize transmittal of the Contracts to the Governor for his review and requested authorization for the New York Power Authority (the "Authority") to execute the Contracts pursuant to Public Authorities Law ("PAL") §1009.

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 (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.

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

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

DISCUSSION

At their meeting on May 19, 2020, the Trustees awarded a 500 kW EP allocation for a term of ten years to Petri to support the manufacturing of cookies and other snack food at Petri's

facilities at 18 Main Street, Silver Creek, NY. Petri has committed to make a capital investment of at least \$12,950,000 at its facilities, and employ at least 85 full-time, permanent employees at the facilities for the term of the allocation (“Supplemental Commitments”).

At their meeting on September 23, 2020, the Trustees awarded a 100 kW RP allocation to Premium for a term of ten years to support manufacturing, which includes making surgical and face masks, at Premium’s facilities at 120 Earhart Drive, Amherst, NY. Premium’s Supplemental Commitments include an agreement to make a capital investment at its facilities of at least \$4,500,000 and employ at least 25 full-time, permanent employees for the term of the allocation.

The following is a summary of some of the pertinent provisions of the Contracts and ST WNY-2 related to these allocations:

- The term of the EP allocation is ten (10) years from commencement of electric service subject to termination/cancellation as provided for in the Contracts.
- Transmission and delivery service would be provided by the customer’s local utility in accordance with the utility’s Public Service Commission-approved 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 ST WNY-2, previously approved by the Trustees.
- The Contracts provide for the sale of additional allocations of WNY Hydropower to the customer 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.
- The customer must perform an energy audit at the facility receiving the allocation. The customer would have the option to satisfy the audit requirement through either a traditional physical audit, or a virtual audit using the Authority’s New York Energy Manager which is expected to provide considerable savings for customers who select it.
- 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 incurs relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the load of the customer.
- The Authority would have the right to reduce or terminate the allocation if Supplemental Commitments are not met.

PUBLIC HEARING

In accordance with PAL § 1009, a public hearing on the Contracts was held on November 30, 2020 at 535 Washington Street, Buffalo, NY 14203. A copy of the official transcript of the public hearing including any written submittals are attached as Exhibit “C”.

FISCAL INFORMATION

The sale of these allocations will result in revenues for the Authority. Both allocations are new allocations.

RECOMMENDATION

The Senior Vice President - Clean Energy Solutions recommends that the Trustees approve the Contracts, 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.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the contracts for the sale of 500 kilowatts (“kW”) of Expansion Power (“EP”) to Petri Baking Products, Inc. and 100 kW of EP to Premium PPE, LLC, (collectively, the “Contracts”), are in the public interest and hereby approved, and in accordance with Public Authorities Law §1009 the Contracts should be submitted 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 be authorized and directed to execute such Contracts in the name of and on behalf of the Authority upon the Governor’s approval of the Contracts; and be it further

RESOLVED, That the Senior Vice President – Clean Energy Solutions, or his designee, be, and hereby is, authorized, subject to the approval of the form thereof by the Executive Vice President and General Counsel, to negotiate and execute any and all documents necessary or desirable to implement the Contracts as set forth in the foregoing memorandum 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.

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

Petri Baking 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 Petri Baking Products, Inc. (“Customer”) with offices and principal place of business at 18 Main Street, Silver Creek, NY 14136. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

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

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

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

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

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

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

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

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

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

ELECTRIC SERVICE

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

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

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

ARTICLE III

RATES, TERMS AND CONDITIONS

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

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

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

ARTICLE IV **SUPPLEMENTAL COMMITMENTS**

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

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

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

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

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

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

c. Notice of Completion; Commencement of Electric Service.

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

d. Other Rights and Remedies Unaffected.

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

ARTICLE V
ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES

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

ARTICLE VI
SERVICE TARIFF; CONFLICTS

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

ARTICLE VII
TRANSMISSION AND DELIVERY

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

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

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

ARTICLE VIII

BILLING AND BILLING METHODOLOGY

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

ARTICLE IX

HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

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

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

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

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

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

ARTICLE X

EFFECTIVENESS, TERM AND TERMINATION

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

ARTICLE XI

EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

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

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

ARTICLE XII

NOTICES

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

To: The Authority

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

Email:

Facsimile: _____

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Petri Baking Products, Inc.
18 Main Street
Silver Creek, New York 14136

Email:

Facsimile:

Attention:

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

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

ARTICLE XIII

SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER

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

ARTICLE XIV

MISCELLANEOUS

1. Choice of Law

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

2. Venue

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

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

3. Previous Agreements; Modifications; and Interpretation

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

4. Waiver

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

5. Severability and Voidability

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

ARTICLE XV
EXECUTION

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

PETRI BAKING PRODUCTS, INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A
EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Petri Baking Products, Inc.				
Type of Allocation	Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
EP	500 kW	18 Main Street Silver Creek, New York 14136	May 19, 2020	Ten (10) years from the date of commencement of Electric Service

SCHEDULE B
SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER
COMMITMENTS

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments

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

2. Capital Investment Commitments

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

3. Power Utilization

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

4. Energy Efficiency and Conservation Program

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

ARTICLE II
RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

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

2. Capital Investments

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

3. Power Usage

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

4. Energy Efficiency and Conservation Program

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

5. Facility Access

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

ARTICLE III

COMPLIANCE ACTION BY THE AUTHORITY

1. Employment

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

2. Capital Investment Commitment

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

3. Power Utilization Level

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

4. Additional Compliance Action

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

5. Notice of Intent to Reduce Contract Demand

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

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

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 85 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. **Annual Capital Investment Commitment** (if applicable, as specified below)
 - a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.
 - b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.
 - c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.
2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)
 - a. The Customer shall make a minimum capital investment of \$12,950,000 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:

DESCRIPTION	EXPENDITURE
Purchase of building, associated properties, and necessary building improvements	\$2.8 million
Machinery and equipment purchases including coolers, freezers, ovens, air compressors, flour systems, heated tanks, mixers, forklifts, etc.	\$7.3 million
Startup costs and initial working capital	\$2.85 million
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$12,950,000</u>

Total Expansion Project Capital Investment Commitment:

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than May 19, 2023 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

SCHEDULE C
TAKEDOWN SCHEDULE

SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“Zero Emission Credit” or “ZEC” has the meaning provided in the CES Order.

“Zero Emission Credit Charge” or “ZEC Charge” means the charge to the Customer established in this Schedule D.

“ZEC Purchase Obligation” has the meaning provided in Section II.2 of this Schedule D.

“ZEC Program Year” has the meaning provided in Section II.2 of this Schedule D.

II. ZEC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a ZEC Charge as provided in this Schedule D. The ZEC Charge shall be in addition to all other charges, fees and assessments provided for in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the ZEC Charge.
2. As provided in the CES Order, the Public Service Commission, as part of the CES and Tier 3 of the Renewable Energy Standard, imposed an obligation on Load Serving Entities that are subject to the CES Order (“Affected LSEs”) to purchase Zero Emission Credits from NYSERDA in an amount representing the Affected LSE’s proportional share of ZECs calculated on the basis of the amount of electric load the LSE serves in relation to the total electric load served by all Load Serving Entities in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes in the State (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
3. The ZEC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of supporting the CES and Tier 3 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan. The Authority will comply with the CES and Tier 3 of the RES by applying a form of ZEC Purchase Obligation to the end-user load for which the Authority serves as a load serving entity, including the load that the Authority serves under the EP and RP power programs.
4. The ZEC Charge, which is intended to recover from the Customer costs that the Authority incurs for purchasing ZECs in quantities that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:
 - a. The cost of the total ZEC Purchase Obligation for all LSEs in the New York Control Area, including the Authority as a participating load serving entity, will be assessed pursuant to the methodology provided in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA based on the proportion of the forecasted total kilowatt-hours load served by

the Authority (i.e., total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The ZEC Purchase Obligations may be based on initial load forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.

- b. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as load serving entity, including the EP and RP load that it serves (the “EP and RP Programs ZEC Costs”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for each ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of ZEC Purchase Obligations will be allocated to the EP and RP power programs based on the proportion of the actual annual kilowatt-hours load served under such programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).
 - c. The Authority will allocate a portion of the EP and RP Programs ZEC Costs to the Customer as the ZEC Charge based on the proportion of the Customer’s actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP power programs (i.e., EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation referenced above will be passed through to the Customer based on the proportion of the Customer’s annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP power program by the Authority (EP and RP Programs level load). The ZEC Charge assessed to the Customer shall not include any costs resulting from the Authority’s inability to collect a ZEC Charge from any other Authority customer.
5. The Authority may, in its discretion, include the ZEC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the ZEC Charge pursuant to another Authority-established procedure.
6. The Authority may, in its discretion, modify the methodology used for determining the ZEC Charge and the procedures used to implement such ZEC Charge on a nondiscriminatory basis among affected EP and RP customers, upon consideration of such matters as Public Service Commission orders modifying or implementing the CES Order, guidance issued by the New York Department of Public Service, and other information that the Authority reasonably determines to be appropriate to the determination of such methodology. The Authority shall

provide Customer with reasonable notice of any modifications to the methodology or procedures used to determine and implement the ZEC Charge.

7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.
8. If the ZEC Purchase Obligation is modified or terminated by the Public Service Commission or other controlling governmental authority (collectively, "Government Action"), the Authority shall modify or terminate the ZEC Charge, and assess any additional charges or provide any credits to the Customer, to the extent that the Authority determines such actions to be appropriate based on such Government Action.

SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Alternative REC Compliance Program” has the meaning provided in Section III.1 of this Schedule E.

“Annual REC Percentage Target” has the meaning provided in Section II.2 of this Schedule E.

“CES Order” means the Order issued by the Public Service Commission entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“Clean Energy Standard” or “CES” means the Clean Energy Standard adopted by the State in the CES Order.

“Load Serving Entity” has the meaning provided in the CES Order.

“Mandatory Minimum Percentage Proportion” has the meaning provided in the CES Order.

“Monthly Renewable Energy Credit Charge” or “Monthly REC Charge” means the monthly charge to the Customer established in this Schedule E.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Credit” or “REC” refers to a qualifying renewable energy credit as described in the CES Order.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“REC Compliance Measures” mean: (1) the Authority’s procurement of RECs from NYSERDA in accordance with NYSERDA procedures and/or the CES Order; (2) the Authority’s procurement of RECs from available REC markets; (3) the Authority’s procurement of RECs from sources other than those identified in items (1) and (2) of this definition, including through a procurement process adopted by the Authority; and/or (4) any other measure that the PCS authorizes a Load Serving Entity to implement for the purpose of meeting the applicable Mandatory Minimum Percentage Proportion.

“Total Monthly EP-RP Load” has the meaning provided in Section II.3.b of this Schedule E

“Total Monthly REC Costs” has the meaning provided in Section II.3.b of this Schedule E.

II. MONTHLY REC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a Monthly REC Charge as provided in this Schedule E. The Monthly REC Charge is in addition to all other charges, fees and assessments provided in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the Monthly REC Charge.
2. The Monthly REC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of complying with the CES and Tier 1 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan, pursuant to which the Authority will invest in new renewable generation resources to serve its EP and RP customers. Such investments will be made through the procurement of RECs through REC Compliance Measures in quantities that are intended to address the annual Mandatory Minimum Percentage Proportions as applied by the Authority to the total EP and RP load that the Authority will serve each calendar year (the “Annual REC Percentage Target”) for the purpose of ultimately meeting the RES.
3. The Monthly REC Charge, which is intended to recover from the Customer costs that the Authority incurs for implementing REC Compliance Measures that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:

- a. The Authority shall have the right, for each calendar year to implement such REC Compliance Measures as it determines in its discretion to be appropriate for the purpose of meeting the Annual REC Percentage Target for the total EP and RP load that it will serve during such calendar year.
 - b. The Authority will, for each month of each calendar year, calculate the total costs (“Total Monthly REC Costs”) that the Authority has incurred or estimates that it will incur from implementing RES Compliance Measures for the purpose of meeting the Annual REC Percentage Target for the total EP and RP kilowatt-hour load for the month (“Total Monthly EP-RP Load”). The Total Monthly REC Costs may be calculated based on forecasts of the Total Monthly EP-RP Load that the Authority expects to serve for the month, or on a lagged basis based on the actual Total Monthly EP-RP Load that the Authority served for the month.
 - c. Each month, the Authority will assess to the Customer, as a Monthly REC Charge, which will represent the Customer’s share of the Total Monthly REC Costs assessed to the Total Monthly EP-RP Load. The Monthly REC Charge will be assessed as the proportion of the Customer’s total kilowatt-hours load served by the Authority for such month to the Total Monthly EP-RP Load served by the Authority for such month, provided, however, that:
 - i. the Monthly REC Charge to the Customer shall not include any costs associated with the Authority’s inability to collect the Monthly REC Charge from other Authority customers; and
 - ii. the effective per-MWh rate of the Monthly REC Charge to the Customer averaged over the REC Program Year to which the Annual REC Percentage Target applies shall not exceed the per-MWh rate of a Monthly REC Charge based on NYSERDA’s published REC price for the REC Program Year.
4. The Authority may, in its discretion, include the Monthly REC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the Monthly REC Charge pursuant to another Authority-established procedure.
5. The Authority will, at the conclusion of each calendar year in which it assesses a Monthly REC Charge, conduct a reconciliation process based on the actual costs that it incurred for REC Compliance Measures and actual load served for the year, compared with cost or load estimates or forecasts, if any, that the Authority used to calculate the Customer’s Monthly REC Charges during the year. The Authority will issue a credit, or an adjusted final charge for the year, as appropriate, based on the results of such reconciliation process. Any such final charge shall be payable within the time frame applicable to the Authority’s bills

for Electric Service under this Agreement or pursuant to any other procedure established by the Authority pursuant to Section II.4 of this Schedule E.

6. Notwithstanding the provisions of Section II.3 of this Schedule E, if Electric Service for the Allocation is commenced after the Authority has implemented REC Compliance Measures for the year in which such Electric Service is commenced, and as a result the Customer's load cannot be accounted for in such REC Compliance Measures, the Authority may in its discretion implement separate REC Compliance Measures in order to meet the Annual REC Percentage Target for Customer's load for the year, and bill the Customer for the costs associated with such separate REC Compliance Measures.
7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

III. ALTERNATIVE REC COMPLIANCE PROGRAM

1. Nothing in this Schedule E shall be construed as preventing the Parties from entering into other agreements for an alternative arrangement for the Authority to meet the Annual REC Percentage Target with respect to the Customer's Allocation, including but not limited to Customer self-supply of RECs, alternative REC compliance programs and cost allocation mechanisms, in lieu of the Monthly REC Charge provided in this Schedule E (collectively, "Alternative REC Compliance Program").
2. The Authority shall communicate at least biennially with the Customer concerning implementation of the RES Compliance Program and potential Alternative REC Compliance Programs, if any, that the Authority is offering or expects to offer.



POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power Service to
Expansion Power and Replacement Power Customers
Located in Western New York

Service Tariff No. WNY-2

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power directly to a qualified business Customer for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff issued by the NYISO

Agreement: An executed written agreement between the Authority and the Customer for the sale of Expansion Power and/or Replacement Power to the Customer.

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business entity that has received an allocation of Expansion Power and/or Replacement Power, and that purchases Expansion Power and/or Replacement Power, directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power or **EP** and/or **Replacement Power** or **RP**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A type of billing methodology applicable to a Customer's Allocation which determines how a Customer's total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer's other source of electricity supply, if any. LSM is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

The rates to be charged to the Customer by the Authority shall be as follows:

Billing Period	Demand (\$/kW)	Energy (\$/MWh)
January – June 2019	7.60	13.00

1. For RY 2019 (July 2019 through June 2020 Billing Periods), 50% of the Annual Adjustment Factor ("AAF"), as described in Section V, will be applied to the demand and energy rates stated in the table above.
2. For RY 2020 (July 2020 through June 2021 Billing Periods) and each Rate Year thereafter, the AAF will be applied to the then-effective base rates for demand and energy in accordance with Section V.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The Minimum Monthly Charge shall equal the product of the demand charge and the Contract Demand (as defined herein). Such Minimum Monthly Charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Load Split Methodology that is applicable to the Customer as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's takedown (kW) amount.
- For Customers whose Allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.
- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III.D shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended and shall not be construed to limit the Authority's rights under the Agreement.

F. Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, and the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G. Billing Period

The Billing Period is any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H. Billing Demand

Billing Demand shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

I. Billing Energy

Billing Energy shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

J. Contract Demand

The Contract Demand will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the base rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology

Unless otherwise specified in the Agreement, the following provisions shall apply:

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing (“LFS”) in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. Billing Demand may not exceed the amount of the Contract Demand.
3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
4. With regard to LFS methodology calculations:
 - a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
 - b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
 - c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
 - i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
 - ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
 - d. All demand values will be adjusted for losses.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Firm Energy during any Billing Period the higher of either (i) the sum of (a), (b) and (c) below, or (ii) the Minimum Monthly Charge (as defined herein):

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's Billing Demand (as defined in Section IV.E, above) for the Billing Period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's Billing Energy (as defined in Section IV.E, above) for the Billing Period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges

The Customer shall compensate the Authority for the following NYISO transmission and related charges (collectively, "NYISO Charges") assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

- A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
- B. Marginal losses;
- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and

- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.
2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.
4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

H. Adjustment of Charges – Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

In the event of any inconsistencies, conflicts, or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of the Agreement and this Service Tariff or the Rules, the provisions of the Agreement shall govern.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
- a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. Subject to the provisions of Section III.A of this Service Tariff, the Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended to reflect, the Customer and the Authority may mutually select a substitute Index. The Customer and the Authority agree to mutually select substitute indices within 90 days, once one of them is notified by the other that the indices are no longer available or no longer reflect the relevant factors or changes which the indices were intended to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If the Customer and Authority are unable to reach agreement on substitute indices within the 90-day period, the Customer and the Authority agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available or reflective of their intended purpose and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> ((\$000s))	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24

Measuring Year -1 (2011)

CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23

Ratio of MY/MY-1 **1.00**

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year (2013)	Measuring Year -1 (2012)
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

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

Premium PPE, 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 Premium PPE, LLC (“Customer”) with offices and principal place of business at 120 Earhart Drive, Amherst, NY 14221. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, including hydropower known as Expansion Power (“EP”) and Replacement Power (“RP”) to qualified businesses in accordance with PAL § 1005(5) and (13);

WHEREAS, the Customer has applied for an allocation of EP and/or RP, or for an extension of an existing allocation of EP or RP, for use at facilities defined in this Agreement as the “Facility”;

WHEREAS, the Customer has offered to make specific commitments relating to, among other things, the creation and/or retention of jobs, capital investments, power usage and energy efficiency measures at the Facility;

WHEREAS, the Authority’s Board of Trustees approved an allocation of EP and/or RP to the Customer;

WHEREAS, the Parties have reached an agreement on the terms and conditions applicable for the sale of the EP and/or RP for a term provided in this Agreement;

WHEREAS, the Authority’s provision of Electric Service under this Agreement is an unbundled service separate from (i) the transmission of the allocation, and (ii) the delivery of the Allocation;

WHEREAS, electric service to be provided hereunder shall be subject to the rates and other terms and conditions contained in the Service Tariff No. WNY-2 as provided in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement; and

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement.

NOW, THEREFORE, in consideration of mutual covenants, terms, and conditions herein, and for other good and valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties do hereby mutually covenant and agree as follows:

ARTICLE I

DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Agreement, shall have the meanings as set forth below. When used with initial capitalization, whether singular or plural, terms defined in schedules or appendices to this Agreement shall have the meanings set forth in such schedules or appendices.

“Adverse Water Condition” means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.

“Agreement” means this Agreement, and unless otherwise indicated herein, includes all schedules, appendices and addenda thereto, as the same may be amended from time to time.

“Allocation” refers to the allocation(s) of EP and/or RP awarded to the Customer as specified in Schedule A.

“Alternative REC Compliance Program” has the meaning provided in Schedule E.

“Annual Capital Investment Commitment” has the meaning set forth in Schedule B.

“Annual CI Expenditures” has the meaning set forth in Schedule B.

“Base Employment Level” has the meaning set forth in Schedule B.

“Contract Demand” is as defined in Service Tariff No. WNY-2.

“Customer-Arranged Energy” means energy that the Customer procures from sources other than the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.

“Effective Date” means the date that this Agreement is fully executed by the Parties.

“Electric Service” is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

“Energy Services” has the meaning set forth in Article V of this Agreement.

“Expansion Power” (or “EP”) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Expansion Project” has the meaning set forth in Section IV.3.a of this Agreement.

“Expansion Project Capital Investment Commitment” has the meaning set forth in Schedule B.

“Facility” means the Customer’s facilities as described in Schedule A to this Agreement.

“Firm Power” is as defined in Service Tariff No. WNY-2.

“Firm Energy” is as defined in Service Tariff No. WNY-2.

“FERC” means the Federal Energy Regulatory Commission (or any successor organization).

“FERC License” means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project’s original license which became effective in 1957.

“Hydro Projects” is a collective reference to the Project and the Authority’s St. Lawrence-FDR Project, FERC Project No. 2000.

“International Joint Commission” or “IJC” refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.

“Load Reduction” has the meaning set forth in Section IX.6 of this Agreement.

“Load Serving Entity” (or “LSE”) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.

“Metering Arrangement” has the meaning set forth in Section II.8 of this Agreement.

“NYEM” means the New York Energy Manager, an energy management center owned and operated by the Authority.

“NYEM Agreement” means a written agreement between the Authority and the Customer providing for the Facility’s enrollment and Customer’s participation in NYEM.

“NYEM Participation” has the meaning specified in Schedule B of this Agreement.

“NYISO” means the New York Independent System Operator or any successor organization.

“NYISO Charges” has the meaning set forth in Section VII.3 of this Agreement.

“NYISO Tariffs” means the NYISO’s Open Access Transmission Tariff or the NYISO’s Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.

“Planned Hydropower Curtailment” means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.

“Physical Energy Audit” or “Audit” means a physical evaluation of the Facility in a manner approved by the Authority that includes at a minimum the following elements: (a) an assessment of the Facility’s energy use, cost and efficiency which produces an energy utilization index for the Facility (such as an Energy Use Intensity or Energy Performance Indicator); (b) a comparison of the Facility’s index to indices for similar buildings/facilities; (c) an analysis of low-cost/no-cost measures for improving energy efficiency; (d) a listing of potential capital improvements for improving energy consumption; and (e) an initial assessment of potential costs and savings from such measures and improvements.

