



**NY Power
Authority**

**Canal
Corporation**

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

PROPOSED AGENDA

***May 25, 2021 at 8:30 A.M.
Videoconference***

- 1. Adoption of the May 25, 2021 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. Risk and Resilience Update (Adrienne Lotto)
 2. COVID-19 Update (Paul Tartaglia)
 - 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 & Risk Committee Report -- (Chairman Koelmel)**
 - i. Niagara Power Project – Next Generation Niagara Program – Mechanical and Electrical Upgrades Project – Mechanical Upgrades – Contract Award -- Resolution (Joseph Kessler)**

- ii. Transmission Life Extension and Modernization Program – Niagara Switchyard – Replacement of Autotransformers – Contract Award -- Resolution (Patricia Lombardi)
- iii. Information Technology Co-Sourcing Value Contracts – Increase in Value -- Resolution (Robert Piascik)
- iv. Procurement (Services) Contract – Uniformed Security Guard Services – Contract Award – Resolution (Lawrence Mallory)
- v. Release of Funds in Support of the New York State Canal Corporation – Resolution (Adam Barsky)

5. CONSENT AGENDA:

a. Commercial Operations

- i. Expansion Power Allocations -- Resolution (Keith Hayes)
- ii. Economic Development Programs - Annual Compliance Deferral -- Resolution (Keith Hayes)
- iii. Westchester County Power Purchase Agreements -- Resolution (Emilie Bolduc)
- iv. Transit eBus Overhead Charging Equipment Steel Waiver -- Resolution (Fabio Mantovani)
- v. Transfer of RNY Power and Expansion Power -- Resolution (Keith Hayes)
- vi. Contracts for the Sale of Hydropower – Final Approval and Transmittal to the Governor -- Resolution (Keith Hayes)
- vii. Proposed Neighboring States Niagara Project Hydropower Contracts – Final Approval and Transmittal to the Governor -- Resolution (Keith Hayes)

b. Procurement (Services) Contracts

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

c. NYPA Development

- i. Smart Path Connect Project – Joint Development Agreement with Niagara Mohawk Power Corporation -- Resolution (Philip Toia)

d. Governance Matters

i. Approval of the Minutes:

1. Minutes of the Joint Annual Meeting of the New York Power Authority's Board of Trustees and Canal Corporation's Board of Directors held on March 30, 2021
2. Minutes of the Joint Special Meeting of the New York Power Authority's Board of Trustees and Canal Corporation's Board of Directors held on April 29, 2021

e. Resolution – Richard M. Flynn – (Gil Quiniones)

6. Next Meeting

May 25, 2021

2. 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).

May 25, 2021

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

May 25, 2021

VISION2030 Updated Scorecard

Previous Scorecard

Maintain Infrastructure

- Generation Market Readiness
- Transmission System Reliability

Financial Management

- Debt Coverage Ratio (Q)
- O&M Budget Performance (\$M)

Energy Services

- Greenhouse Gas (GHG) Saved (Tons)
- MMBTUs Saved in State Facilities

Workforce Management

- Skilled Workforce: Retention (Q)

Safety Leadership

- DART Rate

Environmental Responsibility

- Environmental Incidents

New VISION2030 Scorecard

9 KPIs to be sent to Board on monthly basis (longer-list also reviewed by EMC as part of Dashboard)

Operations

- Commercial Availability – *Generation (NEW)*
- Transmission Asset Base – *Transmission (NEW)*
- Greenhouse Gas Saved – *Customer Products*

Workforce

- Days Away, Restricted or Transferred (DART) Rate – *Employees*
- Workforce Engagement and Development (Q) – *Employees (NEW)*

Financials

- Days Cash on Hand – *Liquidity (NEW)*
- Earnings Before Interest, Depreciation & Amortization (EBIDA) – *Earnings (NEW)*

Key Public Milestones

- Natural Gas Milestones – *Decarbonization (NEW)*
- Reimagine the Canals Priority Project Milestones – *Canals (NEW)*

VISION2030 Updated Scorecard

Operations		Why it matters...
Commercial Availability – <i>Generation</i>		Plant readiness relative to potential, weighted by margin impact
Transmission Asset Base – <i>Transmission</i>		Increasing asset base to support state's clean energy goals
Greenhouse Gas Saved – <i>Customer Products & Services</i>		Enabling customer and state decarbonization
Workforce		
Days Away, Restricted or Transferred (DART) Rate – <i>Employees</i>		Worksite safety is of primary importance
Workforce Engagement and Development (Q) – <i>Employees</i>		Measurement of employee training and enrichment
Financials		
Days Cash on Hand – <i>Liquidity</i>		Reflection of financial resilience
Earnings Before Interest, Depreciation & Amortization (EBIDA) – <i>Earnings</i>		Measures economic sustainability
Key Public Milestones		
Natural Gas Milestones – <i>Decarbonization</i>		Leadership toward clean energy goals
Reimagine the Canals Priority Project – <i>Canals</i>		Sustainability and reinvention of the canals

VISION2030 Updated Scorecard

	YTD Target	YTD Actual
Operations		
● Commercial Availability (%)	85.0%	98.0%
● Transmission Asset Base (\$M)	\$1,015	\$1,092
● Greenhouse Gas Saved (Tons)	5,932	10,837
Workforce Management		
● Days Away, Restricted or Transferred (DART) (Rate)	0.78	0.45
● Workforce Engagement & Development (#) (Q)	964	2,236
Financials		
● Days Cash On Hand (#)	200	236
● Earnings Before Interest, Depreciation & Amortization (EBIDA) (\$M)	\$144.7	\$144.8
Key Public Milestones		
● Natural Gas Milestones (%)	90.0%	100.0%
● Reimagine the Canals Priority Project Milestones (%)	90.0%	100.0%

Legend

- Meeting or exceeding target
- ▲ Off target
- Significantly off target
- ◆ No update
- Informational, no target





NYPA submitted joint bid on NYSERDA Tier 4 Transmission RFP

- **175-mile high-voltage transmission line to bring
upstate renewables into New York City**
 - Delhi (Delaware County) to New York City
 - Supported by NYPA's Blenheim Gilboa Pumped Storage plant
- **Net benefits to customers in New York State
from reduced congestion and reduced fossil fuel
use (16% reduction in NYC)**
- **Estimated to create 10,500 jobs and generate
about \$1.6 billion in state and local tax and
PILOT revenues over 25 years**
- **Partners:** Invenergy and Related Companies'
EnergyRE



Cybersecurity Update: Colonial Pipeline

- **NYPA is actively monitoring the situation**
 - Full details still not disclosed (how they got in, which systems were impacted, etc.)
 - NYPA collaborated with partners across industry and government gather and apply threat intelligence to ensure NYPA was protected
- **No observation of any suspicious or similar activities observed across the NYPA ecosystem to date**
- **Operational resilience and risk management of NYPA plants and sites is being monitored daily**
- **The Colonial Pipeline outage did not cause any system or operational constraints**
- **We continue to partner with our federal and interagency partners to understand potential supply chain impacts both to NYPA and the region**

John S. Dyson New York Energy Zone opened April 23





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Risk & Resilience Report

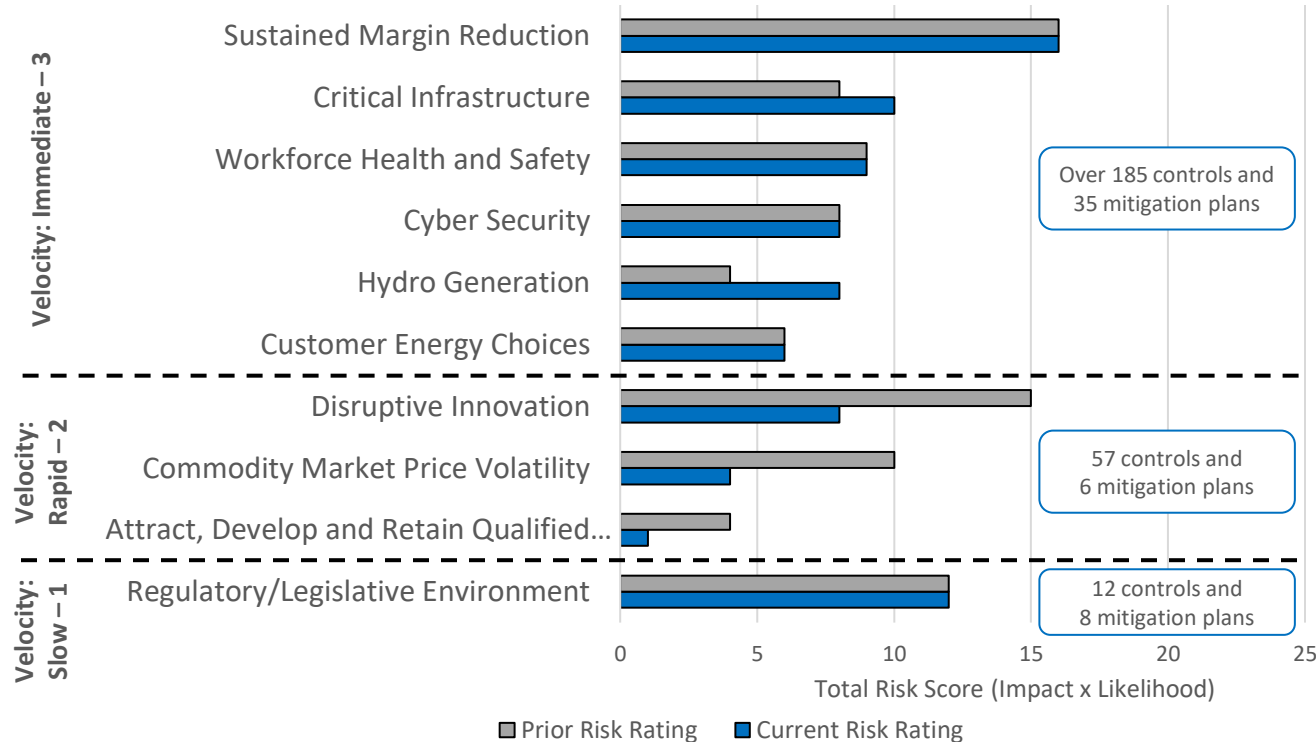
Adrienne Lotto

VP, Chief Risk and Resilience Officer

May 25, 2021

NYPA Enterprise Risk Assessment Residual Risk Summary

Enterprise Risk Ratings



Risks with quicker potential impact require closer oversight

For **six enterprise risks**, NYPA can feel the effect of risk occurrence **within one quarter**

The introduction of risk velocity will enable the Risk Team to allocate resources more efficiently

Velocity Rating Scale

Immediate – 3 (occurring within 1 quarter)
Rapid – 2 (occurring within the 1 year)
Slow – 1 (occurring in 1-2 years)

*Although the impact rating decreased, it is comparable to prior the year impact due to the updated rating matrix



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COVID-19 Update

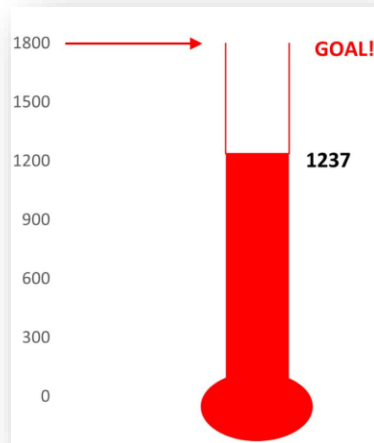
Paul Tartaglia
SVP, EHS & Crisis Management

May 25, 2021

Countermeasure stages are trending down, Vaccinations are trending up

County	NYPA/NYSCC Facilities	Countermeasure	
		Mar. 15	May 11
Albany	ALB, Crescent Vischers Ferry, NYEM	1	0
Schoharie	BG	4	0
Erie	Buffalo	0	1
Oneida	CEC, EECC, Utica (Canals)	0	0
Saratoga	Crescent Vischers Ferry, Waterford (Canals)	1	0
Suffolk	FLN & Brentwood	1	0
Bronx	Harlem River & Hell Gate	1	0
Kings	Kent & Gowanus	1	0
Niagara	NIA, Lockport (Canals)	0	1
Richmond	Pouch	1	0
St. Lawrence	STL	0	0
Westchester	WPO	1	0
Queens	ZEL, Vernon	1	0
Montgomery	Fonda (Canals)	1	1
Monroe	Pittsford (Canals)	0	1
Onondaga	SYR, Lysander (Canals)	0	0
Washington	Fort Edward (Canals)	1	0
Wayne	Lyons (Canals)	0	1
Orleans	Albion (Canals)	0	1

Self reported Vaccination as of May 11:



NYPA: 1036

Canals: 201

Total: 1237



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Transition from ICS to COVID Project team

Transitioning to weekly countermeasure stages save administrative time, while maintaining operational safety.

- Continuing daily COVID data monitoring as we transition from ICS to “COVID Project Team”
- Setting and communicating weekly (rather than daily) countermeasures as of May 10
- Targeting that by June, all ICS projects transition to BU ownership and a full standdown of the COVID Project Team by July
- ICS can be escalated/reestablished as necessary

Goals of our transition:

Continue to keep our people and operations safe by monitoring COVID data and responding accordingly, while reducing administrative time of the ICS team members

Ensure COVID related project continuity

Review and update and archive key tools/materials for ease of reference in case there is another spike/wave or a future similar situation

Thank everyone for their contributions to the ICS!



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Chief Operating Officer's Report

Joseph F. Kessler, P.E.

Executive Vice President & Chief Operating Officer

May 25, 2021

Utility Operations KPIs: YTD April 2021

KPI Name	2021 Annual Target	YTD Target	YTD Actual	Status
Generation Market Readiness	99.40%	99.40%	98.35%	
Transmission System Reliability	92.11%	89.37%	91.65%	
Environmental Incidents	50	17	10	
DART Rate	0.78	0.78	0.45	

Note: TSR year-end target adjusted to isolate impacts of Y-49 forced outage impact.

Legend:



Meeting or exceeding target



Missing target



Significantly missing target

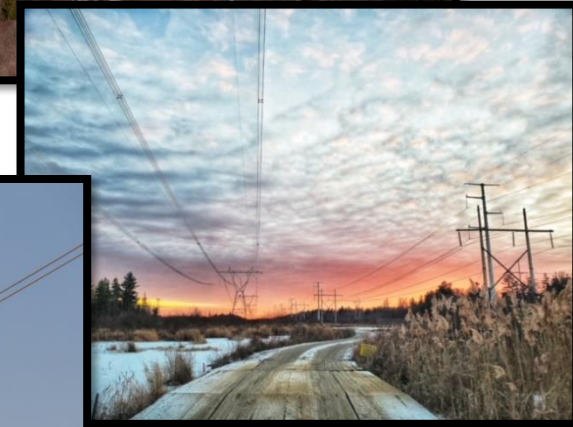


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Moses-Adirondack Smart Path Reliability Project

- Replacement of ~78 miles of the MA1 and MA2 transmission lines (total ~156 circuit miles)
- **MA1 Segment 1 (~23 miles) completed and energized May 7, 2021**
- MA2 Segment 1 planned completion end of May 2021
 - ~20 miles completed and energized 11/14/20
 - Final ~3 miles projected to be complete end of May 2021
- To date (as of May 11, 2021):
 - 30% conductor and optical ground wire (OPGW) installed
 - 45% access roads completed
 - 281 foundations of 796 completed
 - 226 structures of 796 completed
- Project in-service remains on schedule in mid-2023



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Communications Backbone Program – OPGW Update

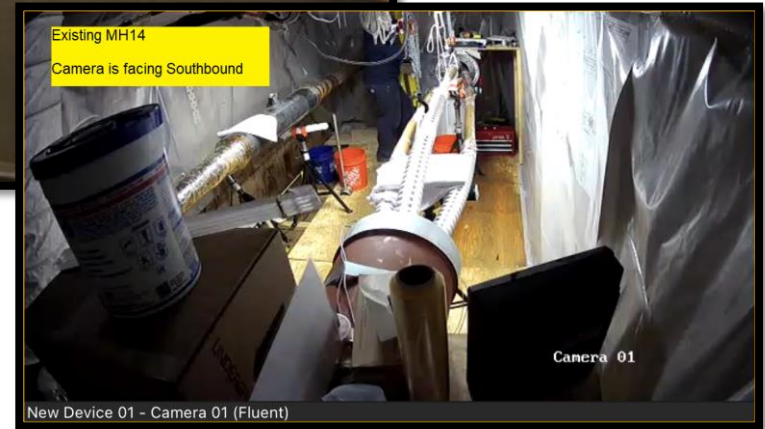
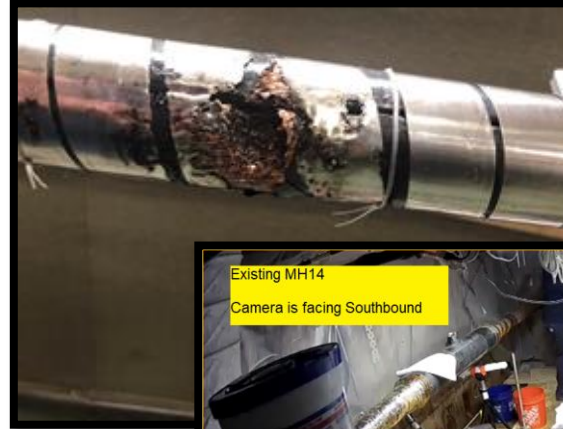
Region	Optical Ground Wire Planned (miles)	Optical Ground Wire Installed (miles)
Western NY	87	87
Central NY	116	362
Northern NY	33	49
TOTAL	236	498

Completion for all OPGW installation expected by Q4 2021



Y-49 Return-To-Service

- Three cable faults repaired over 6-month period (Oct. 2020 to Apr. 2021)
- Line Returned to Service April 16, 2021
- Ongoing assessments and short and long-term planning for transmission line and substation assets



Niagara Fire Alarm & Detection System Upgrade

- Design and installation of safety systems throughout the entire Niagara campus, including:
 - Public address, fire alarm, deluge, signage, emergency lighting, etc.
- Overall project completion targeted for Q1 2024





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Chief Commercial Officer's Report

Sarah Orban Salati

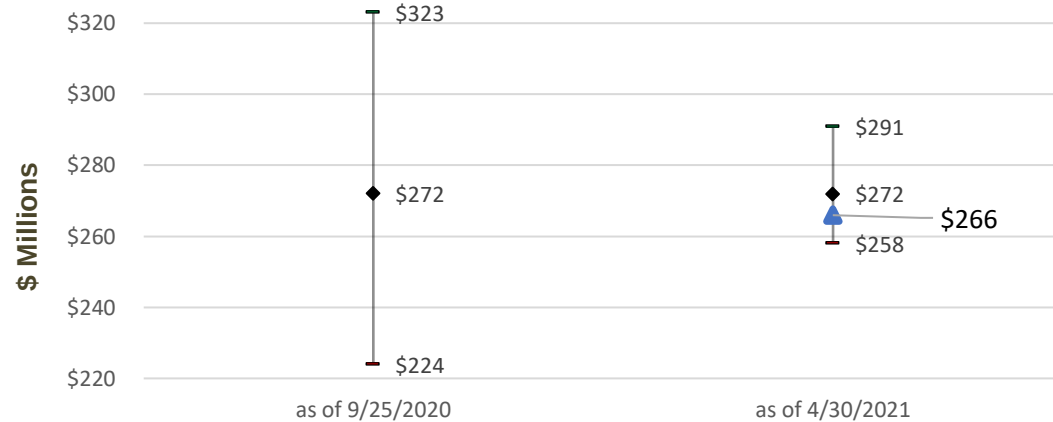
EVP & Chief Commercial Officer

May 25, 2021

Electricity Supply – Through April 2021



2021 Merchant Gross Margin Projections



- YTD \$5.8 M below target of \$83.8 M
- YE Expected Value is \$266 M; within 2% of \$272 M



Economic Development



1,779 Megawatts

Power Allocated



407,275

Jobs Retained and Created



\$22.0 Billion

Capital Committed

Customer Business Lines: April YTD Results

Key Performance Indicator	Actuals - Year to Date	YTD Target / 2021 YE Target
 Clean Energy Solutions	● \$82.2M Capital Spend ● \$223M Capital Project Contracts Signed	\$80.2M / \$253M \$54M / \$223M
 e-Mobility	● 4 EVolve NY DCFC Charging Ports ● \$48M Customer Contracts Signed for DCFCs	4 / 124 Charging Ports \$186K / \$49M
 NY Energy Manager + DER + Flexibility	● 9.8 MW Solar & 0.5 MW Storage Installed ● 28,147 Data Points (Meters & Sensors)	13 MW / 33 MW Solar & 1 MW / 3 MW Storage 27,043 / 35,000

● Within Target
 ● Outside of Target
 ● Significantly Outside of Target Range

We are Driving decarbonization, renewables and customer growth

e-Mobility Featured Partner – Mirabito Oneonta



- Mirabito Oneonta 1st of 4 locations
- Total of 15 EVolve NY chargers to be deployed by summer
- Strong public-private partnering leadership

Distributed Energy Resources – NYS DOCCS



- Initiating construction at 5th and final facility of Phase 1 NYS DOCCS Solar PV Initiative
- 30 MW's total solar portfolio
- \$10M estimated savings over contract term

Economic Development Award – Sumitomo Rubber USA



- Sumitomo Rubber USA, LLC (Tonawanda, Erie County)
- Doubling its daily tire production through \$100M facility upgrades
- 2,000 kW of Expansion Power; 1,327 jobs committed



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Chief Financial Officer's Report

Adam Barsky

EVP & Chief Financial Officer

May 25, 2021

YEAR-TO-DATE ACTUALS THROUGH APRIL 30th

YTD ACTUALS (JANUARY-APRIL 2021)

In \$ Thousands	2021 Budget (\$)	2021 Current (\$)	Variance (\$)		
Net Operating Income					
Operating Revenue					
Customer Revenue	\$568,646	\$546,441	(\$22,205)		
Market-Based Power Sales	143,995	140,797	(3,197)		
Non Utility Revenue	7,755	8,888	1,133		
Ancillary Service Revenue	9,306	12,170	2,864		
NTAC and Other	83,521	88,648	5,127		
Operating Revenue Total	813,222	796,944	(16,278)		
Operating Expense					
Purchase Power	(210,153)	(181,737)	28,416		
Ancillary Service Expense	(20,172)	(17,840)	2,333		
Fuel Consumed	(46,684)	(50,828)	(4,143)		
Wheeling	(176,863)	(190,067)	(13,204)		
Operations & Maintenance	(191,558)	(180,503)	11,054		
Other Expense	(43,411)	(44,270)	(860)		
Allocation to Capital	20,344	13,030	(7,315)		
Operating Expense Total	(668,496)	(652,215)	16,282		
EBIDA Total	144,725	144,729	4		4
EBIDA NYPA	172,072	170,290	(1,782)		
EBIDA Canals	(27,347)	(25,561)	1,786		
Non Operating					
Interest and Other Expenses					
Interest & Other Expenses	(44,013)	(42,441)	1,572		
Investment and Other Income	6,706	6,536	(170)		
Mark to Market Adjustments	0	(1,704)	(1,704)		
Depreciation	(86,124)	(87,786)	(1,661)		
Interest and Other Expenses Total	(123,431)	(125,395)	(1,964)		
NET INCOME	\$21,294	\$19,334	(\$1,960)		(\$1,960)

Margins - Generation (\$7,187)

Margins - Transmission 5,275

Margins - Non Utility (964)

Operating Expenses 2,880

Non-Operating Net (1,964)



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FULL-YEAR FORECAST

YEAR END PROJECTION (JANUARY - DECEMBER 2021)

In \$ Thousands	2021 Budget (\$)	2021 Current (\$)	Variance (\$)
Net Operating Income			Current vs Budget
Operating Revenue			
Customer Revenue	\$1,817,582	\$1,760,233	(\$57,350)
Market-Based Power Sales	430,499	458,270	27,771
Non Utility Revenue	27,375	27,298	(77)
Ancillary Service Revenue	27,662	32,779	5,117
NTAC and Other	237,488	246,107	8,619
Operating Revenue Total	2,540,607	2,524,687	(15,920)
Operating Expense			
Purchase Power	(629,343)	(593,233)	36,111
Ancillary Service Expense	(62,475)	(58,714)	3,760
Fuel Consumed	(119,206)	(135,174)	(15,968)
Wheeling	(642,170)	(656,084)	(13,914)
Operations & Maintenance	(607,911)	(618,706)	(10,795)
Other Expense	(129,657)	(113,831)	15,826
Covid-19 Expense*	0	267	267
Allocation to Capital	59,143	59,143	0
Operating Expense Total	(2,131,619)	(2,116,331)	15,288
EBIDA Total	408,989	408,356	(633)
EBIDA NYPA	495,601	498,027	2,426
EBIDA Canals	(86,613)	(89,671)	(3,059)

Margins - Generation** (\$12,361)

Margins - Transmission 8,885

Margins - Non Utility (2,455)

** Includes Merchant Gross Margin Variance of (\$7,098):
Budget @ \$272,411 vs Current @ \$265,313

Operating Expenses 5,298

(633)

Non Operating

Interest and Other Expenses			
Interest & Other Expenses	(129,262)	(121,331)	7,931
Investment and Other Income	19,626	19,251	(375)
Mark to Market Adjustments	0	(1,704)	(1,704)
Depreciation	(258,373)	(262,084)	(3,711)
Interest and Other Expenses Total	(368,009)	(365,869)	2,140

Non-Operating Net 2,140

NET INCOME	\$40,980	\$35,139	\$42,487	\$49,836	\$1,508
		Low Case	Expected	High Case	

\$1,508

EBIDA: Earnings Before Interest Depreciation & Amortization

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

Low/High Cases: Taken from Risk's Merchant Portfolio Daily Performance Summary



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May 25, 2021

4f. Finance and Risk Committee Report: (Chairman Koelmel)

[Oral Report Only]



Date: May 25, 2021

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 830 kilowatts ("kW") of Expansion Power ("EP") to Americold Real Estate, L.P. ("Americold") to support the company's proposed expansion at 4053 Williams Street, Dunkirk (Chautauqua County); (b) an allocation of 750 kW of EP to SGS Recovery, LLC ("SGS") to support the company's proposed expansion at 4870 Packard Road, Niagara Falls (Niagara County); and (c) an allocation of 2,000 kW of EP to Sumitomo Rubber USA, LLC ("Sumitomo") to support the company's proposed expansion at its facility located at 10 Sheridan Drive, Tonawanda (Erie County). These projects are discussed in more detail below and in Exhibits "A", "B", and "C".
2. Authorize a public hearing, in accordance with Public Authorities Law ("PAL") § 1009, on a proposed form of contract ("Proposed Contract") with Americold and SGS that would, along with Authority Service Tariff No. WNY-2 ("ST WNY-2"), apply to the sale of EP to Americold and SGS. Copies of the Proposed Contract and ST WNY-2 are attached as Exhibits "A-1" and "B-1".