“Project” means the Niagara Power Project, FERC Project No. 2216.

“Replacement Power” (or “RP”) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Reporting Year” means the yearly interval that the Authority uses for reporting, compliance and other purposes as specified in this Agreement. The Reporting Year for this Agreement is from January 1 through December 31, subject to change by the Authority without notice.

“Rolling Average” has the meaning set forth in Schedule B.

“Rules” are the applicable provisions of Authority’s rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.

“Service Information” has the meaning set forth in Section II.12 of this Agreement.

“Service Tariff No. WNY-2” means the Authority’s Service Tariff No. WNY-2, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.

“Schedule A” refers to the Schedule A entitled “Expansion Power and/or Replacement Power Allocations” which is attached to and made part of this Agreement.

“Schedule B” refers to the Schedule B entitled “Supplemental Expansion Power and/or Replacement Power Commitments” which is attached to and made part of this Agreement, including any appendices attached thereto.

“Schedule C” refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of this Agreement.

“Schedule D” refers to the Schedule D entitled “Zero Emission Credit Charge” which is attached to and made part of this Agreement.

“Schedule E” refers to the Schedule E entitled “Monthly Renewable Energy Credit Charge” which is attached to and made part of this Agreement.

“Substitute Energy” means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.

“Takedown” means the portion of the Allocation that Customer requests to be scheduled for a specific period as provided for in Schedule C, if applicable.

“Taxes” is as defined in Service Tariff No. WNY-2.

“Unforced Capacity” (or “UCAP”) means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

“Unplanned Hydropower Curtailment” means a temporary reduction in the amount of Firm Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

“Utility Tariff” means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

ARTICLE II

ELECTRIC SERVICE

1. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.
2. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified in Schedule A.
3. The Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation specified in Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
4. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-2.

5. The provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer. The Customer acknowledges and agrees that Customer's local electric utility, not the Authority, shall be responsible for delivering the Allocation to the Facility specified in Schedule A in accordance with the applicable Utility Tariff(s).
6. The Contract Demand for the Customer's Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
7. The Contract Demand may not exceed the Allocation.
8. The Customer's Facility must be metered by the Customer's local electric utility in a manner satisfactory to the Authority, or another metering arrangement satisfactory to the Authority must be provided (collectively, "Metering Arrangement"). A Metering Arrangement that is not satisfactory to the Authority shall be grounds, after notice to the Customer, for the Authority to modify, withhold, suspend, or terminate Electric Service to the Customer. If a Metering Arrangement is not made to conform to the Authority's requirements within thirty (30) days of a determination that it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days' prior written notice to the Customer. After commencement of Electric Service, the Customer shall notify the Authority in writing within thirty (30) days of any alteration to the Facility's Metering Arrangement, and provide any information requested by the Authority (including Facility access) to enable the Authority to determine whether the Metering Arrangement remains satisfactory. If an altered Metering Arrangement is not made to conform to the Authority's requirements within thirty (30) days of a determination it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days' prior written notice to the Customer. The Authority may, in its discretion, waive any of the requirements provided for in this Section in whole or in part where in the Authority's judgment, another mechanism satisfactory to the Authority can be implemented to enable the Authority to receive pertinent, timely and accurate information relating to the Customer's energy consumption and demand and render bills to the Customer for all fees, assessments and charges that become due in accordance with this Agreement, Service Tariff No. WNY-2, and the Rules.
9. The Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of the Allocation to the Customer, the proper and efficient implementation of the EP and/or RP program, billing related to Electric Service, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents that the Authority determines are necessary to effectuate such exchanges of information.

10. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer's local electric utility providing for the delivery of the Allocation on terms and conditions that are acceptable to the Authority.
11. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, execute consents, and provide information (collectively, "Service Information") that the Authority determines is necessary for the provision of Electric Service, the delivery of the Allocation, billing related to Electric Service, the effective administration of the EP and/or RP programs, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide Service Information on a timely basis shall be grounds for the Authority in its discretion to modify, withhold, suspend, or terminate Electric Service to the Customer.

ARTICLE III

RATES, TERMS AND CONDITIONS

1. Electric Service shall be sold to the Customer in accordance with the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-2 and the Rules. The Authority agrees to waive the Minimum Monthly Charge set forth in Service Tariff No. WNY-2 for a period up to one (1) year upon written request from the Customer that is accompanied by information that demonstrates to the Authority's satisfaction a short-term reduction or interruption of Facility operations due to events beyond the Customer's control. The Customer shall provide such information that the Authority requests during the period of any such waiver to enable the Authority to periodically evaluate the ongoing need for such waiver.
2. If the Authority at any time during the term of this Agreement enters into an agreement with another customer for the sale of EP or RP at power and energy rates that are more advantageous to such customer than the power and energy rates provided in this Agreement and Service Tariff No. WNY-2, then the Customer, upon written request to the Authority, will be entitled to such more advantageous power and energy rates in the place of the power and energy rates provided in this Agreement and Service Tariff No. WNY-2 effective from the date of such written request, provided, however, that the foregoing provision shall not apply to:
 - a. any agreement for the sale of EP and/or RP with an Authority customer whose purchase of EP and/or RP is associated with an Authority service tariff other than Service Tariff No. WNY-2, including Authority Service Tariff No. WNY-1; or
 - b. any agreement for the sale of EP and/or RP with an Authority customer which is associated with such customer's participation in an Alternative REC Compliance Program provided for in Schedule E of this Agreement.
3. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with

respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

4. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-2 and the Rules, the Customer shall be responsible for payment of the Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge provided for in Schedule D and Schedule E, respectively, of this Agreement.

ARTICLE IV **SUPPLEMENTAL COMMITMENTS**

1. Supplemental Commitments. Schedule B sets forth the Customer's "Supplemental Expansion Power and/or Replacement Power Commitments" ("Supplemental Commitments"). The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's timely compliance with the Supplemental Commitments described in Schedule B as further provided in this Agreement. The Customer's Supplemental Commitments are in addition to all other commitments and obligations provided in this Agreement.
2. *[Intentionally Left Blank]*
3. Special Provisions Relating to a New or Expanded Facility.

- a. Proposed New or Expanded Facility; Failure to Complete.

If Schedule B provides for the construction of a new facility or an expansion of an existing facility (collectively, "Expansion Project"), and the Customer fails to complete the Expansion Project by the date specified in Schedule B, the Authority may, in its discretion, (a) cancel the Allocation, or (b) if it believes that the Expansion Project will be completed in a reasonable time, agree with the Customer to extend the time for completion of the Expansion Project.

- b. Proposed New or Expanded Facility; Partial Performance.

If the Expansion Project results in a completed Facility that is only partially operational, or is material different than the Expansion Project agreed to in Schedule B (as measured

by such factors as size, capital investment expenditures, capital improvements, employment levels, estimated energy demand and/or other criteria determined by the Authority to be relevant), the Authority may, in its discretion, on its own initiative or at the Customer's request, make a permanent reduction to the Allocation and Contract Demand to an amount that the Authority determines to fairly correspond to the completed Facility.

c. Notice of Completion; Commencement of Electric Service.

- (i) The Customer shall give the Authority not less than ninety (90) days' advance written notice of the anticipated date of completion of an Expansion Project. The Authority will inspect the Expansion Project for the purpose of verifying the status of the Expansion Project and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time subject to the other provisions of this Agreement based on applicable operating procedures of the Authority, Customer's local electric utility and NYISO.
- (ii) In the event of an Expansion Project being completed in multiple phases, at the Customer's request the Authority may, in its discretion, allow commencement of part of the Allocation upon completion of any such phase, provided the Authority will similarly inspect the Expansion Project for the purpose of verifying the status of the completed phase of the Expansion Project. Upon such verification by the Authority of any such completed phase, the Authority, in its discretion, will determine an amount of kW that fairly corresponds to the completed phase of the Expansion Project, taking into account relevant criteria such as any capital expenditures, increased employment levels, and/or increased electrical demand associated with the completed phase of the Expansion Project.

d. Other Rights and Remedies Unaffected.

Nothing in this Article is intended to limit the Authority's rights and remedies provided for in the other provisions of this Agreement, including without limitation the provisions in Schedule B of this Agreement.

ARTICLE V
ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES

The Authority shall periodically communicate with the Customer for the purpose of informing the Customer about energy-related projects, programs and services ("Energy Services") offered by the Authority that in the Authority's view could provide value to the Customer and/or support the State's Clean Energy Standard. The Customer shall review and respond to all such offers in good faith, provided, however, that, except as otherwise provided for in this Agreement, participation in any such Energy Services shall be at the Customer's option, and subject to such terms and conditions agreed to by the Parties in one or more definitive agreements.

ARTICLE VI
SERVICE TARIFF; CONFLICTS

1. A copy of Service Tariff No. WNY-2 in effect upon the execution of this Agreement is attached to this Agreement as Exhibit 1, and will apply under this Agreement with the same force and effect as if fully set forth herein. The Customer consents to the application of Service Tariff WNY-2. Service Tariff No. WNY-2 is subject to revision by the Authority from time to time, and if revised, the revised provisions thereof will apply under this Agreement with the same force and effect as if set forth herein. The Authority shall provide the Customer with prior written notice of any revisions to Service Tariff No. WNY-2.
2. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-2 and the Rules, the provisions of Service Tariff No. WNY-2 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-2 or the Rules, the provisions of this Agreement shall govern.

ARTICLE VII
TRANSMISSION AND DELIVERY

1. The Customer shall be responsible for:
 - a. complying with all requirements of its local electric utility (including any other interconnecting utilities) that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff;
 - b. paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff, and if the Authority incurs any charges associated with such delivery service, reimbursing the Authority for all such charges; and
 - c. obtaining any consents and agreements from any other person that are necessary for the delivery of the Allocation to the Facility, and complying with the requirements of any such person, provided that any such consents, agreements and requirements shall be subject to the Authority's approval.
2. The Authority will use good faith efforts to provide the Customer with at least one year's advance notice of the scheduled expiration of Historic Fixed Price Transmission Congestion Contracts. After issuance of any such notice, the Authority will make itself available at reasonable times to collaborate with the Customer and other EP and RP customers to discuss potential risk-hedging options that might be available following expiration of such contracts.
3. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service

Tariff No. WNY-2 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related.

4. The Authority will consider opportunities to assist the Customer concerning actions, practices, or procedures of the Customer's local electric utility identified by the Customer that could adversely impact the implementation and effectiveness of the EP and RP programs, provided that whether or not to take any action or adopt any position on any issue, including any adverse position, is within the Authority's discretion and further subject to applicable laws, regulations and existing legal obligations.

ARTICLE VIII

BILLING AND BILLING METHODOLOGY

1. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
2. All other provisions with respect to billing are set forth in Service Tariff No. WNY-2 and the Rules.
3. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

ARTICLE IX

HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

1. The Customer shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Customer-Arranged Energy, for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment. The Customer shall make its election in accordance with the time period and other requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.
2. The Customer may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Customer intends such change to become effective. Such change shall be effective on the first day of January following the Authority's receipt the Customer's notice and shall remain in effect unless it is changed in accordance with the provisions of Section IX.1.
3. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Customer with advance notice of Planned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer no later than the tenth business day of the month

prior to the month in which the Planned Hydropower Curtailment is expected to occur unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.

4. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.
5. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.
6. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer's failure to provide such notice.
7. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.
8. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond. The Authority will give the Customer notice of any Unplanned Hydropower Curtailments that the Authority believes are likely to exceed forty-eight (48) continuous hours in duration.
9. Notwithstanding the Customer's election pursuant to Section IX.1, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments.
10. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless

otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.

11. The Customer shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.
12. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.

ARTICLE X

EFFECTIVENESS, TERM AND TERMINATION

1. This Agreement shall become effective and legally binding on the Parties on the Effective Date.
2. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (a) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (b) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-2, or the Rules; or (c) expiration of the Allocation by its own term as specified in Schedule A.
3. The Customer may exercise a partial termination of the Allocation upon at least sixty (60) days' prior written notice to the Authority. The Authority will effectuate the partial termination as soon as practicable after receipt of such notice taking account of the Authority's internal procedures and requirements of the Customer's local electric utility.
4. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-2, or the Rules.

ARTICLE XI

EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

1. The Customer may apply to the Authority for an extension of the term of the Allocation identified in Schedule A:
 - a. during the thirty-six (36) month period immediately preceding the scheduled expiration of the Allocation;

- b. pursuant to any other process that the Authority establishes; or
 - c. with the Authority's written consent.
- 2. Upon proper application by the Customer, the Authority may in accordance with applicable law and Authority procedures award additional allocations of EP and/or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (a) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (b) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- 3. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for extension of the Allocation or additional allocations and consider the terms and conditions that should be applicable of any extension or additional allocations.

ARTICLE XII

NOTICES

- 1. Notices, consents, authorizations, approvals, instructions, waivers or other communications provided in this Agreement shall be in writing and transmitted to the Parties as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601

Email:

Facsimile: _____

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Premium PPE, LLC
120 Earhart Drive
Amherst, NY 14221

Email:

Facsimile:

Attention:

- 2. The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XII.1.
- 3. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed

properly given: (a) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (b) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (c) if delivered by hand, with written confirmation of receipt; (d) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (e) on the date of transmission if sent by electronic communication to the appropriate address as set forth above, with confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

ARTICLE XIII

SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER

1. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto, provided that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party, which consent shall not be unreasonably withheld or conditioned. Notwithstanding the foregoing sentence, the Authority may require such approvals, and such consents and other agreements from the Customer and other parties, that the Authority determines are necessary in order to effectuate any such assignment.
2. The Customer may not transfer any portion of the Allocation to any other person, or a location different than the Facility, unless: (a) the Authority in its discretion authorizes the transfer Authority; (b) all other requirements applicable to a transfer, including board approvals, are satisfied; and (c) the transfer is effectuated in a form and subject to such terms and conditions approved by the Authority. Any purported transfer that does not comply with the foregoing requirements shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service or terminate the Allocation and/or this Agreement.
3. The Customer may not sell any portion of the Allocation to any other person. Any purported sale shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service, or terminate the Allocation and/or this Agreement.

ARTICLE XIV

MISCELLANEOUS

1. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a) and rulings by the IJC and without regard to conflicts of law provisions.

2. Venue

The Parties: (a) consent to the exclusive jurisdiction and venue of any state court within or

for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement; (b) agree to accept service of process; and (c) will not raise any argument of inconvenient forum.

3. Previous Agreements; Modifications; and Interpretation

- a. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of the Allocation and the subject matter of the Agreement, and supersedes all previous communications and agreements between the Parties, oral or written, with reference to the sale of the Allocation.
- b. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.
- c. No provision shall be construed against a Party on the basis that such Party drafted such provision.

4. Waiver

Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

5. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof. Notwithstanding the preceding sentence, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

ARTICLE XV
EXECUTION

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this

Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement as a PDF or similar file type transmitted via electronic mail, cloud based server, e-signature technology or similar electronic means shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

PREMIUM PPE, LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A
EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Premium PPE, LLC				
Type of Allocation	Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
EP	100 kW	120 Earhart Drive Amherst, New York 14221	September 23, 2020	Ten (10) years from the date of commencement of Electric Service

SCHEDULE B
SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER
COMMITMENTS

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments

- a. The Customer shall create and maintain the employment level set forth in the Appendix to this Schedule B (the “Base Employment Level”). Such Base Employment Level shall be the total number of full-time positions held by: (a) individuals who are employed by the Customer at Customer’s Facility identified in the Appendix to this Schedule, and (b) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, “Base Level Employees”). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.
- b. The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.
- c. The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority’s discretion.

2. Capital Investment Commitments

The Customer shall make the capital investments specified in the Appendix to this Schedule B.

3. Power Utilization

For each month the Authority provides Electric Service to the Customer, the Customer shall utilize the entire Allocation, as represented by the Billing Demand (as such term is described in Service Tariff No. WNY-2), provided, however, that if only part of the Allocation is being utilized in accordance with Schedule C, the Customer shall utilize such partial amount of the Allocation.

4. Energy Efficiency and Conservation Program

- a. The Customer shall implement an energy efficiency and conservation program at the Facility through either (a) enrollment of the Facility and participation in NYEM in accordance with a NYEM Agreement, or (b) one or more Physical Energy Audits of the Facility, or (c) a combination of such measures, in accordance with the provisions of this Article.
- b. The Authority shall transmit to the Customer a NYEM Agreement and an election form. The Customer shall elect to either (a) enroll the Facility and participate in NYEM for a three-year term (“NYEM Participation”) in accordance with the NYEM Agreement, or (b) perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit within three (3) years of the Effective Date of this Agreement, at its own expense.
- c. The Authority shall, on or before the expiration of the three-year term of the NYEM Agreement, transmit to the Customer a NYEM Agreement specifying the terms and conditions that would apply to NYEM participation for a second term, and an election form. The Customer shall elect either (a) NYEM Participation for a second term, or (b) to perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit during the calendar year that begins six years after of the Effective Date of this Agreement, at its own expense.
- d. The Authority may in its discretion waive the requirement for a Physical Energy Audit, or may agree to a limited energy audit of the Facility, where it determines that the Physical Energy Audit is unnecessary based on the age of the Facility, energy efficiency and conservation improvements made at the Facility, the length of the Allocation, or other considerations the Authority determines to be relevant.

ARTICLE II
RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

2. Capital Investments

The Customer shall comply with the recordkeeping, recording and reporting requirements specified in the Appendix to this Schedule B.

3. Power Usage

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement.

4. Energy Efficiency and Conservation Program

Upon the Authority's request, the Customer shall provide the Authority with (a) a copy of the results of any Physical Energy Audit performed at the Facility (or, at the Authority's option, a report describing the results), performed pursuant to this Article; and (b) a description of any energy efficiency or conservation measures that the Customer has implemented at the Facility in response to any Physical Energy Audit or as a result of NYEM Participation.

5. Facility Access

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's Supplemental Commitments specified in this Schedule B.

ARTICLE III

COMPLIANCE ACTION BY THE AUTHORITY

1. Employment

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in the Appendix to this Schedule B for the subject calendar year, the Authority may reduce the Contract Demand in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

2. Capital Investment Commitment

The Authority may reduce the Contract Demand as provided in the Appendix to this Schedule B if the Customer does not comply with the Capital Investment Commitment.

3. Power Utilization Level

If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-2) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to in accordance with the procedures provide in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

4. Additional Compliance Action

In addition to the Authority's other rights and remedies provided in this Agreement, Service Tariff WNY-2 and the Rules, the Authority may suspend Electric Service to the Customer if the Customer does not comply with any of the requirements in Section I.4 or Article II of this Schedule B.

5. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to Sections III.1, III.2, or III.3 of this Schedule B, the Authority shall provide the Customer with at least thirty (30) days prior written notice of the proposed reduction, specifying the amount and reason for the reduction.

Before implementing any reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance, Facility upgrade periods, and the business cycle. If, at the end of the thirty (30) day notice period, the Authority determines that a reduction is warranted, it shall provide the Customer with notice of such determination and provide the Customer with sixty (60) days to present a proposed plan with actionable milestones to cure the deficiency. The Authority shall respond to the Customer concerning the acceptability of any proposed plan that is provided in accordance with this Section III.5 within thirty (30) days of the Authority's receipt of such proposed plan. It shall be within the Authority's discretion whether or not to accept the Customer's proposed plan, require a different plan, or implement the reduction of the Contract Demand.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 27 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. **Annual Capital Investment Commitment** (if applicable, as specified below)
 - a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.
 - b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.
 - c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.
2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)
 - a. The Customer shall make a minimum capital investment of \$4,500,000 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:

DESCRIPTION	EXPENDITURE
Purchase of building to serve as a manufacturing and storage site for medical personal protective equipment (PPE)	\$2,500,000
Machinery and equipment purchases used in the manufacturing of PPE	\$2,000,000
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$4,500,000</u>

Total Expansion Project Capital Investment Commitment:

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than September 23, 2023 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

SCHEDULE C
TAKEDOWN SCHEDULE

SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Affected LSEs” has the meaning provided in Section II.2 of this Schedule D.

“CES Order” means the Order issued by the PSC entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“EP and RP Programs ZEC Costs” has the meaning provided in Section II.4.b of this Schedule D.

“Government Action” has the meaning provided in Section II.8 of this Schedule D.

“Load Serving Entity” or “LSE” has the meaning provided in the CES Order.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“Zero Emission Credit” or “ZEC” has the meaning provided in the CES Order.

“Zero Emission Credit Charge” or “ZEC Charge” means the charge to the Customer established in this Schedule D.

“ZEC Purchase Obligation” has the meaning provided in Section II.2 of this Schedule D.

“ZEC Program Year” has the meaning provided in Section II.2 of this Schedule D.

II. ZEC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a ZEC Charge as provided in this Schedule D. The ZEC Charge shall be in addition to all other charges, fees and assessments provided for in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the ZEC Charge.
2. As provided in the CES Order, the Public Service Commission, as part of the CES and Tier 3 of the Renewable Energy Standard, imposed an obligation on Load Serving Entities that are subject to the CES Order (“Affected LSEs”) to purchase Zero Emission Credits from NYSERDA in an amount representing the Affected LSE’s proportional share of ZECs calculated on the basis of the amount of electric load the LSE serves in relation to the total electric load served by all Load Serving Entities in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes in the State (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
3. The ZEC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of supporting the CES and Tier 3 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan. The Authority will comply with the CES and Tier 3 of the RES by applying a form of ZEC Purchase Obligation to the end-user load for which the Authority serves as a load serving entity, including the load that the Authority serves under the EP and RP power programs.
4. The ZEC Charge, which is intended to recover from the Customer costs that the Authority incurs for purchasing ZECs in quantities that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:
 - a. The cost of the total ZEC Purchase Obligation for all LSEs in the New York Control Area, including the Authority as a participating load serving entity, will be assessed pursuant to the methodology provided in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA based on the proportion of the forecasted total kilowatt-hours load served by

the Authority (i.e., total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The ZEC Purchase Obligations may be based on initial load forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.

- b. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as load serving entity, including the EP and RP load that it serves (the “EP and RP Programs ZEC Costs”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for each ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of ZEC Purchase Obligations will be allocated to the EP and RP power programs based on the proportion of the actual annual kilowatt-hours load served under such programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).
 - c. The Authority will allocate a portion of the EP and RP Programs ZEC Costs to the Customer as the ZEC Charge based on the proportion of the Customer’s actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP power programs (i.e., EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation referenced above will be passed through to the Customer based on the proportion of the Customer’s annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP power program by the Authority (EP and RP Programs level load). The ZEC Charge assessed to the Customer shall not include any costs resulting from the Authority’s inability to collect a ZEC Charge from any other Authority customer.
5. The Authority may, in its discretion, include the ZEC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the ZEC Charge pursuant to another Authority-established procedure.
6. The Authority may, in its discretion, modify the methodology used for determining the ZEC Charge and the procedures used to implement such ZEC Charge on a nondiscriminatory basis among affected EP and RP customers, upon consideration of such matters as Public Service Commission orders modifying or implementing the CES Order, guidance issued by the New York Department of Public Service, and other information that the Authority reasonably determines to be appropriate to the determination of such methodology. The Authority shall

provide Customer with reasonable notice of any modifications to the methodology or procedures used to determine and implement the ZEC Charge.

7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.
8. If the ZEC Purchase Obligation is modified or terminated by the Public Service Commission or other controlling governmental authority (collectively, "Government Action"), the Authority shall modify or terminate the ZEC Charge, and assess any additional charges or provide any credits to the Customer, to the extent that the Authority determines such actions to be appropriate based on such Government Action.

SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Alternative REC Compliance Program” has the meaning provided in Section III.1 of this Schedule E.

“Annual REC Percentage Target” has the meaning provided in Section II.2 of this Schedule E.

“CES Order” means the Order issued by the Public Service Commission entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“Clean Energy Standard” or “CES” means the Clean Energy Standard adopted by the State in the CES Order.

“Load Serving Entity” has the meaning provided in the CES Order.

“Mandatory Minimum Percentage Proportion” has the meaning provided in the CES Order.

“Monthly Renewable Energy Credit Charge” or “Monthly REC Charge” means the monthly charge to the Customer established in this Schedule E.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Credit” or “REC” refers to a qualifying renewable energy credit as described in the CES Order.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“REC Compliance Measures” mean: (1) the Authority’s procurement of RECs from NYSERDA in accordance with NYSERDA procedures and/or the CES Order; (2) the Authority’s procurement of RECs from available REC markets; (3) the Authority’s procurement of RECs from sources other than those identified in items (1) and (2) of this definition, including through a procurement process adopted by the Authority; and/or (4) any other measure that the PCS authorizes a Load Serving Entity to implement for the purpose of meeting the applicable Mandatory Minimum Percentage Proportion.

“Total Monthly EP-RP Load” has the meaning provided in Section II.3.b of this Schedule E

“Total Monthly REC Costs” has the meaning provided in Section II.3.b of this Schedule E.

II. MONTHLY REC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a Monthly REC Charge as provided in this Schedule E. The Monthly REC Charge is in addition to all other charges, fees and assessments provided in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the Monthly REC Charge.
2. The Monthly REC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of complying with the CES and Tier 1 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan, pursuant to which the Authority will invest in new renewable generation resources to serve its EP and RP customers. Such investments will be made through the procurement of RECs through REC Compliance Measures in quantities that are intended to address the annual Mandatory Minimum Percentage Proportions as applied by the Authority to the total EP and RP load that the Authority will serve each calendar year (the “Annual REC Percentage Target”) for the purpose of ultimately meeting the RES.
3. The Monthly REC Charge, which is intended to recover from the Customer costs that the Authority incurs for implementing REC Compliance Measures that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:

- a. The Authority shall have the right, for each calendar year to implement such REC Compliance Measures as it determines in its discretion to be appropriate for the purpose of meeting the Annual REC Percentage Target for the total EP and RP load that it will serve during such calendar year.
 - b. The Authority will, for each month of each calendar year, calculate the total costs (“Total Monthly REC Costs”) that the Authority has incurred or estimates that it will incur from implementing RES Compliance Measures for the purpose of meeting the Annual REC Percentage Target for the total EP and RP kilowatt-hour load for the month (“Total Monthly EP-RP Load”). The Total Monthly REC Costs may be calculated based on forecasts of the Total Monthly EP-RP Load that the Authority expects to serve for the month, or on a lagged basis based on the actual Total Monthly EP-RP Load that the Authority served for the month.
 - c. Each month, the Authority will assess to the Customer, as a Monthly REC Charge, which will represent the Customer’s share of the Total Monthly REC Costs assessed to the Total Monthly EP-RP Load. The Monthly REC Charge will be assessed as the proportion of the Customer’s total kilowatt-hours load served by the Authority for such month to the Total Monthly EP-RP Load served by the Authority for such month, provided, however, that:
 - i. the Monthly REC Charge to the Customer shall not include any costs associated with the Authority’s inability to collect the Monthly REC Charge from other Authority customers; and
 - ii. the effective per-MWh rate of the Monthly REC Charge to the Customer averaged over the REC Program Year to which the Annual REC Percentage Target applies shall not exceed the per-MWh rate of a Monthly REC Charge based on NYSERDA’s published REC price for the REC Program Year.
4. The Authority may, in its discretion, include the Monthly REC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the Monthly REC Charge pursuant to another Authority-established procedure.
5. The Authority will, at the conclusion of each calendar year in which it assesses a Monthly REC Charge, conduct a reconciliation process based on the actual costs that it incurred for REC Compliance Measures and actual load served for the year, compared with cost or load estimates or forecasts, if any, that the Authority used to calculate the Customer’s Monthly REC Charges during the year. The Authority will issue a credit, or an adjusted final charge for the year, as appropriate, based on the results of such reconciliation process. Any such final charge shall be payable within the time frame applicable to the Authority’s bills

for Electric Service under this Agreement or pursuant to any other procedure established by the Authority pursuant to Section II.4 of this Schedule E.

6. Notwithstanding the provisions of Section II.3 of this Schedule E, if Electric Service for the Allocation is commenced after the Authority has implemented REC Compliance Measures for the year in which such Electric Service is commenced, and as a result the Customer's load cannot be accounted for in such REC Compliance Measures, the Authority may in its discretion implement separate REC Compliance Measures in order to meet the Annual REC Percentage Target for Customer's load for the year, and bill the Customer for the costs associated with such separate REC Compliance Measures.
7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

III. ALTERNATIVE REC COMPLIANCE PROGRAM

1. Nothing in this Schedule E shall be construed as preventing the Parties from entering into other agreements for an alternative arrangement for the Authority to meet the Annual REC Percentage Target with respect to the Customer's Allocation, including but not limited to Customer self-supply of RECs, alternative REC compliance programs and cost allocation mechanisms, in lieu of the Monthly REC Charge provided in this Schedule E (collectively, "Alternative REC Compliance Program").
2. The Authority shall communicate at least biennially with the Customer concerning implementation of the RES Compliance Program and potential Alternative REC Compliance Programs, if any, that the Authority is offering or expects to offer.



POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power Service to
Expansion Power and Replacement Power Customers
Located in Western New York

Service Tariff No. WNY-2

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power directly to a qualified business Customer for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff issued by the NYISO

Agreement: An executed written agreement between the Authority and the Customer for the sale of Expansion Power and/or Replacement Power to the Customer.

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business entity that has received an allocation of Expansion Power and/or Replacement Power, and that purchases Expansion Power and/or Replacement Power, directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power or **EP** and/or **Replacement Power** or **RP**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A type of billing methodology applicable to a Customer's Allocation which determines how a Customer's total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer's other source of electricity supply, if any. LSM is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

The rates to be charged to the Customer by the Authority shall be as follows:

Billing Period	Demand (\$/kW)	Energy (\$/MWh)
January – June 2019	7.60	13.00

1. For RY 2019 (July 2019 through June 2020 Billing Periods), 50% of the Annual Adjustment Factor ("AAF"), as described in Section V, will be applied to the demand and energy rates stated in the table above.
2. For RY 2020 (July 2020 through June 2021 Billing Periods) and each Rate Year thereafter, the AAF will be applied to the then-effective base rates for demand and energy in accordance with Section V.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The Minimum Monthly Charge shall equal the product of the demand charge and the Contract Demand (as defined herein). Such Minimum Monthly Charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Load Split Methodology that is applicable to the Customer as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's takedown (kW) amount.
- For Customers whose Allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.
- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III.D shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended and shall not be construed to limit the Authority's rights under the Agreement.

F. Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, and the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G. Billing Period

The Billing Period is any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H. Billing Demand

Billing Demand shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

I. Billing Energy

Billing Energy shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

J. Contract Demand

The Contract Demand will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the base rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology

Unless otherwise specified in the Agreement, the following provisions shall apply:

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing (“LFS”) in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. Billing Demand may not exceed the amount of the Contract Demand.
3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
4. With regard to LFS methodology calculations:
 - a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
 - b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
 - c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
 - i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
 - ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
 - d. All demand values will be adjusted for losses.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Firm Energy during any Billing Period the higher of either (i) the sum of (a), (b) and (c) below, or (ii) the Minimum Monthly Charge (as defined herein):

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's Billing Demand (as defined in Section IV.E, above) for the Billing Period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's Billing Energy (as defined in Section IV.E, above) for the Billing Period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges

The Customer shall compensate the Authority for the following NYISO transmission and related charges (collectively, "NYISO Charges") assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

- A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
- B. Marginal losses;
- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and

- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.
2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.
4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

H. Adjustment of Charges – Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

In the event of any inconsistencies, conflicts, or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of the Agreement and this Service Tariff or the Rules, the provisions of the Agreement shall govern.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
- a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. Subject to the provisions of Section III.A of this Service Tariff, the Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended to reflect, the Customer and the Authority may mutually select a substitute Index. The Customer and the Authority agree to mutually select substitute indices within 90 days, once one of them is notified by the other that the indices are no longer available or no longer reflect the relevant factors or changes which the indices were intended to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If the Customer and Authority are unable to reach agreement on substitute indices within the 90-day period, the Customer and the Authority agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available or reflective of their intended purpose and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> ((\$000s))	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24

Measuring Year -1 (2011)

CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23

Ratio of MY/MY-1 **1.00**

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year (2013)	Measuring Year -1 (2012)
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12



**NY Power
Authority**

**Canal
Corporation**

Memorandum

Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

SUBJECT: Extension of Peaking Power Hydropower Contracts with Upstate Investor-Owned Utilities – Transmittal to the Governor

SUMMARY

The Trustees are requested to:

1. Approve contract extensions ("Contract Extensions") for the sale to New York State Electric and Gas Corporation ("NYSEG") and Rochester Gas and Electric Corporation ("RGE") (collectively, the "Utilities") of firm peaking hydropower in the amounts of 150 megawatts ("MW") and 35 MW, respectively. The forms of the Contract Extensions with NYSEG and RGE are attached as Exhibit "A" and Exhibit "B."
2. In accordance with Public Authorities Law ("PAL") § 1009, authorize transmittal of the Contract Extensions to the Governor for his review and to request his approval of the Contract Extensions.

BACKGROUND

In accordance with hydropower contracts signed with the Utilities in 1990 ("1990 Hydro Contracts") and subsequent contract extensions, the Utilities have purchased both firm power and firm peaking power from the St. Lawrence/FDR and Niagara Power Projects.

The Utilities have purchased such power at the Authority's cost-based hydropower rate, the benefits of which have been passed on to the Utilities' residential and small farm customers (also referred to as their rural and domestic consumers) without markup, through the electric service provided by the Utilities under their retail tariffs.

Chapter 60 (Part CC) of the Laws of 2011 created the Recharge New York Power Program ("RNY Program"). This law authorized the Authority to use the firm hydropower previously allocated to the Utilities for the RNY Program. See PAL § 1005(13-a).

Effective August 1, 2011, the Authority withdrew the firm power allocations from the Utilities in accordance with the withdrawal provisions of the 2010 contract extensions and the new law, and terminated the firm power allocations of 189 MW for Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid"), 167 MW for NYSEG and 99 MW for RGE, but continued to sell the firm peaking power to the Utilities in the following amounts: National Grid, 175 MW; NYSEG, 150 MW; and RGE, 35 MW.

Beginning with the 2014 extension of the 1990 Hydro Contracts, the Authority's Trustees approved a three-year contract extension for the peaking hydropower allocations and associated contracts.

DISCUSSION

The Contract Extensions set forth the terms and conditions for the sale of peaking power to NYSEG (150 MW) and RGE (35 MW) through December 31, 2023. National Grid has decided not to continue to extend its contract to purchase peaking power (175 MW).

The Contract Extensions specify the terms and conditions that would apply to the sale of the peaking power, including provisions providing for the cancellation of the Extension Contract/allocations, with NYPA having the right to terminate each Contract Extension upon thirty days' written notice to the Utilities and the Utilities having the right to terminate their Contract Extension after one year, upon thirty days' written notice to the Authority.

At their meeting of September 23, 2020, the Trustees authorized a public hearing on the Contract Extensions. To avoid an interruption in the delivery of the peaking power, the Trustees also authorized staff to execute the Contract Extensions on an interim basis pending the completion of the PAL § 1009 process. Accordingly, the Contract Extensions provide for their cancellation were the Governor not to approve the contracts.

In accordance with PAL § 1009, a public hearing was held on the Contract Extensions on November 30, 2020, at 535 Washington Street, Buffalo, New York, from 2:00-6:00 p.m.

Following the public hearing, the Authority determined that no substantive modifications to the Contract Extensions are required. The transcript of the public hearing is attached as Exhibit "C."

FISCAL INFORMATION

Under the Contract Extensions, the Utilities would continue to pay for firm peaking hydropower at the rates charged under the preceding contract extension, *i.e.*, the cost-based rates that are currently charged to the Authority's preference customers and determined in accordance with the Authority's rate-setting methodologies and principles. Accordingly, the Contract Extensions will have no fiscal impact on the Authority.

RECOMMENDATION

The Senior Vice President – Clean Energy Solutions recommends that the Trustees approve: (1) the Contract Extensions with the Utilities; and (2) authorize transmittal of the Contract Extensions to the Governor for his consideration in accordance with PAL § 1009.

For the reasons stated, I recommend the approval of the above-requested action by adoption of a resolution in the form of the attached draft resolution.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the contract extensions (“Contract Extensions”) attached to the accompanying Memorandum of the President and Chief Executive Officer as Exhibit “A,” and Exhibit “B” are approved; and be it further

RESOLVED, That the Contract Extensions be submitted to the Governor for review with a request that the Contract Extensions be approved, and that copies of the Contract Extensions 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, in accordance with Public Authorities Law §1009; 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, certifications and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

2020 Amendment to 1990 Hydropower Contract

This 2020 Amendment to 1990 Hydropower Contract, dated this ___ day of December, 2020 is made between New York State Electric & Gas Corporation (“Company”) and the Power Authority of the State of New York (“Authority”).

WHEREAS, the Company and the Authority are parties to an agreement dated February 22, 1989 under which the Authority sells certain quantities of hydroelectric power and energy from Authority’s Niagara and St. Lawrence Projects to Company for resale to its rural and residential consumers (the “1990 Hydropower Contract”).

WHEREAS, Authority, Rochester Gas and Electric Corporation (“RGE”) and Company are also parties to a letter agreement dated February 14, 2008 which modified Article D - Regulation of Rates and Charges as it pertained to the calculation of the monthly savings realized by the customers of Company and RGE from the purchase of Authority hydropower.

WHEREAS, Company and Authority have previously modified and extended the 1990 Hydropower Contract, most recently by the “2017 Amendment to 1990 Hydropower Contract” (the “2017 Amendment”).

WHEREAS, by letter dated June 29, 2011, Authority withdrew all 167 MW of Firm Hydroelectric Power and Energy allocated under Service Tariff No. 41 and terminated service under the 1990 Hydropower Contract with respect to all 167 MW of Firm Hydroelectric Power and Energy, effective August 1, 2011, for use in the Recharge New York Power Program created pursuant to Chapter 60 (Part CC) of the Laws of 2011 (the “Firm Power and Energy Withdrawal/Termination”).

WHEREAS, Company and Authority agree to further modify and extend certain terms of 1990 Hydropower Contract as follows:

- 1) As a result of the Authority’s Firm Power and Energy Withdrawal/Termination, the amount of Firm Hydroelectric Power and Energy allocated to Company under Service Tariff No. 41 is zero (0). The Firm Peaking Power allocation of 150 MW under Service Tariff No. 42 will remain unchanged.
- 2) Article E - Rates. The current text is deleted in its entirety and is replaced with the following text.

“The rates charged by the Authority under this Agreement shall be established In accordance with this Article.

The Authority shall charge and Company shall pay the preference power rates in effect, as such rates may be revised from time to time. Company waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority, except as otherwise provided for below.

Company waives any challenges to any of the following methodologies and principles used by the Authority to set future preference power rates, numbers (i) through (vii) as set forth in the “January 2003 Report on Hydroelectric Production

Rates” as modified by the April 2003 “Staff Analysis of Public Comments and Recommendations”:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “Auer Settlement”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (i.e., retiree health benefits).
- (vii) Rate Stabilization Reserve (RSR) methodology.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Company shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.”

- 3) Article F - Transmission. The current text is deleted in its entirety and is replaced with the following text.

“In accordance with the terms of the existing transmission Hydropower Contract, which by its terms will expire on August 31, 2007, Company will cease taking transmission service from Authority and will instead take transmission service under the New York Independent System Operator's (“NYISO”) Open Access Transmission Tariff. Company agrees to settle any outstanding transmission charges that may apply prior to September 1, 2007 including any subsequent NYISO true up settlements.”

- 4) Article G - Notification. In the contact address for Authority replace “10 Columbus Circle, New York, NY 10019” with “123 Main Street, White Plains, NY 10601”. For Company, delete the current reference in its entirety and replace with the following “David J. Kimiecik, Vice President, Energy Services, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation, 18 Link Drive, P.O. Box 5224, Binghamton, New York 13902-5224”.
- 5) Article J- Cancellation or Reduction. The following sentence is added at the end of Article

J:

Company may also cancel or reduce such service during the period from January 1, 2022 through December 31, 2023, for any reason upon thirty (30) days' prior written notice to the Authority.

6) Article K - Restoration of Withdrawn Power and/or Energy is deleted in its entirety.

7) Article L - Term of Service, is revised to read as follows:

“Service under this contract shall commence at 12:01 A.M. on January 1, 1990 and shall continue unless cancelled as provided for In the “Withdrawals of Power and/or Energy” or the “Cancellation or Reduction” provisions until December 31, 2023, subject to earlier termination by the Authority at any time with respect to any or all of the quantities of power and energy provided hereunder on at least thirty (30) days' prior written notice to Company.”

8) Article M - Availability of Energy - Firm and Firm Peaking Hydroelectric Power Service. In the third paragraph, line 1, starting with the words “In the event that...” through “... minimize the impact of such reductions.” on line 10, replace with the following:

“The Authority will have the right to reduce on a pro rata basis the amount of energy provided to Company under Service Tariff No. 42 if such reductions are necessary due to low flow (i.e. hydrologic) conditions at the Authority's Niagara Project hydroelectric generating station. In the event that hydrologic conditions require the Authority to reduce the amount of energy provided to Company, reductions as a percentage of the otherwise required, energy deliveries will be the same for all firm Niagara Project customers. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Company in later billing periods. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Company. The Authority shall provide reasonable notice to Company of any condition or activities that could result, or have resulted, in low flow conditions consistent with the notice provided to other similarly affected customers.”

9) This amendment shall be referred to as the “2020 Amendment to the 1990 Hydropower Contract”.

10) Continuation of service under this 2020 Amendment to the 1990 Hydropower Contract shall be subject to approval of this 2020 Amendment to the 1990 Hydropower Contract by the Governor of the State of New York pursuant to Public Authorities Law § 1009. If the Governor disapproves this 2020 Amendment to the 1990 Hydropower Contract, service will cease on the last day of the month following the month during which the Governor disapproved this 2020 Amendment to the 1990 Hydropower Contract. If the Governor takes no action within the time frame provided for in Public Authorities Law § 1009, service will cease on the last day of the month following the month during which such timeframe expired.

11) Except as expressly provided in this 2020 Amendment to the 1990 Hydropower Contract,

the 1990 Hydropower Contract shall remain unchanged and in full force and effect.

- 12) This 2020 Amendment to the 1990 Hydropower Contract shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts and to be performed in such state, without regard to conflict of laws principles.
- 13) This 2020 Amendment to the 1990 Hydropower Contract may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signature thereto and hereto were upon the same instrument.
- 14) Upon approval of the Governor of the State of New York pursuant to Public Authorities Law § 1009, and upon execution by the Chairman of the Authority, this 2020 Amendment to the 1990 Hydropower Contract shall come into full force and effect, provided however that pending such gubernatorial approval and execution, this 2020 Amendment to the 1990 Hydropower Contract shall take effect upon the expiration of the 2017 Amendment and continue on a month to month basis.
- 15) This 2020 Amendment to the 1990 Hydropower Contract may be amended or modified by written agreement signed by the Authority and the Company.

AGREED:

New York State Electric & Gas Corporation

By: _____
Name: Joseph J. Syta
Title: Vice President, Controller and Treasurer
Date: _____

By: _____
Name: Carl A. Taylor
Title: President and CEO
Date: _____

Power Authority of the State of New York

ACCEPTED:

By: _____
Name: John R. Koelmel
Title: Chairman
Date: _____

2020 Amendment to 1990 Hydropower Contract

This 2020 Amendment to 1990 Hydropower Contract, dated this ____ day of December, 2020 is made between Rochester Gas and Electric Corporation (“Company”) and the Power Authority of the State of New York (“Authority”).

WHEREAS, the Company and the Authority are parties to an agreement dated February 22, 1989 under which the Authority sells certain quantities of hydroelectric power and energy from Authority’s Niagara and St. Lawrence Projects to Company for resale to its rural and residential consumers (the “1990 Hydropower Contract”).

WHEREAS, Authority, New York State Electric & Gas Corporation (“NYSEG”) and Company are also parties to a letter agreement dated February 14, 2008 which modified Article D - Regulation of Rates and Charges as it pertained to the calculation of the monthly savings realized by the customers of Company and NYSEG from the purchase of Authority hydropower.

WHEREAS, Company and Authority have previously modified and extended the 1990 Hydropower Contract, most recently by the “2017 Amendment to 1990 Hydropower Contract” (the “2017 Amendment”).

WHEREAS, by letter dated June 29, 2011, Authority withdrew all 99 MW of Firm Hydroelectric Power and Energy allocated under Service Tariff No. 41 and terminated service under the 1990 Hydropower Contract with respect to all 99 MW of Firm Hydroelectric Power and Energy, effective August 1, 2011, for use in the Recharge New York Power Program created pursuant to Chapter 60 (Part CC) of the Laws of 2011 (the “Firm Power and Energy Withdrawal/Termination”).