BACKGROUND

Under 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, 12,465 kW of unallocated EP and 82,879 kW of unallocated RP is available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).

DISCUSSION

Americold Real Estate, L.P.

Headquartered in Atlanta, Georgia, Americold owns and operates 238 temperature-controlled warehouses across the globe for the storage of perishable goods. Its refrigerated warehouses are an integral component of the supply chain connecting food producers to consumers.

Americold is proposing to establish a new cold storage facility in Dunkirk to serve Wells Enterprises, Inc. (“Wells”), a major ice cream manufacturer and current NYPA customer. The company would store Wells’ ice cream products until the products are shipped to wholesalers, distributors, and retailers.

The proposed Americold facility would be located less than a quarter mile from the Wells site to expedite the trucking of ice cream products from the Wells plant to the Americold site.

Americold is considering other potential Northeast expansion sites in Pennsylvania and Connecticut. A hydropower allocation award may help in Americold selecting the Dunkirk site for its Northeast expansion.

Americold’s expansion project would involve a capital investment expenditure of at least \$40.4 million. This includes cold storage machinery and equipment (a capital investment expenditure of at least \$31.094 million), infrastructure and associated upgrades (a capital investment expenditure of at least \$8.148 million), and land purchase costs (a capital investment expenditure of at least \$1.158 million).

Americold is planning to begin construction on the expansion project in 2021. The company would commit to the creation of 60 new, permanent, full-time jobs that would be located at the Dunkirk facility. Average annual compensation/benefits are estimated to be \$63,040 per job.

The company applied for a 1,108 kW allocation of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 830 kW for a term of ten years.

The job creation ratio for the proposed allocation of 830 kW is 72 new jobs per MW. This ratio is above the historic average of 65 new jobs per MW based on allocations previously

awarded. The total investment of at least \$40.4 million would result in a capital investment ratio of \$48.7 million per MW. This ratio is above the historic average of \$17.7 million per MW.

The Economic Development Entities have expressed support for the recommended allocation to Americold.

SGS Recovery, LLC

Based in Niagara Falls, SGS provides sustainable waste management, recycling, and energy-producing solutions. The company maintains 21 employees at its current site.

SGS is proposing to lease a new 30,000 square-foot building in Niagara Falls for the conversion of recycled materials into Process Engineered Fuel (“PEF”), which is used as a substitute for fossil and petroleum-based fuels in the cement industry. The expansion project supports clean energy goals through the production of PEF and landfill avoidance.

SGS’s expansion project would involve a capital investment expenditure of at least \$4.9 million. This includes the purchase and installation of multiple shredders.

SGS is planning to begin construction on the expansion project in 2021. The company would commit to the creation of 12 new, permanent, full-time jobs that would be located at the new Niagara Falls facility. The average compensation/benefits are estimated to be \$49,910 per job.

SGS is being considered under the Green Jobs Evaluation Incentive Plan approved by the Trustees on December 9, 2020. The plan allows for the consideration of green jobs impacts when evaluating and recommending power allocations for approval.

The company applied for a 1,000 kW allocation of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 750 kW for a term of ten years.

The job creation ratio for the proposed allocation of 750 kW is 16 new jobs per MW. This ratio is below the historic average of 65 new jobs per MW based on allocations previously awarded. The total investment of at least \$4.9 million would result in a capital investment ratio of \$6.5 million per MW. This ratio is below the historic average of \$17.7 million per MW.

The Economic Development Entities have expressed support for the recommended allocation to SGS.

Sumitomo Rubber USA, LLC

Based in Tonawanda, Sumitomo is a manufacturer of automotive tires for trucks, cars, buses, and motorcycles. The facility has operated for nearly 100 years and is a critical component of the Western New York economy currently supporting nearly 1,300 jobs.

The company is a long-standing NYPA customer and has previously been awarded allocations totaling 6,000 kW of EP and 7,591 kW of RP.

Sumitomo is proposing to significantly expand tire manufacturing operations at its Tonawanda facility. The expansion project would support the additional production of approximately 5,500 passenger car tires and 550 truck and bus tires per day. This would represent a nearly twofold increase in Sumitomo’s daily tire production.

Sumitomo's expansion project would involve a capital investment expenditure of at least \$100 million. This includes land and building costs (a capital investment expenditure of at least \$4.6 million), machinery and equipment purchases (a capital investment expenditure of at least \$72.13 million), and infrastructure costs and associated upgrades (a capital investment expenditure of at least \$23.27 million).

Sumitomo is planning to begin construction on the expansion project in 2021. The company would commit to the creation of 30 new, permanent, full-time jobs that would be located at its Tonawanda facility. The average compensation/benefits are estimated to be \$76,128 per job.

The company applied for 3,000 kW allocation of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 2,000 kW for a term of ten years.

The job creation ratio for the proposed allocation of 2,000 kW is 15 new jobs per MW. This ratio is below the historic average of 65 new jobs per MW based on allocations previously awarded. The total investment of at least \$100 million would result in a capital investment ratio of \$50 million per MW. This ratio is above the historic average of \$17.7 million per MW.

The Economic Development Entities have expressed support for the recommended allocation to Sumitomo.

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 Americold and SGS:

- 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 Americold and SGS 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. If approved, the new allocation to Sumitomo would be added to Sumitomo's existing hydropower contract. ST WNY-2 would also apply to the sale of the allocation.

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

Upon approval of the final proposed contract by the Authority, the Authority must "report" the Proposed Contract, along with its recommendations and the public hearing records, to the Governor and other elected officials. Upon approval by the Governor, the Authority is authorized to execute the final 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 830 kW of EP to Americold as described herein and in Exhibit "A" for a term of ten years; approve an allocation of 750 kW of EP to SGS as described herein and in Exhibit "B" for a term of ten years; and approve an allocation of 2,000 kW of EP to Sumitomo as described herein and in Exhibit "C" for a term of ten years.
2. Authorize a public hearing, in accordance with PAL § 1009, on the Proposed Contracts with Americold and SGS 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 830 kilowatts of Expansion Power (“EP”) be awarded to Americold Real Estate, L.P. 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 750 kilowatts of EP be awarded to SGS Recovery, LLC 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 an allocation of 2,000 kilowatts of EP be awarded to Sumitomo Rubber USA, LLC for a term of 10 years as detailed in the foregoing Memorandum and Exhibit “C”, 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 Americold Real Estate, L.P. and SGS Recovery, LLC for the sale of the EP allocations (the “Contract”), the current forms 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:	Americold Real Estate, L.P. (“Americold”)
Location:	Dunkirk, NY
County:	Chautauqua County
IOU:	National Grid
Business Activity:	The company operates temperature-controlled warehouses for the storage of perishable goods.
Project Description:	Americold is proposing to establish a new cold storage facility in Dunkirk to serve Wells Enterprises, Inc. (“Wells”), a major ice cream manufacturer.
Existing Allocation(s):	None
Power Request:	1,108 kW of EP
Power Recommended:	830 kW of EP
Job Commitment:	
Base:	0
New:	At least 60 jobs
New Jobs/Power Ratio:	72 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$63,040
Capital Investment:	At least \$40.4 million
Capital Investment/MW:	\$48.7 million/MW
Other ED Incentives:	PILOT incentives offered from Empire State Development and the County of Chautauqua Industrial Development Agency
Summary:	Americold is proposing to establish a new 175,000 square-foot cold storage facility in Dunkirk to serve Wells. The project includes the construction of the cold storage facility in addition to significant machinery and equipment purchases. The company would store Wells’ ice cream products until shipped to wholesalers, distributors, and retailers. The proposed Americold facility would be located less than a quarter mile from the Wells site to expedite the trucking of ice cream products from the Wells plant to the Americold cold storage site. An allocation of low-cost hydropower, along with other support offered for this project, could incentivize Americold to consider additional expansion opportunities in Dunkirk 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

Americold Real Estate, L.P.

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 Americold Real Estate, L.P. (“Customer”) with offices and principal place of business at 4053 Williams Street, Dunkirk, NY 14048. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree 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

Americold Real Estate, L.P.
4053 Williams Street
Dunkirk, NY 14048

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:

AMERICOLD REAL ESTATE, L.P.

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: Americold Real Estate, L.P.				
Type of Allocation	Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
EP	830 kW	4053 Williams Street Dunkirk, New York 14048	May 25, 2021	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 60 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 \$40,400,000 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
Cold storage machinery and equipment	\$ 31,094,000
Infrastructure & associated upgrades	\$ 8,148,000
Land purchase	\$ 1,158,000
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$40,400,000</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 25, 2024 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

SCHEDULE C
TAKEDOWN SCHEDULE

SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. ZEC CHARGE

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

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

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

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

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

SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. MONTHLY REC CHARGE

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

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

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

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

III. ALTERNATIVE REC COMPLIANCE PROGRAM

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



POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY 12207

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

Service Tariff No. WNY-2

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Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

Customer: A business entity that has received an allocation of Expansion Power and/or Replacement Power, and that purchases Expansion Power and/or Replacement Power, directly from the Authority.

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

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

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

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

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

Load Split Methodology or **LSM**: A type of billing methodology applicable to a Customer's Allocation which determines how a Customer's total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer's other source of electricity supply, if any. LSM is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

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

Rate Year or **RY**: The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

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

Service Tariff: This Service Tariff No. WNY-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

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

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

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

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

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

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Load Split Methodology that is applicable to the Customer as follows:

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

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

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.
- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the takedown (kW) amount at 100 percent load factor for that Billing Period.

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

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

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

F. Adjustments to Charges

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

G. Billing Period

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

H. Billing Demand

Billing Demand shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

I. Billing Energy

Billing Energy shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

J. Contract Demand

The Contract Demand will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology

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

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing (“LFS”) in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. Billing Demand may not exceed the amount of the Contract Demand.
3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
4. With regard to LFS methodology calculations:
 - a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
 - b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
 - c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
 - i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
 - ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
 - d. All demand values will be adjusted for losses.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges

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

- A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
- B. Marginal losses;
- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and

- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another party.

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.
2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.
4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

H. Adjustment of Charges – Distribution Losses

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

I. Conflicts

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

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

Measuring Year -1 (2011)

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

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

APPLICATION SUMMARY
Expansion Power (“EP”)

Company:	SGS Recovery, LLC (“SGS”)
Location:	Niagara Falls, NY
County:	Niagara County
IOU:	National Grid
Business Activity:	The company provides sustainable waste management, recycling, and energy-producing solutions.
Project Description:	SGS is proposing to lease a new facility in Niagara Falls for the conversion of recycled materials into Process Engineered Fuel (“PEF”).
Existing Allocation(s):	None
Power Request:	1,000 kW of EP
Power Recommended:	750 kW of EP
Job Commitment:	
Base:	21
New:	At least 12 jobs
New Jobs/Power Ratio:	16 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$49,910
Capital Investment:	At least \$4.9 million
Capital Investment/MW:	\$6.5 million/MW
Other ED Incentives:	None at this time
Summary:	SGS provides sustainable waste-handling and energy-producing solutions. SGS is proposing to lease a new 30,000-square foot building in Niagara Falls for the conversion of recycled materials into PEF, which is used as a substitute for fossil and petroleum-based fuels in the cement industry. The project includes the purchase and installation of multiple shredders. The expansion project supports clean energy goals through the production of renewable fuel and landfill avoidance. An allocation of low-cost hydropower could incentivize SGS to consider additional expansion opportunities in Niagara Falls 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

SGS Recovery, LLC

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with SGS Recovery, LLC (“Customer”) with offices and principal place of business at 4870 Packard Road, Niagara Falls, NY 14304. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree 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

SGS Recovery, LLC
4870 Packard Road
Niagara Falls, NY 14304

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:

SGS RECOVERY, 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: SGS Recovery, LLC				
Type of Allocation	Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
EP	750 kW	4870 Packard Road Niagara Falls, New York 14304	May 25, 2021	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 33 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 \$4,900,000 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
Shredding machinery and equipment	\$ 4,900,000
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$ 4,900,000</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 25, 2024 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

SCHEDULE C
TAKEDOWN SCHEDULE

SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. ZEC CHARGE

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

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

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

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

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

SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. MONTHLY REC CHARGE

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

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

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

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

III. ALTERNATIVE REC COMPLIANCE PROGRAM

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



POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY 12207

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

Service Tariff No. WNY-2

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Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

Customer: A business entity that has received an allocation of Expansion Power and/or Replacement Power, and that purchases Expansion Power and/or Replacement Power, directly from the Authority.

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

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

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

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

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

Load Split Methodology or **LSM**: A type of billing methodology applicable to a Customer's Allocation which determines how a Customer's total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer's other source of electricity supply, if any. LSM is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

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

Rate Year or **RY**: The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

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

Service Tariff: This Service Tariff No. WNY-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

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

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

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

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

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

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Load Split Methodology that is applicable to the Customer as follows:

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

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

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.
- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the takedown (kW) amount at 100 percent load factor for that Billing Period.

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

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

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

F. Adjustments to Charges

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

G. Billing Period

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

H. Billing Demand

Billing Demand shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

I. Billing Energy

Billing Energy shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

J. Contract Demand

The Contract Demand will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology

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

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing (“LFS”) in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. Billing Demand may not exceed the amount of the Contract Demand.
3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
4. With regard to LFS methodology calculations:
 - a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
 - b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
 - c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
 - i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
 - ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
 - d. All demand values will be adjusted for losses.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges

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

- A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
- B. Marginal losses;
- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and

- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another party.

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.
2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.
4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

H. Adjustment of Charges – Distribution Losses

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

I. Conflicts

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

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

Measuring Year -1 (2011)

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

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

APPLICATION SUMMARY
Expansion Power (“EP”)

Company:	Sumitomo Rubber USA, LLC (“Sumitomo”)
Location:	Tonawanda, NY
County:	Erie County
IOU:	National Grid
Business Activity:	The company is a manufacturer of automotive tires for trucks, cars, buses, and motorcycles.
Project Description:	Sumitomo is proposing significant manufacturing facility upgrades to accommodate a nearly twofold increase in its daily tire production.
Existing Allocation(s):	6,000 kW of EP and 7,591 kW of Replacement Power (“RP”)
Power Request:	3,000 kW of EP
Power Recommended:	2,000 kW of EP
Job Commitment:	
Base:	1,297
New:	At least 30 jobs
New Jobs/Power Ratio:	15 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$76,128
Capital Investment:	At least \$100 million
Capital Investment/MW:	\$50 million/MW
Other ED Incentives:	Excelsior Jobs Program award of up to \$3.3 million from Empire State Development
Summary:	Sumitomo is proposing to significantly expand tire manufacturing operations at its Tonawanda facility. The project includes the construction of additional manufacturing space and extensive machinery and equipment purchases. The expansion project would support the additional production of approximately 5,500 passenger car tires and 550 truck and bus tires per day. The project would considerably increase Sumitomo’s production capacity and improve the Tonawanda plant’s ability to compete in the global market. An allocation of low-cost hydropower, along with other support offered for this project, could incentivize Sumitomo to consider additional expansion opportunities at its Tonawanda facility in the future.



Date: May 25, 2021
To: THE TRUSTEES
From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER
Subject: **Economic Development Programs - Annual Compliance Deferral**

SUMMARY

The Trustees are requested to authorize the Authority to defer annual compliance action for business customers enrolled in the (1) Recharge New York ("RNY"), (2) Expansion Power ("EP") and Replacement Power ("RP") (collectively, "WNY Hydro"), and (3) Preservation Power ("PP") Programs (collectively, "Economic Development Power Programs") for the annual compliance periods identified below.

BACKGROUND

Under the Authority's Economic Development Power ("EDP") Programs, competitively priced power is made available to for-profit and not-for-profit businesses in the State to, among other things, incentivize business development, business expansion, and job creation and retention.

The sale of NYPA power under the EDP Programs is sold to business customers pursuant to terms and conditions in a written contract between the Authority and the customer. In addition to the basic requirement to pay for energy products supplied, the Authority's contracts address "supplemental commitments" made by customers relating to such matters as employment, capital investment, and/or power utilization. For example, with respect to jobs, the contract may contain supplemental commitments to create new jobs and/or retain jobs for a specified term. On capital investment, the contract may obligate the customer to make a minimum capital investment in its facilities on an annual basis or over another specified period. The nature of the commitment may vary depending on the circumstances, such as whether the customer is establishing a new business presence in New York State, expanding existing operations, or sustaining an ongoing business.

In accordance with the contract, customers are required to report to the Authority annually on employment, capital spending and energy usage ("Annual Report") covering a specified reporting or compliance period applicable to the specific EDP Program ("Compliance Period"). The annual Compliance Period for the RNY Power Program runs from July 1 to June 30. The annual Compliance Period for the WNY Hydro and PP Programs runs from January 1 to December 31. The Authority uses the data contained in the Annual Report to assess the customer's compliance with its Supplemental Commitments.

Each year staff presents the results of its compliance analysis for each EDP Program to the Trustees and makes recommendations on compliance action for customers whose compliance level fell below the required threshold (typically 90%) for the Compliance Period ("Annual Compliance Item"). Compliance action typically consists of a reduction in the amount the Customer's power allocation. In any Annual Compliance Item, staff may recommend no

compliance action for some customers due to extenuating circumstances that affected the customer's ability to meet Supplemental Commitments.

DISCUSSION

At this point each year staff begins its annual compliance assessment for the EDP Programs. This normally culminates in recommended compliance action for non-compliant customers, and this year's assessment would focus on the: (1) RNY Power Program, for the annual Compliance Period running from July 1, 2019 to June 30, 2020 ("RNY 2019-20 Compliance Period"); and (2) the WNY Hydro and PP Power Programs, for the annual Compliance Period running from January 1, 2020 to December 31, 2020 (collectively, "Hydro 2020 Compliance Period").

Last year, the Trustees, at their May 19, 2020 meeting, approved deferral of compliance action for each of the EDP Programs due to impacts related to the COVID-19 pandemic. Businesses across the State, including many customers in the EDP Programs, were severely impacted by the COVID-19 pandemic, suffering significant losses in business, increased operating costs, and supply chain difficulties, and were forced to curtail operations, reduce or eliminate capital spending, and/or reduce employment levels.

In addition, the Trustees approved an Economic Development Customer Assistance Program ("EDCAP") consisting of the following two components:

- (1) the suspension of the Annual Adjustment Factor 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 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 compliance reporting periods being reviewed this year cover the period that includes the height of the world-wide shutdown in 2020 caused by the pandemic. The shutdown caused operational curtailments for many customers. Resource reductions were necessary for businesses to survive. Businesses remain under financial and operational stress as they emerge from the pandemic and seek to normalize business operations. As a result, staff expects many customers to be non-compliant with contractual job, capital investment and energy usage commitments.

Given the pandemic's ongoing impacts on the Authority's customers, staff is recommending that the Trustees approve a deferral of compliance action for (1) all RNY Power customers for RNY 2019-20 Compliance Period, and (2) all WNY Hydro and PP customers for the Hydro 2020 Compliance Period.

Customers will benefit from a deferral of compliance, allowing more time to recover from operational reductions caused by the pandemic. If the deferral is approved, staff will assess the business climate next year at this time to determine the appropriate compliance action for the next reporting periods.

FISCAL INFORMATION

Deferral of annual compliance action for the RNY 2019-20 Compliance Period and Hydro 2020 Compliance Period is not expected to have a significant impact on the Authority's finances.

RECOMMENDATION

The Senior Vice President – Clean Energy Solutions recommends that the Trustees approve a deferral of compliance action for all RNY Power customers for the RNY 2019-20 Compliance Period, and all WNY Hydro Power and PP customers for the Hydro 2020 Compliance Period.

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 authorize the deferral of annual compliance action for (i) business customers enrolled in the Recharge New York Power Program for the annual compliance period running from July 1, 2019 to June 30, 2020, and (ii) business customers enrolled in the Expansion Power, Replacement Power and Preservation Power Programs for the annual compliance period running from January 1, 2020 to December 31, 2020, for the reasons described 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.



Date: May 25, 2021

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICE

Subject: Westchester County Power Purchase Agreements

SUMMARY

The Trustees are requested to authorize the execution of power purchase agreements ("PPA"), described below, with Sol Systems ("Sol") and Westchester County ("County"). The estimated annual cost of the PPA with Sol will be \$355,000 for an estimated 20-year term (PPA may be extended in increments of 5 years) based on a preliminary budget analysis and PV system size and configuration. These costs, plus an administrative fee, will be directly billed to the County under the "back-to-back" PPA.

BACKGROUND

Trustee approval is being sought under Public Authorities Law 1005(17), which enables the Authority to finance and design, develop, implement, and administer energy related services for its customers. As described below, the Authority will be entering into a PPA with Sol for the purchase of energy and attributes from the solar photovoltaic ("PV") systems, and in turn selling that energy and attributes to the County under a separate PPA.

Governor Cuomo through the Climate Leadership and Community Protection Act ("CLCPA") has identified the increased deployment of renewable distributed energy resources ("DER") as a State priority and has directed the Authority to assist public entities to lead by example. The County has undertaken numerous projects to drive sustainability efforts and lead by example and engaged the Authority to procure commercial-scale solar PV systems to be installed at five of their facilities, consistent with Public Authorities Law Section 1005(17). Additionally, the Authority may execute contracts for the purchase of electricity with public sector customers within the Southeast New York operating territory, including Westchester County.

In support of the State's goals, the Trustees are requested to authorize the execution of power purchase agreements with Sol Systems and the County, enabling the completion of the Westchester County Solar PV Projects.

DISCUSSION

The Clean Energy Advisory Services ("CEAS") team offers subject matter expertise and project management for the procurement and implementation of renewable distributed energy

resources, to all Authority customers meeting the eligibility criteria under Public Authorities Law Section 1005(17). The Authority was engaged by Westchester County to support the procurement process for a solar PV projects, to be integrated with their facilities including the Yonkers-Liberty Lines Bus Depot, Valhalla-Cerrato Bus Depot, the County Courthouse Annex, the County Parks Department Headquarters, and the County Archives' Center, (collectively addressed as "Sites") and support the County's sustainability and renewable energy goals. These systems will provide the County with approximately 3,900 kilowatts of solar PV capacity which is expected to generate more than 4,400,000 kilowatt hours of electricity per year. The final system size and configuration, and the term of the PPA may change these estimates and accordingly change the actual annual cost of the PPA agreements. However, because the Authority's risk is mitigated by through back-to-back PPA agreements, the final estimates are not as relevant.

On March 5, 2019 Request for Proposal (RFP) Q19-6660JM was posted in Ariba and advertised in the New York State *Contract Reporter*, soliciting firms interested in providing solar PV systems through a back-to-back PPA structure for Westchester County. Under this contracting structure, the solar PV systems are owned, operated, and maintained by a third-party throughout the term of the PPA, with the Authority responsible for purchasing all attributes produced by the solar PV systems. Those attributes are then purchased by the County from the Authority under substantially like terms and conditions.