WHEREAS, Company and Authority agree to further modify and extend certain terms of 1990 Hydropower Contract as follows:

- 1) As a result of the Authority’s Firm Power and Energy Withdrawal/Termination, the amount of Firm Hydroelectric Power and Energy allocated to Company under Service Tariff No. 41 is zero (0). The Firm Peaking Power allocation of 35 MW under Service Tariff No. 42 will remain unchanged.
- 2) Article E - Rates. The current text is deleted in its entirety and is replaced with the following text.

“The rates charged by the Authority under this Agreement shall be established in accordance with this Article.

The Authority shall charge and Company shall pay the preference power rates in effect, as such rates may be revised from time to time. Company waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority, except as otherwise provided for below.

Company waives any challenges to any of the following methodologies and principles used by the Authority to set future preference power rates, numbers (i) through (vii) as set forth in the “January 2003 Report on Hydroelectric Production

Rates” as modified by the April 2003 “Staff Analysis of Public Comments and Recommendations”:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “Auer Settlement”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (i.e., retiree health benefits).
- (vii) Rate Stabilization Reserve (RSR) methodology.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Company shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.”

- 3) Article F - Transmission. The current text is deleted in its entirety and is replaced with the following text.

“In accordance with the terms of the existing transmission Hydropower Contract, which by its terms will expire on August 31, 2007, Company will cease taking transmission service from Authority and will instead take transmission service under the New York Independent System Operator’s (“NYISO”) Open Access Transmission Tariff. Company agrees to settle any outstanding transmission charges that may apply prior to September 1, 2007 including any subsequent NYISO true up settlements.”

- 4) Article G - Notification. In the contact address for Authority replace “10 Columbus Circle, New York, NY 10019” with “123 Main Street, White Plains, NY 10601”. For Company, delete the current reference in its entirety and replace with the following “David J. Kimiecik, Vice President, Energy Services, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation, 18 Link Drive, P.O. Box 5224, Binghamton, New York 13902-5224”.

- 5) Article J- Cancellation or Reduction. The following sentence is added at the end of Article J:
- Company may also cancel or reduce such service during the period from January 1, 2022 through December 31, 2023, for any reason upon thirty (30) days' prior written notice to the Authority.
- 6) Article K - Restoration of Withdrawn Power and/or Energy is deleted in its entirety.
- 7) Article L - Term of Service, is revised to read as follows:
- “Service under this contract shall commence at 12:01 A.M. on January 1, 1990 and shall continue unless cancelled as provided for In the “Withdrawals of Power and/or Energy” or the “Cancellation or Reduction” provisions until December 31, 2023, subject to earlier termination by the Authority at any time with respect to any or all of the quantities of power and energy provided hereunder on at least thirty (30) days’ prior written notice to Company.”
- 8) Article M - Availability of Energy - Firm and Firm Peaking Hydroelectric Power Service. In the third paragraph, line 1, starting with the words “In the event that...” through “... minimize the impact of such reductions.” on line 10, replace with the following:
- “The Authority will have the right to reduce on a pro rata basis the amount of energy provided to Company under Service Tariff No. 42 if such reductions are necessary due to low flow (i.e. hydrologic) conditions at the Authority's Niagara Project hydroelectric generating station. In the event that hydrologic conditions require the Authority to reduce the amount of energy provided to Company, reductions as a percentage of the otherwise required, energy deliveries will be the same for all firm Niagara Project customers. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Company in later billing periods. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Company. The Authority shall provide reasonable notice to Company of any condition or activities that could result, or have resulted, in low flow conditions consistent with the notice provided to other similarly affected customers.”
- 9) This amendment shall be referred to as the “2020 Amendment to the 1990 Hydropower Contract”.
- 10) Continuation of service under this 2020 Amendment to the 1990 Hydropower Contract shall be subject to approval of this 2020 Amendment to the 1990 Hydropower Contract by the Governor of the State of New York pursuant to Public Authorities Law § 1009. If the Governor disapproves this 2020 Amendment to the 1990 Hydropower Contract, service will cease on the last day of the month following the month during which the Governor disapproved this 2020 Amendment to the 1990 Hydropower Contract. If the Governor takes no action within the time frame provided for in Public Authorities Law § 1009, service will cease on the last day of the month following the month during which such timeframe expired.

- 11) Except as expressly provided in this 2020 Amendment to the 1990 Hydropower Contract, the 1990 Hydropower Contract shall remain unchanged and in full force and effect.
- 12) This 2020 Amendment to the 1990 Hydropower Contract shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts and to be performed in such state, without regard to conflict of laws principles.
- 13) This 2020 Amendment to the 1990 Hydropower Contract may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signature thereto and hereto were upon the same instrument.
- 14) Upon approval of the Governor of the State of New York pursuant to Public Authorities Law § 1009, and upon execution by the Chairman of the Authority, this 2020 Amendment to the 1990 Hydropower Contract shall come into full force and effect, provided however that pending such gubernatorial approval and execution, this 2020 Amendment to the 1990 Hydropower Contract shall take effect upon the expiration of the 2017 Amendment and continue on a month to month basis.
- 15) This 2020 Amendment to the 1990 Hydropower Contract may be amended or modified by written agreement signed by the Authority and the Company.

AGREED:

Rochester Gas and Electric Corporation

By: _____
Name: Joseph J. Syta
Title: Vice President, Controller and Treasurer
Date: _____

By: _____
Name: Carl A. Taylor
Title: President and CEO
Date: _____

Power Authority of the State of New York

ACCEPTED:

By: _____
Name: John R. Koelmel
Title: Chairman
Date: _____



Date: December 9, 2020

To: Board of Trustees

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: **Recommendations for Awards of Fund Benefits from the Western New York Economic Development Fund by the Western New York Power Proceeds Allocation Board**

SUMMARY

The Trustees are requested to: (1) accept the recommendations of the Western New York Power Proceeds Allocation Board (the "Allocation Board" or "WNYPPAB") and make an award of Fund Benefits from the Western New York Economic Development Fund to the eligible applicant listed in Exhibits "A" and "A-1" in the amount indicated on the Exhibits for the reasons discussed below and in the Exhibits; and (2) 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 industry as provided in Public Authorities Law §1005. Additionally, the Allocation Board is authorized to consider the extent to which an award of Fund Benefits is consistent with the strategies and priorities of the Regional Economic Development Council having responsibility for the region in which an eligible project is proposed. A copy of these criteria (collectively, “Program Criteria”), adapted from the Allocation Board’s “Procedures for the Review of Applications for Fund Benefits,” is attached as Exhibit “B.”

The Allocation Board met on March 4, 2013 and, in accordance with the Act, adopted by-laws, operating procedures, guidelines related to the application, and a form of application. At that time, the Allocation Board defined “retail business” to mean a business that is primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain goods or services.

Under the Act, a recommendation for Fund Benefits by the Allocation Board is a prerequisite to an award of Fund Benefits by the Authority, and the Act authorizes the Authority to award Fund Benefits to an applicant upon a recommendation of the Allocation Board. Upon a showing of good cause, the Authority has discretion as to whether to adopt the Allocation Board’s recommendation, or to award benefits in a different amount or on different terms and conditions than proposed by the Allocation Board. In addition, the Authority is authorized to include within the contract covering an award (“Award Contract”) such other terms and conditions the Authority deems appropriate.

3. Application Process

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 2020 on which the Allocation Board would meet to consider applications. At this time, applications are being accepted on a rolling basis. In addition, the application process was promoted through a media release and with assistance from state and local entities, including the Western New York and Finger Lakes Regional Economic Development Councils, the Empire State Development Corporation and other local and regional economic development organizations within the State. A webpage was created that is hosted on WWW.NYPA.GOV/WNYPPAB with application instructions, a link to the approved application form and other program details including a contact phone number and email address staffed by NYPA.

DISCUSSION

At its October 7, 2020 meeting, the Allocation Board considered an application River Road Research, Inc. ("River Road"), seeking \$220,000 in Fund Benefits to facilitate a demonstration/commercialization project. As detailed in Exhibit "A-1", River Road seeks Fund Benefits to support construction of a processing system including an egg production room, growth room, vacuum dryer and screw press to demonstrate and commercialize the conversion of food waste into insect larvae, which is then processed into protein used in aquaculture and poultry feeds. River Road would spend approximately \$1.1M on its project.

Allocation Board's staff analyzed this 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 this project are attached as Exhibit "A-1". The application has also been made available to the Trustees for review.

The Allocation Board has recommended that this applicant receive a Fund Benefit award in the amount indicated on Exhibits "A" and "A-1". Given the nascent stage of the proposed projects, it was not possible to recommend the terms and conditions that would be applicable to this award and memorialized in an Award Contract between the Authority and a successful applicant.

If this applicant receives a Fund Benefit award, it is anticipated that Authority staff would negotiate final terms and conditions with the applicant after receipt of more detailed information concerning the project and proposed schedules. An Award Contract may include scheduled payments keyed to commitment milestones, such as employment creation and retention. In addition, staff anticipates that an Award Contract will contain provisions for periodic audits of the successful applicant for the purpose of determining contract and program compliance and, where appropriate, terms providing for the partial or complete recapture of Fund Benefits disbursements if an applicant fails to maintain agreed-upon commitments, relating to, among other things, employment levels and/or project element due dates.

RECOMMENDATION

The Senior Vice President, Clean Energy Solutions recommends that:

- (1) the Trustees accept the recommendations of the Allocation Board and make an award of Fund Benefits to the applicant in the amount identified in Exhibits "A" and "A-1", conditioned upon an agreement to be negotiated with the applicant on the final

terms and conditions that would be applicable to the award to be contained in an Award Contract approved by the President and Chief Executive Officer, or his designee, and approved by the Executive Vice President and General Counsel, or his designee, as to form;

- (2) the EVP Chief Commercial Officer, 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 EVP Chief Commercial Officer, or such official's designee, be authorized to execute on behalf of the Authority an Award Contract for the award listed on Exhibit "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.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

WHEREAS, The Western New York Power Proceeds Allocation Board (“Allocation Board”) has recommended that the Authority make an award of Fund Benefits from the Western New York Economic Development Fund (“Fund”) to the eligible applicant listed in Exhibit “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 Exhibits “A” and “A-1” in the amount indicated for the reasons set forth in the attached memorandum and the exhibits 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 EVP Chief Commercial Officer, 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 EVP Chief Commercial Officer, or such official’s designee, is authorized to execute on behalf of the Authority an Award Contract for the award listed on Exhibit “A” subject to the forgoing 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.

Exhibit "A"
December 9, 2020

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	River Road Research, Inc.	Buffalo	Erie	Western NY	Start-Up	Innovation/Entrepreneur	\$220,000	\$1,107,240	0	0
Total:							\$220,000	\$1,107,240	N/A	N/A

Total Jobs Created & Retained: N/A



Western NY Power Proceeds Allocation Board

Western New York Economic Development Fund Recommendation Memo

EXHIBIT A-1

Applicant Name:	River Road Research, Inc. ("River Road")	REDC Region:	Western New York
Project Type:	Innovation/Entrepreneur	County:	Erie County
Industry:	Aquaculture Feed Ingredients	Locality:	Buffalo
Amount Requested:	\$220,000	Start Date:	January 2021
		Finish Date:	December 2022
RECOMMENDED OFFER			
Recommended Total Award:		\$220,000	
Total Project Cost:		\$1,107,240	
% of Project Cost Recommended:		20%	
PROJECT BUDGET (Proposed by Applicant)			
Use of funds	Amount	Source of Funds	Amount
Salaries & Wages	\$545,780	WNY EDF	\$220,000
Machinery & Equipment	\$393,460	Cash Equity	\$500,000
Legal & Regulatory	\$50,000	Potential:	
Supplies & Materials	\$40,000	Private Investors	\$262,240
Feasibility	\$30,000	SBIR	\$100,000
Rent	\$24,000	Equipment Rebates	\$25,000
Maintenance & Repairs	\$14,000		
Market Research	\$10,000		
Total:	\$1,107,240	Total:	\$1,107,240
REGIONAL IMPACT MEASUREMENTS			
Job Commitments:	The Funding Track under which the application was submitted does not require job-related commitments.		
Average Salary of Jobs:	N/A		
Indirect Jobs Created:	N/A		
Other Impact:			



Western NY Power Proceeds Allocation Board

Western New York Economic Development Fund Recommendation Memo

EXHIBIT A-1

PROJECT DESCRIPTION (Adapted from Application)			
The Applicant is planning to lease space at 52 Leslie Street in Buffalo to establish an operation to transform food waste into an insect protein that can be used in aquaculture and poultry feeds. Essentially, food waste will be converted into insect larvae, which is then processed into a protein powder and used in pelletized feeds for aquaculture and poultry. The Applicant will construct a processing system, including an egg production room, growth room, vacuum dryer and screw press, to demonstrate viability of the technology and develop and commercialize products that can be successfully marketed. The Applicant is producing whole, dried larvae at its operations in Southern California, which will be relocated to Buffalo. The technology is environmentally sustainable and addresses such societal problems as the overfishing of natural waterways, food security and climate change. If successful in this phase, the project could evolve into a larger scale operation that delivers on-specification, whole aquaculture products at or below current market prices with less pricing volatility, a greater degree of sustainability and a lower transportation cost.			
OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED			
ESD			\$
SBIR	\$100,000		
			\$
PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED			
TYPE	AMOUNT	STATUS	
BASIS FOR RECOMMENDATION			
A Proceeds award would help close a funding gap that could prevent the operation from moving forward. The company's value proposition is based on a low cost of sales and transportation costs resulting from proximity to its customer base. Also, as there are no other companies developing aquaculture feeds based on black soldier fly larvae protein meal, this appears to be an opportunity for a WNY based company to take a leadership role in an emerging global industry. The Applicant indicates the technology developed through the project will reduce carbon dioxide, methane and other GHG emissions as compared to conventional food waste processing, such as landfilling, composting and anaerobic digestion. It will also improve the sustainability of wild caught fishmeal and overfished waterways.			



Western NY Power Proceeds Allocation Board

Western New York Economic Development Fund Recommendation Memo

EXHIBIT A-1

This Project will establish a new business in an abandoned building located on Buffalo's East side, thereby supporting the city's economic growth. The area is being considered by the New York State Department of Environmental Conservation as an Environmental Justice zone.

The Applicant anticipates creating 3 FTE's in the first 18 to 24 months.

The Project aligns well with several key WNYREDC strategies and priorities including the promotion of smart growth and sustainable neighborhoods, addressing climate change concerns and sustainable food systems, and helping to create a viable region.

ANTICIPATED DISBURSEMENT TERMS

Fund Benefits would be used to reimburse the applicant for a portion of costs associated with purchasing machinery and equipment. It is anticipated that funds will be disbursed in arrears upon project completion. Payment will be made upon presentation to the New York Power Authority ("NYPA") of invoices and such other documentation acceptable to NYPA verifying the applicant has incurred eligible expenses of approximately \$1,107,240.

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.
-
-



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Green Jobs Evaluation Incentive Plan

SUMMARY

The Trustees are requested to authorize the Authority to:

1. Consider “green job” impacts when evaluating applications and making recommendations to the Trustees for allocations of power under the Recharge New York (“RNY”), the Expansion Power (“EP”), Replacement Power (“RP”) and Preservation Power (“PP”) programs (collectively, “Economic Development Power” or “EDP” Programs), as more particularly described below.
2. Provide for enhanced scoring as part of the application evaluation process for the EDP Programs that recognizes and incentivizes applicant commitments to create and retain green jobs in New York.
3. Modify applications used for the EDP Programs to enable the Authority to collect relevant information from applicants related to green job creation and retention.

Staff recommends that the Authority be authorized to apply the aforementioned green jobs incentive plan prospectively to applications under the EDP Programs for: (1) allocations to support new load (e.g., new projects and expansion projects); and (2) retention-based allocations for load that is not already served by the Authority.

DISCUSSION

The authorizing statutes for each of the EDP Programs require application of criteria intended to assess job impacts that would result from an allocation of program power, such as the type and number of jobs that would be created and retained as a result of an allocation (collectively, “Job Impact Criteria”). See Public Authorities Law (“PAL”) § 1005(13)(a); Economic Development Law (“EDL”) § 188-a(c).

New York State energy and economic development policies have evolved since the enactment of these statutes and seek to encourage development of green businesses and green jobs in New York. For example, in enacting the New York State Climate Leadership and Community Protection Act (“CLCPA”) in 2019, the Legislature found and declared among other things that (emphasis added):

3. Action undertaken by New York to reduce greenhouse emissions will have an impact on global greenhouse gas emissions and the rate of climate change. In addition, such action will encourage other jurisdictions to implement complementary greenhouse gas reduction strategies and provide an example of how such strategies can be

implemented. *It will also advance the development of green technologies and sustainable practices within the private sector, which can have far-reaching impacts such as a reduction in the cost of renewable energy components, and the creation of jobs and tax revenues in New York.*

8. *Creating good jobs and a thriving economy is a core concern of New York state. Shaping the ongoing transition in our energy sector to ensure that it creates good jobs and protects workers and communities that may lose employment in the current transition must be key concerns of our climate policy. Setting clear standards for job quality and training standards encourages not only high-quality work but positive economic impacts.*

9. [M]uch of the infrastructure work preparing our state for additional climate change events must happen quickly and efficiently. *It is in the interest of the state to ensure labor harmony and promote efficient performance of work on climate change related work sites by requiring workers to be well-trained and adequately compensated.*

The CLCPA further provides for the creation of the New York State Climate Action Council (“Council”) which in turn is obligated to convene a Just Transition Working Group (“Working Group”). The Working Group’s responsibilities include:

- advising the Council on issues and opportunities for workforce development and training related to energy efficiency measures, renewable energy and other clean energy technologies;
- identifying energy-intensive industries and related trades and identify sector specific impacts of the state’s current workforce and avenues to maximize the skills and expertise of New York state workers in the new energy economy; and
- studying and reporting on the number of jobs created to counter climate change, which shall include but not be limited to the energy sector, building sector, transportation sector, and working lands sector; and the projection of the inventory of jobs needed and the skills and training required to meet the demand of jobs to counter climate change.

The Authority, in the 2030 Strategic Plan, encourages the promotion of clean and equitable economic development through the measure of jobs in the clean energy sector.

In response to these policies, staff is recommending that the jobs criteria for each of the EDP Programs be supplemented to enable the Authority to recognize and incentivize green jobs development in the State. Accordingly, the Trustees are requested to authorize staff to undertake the following measures for these purposes:

1. Consider an applicant’s commitment to create and retain green jobs when evaluating applications and making recommendations to the Trustees for allocations of power under the EDP Programs, in the case of applications for (1) allocations that would support new load (e.g., new projects and expansion projects), and (2) retention-based allocations for load not already served by the Authority.
2. Provide enhanced scoring credit to recognize and incentivize green job creation and retention by applicants for the types of allocations described above.

3. Make appropriate modifications to the applications and related process documents used for the EDP Programs to enable the Authority to collect relevant information from applicants related to green job creation and retention.

Exhibit A provides a functional definition of green jobs that staff proposes to use as a guide to develop the green jobs incentive plan.

At its meeting on December 7, 2020, the Economic Development Power Allocation Board (“EDPAB”) approved the evaluation of green job impacts under RNY Power program jobs-related criteria, and authorized staff to make changes to the RNY Power application to enable the collection of green jobs-related information to facilitate consideration of green jobs impacts.

If the Trustees authorize these changes, Staff will prepare the appropriate updates to the application review processes and evaluation processes within each EDP Program for implementation effective prospectively starting with the January 2021 allocation recommendations.

Staff believes that the recommendations contained herein are appropriate and supportive of State and Authority policies aimed at supporting and encouraging the creation of green jobs in New York.

FISCAL INFORMATION

The actions recommended herein will not have a negative impact on the Authority’s finances.

RECOMMENDATION

The Senior Vice President, Clean Energy Solutions recommends that the Trustees authorize staff to undertake the following measures to implement the green jobs incentive plan described above:

1. Consider an applicant’s commitment to create and retain green jobs when evaluating applications and making recommendations to the Trustees for allocations of power under the EDP Programs, in the case of applications for (1) allocations that would support new load (e.g., new projects and expansion projects), and (2) retention-based allocations for load not already served by the Authority.
2. Provide enhanced scoring credit to applicants to recognize and incentivize green job creation for the types of allocations described above.
3. Make appropriate changes to the applications and related process documents used for the EDP Programs to enable the Authority to collect relevant information from applicants related to green job creation and retention.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the Trustees hereby authorize Authority staff to: (1) consider an applicant's commitment to create and retain green jobs when evaluating applications and making recommendations to the Trustees for allocations of power under the Recharge New York, Expansion Power, Replacement Power and Preservation Power programs (collectively, "Economic Development Power" or "EDP" Programs); (2) provide enhanced scoring credit to applicants to recognize and incentivize green job creation; and (3) make appropriate changes to the applications and related process documents used for the EDP Programs to enable the Authority to collect relevant information from applicants needed to evaluate green job creation and retention; and be it further

RESOLVED, That the foregoing green jobs incentive plan may be implemented for applications under the EDP Programs for (1) allocations that would support new customer load (e.g., new projects and expansion projects), and (2) retention-based allocations for load not already served by the Authority; 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.

(Green Jobs Definition)

Any job in a business that produces goods and provides services that benefit the environment or conserve natural resources. These goods and services are sold to customers and include research and development, installation, and maintenance services related to the following:

1. Energy from Renewable Sources
 - Electricity, heat, or fuel generated from renewable sources. These energy sources include wind, biomass, geothermal, solar, ocean, hydropower, and landfill gas and municipal solid waste.
2. Energy Efficiency
 - Products and services that improve energy efficiency. Included in this group are energy-efficient equipment, appliances, buildings, and vehicles, as well as products and services that improve the energy efficiency of buildings and the efficiency of energy storage and distribution, such as Smart Grid technologies.
3. Pollution reduction and removal, greenhouse gas reduction, and recycling and reuse. These are products and services that:
 - Reduce or eliminate the creation or release of pollutants or toxic compounds, or remove pollutants or hazardous waste from the environment
 - Reduce greenhouse gas emissions through methods other than renewable energy generation and energy efficiency, such as electricity generated from nuclear sources
 - Reduce or eliminate the creation of waste materials; collect, reuse, remanufacture, recycle, or compost waste materials or wastewater
4. Natural Resources Conservation
 - Products and services that conserve natural resources. Included in this group are products and services related to organic agriculture and sustainable forestry; land management; soil, water, or wildlife conservation; and stormwater management
5. Environmental compliance, education and training, and public awareness. These are products and services that:
 - Enforce environmental regulations
 - Provide education and training related to green technologies and practices



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: **Niagara Power Project – Next Generation Niagara Program
Mechanical and Electrical Upgrades Project –
Wicket Gate Procurement – Contract Award**

SUMMARY

Trustee approval is requested to award a 15-year design, manufacture, and delivery contract to GE Renewables US LLC (“GE”) of Greenwood Village, CO in the amount of \$12.7 million, which includes \$2.4 million in escalation over the life of the contract, for the Next Generation Niagara – Mechanical and Electrical Upgrades – Wicket Gate Procurement Project. In addition, the Trustees are requested to waive the New York Buy America Act requirements regarding the purchase of steel components.

The Finance Committee, at its July 16, 2020 meeting, adopted a resolution recommending that the Trustees approve the aforementioned award and waiver.

BACKGROUND

Section 2879 of the Public Authorities Law and the Authority’s Guidelines for Procurement Contracts require Trustee approval for procurement contracts involving services to be rendered for a period in excess of one year. In accordance with the Authority’s Expenditure Authorization Procedures, the award of non-personal services contract in excess of \$6 million requires the Trustee approval.

The Next Generation Niagara Program (“NGN”) is comprised of four main projects: (1) controls upgrade, (2) mechanical and electrical upgrades, (3) 630-ton gantry crane upgrade, and (4) penstock platform and inspections. This contract is for the design, manufacture, and delivery of the wicket gates required to support the Mechanical and Electrical Upgrades project. This project will have future separate contract(s) to procure material and perform the remaining work.

The scope-of-work under this contract includes design, manufacture, and delivery of eleven (11) sets of twenty-four (24) wicket gates and three (3) spare gates. The wicket gates will be received and installed by Authority craft in support of the NGN mechanical and electrical upgrades.

It is estimated that the next contract for the design, furnish, and delivery of the shafts will be brought to the Trustees for approval in January 2021. The Mechanical Upgrades contract for the unit overhauls starting in 2023 is tentatively scheduled to be presented to the Trustees for approval at the May 2021 meeting. The overall Program is estimated for completion by 2034.

DISCUSSION

A Request for Proposal (“RFP”), Inquiry No. Q19-6866HM, was issued through the Authority’s Ariba system and was advertised in the NYS *Contract Reporter* on December 13, 2019. A total of fifteen (15) firms were invited into the Ariba Event with forty-seven (47) firms having viewed the RFP on the Strategic Supply Management website. Seven (7) proposals were received through Ariba and one (1) bid was received via email on February 18, 2020. The list of Bidders is below:

Company	Location
GE Renewables USA LLC	Greenwood Village, CO
Andritz Hydro Corp	Charlotte, NC
Industrial Machine & Mfg. Inc	Saskatoon, SK, CA
Gracon LLC	Lafayette, CO
American Hydro	Buffalo, NY
Voith Hydro, Inc.	York, PA
Hydro Tech USA Inc.	Sault Ste Marie, ON, CA
Toshiba America Energy Systems	Charlotte, NC

Three post-bid addenda were issued requesting additional, detailed information and addressing bidders’ questions. Two of the bidders, Industrial Machine & Mfg. Inc., and Toshiba America Energy Systems, were unresponsive to the post-bid addenda. After the evaluation of the post-bid addendum responses, there were no changes in bid-costs.

The Evaluation Committee, comprised of representatives from Strategic Supply Management, Mechanical Engineering, Project Delivery, Control Room Operations, Mechanical Maintenance, Quality Assurance, Environmental, Health and Safety, Project Management, and Program Controls, reviewed the proposals. The proposals were reviewed and evaluated based on the evaluation criteria established in the RFP including best value, proposal completeness, technical capabilities, ability to meet the schedule, experience in performing this type of work, and safety records.

The RFP event was also reviewed for compliance with the Executive Order (“EO”) 13920 “Securing the United States Bulk Power System.” After reviewing, it is not applicable to this Contract. These proposals were also reviewed for compliance with the New York Buy American Act. After review, it is recommended that this requirement be waived based on the cost savings that would be realized to the Authority and superior quality of the products offered by the preferred vendor. Requirements for Minority and Women Business Enterprise and Service-Disabled Veteran-Owned Business are waived on this contract.

GE was determined to be the “best value” bidder based on its strength of experience, ongoing support throughout the life of the project, a well, thought-out project execution plan, high quality manufacturing processes, ability to address the Authority’s requirements and expectations, and best value proposal.

The proposed spending for this contract is in alignment with the original program estimates for this work, which was approved by the Trustees at their July 2019 meeting and has been included in the approved Four-Year Capital Plan.

FISCAL INFORMATION

Payment associated with this Project will be made from the Authority's Capital Fund. Funding in the amount of \$224 million has been authorized, to date, for the Next Generation Niagara Program, which is estimated at \$1.1 billion, to complete preliminary engineering, conduct engineering and design, material procurement, implement limited construction, and Authority direct/indirect costs. The balance, to be authorized at future Trustee meetings, is estimated at \$876 million for the remaining work associated with this program.

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Senior Vice President – Power Supply, the Vice President – Project Management, the Vice President – Strategic Supply Management, the Regional Manager and the Project Manager recommend that the Trustees approve the award of a 15-year contract in the amount of \$12.7 million, which includes \$2.4 million in escalation over the life of the contract, to GE Renewables US LLC of Greenwood Village, CO for design, manufacture, and delivery of the Wicket Gates in support of the Next Generation Niagara Program. In addition, it is recommended that Trustees waive the requirements of the New York Buy America Act for this award.

The Finance Committee, at its July 16, 2020 meeting, adopted a resolution recommending that the Trustees approve the aforementioned award and waiver.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That 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 15-year contract to GE Renewables US LLC in the amount of \$12,700,000 for the design, manufacture, and delivery of the Wicket Gates in support of the Next Generation Niagara Program - Mechanical and Electrical Upgrades Project, as recommended in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the requirements of the New York Buy America Act for this contract award are hereby waived as recommended in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of the Next Generation Niagara – Mechanical and Electrical Upgrades Project – Wicket Gate Procurement;

Contractor

**GE Renewables US LLC
Greenwood Village, CO**

RFP # Q19-6866HM

Contract Approval

\$12.7 million

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.



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Release of Funds in Support of the
Western New York Power Proceeds Allocation Act

SUMMARY

The Trustees are requested to authorize the release of up to \$2 million in funds into the Western New York Economic Development Fund ("WNYEDF") representing "net earnings" from unallocated Expansion Power and Replacement Power sold into the wholesale energy market for the period January 1, 2021 through December 31, 2021 as set forth in Chapter 58 of the Laws of 2012. The request for authorization is based on current projections for 2021, however, the release of funds will be based on the actual 'net earnings'.

BACKGROUND

On March 30, 2012, Governor Cuomo signed into law the Western New York Power Proceeds Allocation Act (the "Act") which authorizes the Authority, as deemed feasible and advisable by the Trustees, to deposit into the WNYEDF net earnings from the sale of unallocated Expansion Power and Replacement Power from the Authority's Niagara power project. The Act repealed Chapter 436 of the Laws of 2010, which had amended the Public Authorities Law and the Economic Development Law, to create a somewhat similar program authorizing unallocated Expansion Power and Replacement Power to be utilized for WNYEDF benefits.

The effective date for calculating the net earnings is August 30, 2010, the original effective date of Chapter 436 of the Laws of 2010. Net earnings are defined as "the aggregate excess of revenues received by the power authority of the state of New York from the sale of expansion and replacement power and energy produced at the Niagara project that was sold in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis to an eligible expansion power or replacement power customer under the applicable tariff or contract."

The net earnings deposited into the WNYEDF will be utilized to fund economic development projects ("eligible projects") by private businesses, including not-for-profits, which are physically located within New York State and within a thirty-mile radius of the Niagara power project. Eligible projects are to support the growth of business in the state and thereby lead to increased tax revenues and job creation or retention. Eligible projects may include capital investment in buildings, equipment and associated infrastructure; research and development that benefits New York State; support for tourism and marketing and advertising for Western New York State tourism and business; and energy related projects as authorized under §1005(17) of Public Authorities Law.

The Act also established the Western New York Power Proceeds Allocation Board ("Allocation Board") which consists of five members appointed by the Governor. The Allocation Board's responsibilities include establishing written procedures for reviewing applications and making recommendations to the Authority for the allocation of fund benefits to eligible projects. In reviewing applications for benefits, the Allocation Board shall employ the same criteria used for determining eligibility for Expansion, Replacement and Preservation Power allocations as provided in §1005 of Public Authorities Law including, but not limited to, the number of jobs and type of jobs created as measured by wage and benefit levels; business' long-term commitment to the region; amount of capital investment; and impact on competitiveness in the region. Upon recommendation of the Allocation Board, the Authority shall award fund benefits to an applicant, provided however, that upon a showing of good cause, the Authority shall have the discretion as to whether to adopt the Allocation Board's recommendation, or to award benefits in a different amount or on different terms and conditions.

DISCUSSION

The Authority is requested, from time to time, to provide financial support to the State or for various other State programs. Any such transfer of funds must (1) be authorized by the Legislature; (2) be approved by the Trustees "as feasible and advisable," and (3) satisfy the requirements of the Authority's General Resolution Authorizing Revenue Obligations dated February 24, 1998, as amended and supplemented ("Bond Resolution"). Further, as set forth in the Trustees' Policy Statement dated May 24, 2011, a debt service coverage ratio of 2.0 shall be used as a reference point in considering any such payments or transfers.

The Bond Resolution's requirements to withdraw monies "free and clear of the lien and pledge created by the Bond Resolution" are such that withdrawals (a) must be for a "lawful corporate purpose as determined by the Authority," and (b) the Authority must determine, taking into account, among other considerations, anticipated future receipt of revenues or other moneys constituting part of the Trust Estate, that the funds to be so withdrawn are not needed for (i) payment of reasonable and necessary operating expenses, (ii) an Operating Fund reserve for working capital, emergency repairs or replacements, major renewals or for retirement from service, decommissioning or disposal of facilities, (iii) payment of, or accumulation of a reserve for payment of, interest and principal on senior debt or (iv) payment of interest and principal on subordinate debt.

The Trustees have already authorized the release of up to \$66 million in net earnings from the Operating Fund to the WNYEDF representing the then-estimated net earnings from inception through December 31, 2020. Actual net earnings deposited into the WNYEDF through this period totaled \$41.7 million.

Staff is seeking authorization to deposit into the WNYEDF net earnings for the period January 1, 2021 through December 31, 2021 of up to a total of \$2 million. While it is estimated that approximately \$0.58 million in net earnings will be generated based upon current levels of unallocated Expansion Power and Replacement Power from the Authority's Niagara power project and presently projected wholesale energy prices, the recommendation for up to \$2 million reflects the potential volatility in market prices. If authorized by the Trustees, such net earnings would be deposited into the WNYEDF on, at least, a quarterly basis. Such deposits may be made up to a fiscal quarter after the period in which the net earnings are generated.

Staff has reviewed the effect of releasing the requested up to \$2 million in funding at this time on the Authority's expected financial position and reserve requirements. In accordance with the Board's Policy Statement adopted May 24, 2011, staff also calculated the impact of this release, together with (i) the release of \$30 million in Recharge New York Discounts for 2020, (ii) the release of up to \$91.0 million in Canal-related operating expenses for 2020 (iii) the release

of up to \$2 million in Western NY Power Proceeds net earnings, and (iv) and the release of up to \$1 million in Northern NY Power Proceeds net earnings on the Authority's debt service coverage ratio and determined it would not fall below the 2.0 reference level. Based on the Authority's Budget and Four-Year Financial Plan, the 2.0 reference point level is forecasted to be met at each year-end of the forecast period 2021-2024. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to release such amounts from the trust estate created by the Bond Resolution consistent with the terms thereof.

FISCAL INFORMATION

Staff has determined that sufficient funds are available to provide up to \$2 million for deposit into the WNYEDF for net earnings calculated for the period January 1, 2021 through December 31, 2021, and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution. Provisions for the Authority's fiscal year 2021 deposits for this program were also included in the 2021 Operating Forecast subject to approval by the Trustees in December 2020. Authorization for the deposit of net earnings calculated for periods beyond December 31, 2021 into the WNYEDF will be requested of the Trustees at a later date.

RECOMMENDATION

The Executive Vice President & Chief Financial Officer recommends that the Trustees (a) affirm the deposit of up to \$2 million into the WNYEDF, to the extent such amount of net earnings is generated during the period January 1, 2021 through December 31, 2021, is feasible and advisable and (b) authorize such amount to be released from the Operating Fund to the WNYEDF.

For the reasons stated, I recommend the approval of the above-requested action by adoption of a resolution in the form of the attached draft resolution.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the Trustees hereby authorize the release of up to \$2 million from the Operating Fund to the Western New York Economic Development Fund ("WNYEDF"), to the extent such amount of net earnings is generated for the period from January 1, 2021 through December 31, 2021, as authorized by Chapter 58 of the Laws of 2012 and as discussed in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the amount of up to \$2 million to be released to the WNYEDF for the purposes authorized by Chapter 58 described in the foregoing resolution is (a) affirmed by the Trustees to be feasible and advisable and (b) not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That as a condition to making the releases specified in the foregoing resolutions, on the day of such payment the Treasurer or the Deputy Treasurer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer, the Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolutions, subject to approval as to the form thereof by the Executive Vice President and General Counsel.



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Release of Funds in Support of the
Northern New York Power Proceeds Allocation Act

SUMMARY

The Trustees are requested to authorize the release of up to \$1 million in funds into the Northern New York Economic Development Fund ("NNYEDF") representing "net earnings" from the sale of unallocated St. Lawrence County Economic Development Power into the wholesale energy market for the period January 1, 2021 through December 31, 2021, as authorized by Chapter 545 of the Laws of 2014. The request for authorization is based on current projections for 2021, however, the release of funds will be based on the actual 'net earnings'.

BACKGROUND

1. Program Structure

On December 29, 2014, Governor Cuomo signed into law the Northern New York Power Proceeds Allocation Act (the "Act") which created a program intended to support economic development by providing financial support for eligible economic development projects located, or proposed to be located, in St. Lawrence County by eligible applicants.

In summary, the program is to be administered by the Authority, with assistance from the five-member Northern New York Power Proceeds Allocation Board ("NNYPPAB") which the Act creates. The NNYPPAB, whose members are appointed by the Governor, is authorized to solicit applications from "eligible applicants" for financial assistance known as "fund benefits" to support "eligible projects;" evaluate applications based on eligibility requirements and applicable criteria; and make recommendations to the Trustees for awards of fund benefits. The Trustees are authorized to consider whether to make awards of fund benefits to support eligible projects that are recommended by the NNYPPAB.

The Act defines "eligible applicant" as a private business, including a not-for-profit corporation. "Eligible projects" are defined as economic development projects that are or would be physically located within St. Lawrence County that will support the growth of business in St. Lawrence County and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments. Eligible projects may include capital investments in buildings, equipment, and associated infrastructure (collectively, "infrastructure") owned by an eligible applicant for fund benefits; transportation projects under state or federally approved plans; the acquisition of land needed for infrastructure; research and development where the results of such research and development will directly benefit New York State; support for tourism and marketing and advertising efforts for St. Lawrence County tourism and business; and energy-related projects. Eligible projects do not include, and fund benefits may not be used for, public interest advertising or advocacy; lobbying; the support or opposition of any candidate for

public office; the support or opposition to any public issue; legal fees related to litigation of any kind; expenses related to administrative proceedings before state or local agencies; or retail businesses as defined by NNYPPAB, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

Applications will be evaluated using the following criteria specified in the Act:

1. whether the eligible project would occur in the absence of an award of fund benefits;
2. the extent to which an award of fund benefits will result in new capital investment in the State by the eligible applicant and the extent of such investment;
3. other assistance the eligible applicant may receive to support the eligible project;
4. the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed if the eligible applicant were to receive an award of fund benefits;
5. the eligible applicant's payroll, salaries, benefits and number of jobs at the eligible project for which an award of fund benefits is requested;
6. the number of jobs that will be created or retained within St. Lawrence County and any other parts of the State in relation to the requested award of fund benefits, and the extent to which the eligible applicant will agree to commit to creating or retaining such jobs as a condition to receiving an award of fund benefits;
7. whether the eligible applicant is at risk of closing or curtailing facilities or operations in St. Lawrence County and other parts of the State, relocating facilities or operations out of St. Lawrence County and other parts of the State, or losing a significant number of jobs in St. Lawrence County and other parts of the State, in the absence of an award of fund benefits;
8. the significance of the eligible project that would receive an award of fund benefits to the economy of the area in which such eligible project is located; and
9. for new, expanded and/or rehabilitated facilities, the extent to which the eligible applicant will commit to implement or otherwise make tangible investments in energy efficiency measures as a condition to receiving an award of fund benefits.

The Act provides that the NNYPPAB shall also consider the extent to which an award of fund benefits would be consistent with the strategies and priorities of any Regional Economic Development Council having responsibility for the region in which the eligible project would be located, and authorizes the NNYPPAB to solicit the views of organizations that have an interest in economic development in St. Lawrence County regarding such matters as proposed funding strategies and priorities, and applications for fund benefits.

2. Program Funding

The program is funded by "net earnings" from the sale of unallocated St. Lawrence County Economic Development Power ("SLCEDP"). SLCEDP consists of up to 20 MW of hydropower from the Authority's St. Lawrence/FDR Power Project which the Authority has made available for sale to the Town of Massena Electric Department ("MED") for MED to sub-allocate for economic development purposes in accordance with a contract between the parties entered into in 2012 entitled "Agreement Governing the Sale of St. Lawrence-FDR Project Power and

Energy to the Town of Massena Electric Department for Economic Development Purposes” (the “Authority-TMED Contract”). The Act defines “net earnings” as the aggregate excess of revenues received by the Authority from the sale of energy associated with SLCEDP by the Authority in the wholesale energy market over what revenues would have been received had such energy been sold to MED on a firm basis under the terms of the Authority-MED contract. For the first five years after enactment, the amount of SLCEDP that may be used by the Authority to generate net earnings may not exceed the lesser of 20 MW or the amount of SLCEDP that has not been allocated by the Authority under the Authority-MED contract for sub-allocations. Thereafter, the amount of SLCEDP that may be used by the Authority to generate net earnings may not exceed the lesser of 10 MW or the amount of SLCEDP that has not been allocated under the Authority-MED contract for sub-allocations.

The Act also authorized the Authority to create and maintain a fund known as the Northern New York Economic Development Fund (the “NNYEDF”), and deposit net earnings into the NNYEDF as determined to be feasible and advisable by the Trustees. The NNYEDF is a separate fund residing within the Authority’s Operating Fund.

DISCUSSION

The Authority is requested, from time to time, to provide financial support to the State or for various other State programs. Any such transfer of funds must (1) be authorized by the Legislature, (2) be approved by the Trustees “as feasible and advisable,” and (3) satisfy the requirements of the Authority’s General Resolution Authorizing Revenue Obligations, dated February 24, 1998, as amended and supplemented (“Bond Resolution”). Further, as set forth in the Trustees’ Policy Statement dated May 24, 2011, a debt service coverage ratio of 2.0 shall be used as a reference point in considering any such payments or transfers.

The Bond Resolution’s requirements to withdraw monies “free and clear of the lien and pledge created by the Bond Resolution” are such that withdrawals (a) must be for a “lawful corporate purpose as determined by the Authority,” and (b) the Authority must determine, taking into account, among other considerations, anticipated future receipt of revenues or other moneys constituting part of the Trust Estate, that the funds to be so withdrawn are not needed for (i) payment of reasonable and necessary operating expenses, (ii) an Operating Fund reserve for working capital, emergency repairs or replacements, major renewals or for retirement from service, decommissioning or disposal of facilities, (iii) payment of, or accumulation of a reserve for payment of, interest and principal on senior debt, or (iv) payment of interest and principal on subordinate debt.

The Trustees have already authorized the release of up to \$15 million in net earnings from the Operating Fund to the NNYEDF representing the then-estimated net earnings from inception through December 31, 2020. Actual net earnings deposited into the NNYEDF through this period totaled \$5.1 million.

Staff is seeking authorization to deposit into the NNYEDF net earnings for the period January 1, 2021 through December 31, 2021 of up to a total of \$1 million. While it is estimated that approximately \$0.46 million in net earnings will be generated based upon current levels of unused St. Lawrence County Economic Development Power and presently projected wholesale energy prices, the recommendation for up to \$1 million reflects the potential volatility in market prices. If authorized by the Trustees, such net earnings would be deposited into the NNYEDF on, at least, a quarterly basis. Such deposits may be made up to a fiscal quarter after the period in which the net earnings are generated.

Staff has reviewed the effect of releasing the requested up to \$1.0 million in funding at this time on the Authority’s expected financial position and reserve requirements. In accordance

with the Board's Policy Statement adopted May 24, 2011, staff also calculated the impact of this release, together with (i) the release of \$30 million in Recharge New York Discounts for 2020, (ii) the release of up to \$91.0 million in Canal-related operating expenses for 2020; (iii) and the release of up to \$2 million in Western NY Power Proceeds net earnings, and (iv) the release of up to \$1 million in Northern NY Power Proceeds net earnings, on the Authority's debt service coverage ratio and determined it would not fall below the 2.0 reference level. Based on the Authority's Budget and Four-Year Financial Plan, the 2.0 reference point level is forecasted to be met at each year-end of the forecast period 2021-2024. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to release such amounts from the trust estate created by the Bond Resolution consistent with the terms thereof.

FISCAL INFORMATION

Staff has determined that sufficient funds are available to provide up to \$1 million for deposit into the NNYEDF for net earnings generated for the period January 1, 2021 through December 31, 2021, and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution. Provisions for the Authority's fiscal year 2021 deposits for this program were also included in the 2021 Operating Forecast subject to approval by the Trustees in December 2020. Authorization for the deposit of net earnings calculated for periods beyond December 31, 2021 into the NNYEDF will be requested of the Trustees at a later date.

RECOMMENDATION

The Executive Vice President & Chief Financial Officer recommends that the Trustees (a) affirm the deposit of up to \$1 million into the NNYEDF, to the extent such amount of net earnings is generated during the period January 1, 2021 through December 31, 2021, is feasible and advisable and (b) authorize such amount to be released from the Operating Fund to the NNYEDF.