In response to the invitation to bid, on May 21st, 2019, proposals were received from fifteen firms. The proposals were reviewed by an evaluation committee comprised of Clean Energy Advisory Services, Strategic Supply Management, and Finance. At the conclusion of the evaluation process, CEAS requested Sol be released to begin the design development process of the solar PV systems at the Sites. In concurrence with that award, Trustee approval is now being sought to proceed with back-to-back PPA execution because of a successful design development phase.

FISCAL INFORMATION

The estimated annual cost of the PPA with Sol will be \$355,000 per year for an estimated 20-year term based on a preliminary budget analysis, with an option for a 5-year renewal term. Cost is calculated based on best estimates available at this point and actual cost may vary depending on project as built design. These costs, plus an administrative fee, will be directly billed to the County under a separate PPA. Additionally, the Authority will receive funds sufficient to fully recover cost incurred by Clean Energy Advisory Services for its services rendered throughout the procurement and implementation processes.

RECOMMENDATION

The Executive Vice President and Chief Commercial Officer, and the Vice President of Clean Energy Solutions recommend that the Trustees approve the request to execute back-to-back PPAs with Sol, and the County, for an estimated annual cost of \$355,000.

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 execution of back-to-back power purchase agreements with Sol Systems, and Westchester County, for an estimated annual amount of approximately \$355,000 as described 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: May 25, 2021

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Transit eBus Overhead Charging Equipment Steel Waiver

SUMMARY

The Trustees are requested to waive the requirement of the New York Buy American Act (“Act”) that the overhead transit bus electric charging equipment to be purchased on behalf of customers contain steel components made in whole or substantial part in the United States. Currently, this preferred equipment is not manufactured in the United States.

Motorized transit bus charging projects involve the design, fabrication, delivery, installation, start-up, and service of overhead pantograph bus charging, cabled direct current fast chargers, and cabled maintenance charging Electric Vehicle Supply Equipment (“EVSE”). The structural steel used for overhead gantries and other assemblies used in these projects complies with the Act except for the steel parts contained within the pantographs and the chargers.

Discussions with equipment suppliers indicate plans for Act compliant pantograph charging equipment to be available by early 2023. In the meantime, a waiver is requested for current transit bus electrification projects.

BACKGROUND

The first two of these overhead bus charging implementation projects are planned at customer sites, the Niagara Frontier Transportation Authority (“NFTA”) and the New York City Transit Authority (“NYCT”). The requirement for a waiver is associated with the use of overhead pantograph charging technology, in which a metallic motorized assembly automatically descends from the ceiling of the depot to electrically mate with the roof of the bus and initiate charging of the battery.

DISCUSSION

Overhead charging technology is preferred by many transit agencies because it helps avoid the complexity of connecting and disconnecting hundreds of buses every night as required by the wired charging method. The automated pantograph technology allows the electrification of buses to occur at scale in larger depots. The electrification of transit buses is far more mature in Europe and Asia than it is in North America, and the pantograph charging technologies needed for these projects are solely produced by two German manufacturers, Schunk and Stemann. There currently is no American-made pantograph charger that can be specified for these projects. Structural steel used in these projects for overhead gantries and other purposes will be compliant with the Act and will comprise most of the steel used in these projects. The requested waiver will only apply to the pantographs and the associated electrical equipment for battery charging. In the event this equipment becomes available with US sources, this request will be revisited. The estimated percentage of steel content in these projects that is not sourced in the USA is 30%. Estimated value of similar contracts between 2021 and 2023 is \$188M; these projected contracts represent 240 bus chargers.

RECOMMENDATION

The Vice President – Head of e-Mobility requests your approval to waive the requirement that Electric Vehicle Supply Equipment (pantographs and chargers) containing steel components be, in whole or substantial part, made in the United States, as stipulated in the New York Buy American Act.

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 to waive the requirement of the New York Buy American Act (“Act”) for all current Bus Electrification projects with the Niagara Frontier Transportation Authority (“NFTA”) and the New York City Transit Authority (“NYCT”); 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: May 25, 2021
To: THE TRUSTEES
From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER
Subject: Transfer of RNY Power and Expansion Power

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 pending 700 kilowatt ("kW") Recharge New York ("RNY") Power allocation awarded to CleanFiber, LLC ("CleanFiber") for its use at its facility at 250 Lake Road, Blasdell, New York, to its subsidiary, CleanFiber Buffalo, LLC ("CleanFiber Buffalo"), to address organizational changes.
2. Transfer of 1,000 kW and 2,000 kW Expansion Power ("EP") allocations, a pending 2,000 kW EP allocation, and a 780 kW RNY Power allocation awarded to Fieldbrook Foods Corporation ("FFC"), for use at its One Ice Cream Drive, Dunkirk, New York facilities, to Wells Enterprises, Inc. ("WEI"), to address organizational changes.
3. Transfer of a 76 kW RNY Power allocation awarded to JK Jewelry, Inc. ("JKJ"), for use at its 1500 Brighton Henrietta Town Line Road, Rochester, New York facilities, to JK Acquisition, LLC ("JKA"), to address organizational changes.
4. Transfer of a 90 kW portion of a 176 kW RNY Power allocation awarded to Newchem, LLC ("Newchem") for use at its facility located at 434 E. Union Street, Newark, New York to a facility located at 401 W. Shore Blvd., Newark, New York.

The Economic Development Power Allocation Board ("EDPAB"), at its May 24, 2021 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) CleanFiber, LLC

CleanFiber has a pending 700 kW RNY Power allocation for use at its facility at 250 Lake Road, Blasdell, NY, where it manufactures high quality cellulose insulation that's both low dust and fire retardant. The Board approved this allocation with CleanFiber's original name, UltraCell Insulation, LLC. The name of the company was changed for name recognition



purposes, with no other changes to the corporate entity. Then operations at this facility were shifted to CleanFiber's wholly-owned subsidiary, CleanFiber Buffalo. CleanFiber Buffalo operates the same type of business as CleanFiber.

Both CleanFiber and CleanFiber Buffalo request the transfer of CleanFiber's pending 700 kW RNY Power allocation to CleanFiber Buffalo. CleanFiber Buffalo would take the transfer of the pending RNY Power allocation subject to the terms and conditions that are applicable to the original award to CleanFiber.

2) Fieldbrook Foods Corporation

FFC was awarded a 1,000 kW, two 2,000 kW EP allocations, and a 780 kW RNY Power allocation, for use at its facilities at One Ice Cream Drive, Dunkirk. This facility manufactures private label ice cream and is one of the largest producers of ice cream in the northeast.

On December 30, 2020 FFC, the wholly-owned subsidiary of WEI merged with and into WEI, with WEI the surviving entity.

Considering the merger, the companies have asked that the 1,000 kW EP, 2,000 kW EP, pending 2,000 kW EP and 780 kW RNY Power allocations be transferred to WEI. The merger has not resulted in changes to operations at the Dunkirk facility, and WEI has indicated that it will honor all terms and commitments made by FFC under its EP and RNY Power sale agreements with the Authority if the transfers are approved.

3) JK Jewelry, Inc.

JKJ, which does business as JK Findings, was awarded a 76 kW RNY Power allocation for use at its facilities at 1500 Brighton Henrietta Town Line Road, Rochester, New York where it designs and manufactures high quality jewelry findings. Jewelry findings are the components of jewelry, such as clasps, beads, etc. JKJ operates a world-wide business with its headquarters in Rochester.

In February 2020 JKA purchased JKJ's operating business and related assets. JKA has continued operations at the same facility with the same employees and equipment as JKJ.

Both companies have asked that the 76 kW RNY Power allocation be transferred to JKA. JKA has indicated it will honor all terms and commitments made by JKJ under its RNY Power sale agreement with the Authority.

4) Newchem, LLC

Newchem, which does business as, Newcut, Inc., was awarded a 176 kW RNY Power allocation, for use at its facilities at 434 E. Union Street, Newark. Newchem manufactures metal alloy screens and filters, RFI/EMI shields, etched signage and more through photo chemical etching processes.

Newchem relocated this business to another facility at 401 W. Shore Blvd., Newark. The Authority awarded the company a 130 kW RNY Expansion allocation for this facility, which it currently receives. The E. Union Street facility has been demolished by Newchem.



Newchem requested that its' 176 kW RNY Power allocation from the E. Union Street facility be transferred to the 401 W. Shore Blvd. facility. However, based on the load at the new facility the Authority determined that only 90 kW of the 176 kW qualified for transfer. The remainder of the allocation has been taken back. The company has indicated it will honor all commitments including employment, power utilization, and capital investment commitments associated with the original 176 kW RNY Power allocation.

RECOMMENDATION

Staff recommends that the Trustees 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 pending 700 kilowatt ("kW") Recharge New York Power ("RNY") allocation awarded to CleanFiber, LLC, for use at its facilities at 250 Lake Road, Blasdell, New York, to CleanFiber Buffalo, LLC, for use at the same facilities, 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 1,000 kW Expansion Power ("EP"), a 2,000 kW EP, a pending 2,000 kW EP, and a 780 kW RNY Power allocation awarded to Fieldbrook Farms Corporation, for use at its facilities located at One Ice Cream Drive, Dunkirk, New York to Wells Enterprises, Inc., 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 transfers; and be it further

RESOLVED, That the transfer of the 76 kW RNY Power allocation awarded to JK Jewelry, Inc. for use at its facility at 1500 Brighton Henrietta Town Line Road, Rochester, New York, to JK Acquisition, 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 a 90 kW portion of the 176 kW RNY Power allocation initially awarded to Newchem, LLC, for use at its facility at 434 E. Union Street, Newark, New York, for use at a facility located at 401 W. Shore Blvd., Newark, 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: May 25, 2021

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 1,750 kilowatts ("kW") of Expansion Power ("EP") to Amcor Rigid Packaging USA, LLC ("Amcor"), 180 kW of EP to Mono-Systems, Inc. ("Mono"), 700 kW of EP to Niagara Specialty Metals, Inc. ("NSM"), 400 kW of EP to Pine Pharmaceuticals LLC ("Pine"), 10,000 kW of EP to Plug Power Inc. ("Plug"), 2,700 kW of EP to Stavatti Aerospace Ltd ("Stavatti"), 5,000 kW of EP to Sucro Real Estate NY, LLC ("Sucro"), and 350 kW of EP to Trek, Inc. ("Trek"). Copies of these Contracts, along with the applicable service tariff, Service Tariff No. WNY-2 ("ST WNY-2"), are attached as Exhibits "A", "B", "C", "D", "E", "F", "G" and "H", 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 March 30, 2021, the Trustees awarded a 1,750 kW EP allocation for a term of ten years to Amcor to support the manufacturing of beverage containers at Amcor's facilities at 135 Buell Avenue, Cheektowaga, NY. Amcor has committed to make a capital investment of at least \$18,800,000 at its facilities that would receive the allocation, and employ at least 24 full-time, permanent employees at the facilities for the term of the allocation ("Supplemental Commitments").

At their meeting on December 9, 2020, the Trustees awarded a 180 kW EP allocation to Mono for a term of ten years to support manufacturing extruded PVC, at Mono's facilities at 180 Hopkins Street, Buffalo, NY. Mono's Supplemental Commitments include an agreement to make a capital investment of at least \$420,000 at its facilities that would receive the allocation, and employ at least 15 full-time, permanent employees above a base of 80 full-time employees at the facilities for the term of the allocation.

At their meeting on December 9, 2020, the Trustees awarded a 700 kW EP allocation to NSM for a term of ten years to support manufacturing new alloys for the aerospace, medical and nuclear industries, at NSM's facilities at 12600 Clarence Center Road, Akron, NY. NSM's Supplemental Commitments include an agreement to make a capital investment of at least \$12,850,000 at the facilities that would receive the allocation and employ at least 5 full-time, permanent employees above a base of 39 full-time employees at the facilities for the term of the allocation.

At their meeting on March 30, 2021, the Trustees awarded a 400 kW EP allocation to Pine for a term of ten years to support producing repackaged and compounded pharmaceuticals, at Pine's facilities at 355 Riverwalk Parkway, Tonawanda, NY. Pine's Supplemental Commitments include an agreement to make a capital investment of at least \$8,615,000 at the facilities that would receive the allocation and employ at least 40 full-time, permanent employees above a base of 94 full-time employees at the facilities for the term of the allocation.

At their meeting on March 30, 2021, the Trustees awarded a 10,000 kW EP allocation to Plug for a term of ten years to support production of green liquid hydrogen, at Plug's facilities at 6840 Crosby Road, Alabama, NY. Plug's Supplemental Commitments include an agreement to make a capital investment of at least \$290,820,000 at the facilities that would receive the allocation and employ at least 68 full-time, permanent employees at the facilities for the term of the allocation.

At their meeting on January 26, 2021, the Trustees awarded a 2,700 kW EP allocation to Stavatti for a term of ten years to support an aircraft research, design and prototyping complex, at Stavatti's facilities at 9400 Porter Road, Niagara Falls, NY. Stavatti's Supplemental Commitments include an agreement to make a capital investment of at least \$155,926,000 at the facilities that would receive the allocation and employ at least 363 full-time, permanent employees at the facilities for the term of the allocation.

At their meeting on January 26, 2021, the Trustees awarded a 5,000 kW EP allocation to Sucro for a term of ten years to support producing organic and conventional refined sugar as bulk and packaged products, at Sucro's facilities at 2303 Hamburg Turnpike, Lackawanna, NY. Sucro's Supplemental Commitments include an agreement to make a capital investment of at

least \$19,000,000 at the facilities that would receive the allocation and employ at least 50 full-time, permanent employees at the facilities for the term of the allocation.

At their meeting on January 26, 2021, the Trustees awarded a 350 kW EP allocation to Trek for a term of ten years to support manufacturing electrostatic measurement and high voltage solutions, which includes high voltage power supplies, amplifiers, electrostatic voltmeters and discharge devices, at Trek's facilities at 190 Walnut Street, Lockport, NY. Trek's Supplemental Commitments include an agreement to make a capital investment of at least \$6,000,000 at the facilities that would receive the allocation and employ at least 30 full-time, permanent employees above a base of 122 full-time employees at the facilities 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 proposed Contracts for Mono, NSM, Stavatti, Sucro and Trek was held on March 10, 2021, and a public hearing on the

proposed Contracts for Amcor, Pine and Plug was held on May 6, 2021, at 535 Washington Street, Buffalo, NY 14203. A copy of the official transcripts of the public hearings including any written submittals are attached as Exhibits “I” and “J”, respectively.

FISCAL INFORMATION

All the allocations are new allocations, and therefore their sale would result in 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 1,750 kilowatts (“kW”) of Expansion Power (“EP”) to Amcor Rigid Packaging USA, LLC, 180 kW of EP to Mono-Systems, Inc., 700 kW of EP to Niagara Specialty Metals, Inc., 400 kW of EP to Pine Pharmaceuticals LLC, 10,000 kW of EP to Plug Power Inc., 2,700 kW of EP to Stavatti Aerospace Ltd, 5,000 kW of EP to Sucro Real Estate NY, LLC, and 350 kW of EP to Trek, 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 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

Amcor Rigid Packaging USA, LLC

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Amcor Rigid Packaging USA, LLC (“Customer”) with offices and principal place of business at 135 Buell Avenue, Cheektowaga, NY 14225. 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

Amcor Rigid Packaging USA, LLC
135 Buell Avenue
Cheektowaga, NY 14225

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:

AMCOR RIGID PACKAGING USA, 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: Amcor Rigid Packaging USA, LLC		Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
Type of Allocation					
	EP	1,750 kW	135 Buell Avenue Cheektowaga, New York 14225	March 30, 2021	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 24 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 \$18,800,000 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:

DESCRIPTION	EXPENDITURE
Blowmolder equipment	\$ 6,900,000
Infrastructure upgrades	\$ 5,300,000
Ancillary equipment	\$ 6,600,000
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$18,800,000</u>

Total Expansion Project Capital Investment Commitment:

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than March 30, 2024 (*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

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.



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

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.



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

Pine Pharmaceuticals 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 Pine Pharmaceuticals LLC (“Customer”) with offices and principal place of business at 355 Riverwalk Parkway, Tonawanda, NY 14150. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree 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

Pine Pharmaceuticals LLC
355 Riverwalk Parkway
Tonawanda, NY 14150

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:

PINE PHARMACEUTICALS 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: Pine Pharmaceuticals LLC				
Type of Allocation	Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
EP	400 kW	355 Riverwalk Parkway Tonawanda, New York 14150	March 30, 2021	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 134 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 \$8,615,000 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
Building and construction	\$ 6,915,000
Machinery and equipment	\$ 1,700,000
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$ 8,615,000</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 March 30, 2024 (*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

Plug Power 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 Plug Power Inc. (“Customer”) with offices and principal place of business at 6840 Crosby Road, Alabama, NY 14013. 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

Plug Power Inc.
6840 Crosby Road
Alabama, NY 14013

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:

PLUG POWER 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: Plug Power Inc.				
Type of Allocation	Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
EP	10,000 kW	6840 Crosby Road Alabama, New York 14013	March 30, 2021	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 68 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 \$290,820,000 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
Land and Construction	\$ 79,650,000
Machinery and equipment	\$ 206,500,000
Infrastructure and associated upgrades	\$ 4,670,000
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$ 290,820,000</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 March 30, 2024 (*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 (2013)	Measuring Year - 1 (2012)
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

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

Measuring Year -1 (2011)

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

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

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

	Measuring Year (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

Stavatti Aerospace Ltd

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 Stavatti Aerospace Ltd (“Customer”) with offices and principal place of business at 9400 Porter Road, Niagara Falls, NY 14304. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree 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

Stavatti Aerospace Ltd
9400 Porter Road
Niagara Falls, NY 14304

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:

STAVATTI AEROSPACE LTD

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: Stavatti Aerospace Ltd				
Type of Allocation	Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
EP	2,700 kW	9400 Porter Road Niagara Falls, New York 14304	January 26, 2021	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 363 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 \$155,926,200 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:

DESCRIPTION	EXPENDITURE
Building Purchase	\$ 1,300,000
Tooling jigs and fixtures	\$ 81,666,200
Manufacturing equipment	\$ 62,300,000
Workstations and software	\$ 10,660,000
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$155,926,200</u>

Total Expansion Project Capital Investment Commitment:

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than January 26, 2024 (*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

Sucro Real Estate NY, 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 Sucro Real Estate NY, LLC (“Customer”) with offices and principal place of business at 2303 Hamburg Turnpike, Lackawanna, NY 14218. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

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

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

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

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

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

WHEREAS, the Authority’s provision of Electric Service under this Agreement is an unbundled service separate from (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

Sucro Real Estate NY, LLC
2303 Hamburg Turnpike
Lackawanna, NY 14218

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:

SUCRO REAL ESTATE NY, 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: Sucro Real Estate NY, LLC				
Type of Allocation	Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
EP	5,000 kW	2303 Hamburg Turnpike Lackawanna, New York 14218	January 26, 2021	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 50 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. **Annual Capital Investment Commitment** (if applicable, as specified below)
 - a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.
 - b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.
 - c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.
2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)
 - a. The Customer shall make a minimum capital investment of \$19,000,000 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
Land investment	\$ 250,000
Renovations	\$ 11,750,000
Warehouse renovation	\$ 200,000
Initial refinery construction	\$ 5,000,000
Refinery expansion	\$ 1,800,000
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$ 19,000,000</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 January 26, 2024 (*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

Trek, 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 Trek, Inc. (“Customer”) with offices and principal place of business at 190 Walnut Street, Lockport, NY 14094. 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

Trek, Inc.
190 Walnut Street
Lockport, NY 14094

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:

TREK, 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: Trek, Inc.				
Type of Allocation	Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
EP	350 kW	190 Walnut Street Lockport, New York 14094	January 26, 2021	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 152 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 \$6,000,000 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
Building expenses	\$2,848,000
Production equipment	\$2,012,000
Capital facility expenses	<u>\$1,140,000</u>
Total Minimum Expansion Project Capital Investment Commitment:	<u>\$6,000,000</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 January 26, 2024 (*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

New York State Power Authority

*Public Hearing
March 10, 2021*



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535 Washington Street
Suite 202
Buffalo, New York 14203
Wednesday, March 10th, 2021
2:00 p.m. - 6:00 p.m.

Jessica Hastings
Stenographer

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1 MS. DELINCE: Good afternoon. This is a
2 public hearing required by law and authorized by the
3 New York Power Authority's Board of Trustees on the
4 proposed Customer Contracts for the sale of
5 hydropower to Trek Inc. Sucro Real Estate NY LLC,
6 Stavatti Aerospace Ltd., Mono-Systems Inc., and
7 Niagara Specialty Metals, Inc.

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

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

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

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

1 Albany Times-Union and Dunkirk Observer.

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

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

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

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

15 If you plan to make an oral statement at this
16 hearing, I ask that you so indicate on the sign-in
17 sheet. Also, if you have a written statement, please
18 gave copy to Richard Smith.

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

22 The record of the hearing will remain open
23 for additional comments through close of business

1 Thursday, March 11, 2021.

2 Additional comments may be mailed, faxed, or
3 e-mailed to the Corporate Secretary at 123 Main
4 Street, 9-B, White Plains, New York 10601, or
5 (914)390-8040, or secretarys.office@nypa.gov.

6 At this point, I would like to introduce
7 Richard Smith, the Authority's Director of Economic
8 Development, who will provide additional details on
9 the proposed Customer Contracts. Thank you. Mr.
10 Smith.

11 MR. SMITH: Thank you, Ms. Delince. Good
12 afternoon. My name is Richard Smith and I am the
13 Director of Economic Development with the NYPA's
14 Clean Energy Solutions department. I am here today
15 to present a summary of five proposed contracts for
16 the sale of hydropower generated at the Niagara
17 Power Project.

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

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

5 At their December 9th, 2020 meeting, the NYPA
6 Trustees approved a 180 kW allocation of EP to
7 Mono-Systems, Inc. for a term of ten years, based on
8 commitments to create 15 new full-time jobs above a
9 base of 80 full-time equivalent jobs and make at
10 least \$420,000 of capital investment at the facility
11 that will use the EP allocation.

12 The company is a manufacturer of wire and
13 cable solutions, including cable trays, power poles,
14 and surface raceways, primarily used by electrical
15 engineers and contractors, and will be expanding its
16 manufacturing capabilities at it's facility located
17 in Buffalo. The capital investment will be to
18 purchase machinery related to the installation of a
19 PVC extrusion line and to install a new roof. The
20 180 kW EP allocation will support manufacturing of
21 the extruded PVC at Mono-Systems' facility, which
22 would replace extruded PVC the company purchases
23 from China.

1 Also, at their December 9th, 2020 meeting,
2 the NYPA Trustees approved a 700 kW allocation of EP
3 to Niagara Specialty Metals, Inc., or NSM for short,
4 for a term of ten years, based on commitments to
5 create five new full-time jobs above a base of 39
6 full-time equivalent jobs and make at least \$12.85
7 million in capital investment at the facility that
8 will use the EP allocation.

9 NSM, located in Akron, manufactures steel and
10 metal products, including processing aerospace,
11 cutlery, medical and nuclear alloys. The company is
12 expanding its manufacturing capabilities to process
13 new alloys. The expansion includes the purchase of
14 new processing equipment and a new rolling mill.

15 Next, at their January 26th, 2021 meeting,
16 the NYPA Trustees approved a 2,700 kW allocation of
17 EP to Stavatti Aerospace Ltd. for a term of ten
18 years, based on commitments to create 363 new
19 full-time jobs and make at least \$155.926 million of
20 capital investment at the facility that will use the
21 EP allocation.

22 The company is an aircraft manufacturer
23 focused on the design and production of military,

1 commercial, and general aviation aircraft. Stavatti
2 proposes to establish an aircraft research, design,
3 and prototyping facility at Niagara Falls
4 International Airport. The capital investment will
5 be to purchase the facility, manufacturing
6 equipment, tooling, fixtures, work stations, and
7 software. The 2,700 kW allocation will help support
8 the design and manufacturing of aircraft.

9 Also, at their January 26th, 2021 meeting,
10 the NYPA Trustees approved a 5,000 kW allocation of
11 EP to Sucro Real Estate NY LLC for a term of ten
12 years, based on commitments to create 50 new
13 full-time jobs and make at least \$19 million of
14 capital investment at the facility that will use the
15 allocation.

16 The company currently operates sugar
17 refineries at locations around the world, including
18 the US. Sucro's proposed refinery is for Lackawanna.
19 The plant would make organic and conventional
20 refined sugar as bulk and packaged products. The
21 capital investment includes land investment and
22 construction of a refinery at the former Bethlehem
23 Steel site. The 5,000 kW EP allocation will help

1 support production of sugar in both granular and
2 liquid form.

3 Lastly, at their January 26th, 2021 meeting,
4 the NYPA Trustees also approved a 350 kW allocation
5 of EP to Trek, Inc. for a term of ten years, based
6 on commitments to create 30 new full-time jobs above
7 a base of 122 full-time equivalent jobs and make at
8 least \$6 million in capital investment at the
9 facility that will use the allocation.