For the reasons stated, I recommend the approval of the above-requested action by adoption of a resolution in the form of the attached draft resolution.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the Trustees hereby authorize the release of up to \$1 million from the Operating Fund to the Northern New York Economic Development Fund ("NNYEDF"), to the extent such amount of net earnings is generated for the period from January 1, 2021 through December 31, 2021, as authorized by Chapter 545 of the Laws of 2014 ("Chapter 545") and as discussed in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the amount of up to \$1 million to be released to the NNYEDF for the purposes authorized by Chapter 545 described in the foregoing resolution is (a) affirmed by the Trustees to be feasible and advisable and (b) not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That as a condition to making the releases specified in the foregoing resolutions, on the day of such payment the Treasurer or the Deputy Treasurer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer, the Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolutions, subject to approval as to the form thereof by the Executive Vice President and General Counsel.



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: **NYPA Fleet Vehicles – Transfer of Ownership to
Regional Boards of Cooperative Education Centers**

SUMMARY

The Trustees are requested to approve the transfer of ownership of three Authority fleet vehicles to three regional Boards of Cooperative Education Centers ("BOCES") for use by those institutions in an educational capacity in furtherance of NYPA's strategic goal of increased electric vehicle technology training and acceptance of electric vehicles in the state of New York. The three BOCES institutions identified herein are:

- Capital Region BOCES
- Orleans-Niagara BOCES
- St. Lawrence BOCES

BOCES located in disadvantaged, or Environmental Justice Communities were prioritized.

BACKGROUND

In 2019, a "Eureka" project suggestion was submitted which suggested a reconsideration of the process in which NYPA disposes of its electric vehicle fleet. The suggestion was refined and reviewed by internal NYPA stakeholders, including NYPA Fleet Operations, Ethics and Compliance, Legal, Environmental Justice, and Strategic Supply Management. The implementation of donating retired NYPA electric vehicles to regional educational institutions for use in a training environment as part of the institutions' automotive maintenance and repair curriculum was accepted and agreed upon by all parties. This donation would serve as a pilot for a potential wider distribution of NYPA electric vehicles for educational purposes.

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; 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

The NYPA Fleet Vehicles' useful life is defined as 5 years of age or 75,000 miles. As of June 2020, there are three NYPA vehicles which are either fully electric or hybrid and are nearing the end of their useful life. These vehicles have been confirmed by Fleet Operations as

being available for use in this program. The details of the three vehicles are included in table 1 below. Normal practice for retired NYPA vehicles is that they are sold at auctions.

With the increasing popularity and availability of electric vehicles in the domestic market, the demand for technicians who can service these vehicles will be increasing as well. As these vehicles are newer and their mechanical components vary greatly from fossil fuel powered vehicles, opportunities to become a technician in this area are sparse. By donating the Authority's retired electric vehicles to educational institutions with the express purpose that they be used only as a training instrument for future EV technicians, NYPA is contributing to New York State's Green Energy future in a very tangible way, and improving career prospects for those individuals living within the communities in which the educational institutions exist. The addition of EVs and Hybrid vehicles to the institution's curriculum will also allow those institutions to provide additional specialized certifications to students.

Consequently, the Authority feels that it is prudent to donate these vehicles which have a combined appraised fair market value of \$10,575 (Exhibit "A"). The educational institutions have expressed interest in obtaining ownership of the vehicles as an addition to their educational fleet (Statement of Need- Capital Region BOCES, Statement of Need- Orleans-Niagara BOCES, Statement of Need- St. Lawrence BOCES) (Exhibit "B.").

Table 1: Electric Vehicles Nearing Retirement

FUEL_TYPE	EQUIP_NO	YEAR	MANUF	MODEL	SERIAL_NO	DESCRIPTION	METER READING	Fair Market Value
Electric/Gas Hybrid	12H20	2012	FORD	FUSI	3FADP0L3XCR340804	CAR-SEDAN-HYBRID	108,047	\$3,075
Electric	12E1	2012	NISS	LEAF	JN1AZ0CP2CT020551	CAR-COM-SEDAN-ELECTRIC-ZERO EMISSION	5,108	\$3,175
Electric/Gas Hybrid	13H27	2013	FORD	FUSI	3FA6P0LU8DR349102	CAR-SEDAN-HYBRID	122,176	\$4,325

The above vehicles were confirmed by Fleet Management to be available for use for these purposes.

The transfer is to be further conditioned upon the execution of an agreement between the educational institutions 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, such as the requirement that the vehicles only be used for educational purposes and are not to be driven.

FISCAL INFORMATION

In accordance with the foregoing, the vehicles will be transferred to the educational institutions without any payment to the Authority.

RECOMMENDATION

The Vice President – Environmental Justice and Sustainability recommends that the Trustees approve the transfer of ownership of three Authority fleet vehicles to regional Boards of Cooperative Education Centers.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That 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 three fleet vehicles listed in Exhibit "A" to the accompanying memorandum to three Boards of Cooperative Education Centers ("BOCES"): Capital Region BOCES, Orleans-Niagara BOCES, and St. Lawrence BOCES, in accordance with the Authority's 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.

**J.D. POWER**

NADAguides Value Report 9/28/2020

2012 Nissan LEAF

Hatchback 5D SL

Values

	Rough Trade-In	Average Trade-In	Clean Trade-In	Clean Retail
Base Price	\$1,675	\$2,400	\$3,000	\$4,875
Mileage (5,108)	\$1,500	\$1,500	\$1,500	\$1,500
Total Base Price	\$3,175	\$3,900	\$4,500	\$6,375
Options				
Price + Options	\$3,175	\$3,900	\$4,500	\$6,375

Selling Your Car? **Get an Online Offer** in 2 Minutes.

**J.D. POWER**

NADAguides Value Report 9/28/2020

2013 Ford Fusion

Sedan 4D SE Hybrid I4

Values

	Rough Trade-In	Average Trade-In	Clean Trade-In	Clean Retail
Base Price	\$5,050	\$6,050	\$6,875	\$9,050
Mileage (122,176)	-\$725	-\$725	-\$725	-\$725
Total Base Price	\$4,325	\$5,325	\$6,150	\$8,325
Options				
Price + Options	\$4,325	\$5,325	\$6,150	\$8,325

Selling Your Car? Get an Online Offer in 2 Minutes.

**J.D. POWER**

NADAguides Value Report 9/28/2020

2012 Ford Fusion

Sedan 4D Hybrid

Values

	Rough Trade-In	Average Trade-In	Clean Trade-In	Clean Retail
Base Price	\$2,950	\$3,825	\$4,525	\$6,600
Mileage (108,047)	\$125	\$125	\$125	\$125
Total Base Price	\$3,075	\$3,950	\$4,650	\$6,725
Options				
Price + Options	\$3,075	\$3,950	\$4,650	\$6,725

Selling Your Car? **Get an Online Offer** in 2 Minutes.



Central Administration
Office of the Senior Executive Officer
Joseph P. Dragone, Ph.D.
Phone: 518.862.4901
Fax: 518.862.4903

November 11, 2020

Mr. Gil Quiniones
President and CEO
New York Power Authority
123 Main Street
White Plains, NY 10601

Dear Mr. Quiniones:

Capital Region BOCES would be pleased to participate and receive a hybrid or electric vehicle to complement and improve our current Automotive Technology Programs. Our programs are located in Colonie, NY, and serve approximately 130 students from throughout the Capital Region including 24 school districts from Albany, Schenectady, Schoharie and Saratoga Counties.

We understand your board is considering the possibility of transferring ownership of an electric vehicle or hybrid vehicle to our BOCES, and we have been asked to express why gaining an electric or hybrid vehicle would benefit our program.

The vehicle will be used for educational purposes to assist in the training for our Automotive Technology Programs. We are ASE accredited, and part of that accreditation includes preparing students for their careers. As electric vehicle and hybrid vehicle technology is becoming increasingly popular, we aim to cover this technology. Financial constraints make it impossible to obtain late model vehicles to use in our labs, and we rely solely on the generosity of partners to donate vehicles to provide our students with the opportunities for practical experience. This vehicle would provide a physical, hands on tool for EV/hybrid training. A donation of a hybrid or electric vehicle would facilitate safety, electrical, and technology training needed for students to receive possible additional ASE certifications.

We greatly appreciate the opportunity to receive a vehicle donation to our BOCES program and being part of NYPA's initiative to enhance EV/hybrid education and workforce development.

Thank you,

A handwritten signature in black ink, appearing to read "J. Dragone", with a long horizontal flourish extending to the right.

Joseph P. Dragone, Ph.D.
Senior Executive Officer



Clark J. Godshall, Ed.D.
District Superintendent

Michael Weyrauch, Ed.D.
Director of CTE, Instructional Services and Adult Education

November 12, 2020

Mr. Gil Quiniones
President and CEO
New York Power Authority
123 Main Street
White Plains, New York 10601

Dear Mr. Quiniones:

The Orleans/Niagara BOCES Niagara Career and Technical Center would be pleased to participate and receive a hybrid or electric vehicle to complement and improve our current Automotive Technology Program. Approximately 70 students attend our BOCES program located in Sanborn, New York, serving students from school districts throughout the region including Starpoint, Lewiston-Porter, Niagara Falls, Niagara Wheatfield, Newfane, Lockport, North Tonawanda, Wilson, Barker, and Royalton-Hartland.

We understand your Board is considering the possibility of transferring ownership of an electric vehicle or hybrid vehicle to our school, and we have been asked to express why gaining an electric or hybrid vehicle would benefit our program.

The vehicle will be used for educational purposes to assist in the training for our Automotive Training Program. We are ASE accredited, and part of that accreditation includes preparing students for their careers. As electric vehicle and hybrid vehicle technology is becoming increasingly popular, we aim to cover this technology. Our BOCES currently does not have any hybrid or electric vehicles due to financial/resource restrictions. This vehicle would provide a physical, hands-on tool for EV/hybrid training. A donation of a hybrid or electric vehicle would facilitate safety, electrical, and technology training needed for students to receive possible additional ASE certifications.

It is important for students to gain as much exposure to the vast array of vehicles the industry offers. Our students get hybrid theory lessons in class, but the only hands-on exposure with hybrid vehicles is if by some far chance one is brought into the shop. We see this donation as a huge asset to the automotive program because a hybrid vehicle will further the current curriculum, as well as further the students' knowledge of hybrids. Having hands-on experience with a hybrid will better prepare our students for employment upon graduation and this is the ultimate goal of the Automotive Technology Program.

We greatly appreciate the opportunity to receive a vehicle donation to our BOCES program and being a part of NYPA's initiative to enhance EV/hybrid education and workforce development.

Sincerely,

Dr. Michael Weyrauch
Director of CTE, Instructional Services and
Adult Education

MW/csc

*District Superintendent & Orleans Career and Technical Education Center • 4232 Shelby Basin Road, Medina, New York 14103
Niagara Career and Technical Education Center & Niagara Academy • 3181 Saunders Settlement Road, Sanborn, New York 14132
Niagara Conference and Technology Center • 4124 Saunders Settlement Road, Sanborn, New York 14132
(716) 731-6800*

ALBION • BARKER • LEWISTON-PORTER • LOCKPORT • LYNDONVILLE • MEDINA • NEWFANE • NIAGARA FALLS
NIAGARA-WHEATFIELD • NORTH TONAWANDA • ROYALTON-HARTLAND • STARPOINT • WILSON



Thomas R. Burns
District Superintendent
Educational Services Center
Phone: (315) 386-4504
Email: tburns@sllboces.org

November 12, 2020

Mr. Gil Quiniones, President and CEO
New York Power Authority
123 Main Street
White Plains, NY 10601

Dear Mr. Quiniones:

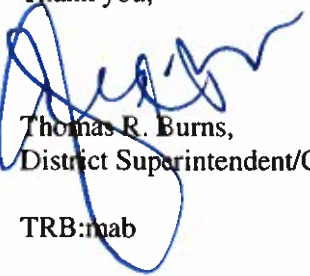
The St. Lawrence-Lewis BOCES would be pleased to participate and receive a hybrid or electric vehicle to complement and improve our current Automotive Technology Program. Approximately 78 students attend our BOCES program, located in Norwood, New York, serving students from school districts throughout the region including Massena Central School, Brasher Falls Central School, Norwood-Norfolk Central School, Potsdam Central School, Colton-Pierrepont Central School, Parishville-Hopkinton Central School, and Canton Central School.

We understand your board is considering the possibility of transferring ownership of an electric vehicle or hybrid vehicle to our district, and we have been asked to express why gaining an electric or hybrid vehicle would benefit our program.

The vehicle will be used for educational purposes to assist in the training for our Automotive Training Program. We are ASE accredited, and part of that accreditation includes preparing students for their careers. As electric vehicle and hybrid vehicle technology is becoming increasingly popular, we aim to cover this technology. Our BOCES currently does not have any hybrid or electric vehicles due to financial/resource restrictions. This vehicle would provide a physical, hands on tool for EV/hybrid training. A donation of a hybrid or electric vehicle would facilitate safety, electrical, and technology training needed for students to receive possible additional ASE certifications.

We greatly appreciate the opportunity to receive a vehicle donation to our BOCES program and being part of NYPA's initiative to enhance EV/hybrid education and workforce development.

Thank you,



Thomas R. Burns,
District Superintendent/Chief School Officer

TRB:mab

40 W. MAIN STREET
PO BOX 231
CANTON, NY 13617
[HTTPS://WWW.SLLBOCES.ORG/](https://www.sllboces.org/)



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: **Procurement (Services) and Other Contracts –
Business Units and Facilities –
Awards, Extensions and/or Additional Funding**

SUMMARY

The Trustees are requested to approve the award and funding of the multiyear procurement (services) contracts listed in Exhibit “A,” in support of projects and programs for the Authority’s Business Units/Departments and Facilities. Detailed explanations of the recommended awards and extensions, including the nature of such services, the basis for the new awards if other than to the lowest-priced, lowest total cost of ownership or “best valued” bidders and the intended duration of such contracts, or the reasons for the extension and the projected expiration dates, are set forth in the discussion below.

BACKGROUND

Section 2879 of the Public Authorities Law and the Authority’s Guidelines for Procurement Contracts require the Trustees’ approval for procurement contracts involving services to be rendered for a period in excess of one year.

The Authority’s Expenditure Authorization Procedures (“EAPs”) require the Trustees’ approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts in excess of \$6 million, as well as personal services contracts in excess of \$2 million if low bidder or best value, or \$1 million if sole-source, single-source or other non-competitive awards.

The Authority’s EAPs also require the Trustees’ approval when the cumulative change order value of a personal services contract exceeds \$500,000, or when the cumulative change order value of a non-personal services, construction, equipment purchase, or non-procurement contract exceeds the greater of \$6 million or 25% of the originally approved contract amount not to exceed \$6 million.

DISCUSSION

Awards

The Trustees are requested to approve the award and funding of the multiyear procurement (services) contracts listed in Exhibit “A,” where the EAPs require approval based upon contract value or the terms of the contracts will be more than one year. Except as noted, all of these contracts contain provisions allowing the Authority to terminate the services for the Authority’s convenience, without liability other than paying for acceptable services rendered to the effective date of termination. Approval is also requested for funding all contracts. Except as noted, these contract awards do not obligate the Authority to a specific level of personnel resources or expenditures.

The issuance of multiyear contracts is recommended from both cost and efficiency standpoints. In many cases, reduced prices are negotiated for these long-term contracts. Since these services are typically required on a continuous basis, it is more efficient to award long-term contracts than to rebid these services annually.

Extensions

Although the firms identified in Exhibit “B” have provided effective services, the issues or projects requiring these services have not been resolved or completed and the need exists for continuing these contracts. The Trustees’ approval is required because the terms of these contracts will exceed one year including the extension, the term of extension of these contracts will exceed one year and/or because the cumulative change-order limits will exceed the levels authorized by the EAPs in forthcoming change orders. The subject contracts contain provisions allowing the Authority to terminate the services at the Authority’s convenience, without liability other than paying for acceptable services rendered to the effective date of termination. These contract extensions do not obligate the Authority to a specific level of personnel resources or expenditures.

Extension of the contracts identified in Exhibit “B” is requested for one or more of the following reasons: (1) additional time is required to complete the current contractual work scope or additional services related to the original work scope; (2) to accommodate an Authority or external regulatory agency schedule change that has delayed, reprioritized or otherwise suspended required services; (3) the original consultant is uniquely qualified to perform services and/or continue its presence and rebidding would not be practical or (4) the contractor provides proprietary technology or specialized equipment, at reasonable negotiated rates, that the Authority needs to continue until a permanent system is put in place.

The following is a detailed summary of each recommended contract award and extension.

Contract Awards in Support of Business Units/Departments and Facilities:

Business Services – Treasury

The proposed personal services contract with **Glass, Lewis & Company LLC (“GLC”)** (**Q20-6993RM**) would provide Proxy Manager services for the Authority’s Other Post-Employment Benefits Trust (“OPEB”). The Proxy Manager to provide proxy voting advisory and execution services on behalf of the Authority OPEB Fund. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority’s website. Three proposals were received and evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to GLC which is technically and commercially qualified and meets the bid requirements on the basis of “best value,” which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of five years, subject to the Trustees’ approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$350,000. It should be noted that GLC is a Small Business Enterprises.

Commercial Operations – Engineering & Construction Management

The proposed non-personal services contracts with **Future Tech Consultants of New York, Inc. (“FTC”)**, **JOADEM Corporation (“JOADEM”)**, **MP Engineers and Architects PC (“MPE”)**, **Tectonic Engineering & Surveying Consultants PC (“Tectonic”)** and **Twin Peaks Incorporated (“TPI”)** (**Q20-6980CC**) would provide Special Inspections services for

Engineering and Construction Management department projects at customer facilities in New York City. The services include performing special inspections and tests on construction projects to meet all requirements per permitting through the New York City Department of Buildings ("NYC DOB"). Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Fifteen firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Eight proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to FTC, JOADEM, MPE, Tectonic, and TPI which are technically and commercially qualified and meet the bid requirements on the basis of "best value", which optimizes quality, cost and efficiency among responsive and responsible offerors. These contracts are for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contract, \$6 million. It should be noted that JOADEM and MPE are NYS certified Minority-owned Business Enterprises. It should also be noted that FTC, JOADEM, MPE and TPI are Small Business Enterprises.

Commercial Operations – Engineering & Construction Management

The proposed construction contracts for Trade On-Call Services would provide labor and materials to perform on-call services for installations, replacements, repairs, troubleshooting, etc. under various trade disciplines at the Authority and customer facilities throughout all regions of New York State. **CD Perry LLC ("CD Perry"), Dynamic US, Inc. ("Dynamic"), Global Iron Works, Inc. ("GIW"), Hohl Industrial Services, Inc. ("Hohl"), John W. Danforth Company ("JWD"), Klima New York LLC ("Klima"), Pinto Construction Services, Inc. ("PCS") and Whitestone Construction Corporation ("WCC")** would provide general facilities including but not limited to carpentry, painting, glazer, plumbing, mechanical/HVAC and etc. **In addition, Candela Systems Corporation ("CSC"), EIA Electric, Inc. ("EIA"), Northline Utilities LLC ("Northline"), Ohm's Electrical Corporation ("OEC"), RDS Industries, Inc. ("RDS") and Threetech Electric, Inc. ("Threetech") (Q20-6982AP)** would provide electrical and lighting trades. Based on customer feedback and future business development needs, the Trade On-Call Services team was formally tasked with developing an implementation model for customers that require more rapid turnaround time than the conventional approach under more urgent circumstances. The Trade On-Call Services model is intended to provide such expedited services at a competitive cost and will offer a wide-range of trade disciplines throughout all regions of New York State. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Forty-six firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Sixteen proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to CD Perry, Dynamic, GIW, Hohl, JWD, Klima, PCS, WCC, CSC, EIA, Northline, OEC, RDS and Threetech which are technically and commercially qualified and meet the bid requirements on the basis of "best value", which optimizes quality, cost and efficiency among responsive and responsible offerors. These contracts are for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contract, \$7.5 million. It should be noted that CSC, GIW, RDS Industries and Threetech are NYS certified Minority-owned Business Enterprises. It should be noted that OEC is NYS certified Women-owned Business Enterprise. It should also be noted that Dynamic, EIA, GIW, JWD, Klima, PCS and Threetech are Small Business Enterprises.

Human Resources & Administration – Aviation

The proposed non-personal services contract with **Turboprop East, Inc. (“Turboprop”) (Q20-6995JM)** would provide maintenance services to be performed on the Authority’s Beechcraft King Air 350 aircraft. NYPA operates a 2007 King Air 350 aircraft based at Westchester Airport in Harrison, NY, which is equipped with 9 passenger seats, all weather avionics, cruising speed of 300 knots and a present value of approximately \$3.5M. Periodic service and inspections are required for the aircraft to comply with Federal Aviation Regulations, and to ensure it is always maintained in a safe and reliable operating condition. Scheduled and unscheduled maintenance must be routinely completed in accordance with the manufacture’s recommendations as predicated by hours of usage and/or calendar date as applicable. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority’s website. Six firms/entities downloaded the ad on NYPA.gov. One proposal was received electronically via Ariba and was evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to Turboprop which is technically and commercially qualified and meets the bid requirements on the basis of “best value,” which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of five years, beginning on or about April 1, 2021, subject to the Trustees’ approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$1.7 million. It should also be noted that Turboprop is a Small Business Enterprises.

Information Technology – IT & Cyber Security

The proposed personal services contract with **Cognizant Technology Solutions U.S. Corporation (“CTS”) (Q20-6920JH)** would provide implementation of a Flexera ITAM software solution. Information Technology (“IT”) is implementing an IT Asset Management (“ITAM”) system to manage the software and hardware assets through their lifecycle. This system will provide improved visibility of IT assets and facilitate the necessary information to provide governance to ensure the Authority is compliant with software licensing agreements and maintenance contracts. The benefits of an ITAM system include reducing financial risk, reducing operating cost for new software and hardware purchases, and providing greater visibility for software licensing tracking and compliance. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority’s website. Twenty firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Twelve proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to CTS which is technically and commercially qualified and meets the bid requirements on the basis of “best value,” which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of three years, subject to the Trustees’ approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$3,192,826.

Utility Operations – Facility & Infrastructure PM

The proposed non-personal services contract with **Michael Bellantoni, Inc. (“Bellantoni”) (Q20-7026JM)** would provide Snow Removal and Landscaping Maintenance services for the Clarence D. Rappleyea (Centroplex) building. Year-round services including snow and ice management and landscaping maintenance are required to keep the property safe and presentable. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority’s website. Three firms/entities were listed as having been invited to, or requested to participate in, the Ariba

event. Two proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to Bellantoni which is technically and commercially qualified and meets the bid requirements on the basis of “best value,” which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of five years, beginning on or about January 1, 2021, subject to the Trustees’ approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$1 million. It should also be noted that Bellantoni is a Small Business Enterprise, and they self-certified in Dun & Bradstreet as a US Veteran Owned Business.