10 The company, located in Lockport, is a
11 manufacturer of electrostatic measurement and high
12 voltage solutions, which includes high voltage power
13 supplies, amplifiers, electrostatic voltmeters, and
14 discharge devices. Trek plans to expand its current
15 facilities to create a High Voltage Center of
16 Excellence, which would allow it to centralize
17 engineering resources and develop new manufacturing
18 capabilities. The capital investment includes
19 building renovations and upgrades and production
20 equipment purchases. The 350 kW EP allocation will
21 help support manufacturing and reduce redundancies
22 within it's multiple-location organization.

23 All five of these projects will support

1 economic development and growth in the region.

2 The following is a summary of pertinent
3 provisions in the proposed contracts.

4 The contracts provide for the billing of all
5 hydropower supply charges and all New York
6 Independent System Operator Inc., NYISO, charges and
7 taxes.

8 The contracts include customer agreed-upon
9 commitments with respect to employment, capital
10 investment, and power utilization.

11 Under the contracts, the Authority may reduce
12 or terminate the allocations if employment, power
13 utilization, or capital investment commitments are
14 not met.

15 Relatedly, the contracts include an annual
16 job reporting requirement and a job compliance
17 threshold of 90%. Should the company's average
18 annual employment fall below the compliance
19 threshold of 90% of the employment commitment, the
20 Authority may reduce the amount of the allocations.

21 The contracts provide for the companies to
22 perform an energy audit at their facilities at least
23 once within five years, helping to ensure that

1 customers use the hydropower efficiently.

2 To address nonpayment risk that could result
3 from the direct billing arrangement, the contracts
4 include commercially reasonable provisions
5 concerning the Authority's ability to charge late
6 payment fees and to require deposits in the event of
7 the customer's failure to make payment for any two
8 monthly bills. These contract provisions are
9 consistent with other Authority direct sale
10 contracts, including the Recharge New York sales
11 contracts.

12 The contracts provide for the collection of a
13 Zero Emission Credit charge and a Renewable Energy
14 Credit charge to allow the Authority to recover
15 costs it would incur relating to its purchase of
16 Zero Emission Credits and Renewable Energy Credits
17 attributable to the customer's load.

18 The contracts will address the allocations
19 along with the Authority's Service Tariff WNY-2
20 which specifies rates and other terms applicable to
21 other EP and RP allocations.

22 Transmission and delivery service for the
23 allocations will be provided by National Grid or

1 NYSEG, in accordance with the utilities' Public
2 Service Commission approved delivery service
3 tariffs.

4 As Ms. Delince stated earlier, the Authority
5 will accept your comments on the proposed contracts
6 until the close of business on Thursday, March 11th,
7 2021.

8 I will now turn the hearing back to Ms.
9 Delince.

10 MS. DELINCE: Thank you. At this point I
11 would like to call on speakers who have signed in.
12 Mr. Smith, are there any speakers present at your
13 location who wish to provide a statement?

14 MR. SMITH: There are none.

15 MS. DELINCE: We'll recess and reconvene if
16 speakers arrive.

17 MR. SMITH: Thank you.

18 (Recess)

19 MS. DELINCE: The March 10th, 2021 public
20 hearing of proposed Customer Contracts for the sale
21 of hydropower to Trek Inc., Sucro Real Estate NY
22 LLC, Stavatti Aerospace Ltd., Mono-Systems, Inc.,
23 and Niagara Specialty Metals, Inc. is now officially

1 closed.

2 As previously stated, the record of the
3 hearing will remain open for additional comments
4 through close of business, Thursday, March 11, 2021.

5 Thank you and good night.
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9 (Hearing concluded at 5:59 P.M.)
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1 STATE OF NEW YORK
2 COUNTY OF ERIE

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

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

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

19 IN WITNESS WHEREOF, I have hereunto subscribed
20 my name this 10th day of March, 2021.

21
22
23


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New York State Power Authority

Public Hearing
May 6, 2021



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New York State Power Authority
Thursday, May 6, 2021
2:00 p.m. - 6:00 p.m.
535 Washington Street, Suite 202
Buffalo, New York 14203

Patricia A. Schreier
(via webcam)

1 SPEAKERS:

2 MS. DELINCE (via webcam) 3,12
3 MR. SMITH (via webcam) 5,12

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1 MS. DELINCE: Good afternoon.

2 This is a public hearing required by law and
3 authorized by the New York Power Authority's Board of
4 Trustees on the proposed Customer Contracts for the sale
5 of hydropower to Amcor Rigid Packaging USA, LLC, Pine
6 Pharmaceuticals LLC, Plug Power Inc., and seven
7 neighboring states, namely, Connecticut, Massachusetts,
8 New Jersey, Ohio, Pennsylvania, Rhode Island, and
9 Vermont.

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

12 New York State Public Authorities Law, Section
13 1009, sets forth procedures for executing certain
14 contracts negotiated by the Authority.

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

22 In addition, notices appeared once a week, for the
23 four weeks leading up to this hearing, in the following

1 newspapers: the Niagara Gazette, Buffalo News, Buffalo
2 Business First, Niagara County Tribune Sentinel, Albany
3 Times-Union and Dunkirk Observer

4 The public was also given access to the proposed
5 contracts on the Authority's website during the 30-day
6 period prior to today's hearing.

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

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

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

16 If you plan to make an oral statement at this
17 hearing, I ask that you so indicate on the sign-in
18 sheet.

19 Also, if you have a written statement, please give
20 a copy to Richard Smith.

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

1 The record of the hearing will remain open for
2 additional comments through close of business, Friday,
3 May 7, 2021. Additional comments should be mailed,
4 faxed, or emailed to the Corporate Secretary at 123 Main
5 Street, 9-B, White Plains, New York 10601 or (914)
6 390-8040 or secretarys.office@nypa.gov.

7 At this point, I would like to introduce Richard
8 Smith, the Authority's Director of Economic Development,
9 who will provide additional details on the proposed
10 Customer Contracts. Thank you.

11 Mr. Smith

12 MR. SMITH: Thank you, Ms. Delince.

13 Good afternoon. My name is Richard Smith, and I am
14 the Director of Economic Development within NYPA's Clean
15 Energy Solutions department. I am here today to present
16 a summary of three proposed contracts for Amcor Rigid
17 Packaging USA, LLC, Pine Pharmaceuticals, LLC, Plug
18 Power Inc., as well as contracts for the seven
19 Neighboring States (namely Connecticut, Massachusetts,
20 New Jersey, Ohio, Pennsylvania, Rhode Island and
21 Vermont) for the sale of hydropower generated at the
22 Niagara Power Project.

23 Regarding the three proposed contracts, under

1 Public Authorities Law Section 1005 Subsection 13 the
2 Authority may allocate and sell directly or by
3 sale-for-resale, 250 MW of Expansion Power, known as EP,
4 and 445 MW of Replacement Power, known as RP, to
5 businesses located within 30 miles of the Niagara Power
6 Project, provided that the amount of EP allocated to
7 businesses in Chautauqua County on January 1, 1987 shall
8 continue to be allocated in Chautauqua County.

9 At their March 30, 2021 meeting, the NYPA Trustees
10 approved a 1,750 kW allocation of EP to Amcor for a term
11 of ten years, based on commitments to create at least 24
12 new full-time jobs and make a capital investment of at
13 least \$18.8 million at the facility that will use the EP
14 allocation.

15 The company is a global manufacturer of packaging
16 products used for various applications in the food,
17 beverage, pharmaceutical and household industries.
18 Amcor proposes to establish a new manufacturing facility
19 in Cheektowaga to produce beverage containers. The
20 capital investment will be for infrastructure upgrades
21 at the facility and new equipment. The 1,750 kW
22 allocation will help support the manufacturing of
23 beverage containers.

1 At their March 30, 2021 meeting, the NYPA Trustees
2 approved a 400 kW allocation of EP to Pine
3 Pharmaceuticals for a term of ten years, based on
4 commitments to create at least 40 new, full-time jobs
5 above a base of 94 full-time jobs and make at least a
6 \$8.615 million capital investment at the company's
7 facility where the EP allocation will be used.

8 The company provides custom compound solutions
9 directly to medical practices, clinics and hospitals for
10 in-office patient care. Pine proposes to construct an
11 addition to its current facility in Tonawanda to produce
12 repackaged and compounded pharmaceuticals.

13 The capital investment reflects costs related to
14 building upgrades, construction and purchases of
15 machinery and equipment. The 400 kW allocation will
16 help support the production of repackaged and compounded
17 pharmaceuticals.

18 At their March 30, 2021 meeting, the NYPA Trustees
19 approved a 10,000 kW allocation of EP to Plug Power for
20 a term of ten years, based on a commitment to create at
21 least 68 new full-time jobs and make a capital
22 investment of at least \$290.82 million at the facility
23 that will use the EP allocation.

1 The company is a producer of green hydrogen for use
2 in fuel cells and is a leading provider of clean
3 hydrogen and zero-emission fuel cell solutions. Plug
4 Power proposes to construct and operate a liquid
5 hydrogen production plant at the Science & Technology
6 Advanced Manufacturing Park in Alabama, New York.

7 The capital investment reflects costs related to
8 land acquisition, construction, and purchase and
9 installation of infrastructure machinery and equipment.
10 The 10,000 kW allocation will help support the
11 production of green liquid hydrogen.

12 The following is a summary of pertinent provisions
13 in the proposed contracts:

14 The contracts provide for the direct billing of all
15 hydropower supply charges and all New York Independent
16 System Operator, Inc., (NYISO) charges and taxes.

17 The contracts include customer agreed-upon
18 commitments with respect to employment, capital
19 investment and power utilization.

20 Under the contracts, the Authority may reduce or
21 terminate the allocations if employment, power
22 utilization or capital investment commitments are not
23 met.

1 Relatedly, the contracts include an annual job
2 reporting requirement and a job compliance threshold of
3 90 percent. Should the company's average annual
4 employment fall below the compliance threshold of 90
5 percent of the employment commitment, the Authority may
6 reduce the amount of the allocations.

7 The contracts provide for the companies to perform
8 an energy audit at their facilities at least once within
9 five years, helping to ensure that customers use the
10 hydropower efficiently.

11 To address non-payment risk that could result from
12 the direct billing arrangement, the contracts include
13 commercially reasonable provisions concerning the
14 Authority's ability to charge late payment fees and to
15 require deposits in the event of the customer's failure
16 to make payment for any two monthly bills. These
17 contract provisions are consistent with other Authority
18 direct sale contracts, including the Recharge New York
19 sales contracts.

20 The contracts provide for collection of a Zero
21 Emission Credit charge and a Renewable Energy Credit
22 charge to allow the Authority to recover costs it would
23 incur relating to its purchase of Zero Emission Credits

1 and Renewable Energy Credits attributable to the
2 customer's load.

3 The contracts will address the allocations along
4 with the Authority's Service Tariff WNY-2 which
5 specifies rates and other terms applicable to other EP
6 and RP allocations.

7 Transmission and delivery service for the
8 allocations will be provided by National Grid or NYSEG,
9 in accordance with the utilities' Public Service
10 Commission approved delivery service tariffs.

11 Lastly, regarding the contracts for the seven
12 Neighboring States, the Niagara Redevelopment Act (NRA)
13 requires the Authority to make available at least 50
14 percent of the Niagara Project's power to 'preference
15 customers' (i.e., public bodies and non-profit
16 cooperatives within economic transmission distance).

17 It further requires the Authority to make available
18 a reasonable portion of such preference power, but not
19 more than 10 percent of total Niagara Project power, to
20 preference customers within reasonable economic
21 transmission distance in the Neighboring States.

22 NYPA's current 50-year FERC license for the Niagara
23 Project made effective on September 1, 2007, fully

1 incorporates the NRA-based requirement to make
2 preference power available to the Neighboring States.
3 The PAL 1005(5) also authorizes the Authority to sell a
4 reasonable share of Niagara Project power to the
5 Neighboring States.

6 At the March 30, 2021 Trustees' meeting, board
7 members considered the request from and awarded
8 allocations to the seven Neighboring States.

9 The proposed contracts with the Neighboring States
10 also provides:

11 (1) the option to take substitute energy when there
12 is a planned curtailment, but requires taking substitute
13 energy for an unplanned curtailment.

14 (2) The transfer of environmental attributes
15 associated with each Neighboring State's Niagara Project
16 allocation, as long as permissible by law, via the
17 on-line New York Generation Attributes Tracking System,
18 and.

19 (3) For each Neighboring State to work with the
20 Authority to maintain mutual assistance agreements that
21 any of their end-user municipal systems may be a party
22 to, along with the Authority, as well as facilitate
23 contact with those end-user municipal systems that are

1 not a party to a mutual assistance agreement along with
2 the Authority.

3 As Ms. Delince stated earlier, the Authority will
4 accept your comments on the proposed contracts until the
5 close of business on Friday, May 7, 2021.

6 I will now turn the hearing back to Ms. Delince.

7 MS. DELINCE: Thank you, Mr. Smith.

8 At this time, I would like to call on speakers who
9 are signed in. Mr. Smith, are there any speakers
10 present at your location who wish to provide a
11 statement?

12 MR. SMITH: No, there are not.

13 MS. DELINCE: In that case, we will recess now
14 and reconvene when speakers arrive.

15 (recess)

16 MS. DELINCE: The May 6, 2021 public hearing on
17 the proposed customer contracts for the sale of
18 hydropower to Amcor Rigid Packaging, USA, LLC, Pine
19 Pharmaceuticals LLC, Plug Power Inc., and seven
20 neighboring states, namely Connecticut, Massachusetts,
21 New Jersey, Ohio, Pennsylvania, Rhode Island, and
22 Vermont is officially closed.

23 As I previously stated, the record of the hearing

1 will remain open for any additional comments through
2 close of business, Friday, May 7, 2021. Thank you and
3 good night.

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5 (Hearing concluded at 6:03 p.m.)
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1 STATE OF NEW YORK
2 COUNTY OF ERIE

3 I, Patricia A. Schreier, a Notary Public in and for
4 the State of New York, do hereby certify:

5 That the witness, whose testimony appears herein
6 before, was, before the commencement of his testimony, duly
7 sworn to testify the truth, the whole truth and nothing but
8 the truth; that such testimony was taken pursuant to notice at
9 the time and place herein set forth; that said testimony was
10 taken down in shorthand by me and thereafter under my
11 supervision transcribed into the English language, and hereby
12 certify the foregoing testimony is a full, true and correct
13 transcription of the shorthand notes so taken.

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

17 IN WITNESS WHEREOF, I have here unto subscribed my
18 name this 11th day of May, 2021.

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23


Notary Public
State of New York

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**NY Power
Authority**

**Canal
Corporation**

Memorandum

Date: May 25, 2021

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

SUBJECT: Proposed Neighboring States Niagara Project Hydropower Contracts – Final Approval and Transmittal to the Governor

SUMMARY

The Trustees are requested to approve hydropower contracts with the seven neighboring state customers (collectively referred to herein as the “the Bargaining Agents” or “the Neighboring States”) for the sale of Niagara Project hydropower and to authorize their transmittal to the Governor for his approval. The Neighboring States and the amounts of firm power and firm peaking power allocated to each are listed in Exhibit “A”. The form of the contract with each of the Neighboring States is attached as Exhibit “B”.

BACKGROUND

The federal Niagara Redevelopment Act (“NRA”) requires the Authority to make available at least 50% of the Niagara Project’s power to ‘preference customers’ (i.e., public bodies and non-profit cooperatives within economic transmission distance). It further requires the Authority to make available a ‘reasonable’ portion of such preference power, but not more than 10% of total Niagara Project power, to preference customers in neighboring states. NYPA’s current 50-year Federal Energy Regulatory Commission-issued (“FERC”) license for the Niagara Project made effective on September 1, 2007, fully incorporates the NRA-based requirement to make preference power available to the Neighboring States.

Under the current contracts with the seven Neighboring States entered into in 2007, the Authority sells, in total, 191.2 MW of firm Niagara Project hydropower, 40.9 MW of firm peaking Niagara Project hydropower and 10% of the non-firm energy from the Niagara Project. The contract would terminate on April 30, 2032. The current Neighboring States contracts have a term expiring on September 1, 2025. The new contracts if approved by the Governor would supersede the current contracts upon full execution.

The proposed contracts retain existing provisions that (1) implement the requirements of the NRA and the Niagara Project license with respect to the Neighboring States’ Niagara Project hydropower entitlements; (2) contain detailed principles governing the establishment of cost-based rates over the contract term that parallel those in the St. Lawrence Project contracts with the Neighboring States previously approved by the Trustees in 2017; and (3) permit the Authority to seek FERC approval to reduce the allocations to the Neighboring States from 10% to 7.5% of Niagara Project power, provided, however, the Neighboring States would then be free to challenge any of the Authority’s ratemaking principles for preference power established by the Trustees in 2003 and 2011.

The proposed contracts contain new provisions that (1) provide to the Neighboring States, as long as legally permissible, the associated renewable attributes, via the New York Generation Attributes Tracking System, the on-line tool that records renewable energy certificates in the State; and (2) commit the Neighboring States to engage where possible in

mutual assistance and facilitate contacts between the Authority and the distributing entities who receive the hydroelectricity from each Neighboring State in furtherance of the provision of mutual assistance if certain distributing entities are not participants in any existing mutual assistance programs that include the Authority.

The contracts also contain, for each Neighboring State, an Appendix A indicating the distributing entities receiving the allocation and an informational Appendix B describing the existing rate stabilization reserve methodology.

DISCUSSION

At their meeting on March 30, 2021, the Trustees authorized the holding of a public hearing, pursuant to Public Authorities Law ("PAL") § 1009, on the contract forms for the Neighboring States. Copies of the proposed contract forms were transmitted to the Governor and the Legislative leaders and notice of a public hearing on the proposed contract forms were published in accordance with the requirements of PAL § 1009.

The public hearing was held on May 6, 2021 at the Authority's Buffalo office on Washington Street. No parties expressed opposition to the proposed contracts at the hearing, the final transcript of which is attached as Exhibit "C".

FISCAL INFORMATION

The 232.1 MW of Niagara Project firm power and energy and the 10% non-firm energy entitlement that will continue to be sold to the Neighboring States under the proposed contracts will be sold at the same cost-based rates that currently apply to such sales. Thus, the proposed contracts will have no adverse revenue impact on the Authority.

RECOMMENDATION

The Senior Vice President – Clean Energy Solutions recommends that the Trustees: (i) approve the proposed form of contracts with the Neighboring States, attached hereto as Exhibit "B"; (ii) authorize the transmittal of the Neighboring States contracts to the Governor for his approval.

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 approve the proposed forms of the hydropower sales contracts for the sale of firm power and energy, firm peaking power and energy, and non-firm energy negotiated with the seven Neighboring States (the “Contracts”) that were submitted to this meeting, and that the Trustees believe to be in the public interest; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit copies of the proposed Contracts to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee pursuant to Public Authorities Law (“PAL”) § 1009; and be it further

RESOLVED, That the Chairman and the Corporate Secretary be, and hereby is, authorized and directed to execute such Neighboring States contracts in the name of and on behalf of the Authority whenever the agreements shall be approved by the Governor; 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, Secretary and General Counsel.

NEIGHBORING STATE NIAGARA PROJECT
HYDROPOWER ALLOCATIONS
(kW)

Neighboring State	Neighboring State Bargaining Agent	Firm Hydroelectric Power (kW)	Firm Hydroelectric Peaking Power (kW)
Connecticut	Connecticut Municipal Electric Energy Cooperative	8,300	1,800
Massachusetts	Massachusetts Department of Public Utilities	43,900	9,400
New Jersey	Public Power Association of New Jersey	9,000	1,900
Ohio	City of Cleveland	84,000	18,000
Pennsylvania	Allegheny Electric Cooperative, Inc.	33,600	7,200
Rhode Island	Rhode Island Public Utilities Commission	600	100
Vermont	Vermont Department of Public Service	11,800	2,500
TOTAL		191,200	40,900

POWER AUTHORITY
OF THE
STATE OF NEW YORK
30 South Pearl Street
Albany, New York

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT POWER AND ENERGY TO
CONNECTICUT MUNICIPAL ELECTRIC ENERGY COOPERATIVE

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy Service
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy Service
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

POWER AUTHORITY OF THE STATE OF NEW YORK

30 South Pearl Street

Albany, New York 12207

AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY

Connecticut Municipal Electric Energy Cooperative, which is the bargaining agent for the State of Connecticut, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the "Parties"), for electric service as follows:

I. Definitions

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 of the Authority who are served by the Project.

Agreement means this Agreement.

Authority is the Power Authority of the State of New York.

Contract Demand will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

Customer is the bargaining agent identified above.

Designated States means the states represented by the Neighboring State Customers.

Distributing Entities are the entities listed in Appendix A to this Agreement.

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

Electric Service is any type of power and energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

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

FERC License means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.

Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy means Firm Hydroelectric Energy, Firm Hydroelectric Power, Firm Hydroelectric Peaking Energy, and Firm Hydroelectric Peaking Power supplied from the Project under this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Energy means energy (kWh) associated with Firm Hydroelectric Power intended to be available at all times except for limitations provided in this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Peaking Energy means energy (kWh) associated with Firm Hydroelectric Peaking Power supplied at 12.5% monthly load factor.

Firm Hydroelectric Peaking Power means additional capacity (kW) from the Project intended to be available during Customer's peak load periods and limited as to the associated Firm Hydroelectric Peaking Energy to be supplied as set forth in this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Power means capacity (kW) from the Project intended to be available at all times except for limitations provided in this Agreement, the Rules, or applicable Service Tariff. Firm Hydroelectric Power shall not include Firm Hydroelectric Peaking Power.

Mutual Assistance is the practice of coordinated sharing of resources between electric systems for the purpose of restoring safe electric service and maintaining electric grid resilience and reliability, and is an essential part of the electric power industry's service restoration process and contingency planning.

Neighboring State Customers means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.

Non-Firm Hydroelectric Energy is all energy from the Authority's Niagara Power Project that is in addition to the energy associated with Firm and Peaking Hydroelectric Power and Energy that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.

NRA means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

NYISO means the New York Independent System Operator, Inc. or any successor organization.

NYISO Capability Period is as defined in the NYISO Open Access Transmission Tariff: Six-month periods which are established as follows: (1) from May 1 through October 31 of each year; and (2) from November 1 of each year through April 30 of the following year; or such other periods as may be determined by the Operating Committee of the NYISO.

Planned Hydropower Curtailment means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which the Authority makes in response to an Adverse Water Condition that the Authority (i) anticipated, and (ii) provided advance notice of pursuant to Section XIII.b of this Agreement.

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

Project Power and Energy means Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II(d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.

Relicensing Settlement Agreement means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring State Customers dated August 5, 2005.

RTO means an entity that, as a Regional Transmission Organization, operates transmission facilities and centralized wholesale power markets in a region pursuant to authority granted by one or more agreements or tariffs that have been accepted or approved by FERC. This term shall also refer to an independent system operator (ISO) that operates in a similar manner to an RTO and pursuant to agreements or tariffs accepted or approved by FERC, but does not refer to the NYISO.

Rules are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).

Service Tariffs are schedules establishing rates and other conditions for sale of Electric Services to Customer.

Substitute Energy means energy that is provided to a Customer by or through the Authority for the purpose of replacing Firm Hydroelectric Energy (and Firm

Hydroelectric Peaking Energy, if being supplied at the time) that is not supplied to the Customer due to a Planned Hydropower Curtailment or Unplanned Hydropower Curtailment.

Unplanned Hydropower Curtailment means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which is made by the Authority in response to an Adverse Water Condition that the Authority did not anticipate.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below*:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NS-1 - 8,300 kilowatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NS-2 - 1,800 kilowatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to
Service Tariff No. NS-3 - As available

*Allocations will be adjusted for the remainder of the term on or about January 1, 2026, per Article XII.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be

such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II.b.). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers. To the extent that there is a balance of Project Energy owed to either the Customer or the Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.
- d. Neither the identification of the Electric Service to be provided under this Article nor other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer. For avoidance of doubt, Additional Products does not include environmental attributes, which is addressed separately in Article XIV, below.

III. Modification of Neighboring State Customers Allocations

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this

Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

IV. Rules, Regulations and Service Tariffs

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

V. Resale of Project Power and Energy

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: (i) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, (ii) do so without profit other than reasonable compensation for administrative and service costs, (iii) resell such Project Power and Energy only to the Distributing Entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and maintained on a current basis, and which are "public bodies or nonprofit cooperatives" under the NRA ("Distributing Entities"), (iv) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric

Service, (v) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and (vi) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License. Neither the Customer nor any Distributing Entity may resell the Project Power and Energy purchased from the Authority into their RTO's market for financial settlement; provided, however, Customer and any Distributing Entity shall be permitted to continue offering Project Power and Energy purchased from the Authority into an RTO market where doing so is necessary to satisfy applicable requirements of the RTO in meeting Customer's load obligations.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of such Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

VI. Determination of Monthly Energy Allocations and Distributing Entities

Monthly energy allotments shall be determined by the Authority using the monthly load factors, which will be updated on an annual basis. Load factors will be calculated from the Customer's aggregated system-wide hourly interval load data for each month of the year two years prior for all end user recipients of Project Power and Energy under this Agreement. If Customer has recipients that do not have readily available historical load data, the Customer may substitute aggregated monthly billing determinants for energy and demand for those recipients as a data contribution to the load factors as set forth below. The Customer's monthly load factor calculation will be as follows:

$$(\text{System-wide monthly energy MWh}) \div [(\text{monthly coincident peak demand MW}) \times (\text{number of hours in the month})]$$

The hourly load data and substitute aggregated billing determinant data shall be submitted to the Authority within 30 days of the execution date of this Agreement, for the calendar year two years earlier. For each subsequent year, the data submitted by Customer shall be for the calendar year two years earlier, and shall be submitted

to the Authority by the second Monday in March. The system-wide monthly load factors shall be updated annually by the Authority based on the load factors of all of the Customer's recipients of Project Power and Energy provided under this Agreement for which load data from the calendar year two years earlier are readily available.

If Customer has individual recipients that do not have readily available historical load data, these recipients may be excluded from the annual calculation of the Customer's system-wide load factors provided that the aggregate of excluded recipients does not exceed 7% of the aggregate monthly energy (MWh) of the Customer's entire system-wide load.

If a Customer does not have interval load data readily available for at least 93% of the aggregate monthly energy (MWh) of its recipients of Project Power and Energy under this Agreement, those recipients may substitute all or a portion of this 93% with hourly load data for calendar month billed energy (MWh) and billed demand (MW) as recorded and quantified by revenue grade metering equipment, for the calendar year two years earlier. The substituted monthly load factors will be weighted for the portion of the Customer's system-wide MWh they represent and combined with the load factors calculated with the otherwise supplied interval load data for the remainder of the Customer's system. Assuming a threshold of 93% of energy is reached, the Authority will determine the load factor calculation for the Customer.

In the case of a substantial reallocation of power among the Distributing Entities, the monthly load factor, and resulting energy allotment, shall be adjusted no later than the next load factor update date. Appendix A, attached hereto contains, inter alia, a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then-existing allocation among authorized recipients in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of power to New York's neighboring states in order to fulfill statutory and/or license obligations.

VII. Transmission and Delivery of Power and Energy

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO.

In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with requisite notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

VIII. Scheduling Procedures

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. In the event the Authority determines that a modification to the Scheduling Procedures or methodologies is necessary to be consistent with this Agreement, or to conform such procedures to the requirements of the NYISO or to improve the efficiency of operations, the Authority shall first consult with Customer in order to identify and mitigate any adverse impacts on Customer that may result from the proposed modification. If the Authority and Customer do not reach agreement on modified Scheduling Procedures or methodologies within 30 days after their initial consultation, the Authority shall furnish Customer prior written notice in accordance with Article XVIII of the Authority's proposed modification of Scheduling Procedures or methodologies, provided that any such modification shall not reduce or impair the Customer's contractual entitlement to Project Power and Energy available hereunder to serve Customer's load.

IX. Dispatching Agent

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule energy in general accordance with Customer's system load shape, except that Customer may (i) at its option, schedule energy against the aggregate load shape of the RTO region or subregion in which the end-use recipients of Authority electricity purchased by Customer are located, or (ii) with the agreement of the Authority, schedule energy on any other load shape basis that represents the end-use recipients of the Authority electricity purchased by Customer. Customer may change its specification of the load shape or other basis on which it will schedule energy for a new calendar year by providing not less than three months prior notice to the Authority.

X. Rates

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Firm and Peaking Hydroelectric Power and Energy and Non-Firm Hydroelectric Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers. The Authority shall charge and Customer shall pay the preference power rates as adopted by the Authority from time to time for as long as those rates remain in effect during the term of this Agreement. Customer 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.

Customer waives any challenges to any of the following methodologies and principles¹ to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted on April 29, 2003 and November 15, 2011:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this 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).

¹ These methodologies and principles were employed in and explained by (1) the Authority’s January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on April 29, 2003; (2) the RSR explanatory statement attached hereto as Appendix B; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

(vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix C.

(viii) Unforced Capacity ("UCAP") sales credited to Cost of Service.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.

XI. Other Classes of Power and Energy

In the event that the Authority at any time determines that any class of power and energy other than those sold pursuant to Service Tariff Nos. NS-1, NS-2 and NS-3 is available for sale to Customer or that additional power and energy under those Service Tariffs is available for sale to Customer, the Authority shall notify Customer, and Customer may purchase such power and energy hereunder at the rate schedule or schedules then in effect for such power and energy, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

XII. Reallocation of Project Power and Energy

- a. The Authority and Customer agree that the Distributing Entities and the consumers for each Distributing Entity in the 2007 agreement's Appendix A, which will be updated in 2025 for the allocation re-allotment on or about January 1, 2026 supporting allocations of Project Power and Energy among the Neighboring State Customers will be as identified in Appendix A. If Customer is or becomes unable to receive, or chooses not to receive, any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.
- b. If a Distributing Entity included on Customer's Appendix A is or becomes ineligible to receive preference power pursuant to the NRA or chooses not to receive preference power, Customer shall cease its resale and distribution of Project Power and Energy to such Distributing Entity as soon as practicable after Customer becomes aware of such ineligibility or election. Customer shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility or election as soon as practicable upon its becoming aware of such ineligibility or election. Moreover, in such event,

the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demands for the Neighboring State Customers pursuant to this Agreement and if after January 1, 2026, the revised Appendix A used to establish the updated Contract Demands for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the the Distributing Entity that becomes ineligible or elects not to receive preference power. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

The Authority and Customer agree that, except for any pro rata reallocation required pursuant to the foregoing subsection a. or subsection b., the rural and domestic customer data supporting allocations among the Neighboring State Customers will be as set forth in Appendix A and will not be revised prior to January 1, 2026.

XIII. Hydropower Curtailments and Substitute Energy

- a. The Authority shall have the right to implement Planned Hydropower Curtailments for any Adverse Water Condition that the Authority anticipated and for which the Authority provided advance notice pursuant to Article XIII.b. of this Agreement. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- b. The Authority will provide the Customer with advance notice of any Planned Hydropower Curtailment that in the Authority's judgment will impact Electric Service. Such notice will be provided no later than the tenth (10th) 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.
- c. The Authority shall have the right to implement Unplanned Hydropower Curtailments for any Adverse Water Condition that the Authority did not anticipate. The Authority will implement Unplanned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- d. The Authority shall notify the Customer of the occurrence and expected duration (if known) of an Unplanned Hydropower Curtailment which in the Authority's judgment will impact Electric Service to the Customer. Such notice will be provided via e-mail (or such other means as the Authority and Customer may agree) to the individuals identified in Article XVIII.d. as

promptly as is practicable under the circumstances but in any event shall be provided not later than five (5) business days after the occurrence of each Unplanned Hydropower Curtailment. The notice also 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.

- e. The Authority will supply each requesting Customer with Substitute Energy during Planned Hydropower Curtailments (subject to the specific provisions of subsection f., below), and will supply each Customer with Substitute Energy during Unplanned Hydropower Curtailments; provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration that is commercially reasonable under the circumstances.
- f. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer during Planned Hydropower Curtailments to replace the Firm Hydroelectric Power and Energy that would otherwise have been supplied under this Agreement. Such request shall be received by the Authority at least thirty (30) days prior to the start of the six-month NYISO Capability Period, during which time such Substitute Energy shall be supplied by the Authority. The provision of Substitute Energy may be terminated by the Authority or the Customer upon written notice of at least thirty (30) days prior to the start of the subsequent six-month NYISO Capability Period.
- g. Unless otherwise agreed upon by the Parties in writing, Substitute Energy will be sourced from markets administered by the NYISO.
- h. The Authority will provide each Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- i. Each Customer shall reimburse the Authority for all costs that the Authority incurs for providing Substitute Energy to such Customer. The charges for such costs shall appear on the Authority's bills, and payment of such charges are subject to the provisions of the applicable Service Tariff and the Rules relating to the payment of bills. The Authority's failure to provide notice pursuant to Article XIII.b. or Article XIII.d. shall not affect the obligation of any Customer to pay for Substitute Energy.

XIV. Environmental Attributes

Provided it remains permissible under the laws, regulations, orders or rulemakings affecting the Authority's hydroelectric resources, the environmental attributes associated with the Project Power and Energy sold to Customer under this Agreement shall be made available to Customer through the New York Generation

Attribute Tracking System ("NYGATS"), New York State's on-line tracking system that records renewable energy certificates. The Authority's provision of environmental attributes to Customer confers on Customer the exclusive right to make beneficial use of such environmental attributes, including the right to utilize, transfer or monetize such environmental attributes as Customer determines in its sole discretion is most advantageous.

XV. Reports

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of (i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), (ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and (iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

XVI. Appointment of Customer Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

XVII. Term and Termination of Service

- a. Once initiated, service shall continue until the earliest of (a) termination by Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) April 30, 2032. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent

jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency), or (b) as otherwise provided herein or in the Rules.

- b. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the FERC License.

XVIII. Communications

The Authority acknowledges that each of the Neighboring State Customers has been appointed by the executive authority of each Designated State as that state's sole representative for all matters pertaining to this Agreement. Accordingly, the Authority agrees as follows:

- a. Before implementing any changes in procedures contemplated in this Agreement related to the sale of electricity, the Authority will notify the Customer for each such Designated State of the nature of and reasons for the proposed change and the date of its proposed implementation. In the absence of exigent circumstances, such notice shall be provided no fewer than sixty (60) days before the change is implemented.
- b. Any notification or communication required in subsection a. above, or by any other provision of this Agreement shall be provided in writing directly to the individual who has been designated by the Customer for each Designated State as the appropriate contact person, as set forth below:

[Name]
[Title]
[Organization]
[Address]
[phone #]
[e-mail address]

It shall be the responsibility of the individual designated above, and not the Authority, to provide the notification or communication required by subsection a. above, to the individual employed by each Customer in the highest executive or senior managerial position with direct responsibility for electric utility matters.

- c. Any notification or communication by the Customer regarding this Agreement shall be provided in writing directly to the individual in the position designated by the Authority as the appropriate contact person, as set forth below:

Manager – Power Contracts & Tariffs
New York Power Authority
123 Main St.
White Plains, New York 10601
(914) 681-6200
PowerContracts@nypa.gov

- d. In addition to providing notice to the individual identified in Article XVIII.b. above via e-mail and phone, any notification of an Unplanned Hydropower Curtailment described in Article XIII.e. will be provided to the appropriate contact person(s) via e-mail (or such other means as the Parties may agree) as set forth below:

[Individual Name]
[E-mail Address]
[Cell Phone]

XIX. Legal or Regulatory Change; Cooperation

- a. If at any time after the Effective Date of this Agreement there is any change to any law or regulation applicable to this Agreement, or to any tariff or rule of the NYISO or the RTO in which Customer is located, that substantially alters the contractual relationship between the Parties or the allocation of benefits hereunder, the Parties shall negotiate in good faith to determine whether any amendments, revisions or additions to this Agreement are necessary in order to maintain or restore the benefits of this Agreement to each Party as contemplated at the time of execution hereof. The Parties shall negotiate in good faith concerning any such amendments, revisions or additions to this Agreement, none of which shall be binding unless it is by agreement of the Parties in writing.
- b. Customer and the Authority agree to reasonably cooperate with one another in the performance of their respective obligations under this Agreement and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

XX. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act.

XXI. Venue

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

XXII. Mutual Assistance

- a. Customer (on behalf of the Distributing Entities listed in Appendix A to this Agreement) receives power allocations from power resources located in New York State and has an interest in the safe and reliable operation of New York's electric transmission system and the prompt restoration of service following interruptions in electric transmission service caused by storms and other events. Certain of Customer's Distributing Entities may currently participate directly or through a third party in mutual assistance agreements with New York State utilities ("Assistance Agreements").
- b. Accordingly, each Distributing Entity is in the position to consider requests by the Authority for rendering of assistance, which may be implemented through existing Assistance Agreements, as applicable. To the extent any Distributing Entity is not a party to any existing Assistance Agreement(s) addressing the provision of aid to the Authority and/or other New York State emergency response officials, (i) the Authority will notify Customer of any such non-participating Distributing Entity, and (ii) within ten business days after receiving such notification from the Authority, Customer will inform the Authority of the name and contact information of one or more individuals engaged by the relevant Distributing Entity in order that the Authority may initiate discussions with such Distributing Entity regarding participation in a mutual assistance network that is available to New York State utilities.
- c. Each Customer agrees to furnish, upon request from the Authority, updated contact information for any of its Distributing Entities with which the Authority does not have an Assistance Agreement for purposes of the Authority (or other New York State emergency response officials) requesting assistance from such Distributing Entities, including, without limitation, a request for the deployment of trained personnel; other forms of support services; equipment; materials; supplies; or fuels. Each Distributing Entity will determine, in its sole and absolute discretion, its ability and willingness to provide the requested assistance, taking into account its operational needs, the health and safety of its workers, and all other circumstances deemed pertinent by the Distributing Entity.

- d. The Parties agree to work together to ensure that appropriate Assistance Agreements are maintained where applicable.
- e. The Customer agrees to consider invitations from the Authority and/or other New York State emergency response officials to participate in emergency management symposiums or other similar emergency planning efforts or initiatives.

XXIII. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained, which consent shall not be unreasonably withheld.

XXIV. Previous Agreements and Communications

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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.

XXV. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

XXVI. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall,

at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be void and unenforceable.

XXVII. Waiver

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

XXVIII. Execution

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

XXIX. Effectiveness of Agreement

The agreement shall take effect upon the Effective Date, which requires execution by both Parties. The Authority will execute the Agreement only after the Governor's approval of the Agreement in accordance with Section 1009 of the New York Public Authorities Law.

CUSTOMER

By: _____

Print: _____

Title: _____

Date: _____

Accepted:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Print: _____

Title: _____

Date: _____

APPENDIX A

I. DISTRIBUTING ENTITIES INFORMATION – Connecticut Municipal Electric Energy Cooperative

<u>Distributing Entity</u>	<u>Resale (Y/N)</u>
1. Bozrah	N
2. Groton	N
3. Jewett City	N
4. Norwalk III	N
5. Norwich	N
6. MTUA	N
7. S. Norwalk	N
8. Wallingford	N

APPENDIX A

II. DISTRIBUTING ENTITIES – CONSUMERS FOR ALLOCATION/ALLOTMENT

Info From: 2007 Niagara Agreement - Connecticut Municipal Electric Energy Cooperative

Public Entities	Number of R & D Consumers (2005 CY)	NIAGARA Allocation %
Bozrah	2,295	3.58
Groton	13,886	21.65
Jewett City	1,846	2.88
Norwalk III	3,066	4.78
Norwich	17,414	27.15
MTUA	50	0.08
S. Norwalk	4,852	7.57
Wallingford	20,726	32.32
Total	64,135	100.00

APPENDIX B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to Customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. It is presently calculated consistent with Service Tariff No. NS-2 regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Customers’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include ancillary services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining assigned costs (after allocation of costs to the demand function) by the annual metered generation.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the Niagara/St. Lawrence projects that is sold in the various ISO auction markets.

POWER AUTHORITY
OF THE
STATE OF NEW YORK

30 South Pearl Street
Albany, New York

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT POWER AND ENERGY TO
MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy Service
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy Service
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

POWER AUTHORITY OF THE STATE OF NEW YORK

30 South Pearl Street

Albany, New York 12207

AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY

Massachusetts Department of Public Utilities, which is the bargaining agent for the Commonwealth of Massachusetts, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the "Parties"), for electric service as follows:

I. Definitions

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 of the Authority who are served by the Project.

Agreement means this Agreement.

Authority is the Power Authority of the State of New York.

Contract Demand will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

Customer is the bargaining agent identified above.

Designated States means the states represented by the Neighboring State Customers.

Distributing Entities are the entities listed in Appendix A to this Agreement.

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

Electric Service is any type of power and energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

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

FERC License means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.

Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy means Firm Hydroelectric Energy, Firm Hydroelectric Power, Firm Hydroelectric Peaking Energy, and Firm Hydroelectric Peaking Power supplied from the Project under this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Energy means energy (kWh) associated with Firm Hydroelectric Power intended to be available at all times except for limitations provided in this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Peaking Energy means energy (kWh) associated with Firm Hydroelectric Peaking Power supplied at 12.5% monthly load factor.

Firm Hydroelectric Peaking Power means additional capacity (kW) from the Project intended to be available during Customer's peak load periods and limited as to the associated Firm Hydroelectric Peaking Energy to be supplied as set forth in this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Power means capacity (kW) from the Project intended to be available at all times except for limitations provided in this Agreement, the Rules, or applicable Service Tariff. Firm Hydroelectric Power shall not include Firm Hydroelectric Peaking Power.

Mutual Assistance is the practice of coordinated sharing of resources between electric systems for the purpose of restoring safe electric service and maintaining electric grid resilience and reliability, and is an essential part of the electric power industry's service restoration process and contingency planning.

Neighboring State Customers means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.

Non-Firm Hydroelectric Energy is all energy from the Authority's Niagara Power Project that is in addition to the energy associated with Firm and Peaking Hydroelectric Power and Energy that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.

NRA means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

NYISO means the New York Independent System Operator, Inc. or any successor organization.

NYISO Capability Period is as defined in the NYISO Open Access Transmission Tariff: Six-month periods which are established as follows: (1) from May 1 through October 31 of each year; and (2) from November 1 of each year through April 30 of the following year; or such other periods as may be determined by the Operating Committee of the NYISO.

Planned Hydropower Curtailment means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which the Authority makes in response to an Adverse Water Condition that the Authority (i) anticipated, and (ii) provided advance notice of pursuant to Section XIII.b of this Agreement.

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

Project Power and Energy means Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II(d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.

Relicensing Settlement Agreement means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring State Customers dated August 5, 2005.

RTO means an entity that, as a Regional Transmission Organization, operates transmission facilities and centralized wholesale power markets in a region pursuant to authority granted by one or more agreements or tariffs that have been accepted or approved by FERC. This term shall also refer to an independent system operator (ISO) that operates in a similar manner to an RTO and pursuant to agreements or tariffs accepted or approved by FERC, but does not refer to the NYISO.

Rules are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).

Service Tariffs are schedules establishing rates and other conditions for sale of Electric Services to Customer.

Substitute Energy means energy that is provided to a Customer by or through the Authority for the purpose of replacing Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) that is not supplied to the Customer due to a Planned Hydropower Curtailment or Unplanned Hydropower Curtailment.

Unplanned Hydropower Curtailment means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which is made by the Authority in response to an Adverse Water Condition that the Authority did not anticipate.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below*:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NS-1 - 43,900 kilowatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NS-2 - 9,400 kilowatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to
Service Tariff No. NS-3 - As available

*Allocations will be adjusted for the remainder of the term on or about January 1, 2026, per Article XII.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability

changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II.b.). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers. To the extent that there is a balance of Project Energy owed to either the Customer or the Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.
- d. Neither the identification of the Electric Service to be provided under this Article nor other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer. For avoidance of doubt, Additional Products does not include environmental attributes, which is addressed separately in Article XIV, below.

III. Modification of Neighboring State Customers Allocations

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

IV. Rules, Regulations and Service Tariffs

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

V. Resale of Project Power and Energy

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: (i) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, (ii) do so without profit other than reasonable compensation for administrative and service costs, (iii) resell such Project Power and Energy only to the Distributing Entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and

maintained on a current basis, and which are “public bodies or nonprofit cooperatives” under the NRA (“Distributing Entities”), (iv) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric Service, (v) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and (vi) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License. Neither the Customer nor any Distributing Entity may resell the Project Power and Energy purchased from the Authority into their RTO's market for financial settlement; provided, however, Customer and any Distributing Entity shall be permitted to continue offering Project Power and Energy purchased from the Authority into an RTO market where doing so is necessary to satisfy applicable requirements of the RTO in meeting Customer's load obligations.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of such Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

VI. Determination of Monthly Energy Allocations and Distributing Entities

Monthly energy allotments shall be determined by the Authority using the monthly load factors, which will be updated on an annual basis. Load factors will be calculated from the Customer's aggregated system-wide hourly interval load data for each month of the year two years prior for all end user recipients of Project Power and Energy under this Agreement. If Customer has recipients that do not have readily available historical load data, the Customer may substitute aggregated monthly billing determinants for energy and demand for those recipients as a data contribution to the load factors as set forth below. The Customer's monthly load factor calculation will be as follows:

$$(\text{System-wide monthly energy MWh}) \div [(\text{monthly coincident peak demand MW}) \times (\text{number of hours in the month})]$$

The hourly load data and substitute aggregated billing determinant data shall be submitted to the Authority within 30 days of the execution date of this Agreement, for the calendar year two years earlier. For each subsequent year, the data submitted by Customer shall be for the calendar year two years earlier, and shall be submitted to the Authority by the second Monday in March. The system-wide monthly load factors shall be updated annually by the Authority based on the load factors of all of the Customer's recipients of Project Power and Energy provided under this Agreement for which load data from the calendar year two years earlier are readily available.

If Customer has individual recipients that do not have readily available historical load data, these recipients may be excluded from the annual calculation of the Customer's system-wide load factors provided that the aggregate of excluded recipients does not exceed 7% of the aggregate monthly energy (MWh) of the Customer's entire system-wide load.

If a Customer does not have interval load data readily available for at least 93% of the aggregate monthly energy (MWh) of its recipients of Project Power and Energy under this Agreement, those recipients may substitute all or a portion of this 93% with hourly load data for calendar month billed energy (MWh) and billed demand (MW) as recorded and quantified by revenue grade metering equipment, for the calendar year two years earlier. The substituted monthly load factors will be weighted for the portion of the Customer's system-wide MWh they represent and combined with the load factors calculated with the otherwise supplied interval load data for the remainder of the Customer's system. Assuming a threshold of 93% of energy is reached, the Authority will determine the load factor calculation for the Customer.

In the case of a substantial reallocation of power among the Distributing Entities, the monthly load factor, and resulting energy allotment, shall be adjusted no later than the next load factor update date. Appendix A, attached hereto contains, inter alia, a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then-existing allocation among authorized recipients in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of power to New York's neighboring states in order to fulfill statutory and/or license obligations.

VII. Transmission and Delivery of Power and Energy

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access

Transmission Tariff (OATT) or other applicable tariff of the NYISO. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO.

In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with requisite notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

VIII. Scheduling Procedures

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. In the event the Authority determines that a modification to the Scheduling Procedures or methodologies is necessary to be consistent with this Agreement, or to conform such procedures to the requirements of the NYISO or to improve the efficiency of operations, the Authority shall first consult with Customer in order to identify and mitigate any adverse impacts on Customer that may result from the proposed modification. If the Authority and Customer do not reach agreement on modified Scheduling Procedures or methodologies within 30 days after their initial consultation, the Authority shall furnish Customer prior written notice in accordance with Article XVIII of the Authority's proposed modification of Scheduling Procedures or methodologies, provided that any such modification shall not reduce or impair the Customer's contractual entitlement to Project Power and Energy available hereunder to serve Customer's load.

IX. Dispatching Agent

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule energy in general accordance with Customer's system load shape, except that Customer may (i) at its option, schedule energy against the aggregate load shape of the RTO region or subregion in which the end-use recipients of Authority electricity purchased by Customer are located, or (ii) with the agreement of the Authority, schedule energy on any other load shape

basis that represents the end-use recipients of the Authority electricity purchased by Customer. Customer may change its specification of the load shape or other basis on which it will schedule energy for a new calendar year by providing not less than three months prior notice to the Authority.

X. Rates

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Firm and Peaking Hydroelectric Power and Energy and Non-Firm Hydroelectric Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers. The Authority shall charge and Customer shall pay the preference power rates as adopted by the Authority from time to time for as long as those rates remain in effect during the term of this Agreement. Customer 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.

Customer waives any challenges to any of the following methodologies and principles¹ to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted on April 29, 2003 and November 15, 2011:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this Agreement) settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, Index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “Auer Settlement”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.

¹ These methodologies and principles were employed in and explained by (1) the Authority’s January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on April 29, 2003; (2) the *RSR explanatory statement attached hereto as Appendix B*; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

- (vi) Post-employment benefits other than pensions (*i.e.*, retiree health benefits).
- (vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix C.
- (viii) Unforced Capacity ("UCAP") sales credited to Cost of Service.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.