Utility Operations – System Planning & Analysis

The proposed personal services contracts with **ABB Enterprise Software, Inc. (“ABB”), Burns & McDonnell Consulting, Inc. dba Burns & McDonnell Consulting PC (“BMC”), Leidos Engineering of New York PC (“Leidos”), Mott MacDonald NY, Inc. (“McDonald”), Power Engineers Incorporated (“PEI”), Siemens Industry, Inc. (“Siemens”), SNC, Ltd. (“SNC”), The Brattle Group, Inc. (“Brattle”), Willdan Energy Solutions dba Energy and Environmental Economics, Inc. (“EEE”) and WSP USA, Inc. (“WSP”) (Q20-6984CC)** would provide, individually or as a group, Transmission Planning, Engineering and Design, Production Cost Modelling Project Development r to implement the Authority’s new strategic plan - Vision2030, and the goals of the Climate Leadership and Community Protection Act (“CLCPA”). Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority’s website. Forty-four firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Twenty proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to ABB, BMC, Leidos, McDonald, PEI, Siemens, SNC, Brattle, EEE and WSP which are technically and commercially qualified and meet the bid requirements on the basis of “best value”, which optimizes quality, cost and efficiency among responsive and responsible offerors. These contracts are for an intended term of five years, subject to the Trustees’ approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contract, \$8 million. It should be noted that Siemens is a Small Business Enterprises.

Utility Operations – Transmission

The proposed non-personal services contract with **Allen Chase Enterprises, Inc. (“ACE”) (Q20-7035DK)** would provide Bare Ground Weed Control Management of vegetation inside substations, pole yards, microwave towers and various other Authority sites. The vegetation will be controlled by both pre-emergent and post-emergent chemical methods employing the use of soil sterilant and selective use herbicides. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority’s website. Five firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Two proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to ACE which is technically and commercially qualified and meets the bid requirements on the basis of “best value,” which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of four years, subject to the Trustees’ approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$250,000. It should be noted that ACE is a Small Business Enterprises.

Extensions and/or Additional Funding Requests:

Commercial Operations – Clean Energy Solutions

As part of NY States Executive Order 88, Governor Cuomo has identified reduced energy use, sustainability, and efficient operation of public facilities as top priorities for the state. The Authority supports its customers statewide in meeting these goals and initiatives with the Energy Efficiency Program. At the December 18, 2012 meeting, the Trustees' approved a total of nineteen suppliers for the Governmental Customers Energy Efficiency Program in the amount of \$750 million to conduct the audit, design, and installation of energy efficiency measures at customer facilities within Southeastern New York State. The original contracts were for a five-year term with a completion date of December 31, 2017. In July 2017, the Trustees approved three-year contract extensions through December 31, 2020, and increased the value to \$1.05 billion. Due to on-going work under these contracts, and delays resulting from the COVID-19 pandemic, further extensions are required to continue to support the Energy Efficiency Program. Staff requests Trustee approval for the extensions of the **CDM Constructors, Inc. ("CDM") (4600002635)**, **EcoSystems / LiRo Energy Group ("LiRo") (4600002646)** and **Guth DeConzo Consulting Engineers ("GDC") (4600002632)** contracts for an additional three-year term from January 1, 2021 through December 31, 2023 to proceed with on-going projects at various customer locations under the Governmental Customers Energy Efficiency Program. No new work will be assigned under these contracts. No additional funding is required.

Commercial Operations – Clean Energy Solutions

As part of NY States Executive Order 88, Governor Cuomo has identified reduced energy use, sustainability, and efficient operation of public facilities as top priorities for the state. The Authority supports its customers statewide in meeting these goals and initiatives with the Energy Efficiency Program. At the October 15, 2014, the Trustees approved a total of twelve suppliers for the Statewide Energy Efficiency Program in the amount of \$300 million to conduct the audit, design, and installation of energy efficiency measures at customer facilities across the state. The original contracts were for a five-year term with a completion date of October 14, 2019. In October 2019, the contracts were extended for an additional one-year grace period. Due to on-going work under these contracts, and delays resulting from the COVID-19 pandemic, further extensions are required to continue to support the Energy Efficiency Program. Staff requests Trustee approval for the extensions of the **Guth DeConzo Consulting Engineers ("GDC") (4600002882)**, **Pres Services LLC ("Pres") (4600002859)** and **Wendel Energy Services LLC ("WES") (4600002934)** contracts for an additional three-year term from October 15, 2020 through October 14, 2023 to proceed with on-going projects at various customer locations under the Statewide Energy Efficiency Program. No new work will be assigned under these contracts. No additional funding is required.

Commercial Operations – Customer Business Development

On September 25, 2019, the Trustees authorized the execution of Power Purchase Agreements ("PPA") to **Siemens Industry, Inc. ("Siemens") (Q18-6513SR)**, and the New York Convention Center Operating Corporation doing business as a Jacob K. Javits Convention Center ("Javits Center"), to commence the design development process of a Solar Photovoltaic ("PV") and Energy Storage Project at the Javits Center. The Trustees approved the annual cost of the PPA with Siemens for \$455,00 per year for a twenty-year term (total amount \$9.1M). Siemens, who was the selected developer is responsible to own, operate and maintain the system for the term of the PPA. The Authority purchases the energy produced from the solar array and Storage system, and in turn sells it to Javits through a companion Power Sales Contract ("PSC"). These two agreements form the "back to back" PPA where the Authority purchases power under the primary PPA and then sells the power to the customer under the PSC. During the design and development phase of the project, it was deemed to be

economically more advantageous for the project to have a term of 25 years verse 20 years. Staff requests Trustee approval for an additional five-year term and additional funding of \$2.275M (total value \$11.375M) with the execution of PPA with Siemens and in parallel a PSC with the Javits Center. Upon execution of the PPA, Siemens will commence construction of the Project, with the first estimated delivery of the Products under the PPA is expected to be October 30, 2021.

Utility Operations – Enterprise Resilience

The Authority solicited proposals for Enterprise Resilience Program Consulting Services under RFP Inquiry No. **Q19-6795RM** Enterprise Resiliency Consulting Services. The stated purpose was management consulting services to assist the Authority and New York State Canal Corporation (“Canals”) in the development and implementation of an Enterprise Resilience Program. The development of the Enterprise Resilience Program encompasses all business units within the Authority and Canals and will extend to relevant external stakeholders. The Trustees approved personal services contracts with an initial term of three years and the option to extend for two additional years to **Accenture LLP (“Accenture”) (4600003855)**, **ICF Incorporated LLC** (formerly known as ICF Resources LLC) (**“ICF”) (4600003854)**, and **Toffler Associates, Inc. (“Toffler”) (4600003856)** in the aggregate amount of \$3,350,000 on December 12, 2019. Staff requests Trustee approval for additional funding, to date \$2.04 million has been released, in the amount of \$8 million which will increase the total aggregate amount to \$11,350,000. Staff envisions that the multitude of benefits that the Authority continues to see from these contracts warrants an additional increase in the aggregate funding amount to support new and ongoing initiatives needed to support the Authority’s development and implementation of an Enterprise Resilience Program. It should be noted that Toffler is a Small Business Enterprises.

Utility Operations – Project Management

On February 21, 2020, the Authority issued one-year construction contract to **Development Authority of the North Country (“DANC”) (4500318593)** in the amount of \$20,600 to provide construction required to insert the New York State (“NYS”) Thruway Regeneration site at Exit 31 to existing dark fiber. The Authority is waiting for the New York State Thruway Authority (“NYSTA”) User Agreement to be approved by the Comptroller. Due to COVID-19 pandemic the construction activity on this project was postponed. This contract extension is requested for completing the construction, splicing, and testing required to connect DANC Dark Fiber to the NYSTA Dark Fiber at the NYS Thruway Regeneration site on the NYS Thruway at Exit 31. Staff requests Trustee approval for the extension of the DANC contract for one-year from February 21, 2021 through February 20, 2022 for the DANC NYS Thruway Authority Regeneration project. No additional funding is being requested at this time.

FISCAL INFORMATION

Funds required to support contract services for various Business Units/Departments and Facilities have been included in the 2020 Approved Operating or Capital Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years. Payment will be made from the Operating or Capital Fund, as applicable.

Funds required to support contract services for capital projects have been included as part of the approved capital expenditures for those projects and will be disbursed from the Capital Fund in accordance with the project’s Capital Expenditure Authorization Request, as applicable.

RECOMMENDATION

The Senior Vice President – Operations Support Services and Chief Engineer; the Senior Vice President – Power Supply; the Senior Vice President – Clean Energy Solutions; the Senior Vice President – Chief Information Officer; the Senior Vice President – System Planning & Analysis; the Vice President – Strategic Supply Management; the Vice President – Project Management; the Vice President – Engineering & Construction Management; the Vice President – Enterprise Shared Services; the Vice President – Enterprise Resilience; and the Regional Manager of Transmission; Treasurer; recommend that the Trustees approve the award of multiyear procurement (services) and other contracts to the companies listed in Exhibit “A,” and the extension and/or funding of the procurement (services) contracts listed in Exhibit “B,” for the purposes and in the amounts discussed within the item and/or listed in the respective exhibits.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award and funding of the multiyear procurement services contracts set forth in Exhibit "A," attached hereto, are hereby approved for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the contracts listed in Exhibit "B," attached hereto, are hereby approved and extended for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

Procurement (Services) and Other Contracts – Awards
(For Description of Contracts See "Discussion")

EXHIBIT "A"
December 9, 2020

<u>Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
BUSINESS SERVICES – TREASURY	GLASS, LEWIS & COMPANY LLC San Francisco, CA (Q20-6993RM)	12/09/20 (on or about)	Provide Proxy Manager services for the Authority's OPEB	12/08/25	B/P			\$350,000*
*Note: represents total for up to 5-year term								
COMMERCIAL OPERATIONS - ENGINEERING & CONSTRUCTION MANAGEMENT	Q20-6980CC; 5 Awards 1. FUTURE TECH CONSULTANTS OF NEW YORK, INC. Mineola, NY 2. JOADEM CORPORATION ♦ Franklin Square, NY 3. MP ENGINEERS AND ARCHITECT PC ♦ New York, NY 4. TECTONIC ENGINEERING & SURVEYING CONSULTANTS PC Mountainville, NY 5. TWIN PEAKS INCORPORATED Long Island City, NY	12/09/20 (on or about)	Provide Special Inspections services for Engineering and Construction Management department projects at customer facilities in New York City	12/08/25	B/P			\$6 million*
*Note: represents total aggregate value for a 5-year term								
COMMERCIAL OPERATIONS - ENGINEERING & CONSTRUCTION MANAGEMENT	Q20-6982AP; 14 Awards 1. CD PERRY LLC Troy, NY 2. DYNAMIC US, INC. Purchase, NY	12/09/20 (on or about)	Provide general facilities including but not limited to carpentry, painting, glazer, plumbing, mechanical/HVAC and etc.	12/08/25	B/C			\$7.5 million*

♦ **M / WBE:** New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
1 Award Basis: B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search
2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

Procurement (Services) and Other Contracts – Awards
(For Description of Contracts See "Discussion")

EXHIBIT "A"
December 9, 2020

<u>Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
	3. GLOBAL IRON WORKS, INC. ♦ Ossining, NY							
	4. HOHL INDUSTRIAL SERVICES, INC. Tonawanda, NY							
	5. JOHN W. DANFORTH COMPANY TONAWANDA, NY							
	6. KLIMA NEW YORK LLC Long Island City, NY							
	7. PINTO CONSTRUCTION SERVICES, INC. Buffalo, NY							
	8. WHITESTONE CONSTRUCTION CORPORATION Woodside, NY							
	9. CANDELA SYSTEMS CORPORATION ♦ Hawthorne, NY		Provide electrical and lighting trades					
	10. EIA ELECTRIC, INC. Long Island City, NY							
	11. NORTHLINE VENTURES, INC. dba NORTHLINE UTILITIES LLC Au Sable Forks, NY							
	12. OHM'S ELECTRICAL CORPORATION ♦ Glendale, NY							

♦ M / WBE: New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)

1 Award Basis: B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search

2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

Procurement (Services) and Other Contracts – Awards
(For Description of Contracts See "Discussion")

EXHIBIT "A"
December 9, 2020

<u>Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
	13. RDS INDUSTRIES, INC. ♦ Flushing, NY							
	14. THREETECH ELECTRIC, INC. ♦ Middle Village, NY							
							*Note: represents total aggregate value for a 5-year term	
HUMAN RESOURCES & ADMINISTRATION – AVIATION	TURBOPROP EAST, INC. –North Adams, MA (Q20-6995JM)	04/01/21	Provide maintenance services to be performed on the Authority's Beechcraft King Air 350 aircraft	03/31/26	B/S			\$1.7 million*
							*Note: represents total for up to 5-year term	
INFORMATION TECHNOLOGY - IT & CYBER SECURITY	COGNIZANT TECHNOLOGY SOLUTIONS U.S. CORPORATION College Station, TX (Q20-6920JH)	12/09/20 (on or about)	Provide implementation of a Flexera ITAM software solution	12/08/23	B/P			\$3,192,826*
							*Note: represents total for up to 3-year term	
UTILITY OPERATIONS – FACILITY & INFRASTRUCTURE PM	MICHAEL BELLANTONI, INC. White Plains, NY (Q20-7026JM)	01/01/21	Provide Snow Removal and Landscaping Maintenance services for the Clarence D. Rappleyea (Centroplex) building in WPO	12/31/25	B/S			\$1 million*
							*Note: represents total for up to 5-year term	
UTILITY OPERATIONS - SYSTEM PLANNING & ANALYSIS	Q20-6984CC; 10 Awards 1. ABB ENTERPRISE SOFTWARE, INC. Cary, NC 2. BURNS & MCDONNELL CONSULTING, INC. dba BURNS & MCDONNELL CONSULTING PC	12/09/20 (on or about)	Provide Transmission Planning, Engineering and Design, Production Cost Modelling Project Development to implement the Authority's new strategic plan – Vision2030 and the goals of the Climate Leadership and Community Protection Act ("CLCPA")	12/08/25	B/P			\$8 million*

♦ **M / WBE:** New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
1 Award Basis: B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search
2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

Procurement (Services) and Other Contracts – Awards
(For Description of Contracts See "Discussion")

EXHIBIT "A"
December 9, 2020

<u>Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
	Kansas City, MO							
	3. LEIDOS ENGINEERING OF NEW YORK PC Reston, VA							
	4. MOTT MCDONALD NY, INC. Iselin, NJ							
	5. POWER ENGINEERS INCORPORATED Hailey, ID							
	6. SIEMENS INDUSTRY, INC. Alpharetta, GA							
	7. SNC, LTD. Portland, ME							
	8. THE BRATTLE GROUP, INC. Boston, MA							
	9. WILLDAN ENERGY SOLUTIONS dba ENERGY AND ENVIRONMENTAL ECONOMICS, INC. Anaheim, CA							
	10. WSP USA, INC. New York, NY							
								*Note: represents total aggregate value for a 5-year term
UTILITY OPERATIONS – TRANSMISSION	ALLEN CHASE ENTERPRISES, INC. Oswego, NY (Q20-7035DK)	12/09/20 (on or about)	Provide Bare Ground Weed Control Management of vegetation inside substations, pole yards, microwave towers and various other Authority sites	12/08/24	B/S			\$250,000*
								*Note: represents total for up to 4-year term

♦ **M / WBE:** New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
1 Award Basis: B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search
2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

Procurement (Services) Contracts – Extensions and/or Additional Funding
(For Description of Contracts See "Discussion")

EXHIBIT "B"
December 9, 2020

<u>Plant Site/ Bus. Unit</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Authorized Expenditures For Life Of Contract</u>
COMMERCIAL OPERATIONS - CLEAN ENERGY SOLUTIONS	3 Awards	12/18/12	Provide on-going projects at various customer locations under Governmental Customers Energy Efficiency Program.	12/31/23	B/C			\$1.05 billion*
	1. CDM CONSTRUCTORS, INC. Boston, MA (4600002635)						\$183,701,172.80	
	2. ECOSYSTEMS / LIRO ENERGY GROUP Syosset, NY (4600002646)						\$252,580,018.60	
	3. GUTH DECONZO CONSULTING ENGINEERS New York, NY (4600002632)						\$36,551,928.51	
*Note: represents total aggregate value for a 11-year term; December 2012 5-year term and \$750M value; July 2017 3-year extension to December 31, 2020 and increase value to \$1.05B; another 3-year extension due to COVID-19 to December 31, 2023; No additional funding								
COMMERCIAL OPERATIONS - CLEAN ENERGY SOLUTIONS	3 Awards	10/15/14	Provide on-going projects at various customer locations under the Statewide Energy Efficiency Program.	10/14/23	B/C			\$300 million*
	1. GUTH DECONZO CONSULTING ENGINEERS New York, NY (4600002882)						\$115,531,991.16	
	2. PRES SERVICES LLC Getzville, NY (4600002859)						\$77,552,695.47	
	3. WENDEL ENERGY SERVICES LLC Williamsville, NY (4600002934)						\$100,196,468.06	
*Note: represents total aggregate value for a 9-year term; October 2014 5-year term and \$300M value; October 2019 1-year extension to October 14, 2020; another 3-year extension due to COVID-19 to October 14, 2023; No additional funding								

♦ **M / WBE:** New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
1 **Award Basis:** B= Competitive Bid; C= Competitive Search; S= Sole Source; Si = Single Source
2 **Contract Type:** P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; L= Legal Service

◆	M / WBE:	New York State-certified Minority / Women-owned Business Enterprise (indicated by the ◆ symbol after the Company Name)
1	Award Basis:	B= Competitive Bid; C= Competitive Search; S= Sole Source; Si = Single Source
2	Contract Type:	P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; L= Legal Service



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Seaway Private Equity Corporation –
Grant Agreement Amendment

SUMMARY

The Trustees are requested to approve an amendment to the Amended and Restated Grant Agreement with the Seaway Private Equity Corporation ("SPEC") to extend its term through December 31, 2021 and to increase the amount set aside for legal and administrative expenses by the sum of \$25,000 authorizing SPEC to use the interest earned on the unexpended principal for such expenses.

BACKGROUND

By resolution approved September 20, 2005, as part of the St. Lawrence Relicensing Settlement Agreements, the Trustees authorized the Authority to negotiate the terms and conditions of a grant agreement ("Grant Agreement") with a St. Lawrence County not-for-profit corporation, subsequently incorporated as SPEC. Pursuant to that grant agreement, the Authority would provide a grant of \$10 million to be invested by SPEC under a capital commitment agreement ("Capital Commitment Agreement") with Golden Technology Management, LLC ("Golden"). Golden, in turn, would raise an additional \$20 million in private equity funds for the purpose of establishing a pool for investments in technology businesses to promote economic development and increase employment and the tax base in St. Lawrence County.

The original Grant Agreement was amended, effective as of March 1, 2006 ("Amended and Restated Grant Agreement"), to: (i) clarify the definitions of business development firms in which SPEC may invest, (ii) allow SPEC to invest in firms other than Golden, (iii) allow SPEC to invest in firms that are not "new technology" firms (requiring a two-thirds vote of the SPEC Board), and (iv) require that the Authority approve any alternate business development firms prior to SPEC's investment.

On July 28, 2009, the Trustees approved two amendments to the Amended and Restated Grant Agreement with SPEC to: (i) authorize SPEC to waive provisions of the standard-form Amended and Restated Capital Commitment Agreement upon a vote of two-thirds of its Board of Directors and (ii) increase the amount set aside for legal and administrative expenses, from \$250,000 to \$500,000 by authorizing SPEC to use the interest earned on the principal for such expenses.

On January 23, 2013, the Trustees approved a further amendment to the Amended and Restated Grant Agreement with SPEC to increase the amount set aside for legal and administrative expenses, from \$500,000 to \$750,000 by authorizing SPEC to use the interest earned on the principal for such expenses.

On March 20, 2018, the Trustees approved a further amendment to the Amended and Restated Grant Agreement with SPEC to extend its term to December 31, 2019 and to further increase the amount set aside for legal and administrative expenses, from \$750,000 to \$800,000 by authorizing SPEC to use the interest earned on the principal for such expenses.

On May 21, 2019, the Trustees approved a further amendment to the Amended and Restated Grant Agreement with SPEC to increase the amount set aside for legal and administrative expenses, from \$800,000 to \$850,000 by authorizing SPEC to use the interest earned on the principal for such expenses.

On December 11, 2019, the Trustees approved a further amendment to the Amended and Restated Grant Agreement with SPEC to extend its term to December 31, 2020 and to further increase the amount set aside for legal and administrative expenses, from \$850,000 to \$925,000 by authorizing SPEC to use the interest earned on the principal for such expenses.

Since its inception, SPEC has invested approximately \$9,482,079 of the original \$10,000,000 in firms located in St. Lawrence County. The fund has a balance of \$1,154,013 (including earned interest less expenses).

SPEC has now requested that the term of the Amended and Restated Grant Agreement be extended to December 31, 2021 and to further increase the cap on administrative expenses by \$25,000 from \$925,000 to \$950,000. Currently, approximately \$895,419 has been expended by SPEC for administrative expenses. To date, the principal grant amount has earned \$1,293,367 in interest.

It is recommended that the term of the Amended and Restated Grant Agreement be extended to December 31, 2021 and that the cap on administrative expenses be increased to \$925,000, with such increase to be paid out of the interest earned. Trustee approval of this recommendation will result in maintaining the availability of these grant funds during the COVID-19 pandemic and help promote the economic development and increased employment in St. Lawrence County.

RECOMMENDATION

The Executive Vice President and Chief Financial Officer recommends that the Trustees approve an amendment to the Amended and Restated Grant Agreement with the Seaway Private Equity Corporation to extend its term through December 31, 2021 and increase the amount set aside for legal and administrative expenses from \$925,000 to \$950,000 using the interest earned on the principal for such expenses.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That an amendment to the Amended and Restated Grant Agreement with the Seaway Private Equity Corporation ("SPEC") to o extend its term through December 31, 2021 and increase the amount set aside for legal and administrative expenses from \$925,000 to \$950,000 using the interest earned on the principal for such expenses, be, and hereby is, approved on the terms set forth in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.