XI. Other Classes of Power and Energy

In the event that the Authority at any time determines that any class of power and energy other than those sold pursuant to Service Tariff Nos. NS-1, NS-2 and NS-3 is available for sale to Customer or that additional power and energy under those Service Tariffs is available for sale to Customer, the Authority shall notify Customer, and Customer may purchase such power and energy hereunder at the rate schedule or schedules then in effect for such power and energy, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

XII. Reallocation of Project Power and Energy

- a. The Authority and Customer agree that the Distributing Entities and the consumers for each Distributing Entity in the 2007 agreement's Appendix A, which will be updated in 2025 for the allocation re-allotment on or about January 1, 2026 supporting allocations of Project Power and Energy among the Neighboring State Customers will be as identified in Appendix A. If Customer is or becomes unable to receive, or chooses not to receive, any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.
- b. If a Distributing Entity included on Customer's Appendix A is or becomes ineligible to receive preference power pursuant to the NRA or chooses not to receive preference power, Customer shall cease its resale and distribution of Project Power and Energy to such Distributing Entity as soon as practicable after Customer becomes aware of such ineligibility or election. Customer

shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility or election as soon as practicable upon its becoming aware of such ineligibility or election. Moreover, in such event, the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demands for the Neighboring State Customers pursuant to this Agreement and if after January 1, 2026, the revised Appendix A used to establish the updated Contract Demands for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the the Distributing Entity that becomes ineligible or elects not to receive preference power. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

The Authority and Customer agree that, except for any pro rata reallocation required pursuant to the foregoing subsection a. or subsection b., the rural and domestic customer data supporting allocations among the Neighboring State Customers will be as set forth in Appendix A and will not be revised prior to January 1, 2026.

XIII. Hydropower Curtailments and Substitute Energy

- a. The Authority shall have the right to implement Planned Hydropower Curtailments for any Adverse Water Condition that the Authority anticipated and for which the Authority provided advance notice pursuant to Article XIII.b. of this Agreement. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- b. The Authority will provide the Customer with advance notice of any Planned Hydropower Curtailment that in the Authority's judgment will impact Electric Service. Such notice will be provided no later than the tenth (10th) 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.
- c. The Authority shall have the right to implement Unplanned Hydropower Curtailments for any Adverse Water Condition that the Authority did not anticipate. The Authority will implement Unplanned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- d. The Authority shall notify the Customer of the occurrence and expected duration (if known) of an Unplanned Hydropower Curtailment which in the

Authority's judgment will impact Electric Service to the Customer. Such notice will be provided via e-mail (or such other means as the Authority and Customer may agree) to the individuals identified in Article XVIII.d. as promptly as is practicable under the circumstances but in any event shall be provided not later than five (5) business days after the occurrence of each Unplanned Hydropower Curtailment. The notice also 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.

- e. The Authority will supply each requesting Customer with Substitute Energy during Planned Hydropower Curtailments (subject to the specific provisions of subsection f., below), and will supply each Customer with Substitute Energy during Unplanned Hydropower Curtailments; provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration that is commercially reasonable under the circumstances.
- f. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer during Planned Hydropower Curtailments to replace the Firm Hydroelectric Power and Energy that would otherwise have been supplied under this Agreement. Such request shall be received by the Authority at least thirty (30) days prior to the start of the six-month NYISO Capability Period, during which time such Substitute Energy shall be supplied by the Authority. The provision of Substitute Energy may be terminated by the Authority or the Customer upon written notice of at least thirty (30) days prior to the start of the subsequent six-month NYISO Capability Period.
- g. Unless otherwise agreed upon by the Parties in writing, Substitute Energy will be sourced from markets administered by the NYISO.
- h. The Authority will provide each Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- i. Each Customer shall reimburse the Authority for all costs that the Authority incurs for providing Substitute Energy to such Customer. The charges for such costs shall appear on the Authority's bills, and payment of such charges are subject to the provisions of the applicable Service Tariff and the Rules relating to the payment of bills. The Authority's failure to provide notice pursuant to Article XIII.b. or Article XIII.d. shall not affect the obligation of any Customer to pay for Substitute Energy.

XIV. Environmental Attributes

Provided it remains permissible under the laws, regulations, orders or rulemakings affecting the Authority's hydroelectric resources, the environmental attributes associated with the Project Power and Energy sold to Customer under this Agreement shall be made available to Customer through the New York Generation Attribute Tracking System ("NYGATS"), New York State's on-line tracking system that records renewable energy certificates. The Authority's provision of environmental attributes to Customer confers on Customer the exclusive right to make beneficial use of such environmental attributes, including the right to utilize, transfer or monetize such environmental attributes as Customer determines in its sole discretion is most advantageous.

XV. Reports

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of (i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), (ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and (iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

XVI. Appointment of Customer Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

XVII. Term and Termination of Service

- a. Once initiated, service shall continue until the earliest of (a) termination by

Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) April 30, 2032. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency), or (b) as otherwise provided herein or in the Rules.

- b. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the FERC License.

XVIII. Communications

The Authority acknowledges that each of the Neighboring State Customers has been appointed by the executive authority of each Designated State as that state's sole representative for all matters pertaining to this Agreement. Accordingly, the Authority agrees as follows:

- a. Before implementing any changes in procedures contemplated in this Agreement related to the sale of electricity, the Authority will notify the Customer for each such Designated State of the nature of and reasons for the proposed change and the date of its proposed implementation. In the absence of exigent circumstances, such notice shall be provided no fewer than sixty (60) days before the change is implemented.
- b. Any notification or communication required in subsection a. above, or by any other provision of this Agreement shall be provided in writing directly to the individual who has been designated by the Customer for each Designated State as the appropriate contact person, as set forth below:

[Name]
[Title]
[Organization]
[Address]
[phone #]
[e-mail address]

It shall be the responsibility of the individual designated above, and not the Authority, to provide the notification or communication required by subsection a. above, to the individual employed by each Customer in the highest executive or senior managerial position with direct responsibility for electric utility matters.

- c. Any notification or communication by the Customer regarding this Agreement shall be provided in writing directly to the individual in the position designated by the Authority as the appropriate contact person, as set forth below:

**Manager – Power Contracts & Tariffs
New York Power Authority
123 Main St.
White Plains, New York 10601
(914) 681-6200
PowerContracts@nypa.gov**

- d. In addition to providing notice to the individual identified in Article XVIII.b. above via e-mail and phone, any notification of an Unplanned Hydropower Curtailment described in Article XIII.e. will be provided to the appropriate contact person(s) via e-mail (or such other means as the Parties may agree) as set forth below:

**[Individual Name]
[E-mail Address]
[Cell Phone]**

XIX. Legal or Regulatory Change; Cooperation

- a. If at any time after the Effective Date of this Agreement there is any change to any law or regulation applicable to this Agreement, or to any tariff or rule of the NYISO or the RTO in which Customer is located, that substantially alters the contractual relationship between the Parties or the allocation of benefits hereunder, the Parties shall negotiate in good faith to determine whether any amendments, revisions or additions to this Agreement are necessary in order to maintain or restore the benefits of this Agreement to each Party as contemplated at the time of execution hereof. The Parties shall negotiate in good faith concerning any such amendments, revisions or additions to this Agreement, none of which shall be binding unless it is by agreement of the Parties in writing.
- b. Customer and the Authority agree to reasonably cooperate with one another in the performance of their respective obligations under this Agreement and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

XX. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act.

XXI. Venue

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

XXII. Mutual Assistance

- a. Customer (on behalf of the Distributing Entities listed in Appendix A to this Agreement) receives power allocations from power resources located in New York State and has an interest in the safe and reliable operation of New York's electric transmission system and the prompt restoration of service following interruptions in electric transmission service caused by storms and other events. Certain of Customer's Distributing Entities may currently participate directly or through a third party in mutual assistance agreements with New York State utilities ("Assistance Agreements").
- b. Accordingly, each Distributing Entity is in the position to consider requests by the Authority for rendering of assistance, which may be implemented through existing Assistance Agreements, as applicable. To the extent any Distributing Entity is not a party to any existing Assistance Agreement(s) addressing the provision of aid to the Authority and/or other New York State emergency response officials, (i) the Authority will notify Customer of any such non-participating Distributing Entity, and (ii) within ten business days after receiving such notification from the Authority, Customer will inform the Authority of the name and contact information of one or more individuals engaged by the relevant Distributing Entity in order that the Authority may initiate discussions with such Distributing Entity regarding participation in a mutual assistance network that is available to New York State utilities.
- c. Each Customer agrees to furnish, upon request from the Authority, updated contact information for any of its Distributing Entities with which the Authority does not have an Assistance Agreement for purposes of the Authority (or other New York State emergency response officials) requesting assistance from such Distributing Entities, including, without limitation, a request for the deployment of trained personnel; other forms of support services; equipment; materials; supplies; or fuels. Each Distributing Entity will determine, in its sole and absolute discretion, its ability and willingness to provide the requested assistance, taking into account its operational needs, the health and safety of its workers, and all other circumstances deemed pertinent by the Distributing Entity.

- d. The Parties agree to work together to ensure that appropriate Assistance Agreements are maintained where applicable.
- e. The Customer agrees to consider invitations from the Authority and/or other New York State emergency response officials to participate in emergency management symposiums or other similar emergency planning efforts or initiatives.

XXIII. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained, which consent shall not be unreasonably withheld.

XXIV. Previous Agreements and Communications

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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.

XXV. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

XXVI. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall,

at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be void and unenforceable.

XXVII. Waiver

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

XXVIII. Execution

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

XXIX. Effectiveness of Agreement

The agreement shall take effect upon the Effective Date, which requires execution by both Parties. The Authority will execute the Agreement only after the Governor's approval of the Agreement in accordance with Section 1009 of the New York Public Authorities Law.

CUSTOMER

By: _____

Print: _____

Title: _____

Date: _____

Accepted:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Print: _____

Title: _____

Date: _____

APPENDIX A

I. DISTRIBUTING ENTITIES INFORMATION – Massachusetts Department of Public Utilities

Distributing Entities	Resale (Y/N)?	Distributing Entities	Resale (Y/N)?
Ashburnham	N	Templeton	N
Belmont	N	Wakefield	N
Boylston	N	Wellesley	N
Braintree	N	W. Boylston	N
Chester	N	Westfield	N
Chicopee	N		
Concord	N		
Danvers	N		
Georgetown	N		
Groton	N		
Groveland	N		
Hingham	N		
Holden	N		
Holyoke	N		
Hudson	N		
Hull	N		
Ipswich	N		
Littleton	N		
Mansfield	N		
Marblehead	N		
Merrimac	N		
Middleborough	N		
Middleton	N		
N. Attleborough	N		
Norwood	N		
Paxton	N		
Peabody	N		
Princeton	N		
Reading	N		
Rowley	N		
Russell	N		
Shrewsbury	N		
S. Hadley	N		
Sterling	N		
Taunton	N		

APPENDIX A

II. DISTRIBUTING ENTITIES – CONSUMERS FOR ALLOCATION/ALLOTMENT

Info From: 2007 Niagara Agreement - Massachusetts Department of Public Utilities

Distributing Entities	Number of R & D Consumers (2005 CY)	NIAGARA Allocation %
Ashburnham	2,687	0.70
Belmont	9,956	2.94
Boylston	1,845	0.57
Braintree	12,498	3.88
Chester	594	0.16
Chicopee	23,378	7.12
Concord	6,255	2.18
Danvers	10,362	3.15
Georgetown	2,987	0.80
Groton	3,989	1.18
Groveland	2,391	0.66
Hingham	8,754	2.69
Holden	6,301	1.87
Holyoke	17,061	4.82
Hudson	7,929	2.97
Hull	5,664	1.43
Ipswich	5,863	1.74
Littleton	5,648	1.83
Mansfield	8,327	2.39
Marblehead	9,137	2.75
Merrimac	2,502	0.78
Middleboro	12,264	3.14
Middleton	2,825	0.68
N. Attleboro	11,545	3.34
Norwood	12,934	3.26
Paxton	1,586	0.49
Peabody*	20,283	6.25
Princeton	1,391	0.42
Reading	24,434	7.54
Rowley	2,287	0.65
Russell	438	0.13
Shrewsbury	13,461	3.92
S. Hadley	6,793	2.26
Sterling	3,104	0.84
Taunton	31,105	8.38
Templeton	3,380	0.82

Wakefield	9,990	2.86
Wellesley	8,812	3.01
W. Boylston	2,753	0.81
Westfield	15,419	4.59
Total	338,932	100.00

APPENDIX B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to Customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. It is presently calculated consistent with Service Tariff No. NS-2 regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Customers’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include ancillary services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining assigned costs (after allocation of costs to the demand function) by the annual metered generation.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the Niagara/St. Lawrence projects that is sold in the various ISO auction markets.

POWER AUTHORITY
OF THE
STATE OF NEW YORK

30 South Pearl Street
Albany, New York

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT POWER AND ENERGY TO
PUBLIC POWER ASSOCIATION OF NEW JERSEY

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy Service
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy Service
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

POWER AUTHORITY OF THE STATE OF NEW YORK

30 South Pearl Street

Albany, New York 12207

AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY

Public Power Association of New Jersey, which is the bargaining agent for the State of New Jersey, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the "Parties"), for electric service as follows:

I. Definitions

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 of the Authority who are served by the Project.

Agreement means this Agreement.

Authority is the Power Authority of the State of New York.

Contract Demand will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

Customer is the bargaining agent identified above.

Designated States means the states represented by the Neighboring State Customers.

Distributing Entities are the entities listed in Appendix A to this Agreement.

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

Electric Service is any type of power and energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

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

FERC License means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.

Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy means Firm Hydroelectric Energy, Firm Hydroelectric Power, Firm Hydroelectric Peaking Energy, and Firm Hydroelectric Peaking Power supplied from the Project under this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Energy means energy (kWh) associated with Firm Hydroelectric Power intended to be available at all times except for limitations provided in this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Peaking Energy means energy (kWh) associated with Firm Hydroelectric Peaking Power supplied at 12.5% monthly load factor.

Firm Hydroelectric Peaking Power means additional capacity (kW) from the Project intended to be available during Customer's peak load periods and limited as to the associated Firm Hydroelectric Peaking Energy to be supplied as set forth in this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Power means capacity (kW) from the Project intended to be available at all times except for limitations provided in this Agreement, the Rules, or applicable Service Tariff. Firm Hydroelectric Power shall not include Firm Hydroelectric Peaking Power.

Mutual Assistance is the practice of coordinated sharing of resources between electric systems for the purpose of restoring safe electric service and maintaining electric grid resilience and reliability, and is an essential part of the electric power industry's service restoration process and contingency planning.

Neighboring State Customers means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.

Non-Firm Hydroelectric Energy is all energy from the Authority's Niagara Power Project that is in addition to the energy associated with Firm and Peaking Hydroelectric Power and Energy that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.

NRA means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

NYISO means the New York Independent System Operator, Inc. or any successor organization.

NYISO Capability Period is as defined in the NYISO Open Access Transmission Tariff: Six-month periods which are established as follows: (1) from May 1 through October 31 of each year; and (2) from November 1 of each year through April 30 of the following year; or such other periods as may be determined by the Operating Committee of the NYISO.

Planned Hydropower Curtailment means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which the Authority makes in response to an Adverse Water Condition that the Authority (i) anticipated, and (ii) provided advance notice of pursuant to Section XIII.b of this Agreement.

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

Project Power and Energy means Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II(d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.

Relicensing Settlement Agreement means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring State Customers dated August 5, 2005.

RTO means an entity that, as a Regional Transmission Organization, operates transmission facilities and centralized wholesale power markets in a region pursuant to authority granted by one or more agreements or tariffs that have been accepted or approved by FERC. This term shall also refer to an independent system operator (ISO) that operates in a similar manner to an RTO and pursuant to agreements or tariffs accepted or approved by FERC, but does not refer to the NYISO.

Rules are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).

Service Tariffs are schedules establishing rates and other conditions for sale of Electric Services to Customer.

Substitute Energy means energy that is provided to a Customer by or through the Authority for the purpose of replacing Firm Hydroelectric Energy (and Firm

Hydroelectric Peaking Energy, if being supplied at the time) that is not supplied to the Customer due to a Planned Hydropower Curtailment or Unplanned Hydropower Curtailment.

Unplanned Hydropower Curtailment means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which is made by the Authority in response to an Adverse Water Condition that the Authority did not anticipate.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below*:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NS-1 - 9,000 kilowatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NS-2 - 1,900 kilowatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to
Service Tariff No. NS-3 - As available

*Allocations will be adjusted for the remainder of the term on or about January 1, 2026, per Article XII.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be

such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II.b.). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers. To the extent that there is a balance of Project Energy owed to either the Customer or the Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.
- d. Neither the identification of the Electric Service to be provided under this Article nor other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer. For avoidance of doubt, Additional Products does not include environmental attributes, which is addressed separately in Article XIV, below.

III. Modification of Neighboring State Customers Allocations

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this

Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

IV. Rules, Regulations and Service Tariffs

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

V. Resale of Project Power and Energy

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: (i) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, (ii) do so without profit other than reasonable compensation for administrative and service costs, (iii) resell such Project Power and Energy only to the Distributing Entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and maintained on a current basis, and which are "public bodies or nonprofit cooperatives" under the NRA ("Distributing Entities"), (iv) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric

Service, (v) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and (vi) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License. Neither the Customer nor any Distributing Entity may resell the Project Power and Energy purchased from the Authority into their RTO's market for financial settlement; provided, however, Customer and any Distributing Entity shall be permitted to continue offering Project Power and Energy purchased from the Authority into an RTO market where doing so is necessary to satisfy applicable requirements of the RTO in meeting Customer's load obligations.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of such Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

VI. Determination of Monthly Energy Allocations and Distributing Entities

Monthly energy allotments shall be determined by the Authority using the monthly load factors, which will be updated on an annual basis. Load factors will be calculated from the Customer's aggregated system-wide hourly interval load data for each month of the year two years prior for all end user recipients of Project Power and Energy under this Agreement. If Customer has recipients that do not have readily available historical load data, the Customer may substitute aggregated monthly billing determinants for energy and demand for those recipients as a data contribution to the load factors as set forth below. The Customer's monthly load factor calculation will be as follows:

$$(\text{System-wide monthly energy MWh}) \div [(\text{monthly coincident peak demand MW}) \times (\text{number of hours in the month})]$$

The hourly load data and substitute aggregated billing determinant data shall be submitted to the Authority within 30 days of the execution date of this Agreement, for the calendar year two years earlier. For each subsequent year, the data submitted by Customer shall be for the calendar year two years earlier, and shall be submitted

to the Authority by the second Monday in March. The system-wide monthly load factors shall be updated annually by the Authority based on the load factors of all of the Customer's recipients of Project Power and Energy provided under this Agreement for which load data from the calendar year two years earlier are readily available.

If Customer has individual recipients that do not have readily available historical load data, these recipients may be excluded from the annual calculation of the Customer's system-wide load factors provided that the aggregate of excluded recipients does not exceed 7% of the aggregate monthly energy (MWh) of the Customer's entire system-wide load.

If a Customer does not have interval load data readily available for at least 93% of the aggregate monthly energy (MWh) of its recipients of Project Power and Energy under this Agreement, those recipients may substitute all or a portion of this 93% with hourly load data for calendar month billed energy (MWh) and billed demand (MW) as recorded and quantified by revenue grade metering equipment, for the calendar year two years earlier. The substituted monthly load factors will be weighted for the portion of the Customer's system-wide MWh they represent and combined with the load factors calculated with the otherwise supplied interval load data for the remainder of the Customer's system. Assuming a threshold of 93% of energy is reached, the Authority will determine the load factor calculation for the Customer.

In the case of a substantial reallocation of power among the Distributing Entities, the monthly load factor, and resulting energy allotment, shall be adjusted no later than the next load factor update date. Appendix A, attached hereto contains, inter alia, a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then-existing allocation among authorized recipients in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of power to New York's neighboring states in order to fulfill statutory and/or license obligations.

VII. Transmission and Delivery of Power and Energy

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO.

In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with requisite notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

VIII. Scheduling Procedures

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. In the event the Authority determines that a modification to the Scheduling Procedures or methodologies is necessary to be consistent with this Agreement, or to conform such procedures to the requirements of the NYISO or to improve the efficiency of operations, the Authority shall first consult with Customer in order to identify and mitigate any adverse impacts on Customer that may result from the proposed modification. If the Authority and Customer do not reach agreement on modified Scheduling Procedures or methodologies within 30 days after their initial consultation, the Authority shall furnish Customer prior written notice in accordance with Article XVIII of the Authority's proposed modification of Scheduling Procedures or methodologies, provided that any such modification shall not reduce or impair the Customer's contractual entitlement to Project Power and Energy available hereunder to serve Customer's load.

IX. Dispatching Agent

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule energy in general accordance with Customer's system load shape, except that Customer may (i) at its option, schedule energy against the aggregate load shape of the RTO region or subregion in which the end-use recipients of Authority electricity purchased by Customer are located, or (ii) with the agreement of the Authority, schedule energy on any other load shape basis that represents the end-use recipients of the Authority electricity purchased by Customer. Customer may change its specification of the load shape or other basis on which it will schedule energy for a new calendar year by providing not less than three months prior notice to the Authority.

X. Rates

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Firm and Peaking Hydroelectric Power and Energy and Non-Firm Hydroelectric Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers. The Authority shall charge and Customer shall pay the preference power rates as adopted by the Authority from time to time for as long as those rates remain in effect during the term of this Agreement. Customer 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.

Customer waives any challenges to any of the following methodologies and principles¹ to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted on April 29, 2003 and November 15, 2011:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this 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).

¹ These methodologies and principles were employed in and explained by (1) the Authority’s January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on April 29, 2003; (2) the RSR explanatory statement attached hereto as Appendix B; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

(vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix C.

(viii) Unforced Capacity ("UCAP") sales credited to Cost of Service.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.

XI. Other Classes of Power and Energy

In the event that the Authority at any time determines that any class of power and energy other than those sold pursuant to Service Tariff Nos. NS-1, NS-2 and NS-3 is available for sale to Customer or that additional power and energy under those Service Tariffs is available for sale to Customer, the Authority shall notify Customer, and Customer may purchase such power and energy hereunder at the rate schedule or schedules then in effect for such power and energy, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

XII. Reallocation of Project Power and Energy

- a. The Authority and Customer agree that the Distributing Entities and the consumers for each Distributing Entity in the 2007 agreement's Appendix A, which will be updated in 2025 for the allocation re-allotment on or about January 1, 2026 supporting allocations of Project Power and Energy among the Neighboring State Customers will be as identified in Appendix A. If Customer is or becomes unable to receive, or chooses not to receive, any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.
- b. If a Distributing Entity included on Customer's Appendix A is or becomes ineligible to receive preference power pursuant to the NRA or chooses not to receive preference power, Customer shall cease its resale and distribution of Project Power and Energy to such Distributing Entity as soon as practicable after Customer becomes aware of such ineligibility or election. Customer shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility or election as soon as practicable upon its becoming aware of such ineligibility or election. Moreover, in such event,

the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demands for the Neighboring State Customers pursuant to this Agreement and if after January 1, 2026, the revised Appendix A used to establish the updated Contract Demands for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the the Distributing Entity that becomes ineligible or elects not to receive preference power. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

The Authority and Customer agree that, except for any pro rata reallocation required pursuant to the foregoing subsection a. or subsection b., the rural and domestic customer data supporting allocations among the Neighboring State Customers will be as set forth in Appendix A and will not be revised prior to January 1, 2026.

XIII. Hydropower Curtailments and Substitute Energy

- a. The Authority shall have the right to implement Planned Hydropower Curtailments for any Adverse Water Condition that the Authority anticipated and for which the Authority provided advance notice pursuant to Article XIII.b. of this Agreement. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- b. The Authority will provide the Customer with advance notice of any Planned Hydropower Curtailment that in the Authority's judgment will impact Electric Service. Such notice will be provided no later than the tenth (10th) 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.
- c. The Authority shall have the right to implement Unplanned Hydropower Curtailments for any Adverse Water Condition that the Authority did not anticipate. The Authority will implement Unplanned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- d. The Authority shall notify the Customer of the occurrence and expected duration (if known) of an Unplanned Hydropower Curtailment which in the Authority's judgment will impact Electric Service to the Customer. Such notice will be provided via e-mail (or such other means as the Authority and Customer may agree) to the individuals identified in Article XVIII.d. as

promptly as is practicable under the circumstances but in any event shall be provided not later than five (5) business days after the occurrence of each Unplanned Hydropower Curtailment. The notice also 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.