Date: December 9, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: AC Transmission Proceeding – Lease of Real Property

SUMMARY

The Trustees are requested to authorize entry into a 99-year lease, with National Grid as grantor and LS Power Grid New York Corporation 1 (“LSP”) as co-tenant, for approximately 2,124 acres of transmission line right-of-way (“ROW”) and appurtenant property extending for approximately 83 linear miles in Oneida, Herkimer, Montgomery, Schenectady and Albany counties. This lease is in support of the AC Transmission Public Policy Transmission Needs Project (Project).

BACKGROUND

On February 29, 2016, in accordance with the New York Public Service Commission (“PSC”) order identifying transmission needs associated with the Central East and UPNY/SENY transmission interfaces, the NYISO issued the AC Transmission Public Policy Transmission Needs Project Solicitation (“Solicitation”), commencing a 60-day period for developers to submit proposals.

On March 16, 2016, the Authority executed a Memorandum of Understanding (“MOU”) with LSP to develop and submit proposals in response to the Solicitation. LSP assumed the lead role and developed thorough proposals including transmission planning, engineering design, preparation of competitive cost estimates and construction schedules followed by formal submission and remittance of all NYISO required deposits and fees. The Authority provided technical assistance, comments, advice, and participation in all meetings with the NYISO, PSC, and regulatory agencies throughout the process. At its December 15, 2016 meeting, the Board of Trustees authorized funding of the Authority’s share of expenses pursuant to the MOU.

On June 7, 2018, the Authority and LS entered into a Participation Agreement (“PA”), as contemplated in, and in replacement of, the MOU. The PA granted the Authority an option to elect an ownership interest of up to 37.5% of the total Project.

On July 28, 2020, The Board of Trustees granted approval to formally acquire the maximum ownership stake of 37.5% in the Project.

DISCUSSION

The proposed term is ninety-nine (99) years, to commence upon the receipt of approval by the Federal Energy Regulatory Commission and the PSC.

An appraisal was undertaken to determine the fair market value of the leasehold interest. The lease calls for a one-time rental payment of \$31,050,564, of which it is expected that the Authority will be obligated for 37.5%, or \$11,643,961, which ownership stake was previously approved by the Trustees at their meeting of July 20, 2020. The rental value is in line with the appraisal.

The parties initially agreed that the leasehold would extend for 95 linear miles, from the EDIC Substation in Marcy, NY to New Scotland, Albany County. Subsequently, National Grid exercised a Right of First Refusal to retain rights to portions of the first 12 miles of ROW. This change is factored into the rent and leasehold acreage calculations.

The lease provides that the respective interests of LSP and the Authority may be separated into two independent leases on the same terms as the initial lease. It is anticipated that this will result in a physical separation of the leasehold, with the line of demarcation at a location to be determined in Montgomery County. The Authority's leasehold will consist exclusively of transmission line ROW. LSP will have responsibility for both transmission line ROW and substations. The Authority will have ongoing operation and maintenance obligations over its portion of the leasehold.

LSP and the Authority were mutually represented in the lease negotiations by the law firm of Barclay Damon. Project Development, Real Estate, and Legal staff have reviewed the terms and believe them to be reasonable.

The Authority's Real Property Expenditure Authorization Procedures require the Trustees' approval of any lease of real property where the annual rental value exceeds \$100,000 or the term is longer than ten (10) years.

FISCAL INFORMATION

In anticipation of the acquisition of property rights from National Grid, a cumulative spend of \$275.1M for this Project was approved by the Board of Trustees on May 21, 2019 and December 11, 2019, as part of the 2020-2023 Approved Budget and Financial Plan.

No additional funding authorization is required beyond the previously approved requests. Rate recovery of Project costs, including the lease, was authorized by FERC in November 2019.

RECOMMENDATION

The Vice President – Project and Business Development recommends that the Trustees approve the entry into a 99-year lease, with National Grid as grantor and LS Power Grid New York Corporation 1 ("LSP").

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the Trustees hereby authorize the President and Chief Executive Officer and the Executive Vice President and Chief Commercial Officer – Commercial Operations to enter into a lease with National Grid as grantor and LS Power Grid New York Corporation 1 (“LSP”) as co-tenant, for approximately 2,124 acres of transmission line right-of-way and appurtenant property located in Oneida, Herkimer, Montgomery, Schenectady and Albany counties on substantially the terms set forth herein, subject to approval of lease 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, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.



Date: December 9, 2020

To: CANAL CORPORATION BOARD OF DIRECTORS

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Procurement (Services) and Other Contracts –
Business Units and Facilities –
Awards, Extensions and/or Additional Funding

SUMMARY

The Board of Directors' are requested to approve the award and funding of the multiyear procurement (services) contracts listed in Exhibit "A," in support of projects and programs for the Canal Corporation's Business Units/Departments and Facilities. Detailed explanations of the recommended awards and extensions, including the nature of such services, the basis for the new awards if other than to the lowest-priced, lowest total cost of ownership or "best value" bidders and the intended duration of such contracts, or the reasons for the extension and the projected expiration dates, are set forth in the discussion below.

BACKGROUND

Section 2879 of the Public Authorities Law and the Canal Corporation's Guidelines for Procurement Contracts require Board of Directors' ("Board") approval for procurement contracts involving services to be rendered for a period in excess of one year.

The Canal Corporation's Expenditure Authorization Procedures ("EAPs") require Board approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts in excess of \$6 million, as well as personal services contracts in excess of \$2 million if low bidder or best value, or \$1 million if sole-source, single-source or other non-competitive awards.

The Canal Corporation's EAPs also require Board approval when the cumulative change order value of a personal services contract exceeds \$500,000, or when the cumulative change order value of a non-personal services, construction, equipment purchase, or non-procurement contract exceeds the greater of \$6 million or 25% of the originally approved contract amount not to exceed \$6 million.

DISCUSSION

Awards

The Board is requested to approve the award and funding of the multiyear procurement (services) contracts listed in Exhibit "A," where the EAPs require approval based upon contract value or the terms of the contracts will be more than one year. Except as noted, the Exhibit "A" contracts contain provisions allowing the Canal Corporation to terminate the services for the Canal Corporation's convenience, without liability other than paying for acceptable services rendered to the effective date of termination. Approval is also requested for funding all contracts. Except as noted, these contract awards do not obligate the Canal Corporation to a specific level of personnel resources or expenditures.

The issuance of multiyear contracts is recommended from both cost and efficiency standpoints. In many cases, reduced prices are negotiated for these long-term contracts. Since these services are typically required on a continuous basis, it is more efficient to award long-term contracts than to rebid these services annually.

Extensions

Although the firms identified in Exhibit “B” have provided effective services, the issues or projects requiring these services have not been resolved or completed and the need exists for continuing these contracts. Board approval is required because the terms of these contracts will exceed one year including the extension, the term of extension of these contracts will exceed one year and/or because the cumulative change-order limits will exceed the levels authorized by the EAPs in forthcoming change orders. The subject contracts contain provisions allowing the Canal Corporation to terminate the services at the Canal Corporation’s convenience, without liability other than paying for acceptable services rendered to the effective date of termination. These contract extensions do not obligate the Canal Corporation to a specific level of personnel resources or expenditures.

Extension of the contracts identified in Exhibit “B” is requested for one or more of the following reasons: (1) additional time is required to complete the current contractual work scope or additional services related to the original work scope; (2) to accommodate an Canal Corporation external regulatory agency schedule change that has delayed, reprioritized or otherwise suspended required services; (3) the original consultant is uniquely qualified to perform services and/or continue its presence and rebidding would not be practical or (4) the contractor provides proprietary technology or specialized equipment, at reasonable negotiated rates, that the Canal Corporation needs to continue until a permanent system is put in place.

The following is a summary of each recommended contract award and extension.

Contract Awards in Support of Business Units/Departments and Facilities:

Strategic Planning – Empire Line

The proposed single source, personal services contract with **Clarkson University (“Clarkson”)** would provide design services for the Ice Jam Warning and Monitoring System project. The Ice Jam Warning and Monitoring System project will ultimately develop an “Operational Model” to predict the location of ice jams in the canal system so that emergency managers can effectively issue ice jam warnings. The first step in the project is to install monitoring equipment and to develop a “Scenario Model” from existing and newly gathered data on prior ice jam formations. The Scenario Model will then be used to develop the Operational Model as a tool that can predict future ice jams. The contract is for an intended term of twenty-four months with an option of twelve additional months, subject to Boards’ approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$491,493.

Utility Operations – Power Supply

Due to the need to meet and maintain Canal Corporation’s (“Canals”) project schedule, the proposed non-procurement contract with the **City of Rochester (“COR”)** for the replacement of the Canal Corporation’s portion of the West River Wall Improvements – Phase I project in accordance with the “*Funding Agreement Between the New York State Canal Corporation and the City of Rochester*” effective September 1, 2020, subject to the Board’s approval, in accordance with the Canal’s Guidelines for Procurement Contracts and EAP’s. The

West River Wall is located along the west side of the Genesee River, the site extends from Corn Hill Landing south to the Ford Street Bridge in the City of Rochester. Canal's currently owns the wall and the immediate river frontage. Heavy vegetation and trees are present along the back side of the wall creating a physical and visual barrier between the adjacent Corn Hill Neighborhood and the Genesee River view shed. This project has been identified as part of the "ROC the Riverway" initiative, a plan to revitalize the severely underutilized Genesee Riverfront. The City of Rochester competitively bid the project "West River Wall Improvements – Phase I", C05980 in accordance with their procurement guidelines. The City of Rochester awarded the construction contract to Ramsey Constructors, Inc. of Lakeville, NY. The Award Letter is on file and available upon request. Staff recommends issuing a non-procurement contract to COR pursuant to the cost-sharing funding agreement effective September 1, 2020. The contract is for an intended term of eighteen months, subject to Boards' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$4.2 million.

Utility Operations – Power Supply

Due to the need to meet and maintain Canal Corporation's project schedule, the proposed single source personal services contract with **Synthesis Architects LLP ("Synthesis") (4400005376)** would provide design and construction support services related to Phase 1 of the rehabilitation of Historic Guy Park Manor in the City of Amsterdam, Montgomery County, New York, effective November 10, 2020, with an initial interim award amount of \$200,000, subject to the Board's approval, in accordance with the Canal's Guidelines for Procurement Contracts and EAP's. Guy Park Manor is located on Canal land adjacent to Lock E-11 and is listed on the National Register of Historic Places. The building was severely damaged by flooding in 2011 and was later stabilized. The Canal Corporation will make site and utility improvements, construct flood hazard mitigation measures, and rehabilitate the building in a Phase 1 construction contract that will be partially reimbursable by FEMA. Future site and interior building work are planned for a Phase 2 redevelopment project under the "Reimagine the Canals" initiative, a new initiative announced by Governor Cuomo in 2020. A Waiver of Competition memo has been signed. It contains a detailed justification and indicates that Synthesis is experienced in the restoration of historic buildings and has been the designing architect on the project since September 2014. Synthesis was selected at that time by the NYS Office of General Services and assisted the Corporation when it was a subsidiary of the NYS Thruway Authority. The contract is for an intended term of three years, subject to Boards' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$589,000. It should be noted that Synthesis is a Small Business Enterprises.

Utility Operations – Waterway Infrastructure

Due to the need to meet and maintain Canal Corporation's project schedule, the proposed personal services contract with **Ove Arup & Partners PC ("OAP") (4500324438)** would provide engineering design services for the Pedestrian Bridge at Brockport Guard. The contract will be effective December 7, 2020, with an initial interim award amount of \$200,000, subject to the Board's approval, which is hereby requested. The Pedestrian Bridge at Brockport Guard Gate is one of the economic development projects under the "Reimagine the Canals" initiative, a new initiative announced by Governor Cuomo in 2020. The Erie Canal runs through the Village of Brockport, New York, separating the SUNY Brockport campus on the south side of the canal from the Empire State Trail on the north side. The new bridge and associated improvements will connect the SUNY campus to the trail, and provide the missing link in a trail loop, enabling sites within the Village of Brockport and the SUNY Brockport campus to be connected. Bid documents were developed by staff and were accessible through the NYPA.gov

site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Twenty-six firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Twelve proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Approval is also requested for the amount expected to be expended for the five-year term of the contract, \$1.6 million.

Extensions and/or Additional Funding Requests:

Utility Operations – Construction, Engineering and Maintenance

On November 20, 2019, Canal Corporation issued seven-month construction services contract to **O'Connell Electric Company, Inc. ("OEC") (4400004588)** in the amount of \$2,442,599.15 for the rewiring, drainage improvements and miscellaneous work at Locks CS-2 and CS-3. Due to COVID-19 pandemic this project was previously extended until September 25, 2020. The project is substantially complete at this time, but the remaining items of work consist of landscaping that may be required to be done next spring and miscellaneous punch-list items at the locks. Staff requests Board approval for an additional extension including interim approval for the period September 25, 2020 thru December 9, 2020, with an updated end date of June 30, 2021. No additional funding is being requested at this time.

Utility Operations – Technical Services

On October 7, 2019, the Canal Corporation issued one-year non-personal services contract to **Ardem, Inc. ("Ardem") (4400004452)** in the amount of \$69,080 to provide scanning and indexing services to Canal Corporation to digitize the Barge Canal Final Estimate book folios. This service ensures that critical design and construction information can be used in the field and offices by Canal personnel and consultants in a timely and convenient manner, reducing costs to projects and operations. Due to COVID-19 pandemic the project was put on hold for three months which put the project behind schedule. Staff requests Board approval for the extension of the scanning services for an additional three-month extension, including interim approval for the period October 6, 2020 thru December 9, 2020, with an updated end date of December 31, 2020. No additional funding is being requested at this time. Ardem is both a NYS certified Minority-owned Business Enterprises and a Small Business Enterprises.

FISCAL INFORMATION

Funds required to support contract services for various Business Units/Departments and Facilities have been included in the 2020 Approved Operating or Capital Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years. Payment will be made from the Operating or Capital Fund, as applicable.

Funds required to support contract services for capital projects have been included as part of the approved capital expenditures for those projects and will be disbursed from the Capital Fund in accordance with the project's Capital Expenditure Authorization Request, as applicable.

RECOMMENDATION

The Senior Vice President – Operations Support Services and Chief Engineer; the Senior Vice President – Power Supply; the Senior Vice President – Strategy and Corporate Development; the Vice President – Strategic Supply Management; the Vice President – Project Management; the Vice President – Planning Empire Line; the Deputy Director of Construction,

Engineering and Maintenance; the Director of Design and Director of Canal Technical Services; recommend that the Boards approve the award of multiyear procurement (services) and other contracts to the companies listed in Exhibit "A," and the extension and/or funding of the procurement (services) contracts listed in Exhibit "B," for the purposes and in the amounts discussed within the item and/or listed in the respective exhibits.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Canal Corporation, the award and funding of the multiyear procurement services contracts set forth in Exhibit "A," attached hereto, are hereby approved for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Canal Corporation, the contracts listed in Exhibit "B," attached hereto, are hereby approved and extended for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Canal Corporation are, and each of them hereby is, authorized on behalf of the Canal Corporation to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

Procurement (Services) and Other Contracts – Canal Awards
(For Description of Contracts See "Discussion")

EXHIBIT "A"
December 9, 2020

<u>Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
STRATEGIC PLANNING - EMPIRE LINE	CLARKSON UNIVERSITY Potsdam, NY	12/09/20 (on or about)	Provide design services for the Ice Jam Warning and Monitoring System project	12/08/22	Si/P			\$491,493*
*Note: represents total value for a 2-year term with an option of 12 additional months								
UTILITY OPERATIONS – POWER SUPPLY	CITY OF ROCHESTER Rochester, NY	09/01/20	Provide replacement of the Canal Corporation's portion of the West River Wall Improvements – Phase I project per the "Funding Agreement Between the New York State Canal Corporation and the City of Rochester"	03/31/22	B/N			\$4.2 million*
*Note: represents total value for a 18-month term								
UTILITY OPERATIONS – POWER SUPPLY	SYNTHESIS ARCHITECTS LLP Schenectady, NY (4400005376)	11/10/20	Provide design and construction support services related to Phase 1 of the rehabilitation of Historic Guy Park Manor	11/09/23	Si/P	\$200,000		\$589,000*
*Note: represents total value for a 3-year term including an interim value of \$200,000								
UTILITY OPERATIONS – WATERWAY INFRASTRUCTURE	OVE ARUP & PARTNERS PC New York, NY (4500324438)	12/7/20	Provide Engineering design services for the Pedestrian Bridge at Brockport Guard	12/16/25	B/P	\$200,000		\$1.6 million*
*Note: represents total for up to 5-year term including an interim value of \$200,000								

♦ **M / WBE:** New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
1 Award Basis: B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search
2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

Procurement (Services) Contracts – Canal Extensions and/or Additional Funding
(For Description of Contracts See "Discussion")

EXHIBIT "B"
December 9, 2020

<u>Plant Site/ Bus. Unit</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Authorized Expenditures For Life Of Contract</u>
UTILITY OPERATIONS – CONSTRUCTION ENGINEERING & MAINTENANCE	O'CONNELL ELECTRIC COMPANY, INC. Victor, NY (4400004588)	11/20/19	Provide for the rewiring, drainage improvements and misc. work at Locks CS-2 and CS-3	06/30/21	B/C		\$2,424,562.28	\$2,692,599.15*
						*Note: represents total for 19-month term, including a nine-month extension thru June 30, 2021; No additional funding		
UTILITY OPERATIONS – TECHNICAL SERVICES	ARDEM, INC. ♦ Hillsborough, NJ (4400004452)	10/07/19	Provide scanning and indexing services to digitize the Barge Canal Final Estimate book folios	12/31/20	B/C		\$44,029	\$69,080*
						*Note: represents total for 14-month term, including a two-month extension thru December 31, 2020; No additional funding		

♦ M / WBE: New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
1 Award Basis: B= Competitive Bid; C= Competitive Search; S= Sole Source; Si = Single Source
2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; L= Legal Service

RESOLUTION

WHEREAS, Kimberly A. Harriman, Senior Vice President for Public and Regulatory Affairs, resigned from the New York Power Authority at the end of November to join AVANGRID, a leading sustainable energy company with more than three million customers in New York and New England, as its new Vice President of State Government Relations and Public Affairs; and

WHEREAS, Ms. Harriman, through her steady and poised leadership and in-depth knowledge of New York State government, made a significant difference in NYPA's strategy, seizing opportunities to help shape legislation and proposed rules in support of Governor Andrew M. Cuomo's nation-leading, clean energy agenda to combat climate change, enhance consumer choice in electricity sources and promote affordable and reliable energy; and

WHEREAS, Ms. Harriman served on a special assignment from February to June of this year as Acting Deputy Secretary for Energy and Environment, where she led the day-to-day relationship between the Executive Chamber and the energy and environmental agencies of the state. In that capacity, she negotiated the Accelerated Renewable Energy Growth and Community Benefit Act, which paved the way for the State Public Service Commission identifying a NYPA-proposed initiative called the Northern New York Project as the first "priority transmission project" under the legislation; and

WHEREAS, Ms. Harriman, upon joining NYPA in July 2016 after 15 years at the Department of Public Service, where she served as its General Counsel, was tasked with the major undertaking of spearheading the integration of the State Canals Corporation with NYPA. The fusing of the two organizations was provided for in the Executive Budget legislation transferring Canals from the New York State Thruway Authority to NYPA on January 1, 2017; and

WHEREAS, Ms. Harriman directed a leadership team of 60 NYPA, State Thruway and Canals employees in the months ahead of the formal transfer to ensure a smooth and seamless transition and melding of work cultures and practices of NYPA and Canals. The broad sweep of the functions, including Shared Services, Human Resources, Procurement, IT, Law, Finance, Public and Regulatory Affairs, and Corporate Communications underscored the complexity of the changeover; and

WHEREAS, Ms. Harriman's dedicated and tireless leadership following the successful Canals transfer extended to the Reimagine the Canals initiative—a five-year, \$300 million endeavor for reinventing the Canal System and bringing forth additional economic development opportunities and other benefits from the system's 524 miles of waterways and 57 locks. The comprehensive initiative will further add to Ms. Harriman's meaningful and long-lasting impact on the Canal System and its surrounding communities; and

WHEREAS, Ms. Harriman was instrumental in leading some of the most innovative, community-driven Environmental Justice (E-J) and Sustainability programs in the electric utility industry. The NYPA E-J program has touched the lives of thousands of New Yorkers in under-

resourced neighborhoods through such initiatives as STEM energy education for students in grades K-12, adult energy literacy and weatherization workshops. The sustainability measures, as framed by a five-year plan to 2023, continue to advance the reduction of greenhouse gas emissions of NYPA's statewide operations in close alignment with Governor Cuomo's pioneering Climate Leadership and Community Protection Act; and

WHEREAS, Community and Government Relations—a section of the Public and Regulatory Affairs department that was headed Ms. Harriman—has been at the forefront of NYPA's outreach to key stakeholders of such critically important initiatives as the Robert Moses Smart Path Reliability Project, now being built; the AC Transmission Project, for upgrading transmission lines between Oneida and Albany Counties; and the federal relicensing in 2019 of the Blenheim Gilboa Project; and

WHEREAS, the many and varied outreach contributions of the same team have additionally ranged from its integral support for the construction and opening in 2017 of the Eugene L. Nicandri Nature Center in Massena and to the branding of the \$250 million EVolve NY initiative for accelerating the market penetration of EVs through expanding charging-station infrastructure; and

WHEREAS, Ms. Harriman served by chamber appointment as the captain of the New York State Regional Emergency Management Team, Mid-Hudson Region, coordinating personnel and resources assigned to the team, in response to various emergencies, including storm-related power disruptions. Her proactive leadership in supporting the restoration of electricity service by utilities impacted the lives of countless New Yorkers and visitors to the state; and

WHEREAS, Ms. Harriman has served since 2018 on the Board of Directors of the National Hydropower Association, a vital advocacy organization representing the interests of clean hydropower, a renewable energy source, representing 75 percent of NYPA's energy generation;

NOW, THEREFORE, BE IT RESOLVED, that the Trustees of the Power Authority of the State of New York convey their deepest gratitude and appreciation to Kim for her extensive accomplishments at NYPA and Canals. She is a great addition to AVANGRID and is certain to make meaningful contributions to its clean energy activities in support of the ambitious climate goals of New York State. The Trustees extend their best wishes to Kim, her husband, Wes, and children, Emma, Abigail and Nathan, for much success, good health and happiness in the years ahead.

December 9, 2020

December 9, 2020

7. Next Meeting

The regular joint meeting of the New York Power Authority's Board of Trustees and the Canal Corporation's Board of Directors will be held on January 26, 2021, unless otherwise designated by the Chairman with the concurrence of the members.