- e. The Authority will supply each requesting Customer with Substitute Energy during Planned Hydropower Curtailments (subject to the specific provisions of subsection f., below), and will supply each Customer with Substitute Energy during Unplanned Hydropower Curtailments; provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration that is commercially reasonable under the circumstances.
- f. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer during Planned Hydropower Curtailments to replace the Firm Hydroelectric Power and Energy that would otherwise have been supplied under this Agreement. Such request shall be received by the Authority at least thirty (30) days prior to the start of the six-month NYISO Capability Period, during which time such Substitute Energy shall be supplied by the Authority. The provision of Substitute Energy may be terminated by the Authority or the Customer upon written notice of at least thirty (30) days prior to the start of the subsequent six-month NYISO Capability Period.
- g. Unless otherwise agreed upon by the Parties in writing, Substitute Energy will be sourced from markets administered by the NYISO.
- h. The Authority will provide each Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- i. Each Customer shall reimburse the Authority for all costs that the Authority incurs for providing Substitute Energy to such Customer. The charges for such costs shall appear on the Authority's bills, and payment of such charges are subject to the provisions of the applicable Service Tariff and the Rules relating to the payment of bills. The Authority's failure to provide notice pursuant to Article XIII.b. or Article XIII.d. shall not affect the obligation of any Customer to pay for Substitute Energy.

XIV. Environmental Attributes

Provided it remains permissible under the laws, regulations, orders or rulemakings affecting the Authority's hydroelectric resources, the environmental attributes associated with the Project Power and Energy sold to Customer under this Agreement shall be made available to Customer through the New York Generation

Attribute Tracking System ("NYGATS"), New York State's on-line tracking system that records renewable energy certificates. The Authority's provision of environmental attributes to Customer confers on Customer the exclusive right to make beneficial use of such environmental attributes, including the right to utilize, transfer or monetize such environmental attributes as Customer determines in its sole discretion is most advantageous.

XV. Reports

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of (i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), (ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and (iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

XVI. Appointment of Customer Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

XVII. Term and Termination of Service

- a. Once initiated, service shall continue until the earliest of (a) termination by Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) April 30, 2032. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent

jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency), or (b) as otherwise provided herein or in the Rules.

- b. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the FERC License.

XVIII. Communications

The Authority acknowledges that each of the Neighboring State Customers has been appointed by the executive authority of each Designated State as that state's sole representative for all matters pertaining to this Agreement. Accordingly, the Authority agrees as follows:

- a. Before implementing any changes in procedures contemplated in this Agreement related to the sale of electricity, the Authority will notify the Customer for each such Designated State of the nature of and reasons for the proposed change and the date of its proposed implementation. In the absence of exigent circumstances, such notice shall be provided no fewer than sixty (60) days before the change is implemented.
- b. Any notification or communication required in subsection a. above, or by any other provision of this Agreement shall be provided in writing directly to the individual who has been designated by the Customer for each Designated State as the appropriate contact person, as set forth below:

[Name]
[Title]
[Organization]
[Address]
[phone #]
[e-mail address]

It shall be the responsibility of the individual designated above, and not the Authority, to provide the notification or communication required by subsection a. above, to the individual employed by each Customer in the highest executive or senior managerial position with direct responsibility for electric utility matters.

- c. Any notification or communication by the Customer regarding this Agreement shall be provided in writing directly to the individual in the position designated by the Authority as the appropriate contact person, as set forth below:

**Manager – Power Contracts & Tariffs
New York Power Authority
123 Main St.
White Plains, New York 10601
(914) 681-6200
PowerContracts@nypa.gov**

- d. In addition to providing notice to the individual identified in Article XVIII.b. above via e-mail and phone, any notification of an Unplanned Hydropower Curtailment described in Article XIII.e. will be provided to the appropriate contact person(s) via e-mail (or such other means as the Parties may agree) as set forth below:

**[Individual Name]
[E-mail Address]
[Cell Phone]**

XIX. Legal or Regulatory Change; Cooperation

- a. If at any time after the Effective Date of this Agreement there is any change to any law or regulation applicable to this Agreement, or to any tariff or rule of the NYISO or the RTO in which Customer is located, that substantially alters the contractual relationship between the Parties or the allocation of benefits hereunder, the Parties shall negotiate in good faith to determine whether any amendments, revisions or additions to this Agreement are necessary in order to maintain or restore the benefits of this Agreement to each Party as contemplated at the time of execution hereof. The Parties shall negotiate in good faith concerning any such amendments, revisions or additions to this Agreement, none of which shall be binding unless it is by agreement of the Parties in writing.
- b. Customer and the Authority agree to reasonably cooperate with one another in the performance of their respective obligations under this Agreement and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

XX. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act.

XXI. Venue

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

XXII. Mutual Assistance

- a. Customer (on behalf of the Distributing Entities listed in Appendix A to this Agreement) receives power allocations from power resources located in New York State and has an interest in the safe and reliable operation of New York's electric transmission system and the prompt restoration of service following interruptions in electric transmission service caused by storms and other events. Certain of Customer's Distributing Entities may currently participate directly or through a third party in mutual assistance agreements with New York State utilities ("Assistance Agreements").
- b. Accordingly, each Distributing Entity is in the position to consider requests by the Authority for rendering of assistance, which may be implemented through existing Assistance Agreements, as applicable. To the extent any Distributing Entity is not a party to any existing Assistance Agreement(s) addressing the provision of aid to the Authority and/or other New York State emergency response officials, (i) the Authority will notify Customer of any such non-participating Distributing Entity, and (ii) within ten business days after receiving such notification from the Authority, Customer will inform the Authority of the name and contact information of one or more individuals engaged by the relevant Distributing Entity in order that the Authority may initiate discussions with such Distributing Entity regarding participation in a mutual assistance network that is available to New York State utilities.
- c. Each Customer agrees to furnish, upon request from the Authority, updated contact information for any of its Distributing Entities with which the Authority does not have an Assistance Agreement for purposes of the Authority (or other New York State emergency response officials) requesting assistance from such Distributing Entities, including, without limitation, a request for the deployment of trained personnel; other forms of support services; equipment; materials; supplies; or fuels. Each Distributing Entity will determine, in its sole and absolute discretion, its ability and willingness to provide the requested assistance, taking into account its operational needs, the health and safety of its workers, and all other circumstances deemed pertinent by the Distributing Entity.

- d. The Parties agree to work together to ensure that appropriate Assistance Agreements are maintained where applicable.
- e. The Customer agrees to consider invitations from the Authority and/or other New York State emergency response officials to participate in emergency management symposiums or other similar emergency planning efforts or initiatives.

XXIII. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained, which consent shall not be unreasonably withheld.

XXIV. Previous Agreements and Communications

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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.

XXV. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

XXVI. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall,

at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be void and unenforceable.

XXVII. Waiver

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

XXVIII. Execution

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

XXIX. Effectiveness of Agreement

The agreement shall take effect upon the Effective Date, which requires execution by both Parties. The Authority will execute the Agreement only after the Governor's approval of the Agreement in accordance with Section 1009 of the New York Public Authorities Law.

CUSTOMER

By: _____

Print: _____

Title: _____

Date: _____

Accepted:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Print: _____

Title: _____

Date: _____

APPENDIX A

I. DISTRIBUTING ENTITIES INFORMATION – Public Power Association of New Jersey

<u>Distributing Entity</u>	<u>Resale (Y/N)</u>
1. Butler	N
2. Lavallette	N
3. Madison	N
4. Milltown	N
5. Park Ridge	N
6. Pemberton	N
7. Seaside Heights	N
8. South River	N
9. Sussex	N
10. Vineland	N

APPENDIX A

II. DISTRIBUTING ENTITIES – CONSUMERS FOR ALLOCATION/ALLOTMENT

Info From: 2007 Niagara Agreement - Public Power Association of New Jersey

Distributing Entities	Number of R & D Consumers (2005 CY)	NIAGARA Allocation %
Butler	10,022	14.37
Lavallette	2,577	3.69
Madison	5,920	8.49
Milltown	2,787	4.00
Park Ridge	3,388	4.86
Pemberton	652	0.93
Seaside Heights	2,091	3.00
South River	6,350	9.10
Sussex	11,546	16.55
Vineland	24,421	35.01
Total	69,754	100.00

APPENDIX B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to Customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. It is presently calculated consistent with Service Tariff No. NS-2 regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Customers’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include ancillary services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining assigned costs (after allocation of costs to the demand function) by the annual metered generation.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the Niagara/St. Lawrence projects that is sold in the various ISO auction markets.

POWER AUTHORITY
OF THE
STATE OF NEW YORK

30 South Pearl Street
Albany, New York

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT POWER AND ENERGY TO
CITY OF CLEVELAND

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy Service
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy Service
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

POWER AUTHORITY OF THE STATE OF NEW YORK

30 South Pearl Street

Albany, New York 12207

AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY

City of Cleveland, which is the bargaining agent for the State of Ohio, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the "Parties"), for electric service as follows:

I. Definitions

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 of the Authority who are served by the Project.

Agreement means this Agreement.

Authority is the Power Authority of the State of New York.

Contract Demand will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

Customer is the bargaining agent identified above.

Designated States means the states represented by the Neighboring State Customers.

Distributing Entities are the entities listed in Appendix A to this Agreement.

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

Electric Service is any type of power and energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

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

FERC License means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.

Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy means Firm Hydroelectric Energy, Firm Hydroelectric Power, Firm Hydroelectric Peaking Energy, and Firm Hydroelectric Peaking Power supplied from the Project under this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Energy means energy (kWh) associated with Firm Hydroelectric Power intended to be available at all times except for limitations provided in this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Peaking Energy means energy (kWh) associated with Firm Hydroelectric Peaking Power supplied at 12.5% monthly load factor.

Firm Hydroelectric Peaking Power means additional capacity (kW) from the Project intended to be available during Customer's peak load periods and limited as to the associated Firm Hydroelectric Peaking Energy to be supplied as set forth in this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Power means capacity (kW) from the Project intended to be available at all times except for limitations provided in this Agreement, the Rules, or applicable Service Tariff. Firm Hydroelectric Power shall not include Firm Hydroelectric Peaking Power.

Mutual Assistance is the practice of coordinated sharing of resources between electric systems for the purpose of restoring safe electric service and maintaining electric grid resilience and reliability, and is an essential part of the electric power industry's service restoration process and contingency planning.

Neighboring State Customers means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.

Non-Firm Hydroelectric Energy is all energy from the Authority's Niagara Power Project that is in addition to the energy associated with Firm and Peaking Hydroelectric Power and Energy that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.

NRA means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

NYISO means the New York Independent System Operator, Inc. or any successor organization.

NYISO Capability Period is as defined in the NYISO Open Access Transmission Tariff: Six-month periods which are established as follows: (1) from May 1 through October 31 of each year; and (2) from November 1 of each year through April 30 of the following year; or such other periods as may be determined by the Operating Committee of the NYISO.

Planned Hydropower Curtailment means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which the Authority makes in response to an Adverse Water Condition that the Authority (i) anticipated, and (ii) provided advance notice of pursuant to Section XIII.b of this Agreement.

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

Project Power and Energy means Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II(d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.

Relicensing Settlement Agreement means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring State Customers dated August 5, 2005.

RTO means an entity that, as a Regional Transmission Organization, operates transmission facilities and centralized wholesale power markets in a region pursuant to authority granted by one or more agreements or tariffs that have been accepted or approved by FERC. This term shall also refer to an independent system operator (ISO) that operates in a similar manner to an RTO and pursuant to agreements or tariffs accepted or approved by FERC, but does not refer to the NYISO.

Rules are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).

Service Tariffs are schedules establishing rates and other conditions for sale of Electric Services to Customer.

Substitute Energy means energy that is provided to a Customer by or through the Authority for the purpose of replacing Firm Hydroelectric Energy (and Firm

Hydroelectric Peaking Energy, if being supplied at the time) that is not supplied to the Customer due to a Planned Hydropower Curtailment or Unplanned Hydropower Curtailment.

Unplanned Hydropower Curtailment means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which is made by the Authority in response to an Adverse Water Condition that the Authority did not anticipate.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below*:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NS-1 - 84,000 kilowatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NS-2 - 18,000 kilowatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to
Service Tariff No. NS-3 - As available

*Allocations will be adjusted for the remainder of the term on or about January 1, 2026, per Article XII.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be

such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II.b.). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers. To the extent that there is a balance of Project Energy owed to either the Customer or the Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.
- d. Neither the identification of the Electric Service to be provided under this Article nor other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer. For avoidance of doubt, Additional Products does not include environmental attributes, which is addressed separately in Article XIV, below.

III. Modification of Neighboring State Customers Allocations

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this

Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

IV. Rules, Regulations and Service Tariffs

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

V. Resale of Project Power and Energy

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: (i) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, (ii) do so without profit other than reasonable compensation for administrative and service costs, (iii) resell such Project Power and Energy only to the Distributing Entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and maintained on a current basis, and which are "public bodies or nonprofit cooperatives" under the NRA ("Distributing Entities"), (iv) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric

Service, (v) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and (vi) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License. Neither the Customer nor any Distributing Entity may resell the Project Power and Energy purchased from the Authority into their RTO's market for financial settlement; provided, however, Customer and any Distributing Entity shall be permitted to continue offering Project Power and Energy purchased from the Authority into an RTO market where doing so is necessary to satisfy applicable requirements of the RTO in meeting Customer's load obligations.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of such Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

VI. Determination of Monthly Energy Allocations and Distributing Entities

Monthly energy allotments shall be determined by the Authority using the monthly load factors, which will be updated on an annual basis. Load factors will be calculated from the Customer's aggregated system-wide hourly interval load data for each month of the year two years prior for all end user recipients of Project Power and Energy under this Agreement. If Customer has recipients that do not have readily available historical load data, the Customer may substitute aggregated monthly billing determinants for energy and demand for those recipients as a data contribution to the load factors as set forth below. The Customer's monthly load factor calculation will be as follows:

$$(\text{System-wide monthly energy MWh}) \div [(\text{monthly coincident peak demand MW}) \times (\text{number of hours in the month})]$$

The hourly load data and substitute aggregated billing determinant data shall be submitted to the Authority within 30 days of the execution date of this Agreement, for the calendar year two years earlier. For each subsequent year, the data submitted by Customer shall be for the calendar year two years earlier, and shall be submitted

to the Authority by the second Monday in March. The system-wide monthly load factors shall be updated annually by the Authority based on the load factors of all of the Customer's recipients of Project Power and Energy provided under this Agreement for which load data from the calendar year two years earlier are readily available.

If Customer has individual recipients that do not have readily available historical load data, these recipients may be excluded from the annual calculation of the Customer's system-wide load factors provided that the aggregate of excluded recipients does not exceed 7% of the aggregate monthly energy (MWh) of the Customer's entire system-wide load.

If a Customer does not have interval load data readily available for at least 93% of the aggregate monthly energy (MWh) of its recipients of Project Power and Energy under this Agreement, those recipients may substitute all or a portion of this 93% with hourly load data for calendar month billed energy (MWh) and billed demand (MW) as recorded and quantified by revenue grade metering equipment, for the calendar year two years earlier. The substituted monthly load factors will be weighted for the portion of the Customer's system-wide MWh they represent and combined with the load factors calculated with the otherwise supplied interval load data for the remainder of the Customer's system. Assuming a threshold of 93% of energy is reached, the Authority will determine the load factor calculation for the Customer.

In the case of a substantial reallocation of power among the Distributing Entities, the monthly load factor, and resulting energy allotment, shall be adjusted no later than the next load factor update date. Appendix A, attached hereto contains, inter alia, a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then-existing allocation among authorized recipients in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of power to New York's neighboring states in order to fulfill statutory and/or license obligations.

VII. Transmission and Delivery of Power and Energy

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO.

In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with requisite notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

VIII. Scheduling Procedures

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. In the event the Authority determines that a modification to the Scheduling Procedures or methodologies is necessary to be consistent with this Agreement, or to conform such procedures to the requirements of the NYISO or to improve the efficiency of operations, the Authority shall first consult with Customer in order to identify and mitigate any adverse impacts on Customer that may result from the proposed modification. If the Authority and Customer do not reach agreement on modified Scheduling Procedures or methodologies within 30 days after their initial consultation, the Authority shall furnish Customer prior written notice in accordance with Article XVIII of the Authority's proposed modification of Scheduling Procedures or methodologies, provided that any such modification shall not reduce or impair the Customer's contractual entitlement to Project Power and Energy available hereunder to serve Customer's load.

IX. Dispatching Agent

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule energy in general accordance with Customer's system load shape, except that Customer may (i) at its option, schedule energy against the aggregate load shape of the RTO region or subregion in which the end-use recipients of Authority electricity purchased by Customer are located, or (ii) with the agreement of the Authority, schedule energy on any other load shape basis that represents the end-use recipients of the Authority electricity purchased by Customer. Customer may change its specification of the load shape or other basis on which it will schedule energy for a new calendar year by providing not less than three months prior notice to the Authority.

X. Rates

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Firm and Peaking Hydroelectric Power and Energy and Non-Firm Hydroelectric Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers. The Authority shall charge and Customer shall pay the preference power rates as adopted by the Authority from time to time for as long as those rates remain in effect during the term of this Agreement. Customer 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.

Customer waives any challenges to any of the following methodologies and principles¹ to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted on April 29, 2003 and November 15, 2011:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this 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).

¹ These methodologies and principles were employed in and explained by (1) the Authority’s January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on April 29, 2003; (2) the *RSR explanatory statement attached hereto as Appendix B*; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

(vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix C.

(viii) Unforced Capacity ("UCAP") sales credited to Cost of Service.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.

XI. Other Classes of Power and Energy

In the event that the Authority at any time determines that any class of power and energy other than those sold pursuant to Service Tariff Nos. NS-1, NS-2 and NS-3 is available for sale to Customer or that additional power and energy under those Service Tariffs is available for sale to Customer, the Authority shall notify Customer, and Customer may purchase such power and energy hereunder at the rate schedule or schedules then in effect for such power and energy, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

XII. Reallocation of Project Power and Energy

- a. The Authority and Customer agree that the Distributing Entities and the consumers for each Distributing Entity in the 2007 agreement's Appendix A, which will be updated in 2025 for the allocation re-allotment on or about January 1, 2026 supporting allocations of Project Power and Energy among the Neighboring State Customers will be as identified in Appendix A. If Customer is or becomes unable to receive, or chooses not to receive, any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.
- b. If a Distributing Entity included on Customer's Appendix A is or becomes ineligible to receive preference power pursuant to the NRA or chooses not to receive preference power, Customer shall cease its resale and distribution of Project Power and Energy to such Distributing Entity as soon as practicable after Customer becomes aware of such ineligibility or election. Customer shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility or election as soon as practicable upon its becoming aware of such ineligibility or election. Moreover, in such event,

the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demands for the Neighboring State Customers pursuant to this Agreement and if after January 1, 2026, the revised Appendix A used to establish the updated Contract Demands for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the the Distributing Entity that becomes ineligible or elects not to receive preference power. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

The Authority and Customer agree that, except for any pro rata reallocation required pursuant to the foregoing subsection a. or subsection b., the rural and domestic customer data supporting allocations among the Neighboring State Customers will be as set forth in Appendix A and will not be revised prior to January 1, 2026.

XIII. Hydropower Curtailments and Substitute Energy

- a. The Authority shall have the right to implement Planned Hydropower Curtailments for any Adverse Water Condition that the Authority anticipated and for which the Authority provided advance notice pursuant to Article XIII.b. of this Agreement. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- b. The Authority will provide the Customer with advance notice of any Planned Hydropower Curtailment that in the Authority's judgment will impact Electric Service. Such notice will be provided no later than the tenth (10th) 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.
- c. The Authority shall have the right to implement Unplanned Hydropower Curtailments for any Adverse Water Condition that the Authority did not anticipate. The Authority will implement Unplanned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- d. The Authority shall notify the Customer of the occurrence and expected duration (if known) of an Unplanned Hydropower Curtailment which in the Authority's judgment will impact Electric Service to the Customer. Such notice will be provided via e-mail (or such other means as the Authority and Customer may agree) to the individuals identified in Article XVIII.d. as

promptly as is practicable under the circumstances but in any event shall be provided not later than five (5) business days after the occurrence of each Unplanned Hydropower Curtailment. The notice also 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.

- e. The Authority will supply each requesting Customer with Substitute Energy during Planned Hydropower Curtailments (subject to the specific provisions of subsection f., below), and will supply each Customer with Substitute Energy during Unplanned Hydropower Curtailments; provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration that is commercially reasonable under the circumstances.
- f. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer during Planned Hydropower Curtailments to replace the Firm Hydroelectric Power and Energy that would otherwise have been supplied under this Agreement. Such request shall be received by the Authority at least thirty (30) days prior to the start of the six-month NYISO Capability Period, during which time such Substitute Energy shall be supplied by the Authority. The provision of Substitute Energy may be terminated by the Authority or the Customer upon written notice of at least thirty (30) days prior to the start of the subsequent six-month NYISO Capability Period.
- g. Unless otherwise agreed upon by the Parties in writing, Substitute Energy will be sourced from markets administered by the NYISO.
- h. The Authority will provide each Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- i. Each Customer shall reimburse the Authority for all costs that the Authority incurs for providing Substitute Energy to such Customer. The charges for such costs shall appear on the Authority's bills, and payment of such charges are subject to the provisions of the applicable Service Tariff and the Rules relating to the payment of bills. The Authority's failure to provide notice pursuant to Article XIII.b. or Article XIII.d. shall not affect the obligation of any Customer to pay for Substitute Energy.

XIV. Environmental Attributes

Provided it remains permissible under the laws, regulations, orders or rulemakings affecting the Authority's hydroelectric resources, the environmental attributes associated with the Project Power and Energy sold to Customer under this Agreement shall be made available to Customer through the New York Generation

Attribute Tracking System ("NYGATS"), New York State's on-line tracking system that records renewable energy certificates. The Authority's provision of environmental attributes to Customer confers on Customer the exclusive right to make beneficial use of such environmental attributes, including the right to utilize, transfer or monetize such environmental attributes as Customer determines in its sole discretion is most advantageous.

XV. Reports

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of (i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), (ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and (iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

XVI. Appointment of Customer Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

XVII. Term and Termination of Service

- a. Once initiated, service shall continue until the earliest of (a) termination by Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) April 30, 2032. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent

jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency), or (b) as otherwise provided herein or in the Rules.

- b. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the FERC License.

XVIII. Communications

The Authority acknowledges that each of the Neighboring State Customers has been appointed by the executive authority of each Designated State as that state's sole representative for all matters pertaining to this Agreement. Accordingly, the Authority agrees as follows:

- a. Before implementing any changes in procedures contemplated in this Agreement related to the sale of electricity, the Authority will notify the Customer for each such Designated State of the nature of and reasons for the proposed change and the date of its proposed implementation. In the absence of exigent circumstances, such notice shall be provided no fewer than sixty (60) days before the change is implemented.
- b. Any notification or communication required in subsection a. above, or by any other provision of this Agreement shall be provided in writing directly to the individual who has been designated by the Customer for each Designated State as the appropriate contact person, as set forth below:

[Name]
[Title]
[Organization]
[Address]
[phone #]
[e-mail address]

It shall be the responsibility of the individual designated above, and not the Authority, to provide the notification or communication required by subsection a. above, to the individual employed by each Customer in the highest executive or senior managerial position with direct responsibility for electric utility matters.

- c. Any notification or communication by the Customer regarding this Agreement shall be provided in writing directly to the individual in the position designated by the Authority as the appropriate contact person, as set forth below:

**Manager – Power Contracts & Tariffs
New York Power Authority
123 Main St.
White Plains, New York 10601
(914) 681-6200
PowerContracts@nypa.gov**

- d. In addition to providing notice to the individual identified in Article XVIII.b. above via e-mail and phone, any notification of an Unplanned Hydropower Curtailment described in Article XIII.e. will be provided to the appropriate contact person(s) via e-mail (or such other means as the Parties may agree) as set forth below:

**[Individual Name]
[E-mail Address]
[Cell Phone]**

XIX. Legal or Regulatory Change; Cooperation

- a. If at any time after the Effective Date of this Agreement there is any change to any law or regulation applicable to this Agreement, or to any tariff or rule of the NYISO or the RTO in which Customer is located, that substantially alters the contractual relationship between the Parties or the allocation of benefits hereunder, the Parties shall negotiate in good faith to determine whether any amendments, revisions or additions to this Agreement are necessary in order to maintain or restore the benefits of this Agreement to each Party as contemplated at the time of execution hereof. The Parties shall negotiate in good faith concerning any such amendments, revisions or additions to this Agreement, none of which shall be binding unless it is by agreement of the Parties in writing.
- b. Customer and the Authority agree to reasonably cooperate with one another in the performance of their respective obligations under this Agreement and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

XX. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act.

XXI. Venue

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

XXII. Mutual Assistance

- a. Customer (on behalf of the Distributing Entities listed in Appendix A to this Agreement) receives power allocations from power resources located in New York State and has an interest in the safe and reliable operation of New York's electric transmission system and the prompt restoration of service following interruptions in electric transmission service caused by storms and other events. Certain of Customer's Distributing Entities may currently participate directly or through a third party in mutual assistance agreements with New York State utilities ("Assistance Agreements").
- b. Accordingly, each Distributing Entity is in the position to consider requests by the Authority for rendering of assistance, which may be implemented through existing Assistance Agreements, as applicable. To the extent any Distributing Entity is not a party to any existing Assistance Agreement(s) addressing the provision of aid to the Authority and/or other New York State emergency response officials, (i) the Authority will notify Customer of any such non-participating Distributing Entity, and (ii) within ten business days after receiving such notification from the Authority, Customer will inform the Authority of the name and contact information of one or more individuals engaged by the relevant Distributing Entity in order that the Authority may initiate discussions with such Distributing Entity regarding participation in a mutual assistance network that is available to New York State utilities.
- c. Each Customer agrees to furnish, upon request from the Authority, updated contact information for any of its Distributing Entities with which the Authority does not have an Assistance Agreement for purposes of the Authority (or other New York State emergency response officials) requesting assistance from such Distributing Entities, including, without limitation, a request for the deployment of trained personnel; other forms of support services; equipment; materials; supplies; or fuels. Each Distributing Entity will determine, in its sole and absolute discretion, its ability and willingness to provide the requested assistance, taking into account its operational needs, the health and safety of its workers, and all other circumstances deemed pertinent by the Distributing Entity.

- d. The Parties agree to work together to ensure that appropriate Assistance Agreements are maintained where applicable.
- e. The Customer agrees to consider invitations from the Authority and/or other New York State emergency response officials to participate in emergency management symposiums or other similar emergency planning efforts or initiatives.

XXIII. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained, which consent shall not be unreasonably withheld.

XXIV. Previous Agreements and Communications

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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.

XXV. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

XXVI. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall,

at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be void and unenforceable.

XXVII. Waiver

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

XXVIII. Execution

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

XXIX. Effectiveness of Agreement

The agreement shall take effect upon the Effective Date, which requires execution by both Parties. The Authority will execute the Agreement only after the Governor's approval of the Agreement in accordance with Section 1009 of the New York Public Authorities Law.

CUSTOMER

By: _____

Print: _____

Title: _____

Date: _____

Accepted:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Print: _____

Title: _____

Date: _____

APPENDIX A

I. DISTRIBUTING ENTITIES INFORMATION – City of Cleveland

Distributing Entities	Resale (Y/N)?	Distributing Entities	Resale (Y/N)?	Distributing Entities	Resale (Y/N)?
Amherst	N	Celina	N	Montpeller	N
Arcadia	N	Cleveland	N	Napoleon	N
Arcanum	N	City of Clyde	N	New Bremen	N
Beach City	N	Columbiana	N	New Knoxville	N
Bloomdale	N	Columbus	N	Newton Falls	N
Bowling Green	N	Custar	N	Niles	N
Bradner	N	Cuyahoga Falls	N	Oak Harbor	N
Brewster	N	Cygnat	N	Oberlin	N
Bryan	N	Deshler	N	Ohio City	N
Adams	N	Dover	N	Orville	N
Buckeye Rural Elec. Co-op	N	Edgerton	N	Painesville	N
Butler	N	Eldorado	N	Pemberville	N
Carroll	N	Elmore	N	Pioneer	N
Consolidated	N	Galion	N	Piqua	N
Darke	N	Genoa	N	Plymouth	N
Firelands	N	Georgetown	N	Prospect	N
Frontier	N	Glouster	N	Republic	N
Guernsey-Muskingum	N	Grafton	N	Seville	N
Hancock-Wood	N	Greenwich	N	Shelby	N
Holmes-Wayne	N	Hamilton	N	Shiloh	N
Licking	N	Haskins	N	South Vienna	N
Logan	N	Holiday City	N	St. Clairsville	N
Lorain-Medina	N	Hubbard	N	St. Marys	N
Mid-Ohio	N	Hudson	N	Sycamore	N
Midwest Electric	N	Huron	N	Tipp City	N
North Central	N	Jackson	N	Versailles	N
NorthWestern	N	Jackson Center	N	Wadsworth	N
Paulding-Putnam	N	Lakeview	N	Wapakoneta	N
Pioneer	N	Lebanon	N	Waynesfield	N
South Central	N	Lodi	N	Wellington	N
S.E. (Midwest Energy)	N	Lucas	N	Westerville	N
Tricounty	N	Mendon	N	Wharton	N
Union	N	Milan	N	Woodsfield	N
Washington	N	Minster	N	Woodville	N
Carey	N	Monroeville	N	Yellow Springs	N

APPENDIX A

II. DISTRIBUTING ENTITIES - CONSUMERS FOR ALLOCATION/ALLOTMENT

Info From: 2007 Niagara Agreement - City of Cleveland

Preference Power Entities	Number of R & D Consumers (2002 CY)	NIAGARA Allocation %
Amherst	4,896	0.76
Arcadia	249	0.04
Arcanum	1,571	0.24
Beach City	862	0.13
Bloomdale	284	0.04
Bowling Green	11,529	1.78
Bradner	503	0.08
Brewster	879	0.14
Bryan	4,945	0.76
Buckeye Power, Inc.		
Adams	7,515	1.16
Buckeye Rural Electric Co-op	17,899	2.76
Butler	9,622	1.49
Carroll	9,831	1.52
Consolidated	12,451	1.92
Darke	4,795	0.74
Firelands	8,072	1.25
Frontier	6,634	1.02
Guernsey-Muskingum	12,722	1.96
Hancock-Wood	9,938	1.53
Holmes-Wayne	12,699	1.96
Licking	20,935	3.23
Logan	4,108	0.63
Lorain-Medina	13,398	2.07
Mid-Ohio	7,021	1.08
Midwest Electric	9,135	1.41
North Central	8,568	1.32
NorthWestern	5,349	0.83
Paulding-Putnam	8,815	1.36
Pioneer	14,676	2.27
South Central	95,696	14.78
S.E. (Midwest Energy)	921	0.14
Tricounty	3,425	0.53
Union	6,862	1.06
Washington	8,515	1.31
Carey	1,631	0.25

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Celina	6,348	0.98
Cleveland	79,362	12.26
City of Clyde	2,380	0.37
Columbiana	3,069	0.47
Columbus	9,501	1.47
Custar	120	0.02
Cuyahoga Falls	21,629	3.34
Cygnnet	3,048	0.47
Deshler	899	0.14
Dover	5,579	0.86
Edgerton	931	0.14
Eldorado	274	0.04
Elmore	763	0.12
Galion	6,103	0.94
Genoa	907	0.14
Glouster	1,028	0.16
Grafton	900	0.14
Greenwich	670	0.10
Hamilton	24,943	3.85
Haskins	404	0.06
Holiday City	0	0.00
Hubbard	3,457	0.53
Hudson	5,622	0.87
Jackson	3,390	0.52
Jackson Center	620	0.10
Lakeview	822	0.13
Lebanon	6,997	1.08
Lodi	1,563	0.24
Lucas	285	0.04
Mendon	306	0.05
Milan	695	0.11
Minster	1,116	0.17
Monroeville	883	0.14
Montpeller	2,082	0.32
Napoleon	5,075	0.78
New Bremen	1,230	0.19
New Knoxville	369	0.06
Newton Falls	2,206	0.34
Niles	10,435	1.61
Oak Harbor	1,538	0.24
Oberlin	2,569	0.40
Ohio City	458	0.07
Orvile	5,779	0.89
Painesville	9,057	1.40
Pemberville	625	0.10

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Pioneer	808	0.12
Piqua	9,351	1.44
Plymouth	787	0.12
Prospect	633	0.10
Republic	251	0.04
Seville	1,467	0.23
Shelby	4,979	0.77
Shiloh	216	0.03
South Vienna	201	0.03
St. Clairsville	2,483	0.38
St. Marys	3,489	0.54
Sycamore	435	0.07
Tipp City	3,788	0.58
Versailles	1,501	0.23
Wadsworth	9,699	1.50
Wapakoneta	4,485	0.69
Waynesfield	457	0.07
Wellington	2,183	0.34
Westerville	13,228	2.04
Wharton	159	0.02
Woodsfield	1,300	0.20
Woodville	910	0.14
Yellow Springs	1,790	0.28
Total	647,588	100.00

APPENDIX B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to Customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. It is presently calculated consistent with Service Tariff No. NS-2 regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Customers’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include ancillary services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining assigned costs (after allocation of costs to the demand function) by the annual metered generation.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the Niagara/St. Lawrence projects that is sold in the various ISO auction markets.

POWER AUTHORITY
OF THE
STATE OF NEW YORK

30 South Pearl Street
Albany, New York

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT POWER AND ENERGY TO
ALLEGHENY ELECTRIC COOPERATIVE, INC.

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy Service
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy Service
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

POWER AUTHORITY OF THE STATE OF NEW YORK

30 South Pearl Street

Albany, New York 12207

AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY

Allegheny Electric Cooperative, Inc., which is the bargaining agent for the Commonwealth of Pennsylvania, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the "Parties"), for electric service as follows:

I. Definitions

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 of the Authority who are served by the Project.

Agreement means this Agreement.

Authority is the Power Authority of the State of New York.

Contract Demand will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

Customer is the bargaining agent identified above.

Designated States means the states represented by the Neighboring State Customers.

Distributing Entities are the entities listed in Appendix A to this Agreement.

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

Electric Service is any type of power and energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

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

FERC License means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.

Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy means Firm Hydroelectric Energy, Firm Hydroelectric Power, Firm Hydroelectric Peaking Energy, and Firm Hydroelectric Peaking Power supplied from the Project under this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Energy means energy (kWh) associated with Firm Hydroelectric Power intended to be available at all times except for limitations provided in this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Peaking Energy means energy (kWh) associated with Firm Hydroelectric Peaking Power supplied at 12.5% monthly load factor.

Firm Hydroelectric Peaking Power means additional capacity (kW) from the Project intended to be available during Customer's peak load periods and limited as to the associated Firm Hydroelectric Peaking Energy to be supplied as set forth in this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Power means capacity (kW) from the Project intended to be available at all times except for limitations provided in this Agreement, the Rules, or applicable Service Tariff. Firm Hydroelectric Power shall not include Firm Hydroelectric Peaking Power.

Mutual Assistance is the practice of coordinated sharing of resources between electric systems for the purpose of restoring safe electric service and maintaining electric grid resilience and reliability, and is an essential part of the electric power industry's service restoration process and contingency planning.

Neighboring State Customers means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.

Non-Firm Hydroelectric Energy is all energy from the Authority's Niagara Power Project that is in addition to the energy associated with Firm and Peaking Hydroelectric Power and Energy that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.

NRA means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

NYISO means the New York Independent System Operator, Inc. or any successor organization.

NYISO Capability Period is as defined in the NYISO Open Access Transmission Tariff: Six-month periods which are established as follows: (1) from May 1 through October 31 of each year; and (2) from November 1 of each year through April 30 of the following year; or such other periods as may be determined by the Operating Committee of the NYISO.

Planned Hydropower Curtailment means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which the Authority makes in response to an Adverse Water Condition that the Authority (i) anticipated, and (ii) provided advance notice of pursuant to Section XIII.b of this Agreement.

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

Project Power and Energy means Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II(d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.

Relicensing Settlement Agreement means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring State Customers dated August 5, 2005.

RTO means an entity that, as a Regional Transmission Organization, operates transmission facilities and centralized wholesale power markets in a region pursuant to authority granted by one or more agreements or tariffs that have been accepted or approved by FERC. This term shall also refer to an independent system operator (ISO) that operates in a similar manner to an RTO and pursuant to agreements or tariffs accepted or approved by FERC, but does not refer to the NYISO.

Rules are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).

Service Tariffs are schedules establishing rates and other conditions for sale of Electric Services to Customer.

Substitute Energy means energy that is provided to a Customer by or through the Authority for the purpose of replacing Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) that is not supplied to the Customer due to a Planned Hydropower Curtailment or Unplanned Hydropower Curtailment.

Unplanned Hydropower Curtailment means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which is made by the Authority in response to an Adverse Water Condition that the Authority did not anticipate.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below*:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NS-1 - 33,600 kilowatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NS-2 - 7,200 kilowatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to
Service Tariff No. NS-3 - As available

*Allocations will be adjusted for the remainder of the term on or about January 1, 2026, per Article XII.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability

changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II.b.). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers. To the extent that there is a balance of Project Energy owed to either the Customer or the Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.
- d. Neither the identification of the Electric Service to be provided under this Article nor other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer. For avoidance of doubt, Additional Products does not include environmental attributes, which is addressed separately in Article XIV, below.

III. Modification of Neighboring State Customers Allocations

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

IV. Rules, Regulations and Service Tariffs

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

V. Resale of Project Power and Energy

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: (i) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, (ii) do so without profit other than reasonable compensation for administrative and service costs, (iii) resell such Project Power and Energy only to the Distributing Entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and

maintained on a current basis, and which are “public bodies or nonprofit cooperatives” under the NRA (“Distributing Entities”), (iv) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric Service, (v) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and (vi) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License. Neither the Customer nor any Distributing Entity may resell the Project Power and Energy purchased from the Authority into their RTO's market for financial settlement; provided, however, Customer and any Distributing Entity shall be permitted to continue offering Project Power and Energy purchased from the Authority into an RTO market where doing so is necessary to satisfy applicable requirements of the RTO in meeting Customer's load obligations.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of such Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

VI. Determination of Monthly Energy Allocations and Distributing Entities

Monthly energy allotments shall be determined by the Authority using the monthly load factors, which will be updated on an annual basis. Load factors will be calculated from the Customer's aggregated system-wide hourly interval load data for each month of the year two years prior for all end user recipients of Project Power and Energy under this Agreement. If Customer has recipients that do not have readily available historical load data, the Customer may substitute aggregated monthly billing determinants for energy and demand for those recipients as a data contribution to the load factors as set forth below. The Customer's monthly load factor calculation will be as follows:

$$(\text{System-wide monthly energy MWh}) \div [(\text{monthly coincident peak demand MW}) \times (\text{number of hours in the month})]$$

The hourly load data and substitute aggregated billing determinant data shall be submitted to the Authority within 30 days of the execution date of this Agreement, for the calendar year two years earlier. For each subsequent year, the data submitted by Customer shall be for the calendar year two years earlier, and shall be submitted to the Authority by the second Monday in March. The system-wide monthly load factors shall be updated annually by the Authority based on the load factors of all of the Customer's recipients of Project Power and Energy provided under this Agreement for which load data from the calendar year two years earlier are readily available.

If Customer has individual recipients that do not have readily available historical load data, these recipients may be excluded from the annual calculation of the Customer's system-wide load factors provided that the aggregate of excluded recipients does not exceed 7% of the aggregate monthly energy (MWh) of the Customer's entire system-wide load.

If a Customer does not have interval load data readily available for at least 93% of the aggregate monthly energy (MWh) of its recipients of Project Power and Energy under this Agreement, those recipients may substitute all or a portion of this 93% with hourly load data for calendar month billed energy (MWh) and billed demand (MW) as recorded and quantified by revenue grade metering equipment, for the calendar year two years earlier. The substituted monthly load factors will be weighted for the portion of the Customer's system-wide MWh they represent and combined with the load factors calculated with the otherwise supplied interval load data for the remainder of the Customer's system. Assuming a threshold of 93% of energy is reached, the Authority will determine the load factor calculation for the Customer.

In the case of a substantial reallocation of power among the Distributing Entities, the monthly load factor, and resulting energy allotment, shall be adjusted no later than the next load factor update date. Appendix A, attached hereto contains, inter alia, a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then-existing allocation among authorized recipients in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of power to New York's neighboring states in order to fulfill statutory and/or license obligations.

VII. Transmission and Delivery of Power and Energy

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access

Transmission Tariff (OATT) or other applicable tariff of the NYISO. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO.

In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with requisite notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

VIII. Scheduling Procedures

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. In the event the Authority determines that a modification to the Scheduling Procedures or methodologies is necessary to be consistent with this Agreement, or to conform such procedures to the requirements of the NYISO or to improve the efficiency of operations, the Authority shall first consult with Customer in order to identify and mitigate any adverse impacts on Customer that may result from the proposed modification. If the Authority and Customer do not reach agreement on modified Scheduling Procedures or methodologies within 30 days after their initial consultation, the Authority shall furnish Customer prior written notice in accordance with Article XVIII of the Authority's proposed modification of Scheduling Procedures or methodologies, provided that any such modification shall not reduce or impair the Customer's contractual entitlement to Project Power and Energy available hereunder to serve Customer's load.

IX. Dispatching Agent

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule energy in general accordance with Customer's system load shape, except that Customer may (i) at its option, schedule energy against the aggregate load shape of the RTO region or subregion in which the end-use recipients of Authority electricity purchased by Customer are located, or (ii) with the agreement of the Authority, schedule energy on any other load shape

basis that represents the end-use recipients of the Authority electricity purchased by Customer. Customer may change its specification of the load shape or other basis on which it will schedule energy for a new calendar year by providing not less than three months prior notice to the Authority.

X. Rates

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Firm and Peaking Hydroelectric Power and Energy and Non-Firm Hydroelectric Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers. The Authority shall charge and Customer shall pay the preference power rates as adopted by the Authority from time to time for as long as those rates remain in effect during the term of this Agreement. Customer 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.

Customer waives any challenges to any of the following methodologies and principles¹ to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted on April 29, 2003 and November 15, 2011:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this Agreement) settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, Index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “Auer Settlement”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.

¹ These methodologies and principles were employed in and explained by (1) the Authority’s January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on April 29, 2003; (2) the *RSR explanatory statement attached hereto as Appendix B*; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

- (vi) Post-employment benefits other than pensions (*i.e.*, retiree health benefits).
- (vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix C.
- (viii) Unforced Capacity ("UCAP") sales credited to Cost of Service.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.

XI. Other Classes of Power and Energy

In the event that the Authority at any time determines that any class of power and energy other than those sold pursuant to Service Tariff Nos. NS-1, NS-2 and NS-3 is available for sale to Customer or that additional power and energy under those Service Tariffs is available for sale to Customer, the Authority shall notify Customer, and Customer may purchase such power and energy hereunder at the rate schedule or schedules then in effect for such power and energy, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

XII. Reallocation of Project Power and Energy

- a. The Authority and Customer agree that the Distributing Entities and the consumers for each Distributing Entity in the 2007 agreement's Appendix A, which will be updated in 2025 for the allocation re-allotment on or about January 1, 2026 supporting allocations of Project Power and Energy among the Neighboring State Customers will be as identified in Appendix A. If Customer is or becomes unable to receive, or chooses not to receive, any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.
- b. If a Distributing Entity included on Customer's Appendix A is or becomes ineligible to receive preference power pursuant to the NRA or chooses not to receive preference power, Customer shall cease its resale and distribution of Project Power and Energy to such Distributing Entity as soon as practicable after Customer becomes aware of such ineligibility or election. Customer

shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility or election as soon as practicable upon its becoming aware of such ineligibility or election. Moreover, in such event, the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demands for the Neighboring State Customers pursuant to this Agreement and if after January 1, 2026, the revised Appendix A used to establish the updated Contract Demands for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the the Distributing Entity that becomes ineligible or elects not to receive preference power. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

The Authority and Customer agree that, except for any pro rata reallocation required pursuant to the foregoing subsection a. or subsection b., the rural and domestic customer data supporting allocations among the Neighboring State Customers will be as set forth in Appendix A and will not be revised prior to January 1, 2026.

XIII. Hydropower Curtailments and Substitute Energy

- a. The Authority shall have the right to implement Planned Hydropower Curtailments for any Adverse Water Condition that the Authority anticipated and for which the Authority provided advance notice pursuant to Article XIII.b. of this Agreement. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- b. The Authority will provide the Customer with advance notice of any Planned Hydropower Curtailment that in the Authority's judgment will impact Electric Service. Such notice will be provided no later than the tenth (10th) 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.
- c. The Authority shall have the right to implement Unplanned Hydropower Curtailments for any Adverse Water Condition that the Authority did not anticipate. The Authority will implement Unplanned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- d. The Authority shall notify the Customer of the occurrence and expected duration (if known) of an Unplanned Hydropower Curtailment which in the

Authority's judgment will impact Electric Service to the Customer. Such notice will be provided via e-mail (or such other means as the Authority and Customer may agree) to the individuals identified in Article XVIII.d. as promptly as is practicable under the circumstances but in any event shall be provided not later than five (5) business days after the occurrence of each Unplanned Hydropower Curtailment. The notice also 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.

- e. The Authority will supply each requesting Customer with Substitute Energy during Planned Hydropower Curtailments (subject to the specific provisions of subsection f., below), and will supply each Customer with Substitute Energy during Unplanned Hydropower Curtailments; provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration that is commercially reasonable under the circumstances.
- f. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer during Planned Hydropower Curtailments to replace the Firm Hydroelectric Power and Energy that would otherwise have been supplied under this Agreement. Such request shall be received by the Authority at least thirty (30) days prior to the start of the six-month NYISO Capability Period, during which time such Substitute Energy shall be supplied by the Authority. The provision of Substitute Energy may be terminated by the Authority or the Customer upon written notice of at least thirty (30) days prior to the start of the subsequent six-month NYISO Capability Period.
- g. Unless otherwise agreed upon by the Parties in writing, Substitute Energy will be sourced from markets administered by the NYISO.
- h. The Authority will provide each Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- i. Each Customer shall reimburse the Authority for all costs that the Authority incurs for providing Substitute Energy to such Customer. The charges for such costs shall appear on the Authority's bills, and payment of such charges are subject to the provisions of the applicable Service Tariff and the Rules relating to the payment of bills. The Authority's failure to provide notice pursuant to Article XIII.b. or Article XIII.d. shall not affect the obligation of any Customer to pay for Substitute Energy.

XIV. Environmental Attributes

Provided it remains permissible under the laws, regulations, orders or rulemakings affecting the Authority's hydroelectric resources, the environmental attributes associated with the Project Power and Energy sold to Customer under this Agreement shall be made available to Customer through the New York Generation Attribute Tracking System ("NYGATS"), New York State's on-line tracking system that records renewable energy certificates. The Authority's provision of environmental attributes to Customer confers on Customer the exclusive right to make beneficial use of such environmental attributes, including the right to utilize, transfer or monetize such environmental attributes as Customer determines in its sole discretion is most advantageous.

XV. Reports

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of (i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), (ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and (iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

XVI. Appointment of Customer Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

XVII. Term and Termination of Service

- a. Once initiated, service shall continue until the earliest of (a) termination by

Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) April 30, 2032. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency), or (b) as otherwise provided herein or in the Rules.

- b. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the FERC License.

XVIII. Communications

The Authority acknowledges that each of the Neighboring State Customers has been appointed by the executive authority of each Designated State as that state's sole representative for all matters pertaining to this Agreement. Accordingly, the Authority agrees as follows:

- a. Before implementing any changes in procedures contemplated in this Agreement related to the sale of electricity, the Authority will notify the Customer for each such Designated State of the nature of and reasons for the proposed change and the date of its proposed implementation. In the absence of exigent circumstances, such notice shall be provided no fewer than sixty (60) days before the change is implemented.
- b. Any notification or communication required in subsection a. above, or by any other provision of this Agreement shall be provided in writing directly to the individual who has been designated by the Customer for each Designated State as the appropriate contact person, as set forth below:

[Name]
[Title]
[Organization]
[Address]
[phone #]
[e-mail address]

It shall be the responsibility of the individual designated above, and not the Authority, to provide the notification or communication required by subsection a. above, to the individual employed by each Customer in the highest executive or senior managerial position with direct responsibility for electric utility matters.

- c. Any notification or communication by the Customer regarding this Agreement shall be provided in writing directly to the individual in the position designated by the Authority as the appropriate contact person, as set forth below:

**Manager – Power Contracts & Tariffs
New York Power Authority
123 Main St.
White Plains, New York 10601
(914) 681-6200
PowerContracts@nypa.gov**

- d. In addition to providing notice to the individual identified in Article XVIII.b. above via e-mail and phone, any notification of an Unplanned Hydropower Curtailment described in Article XIII.e. will be provided to the appropriate contact person(s) via e-mail (or such other means as the Parties may agree) as set forth below:

**[Individual Name]
[E-mail Address]
[Cell Phone]**

XIX. Legal or Regulatory Change; Cooperation

- a. If at any time after the Effective Date of this Agreement there is any change to any law or regulation applicable to this Agreement, or to any tariff or rule of the NYISO or the RTO in which Customer is located, that substantially alters the contractual relationship between the Parties or the allocation of benefits hereunder, the Parties shall negotiate in good faith to determine whether any amendments, revisions or additions to this Agreement are necessary in order to maintain or restore the benefits of this Agreement to each Party as contemplated at the time of execution hereof. The Parties shall negotiate in good faith concerning any such amendments, revisions or additions to this Agreement, none of which shall be binding unless it is by agreement of the Parties in writing.
- b. Customer and the Authority agree to reasonably cooperate with one another in the performance of their respective obligations under this Agreement and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

XX. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act.

XXI. Venue

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

XXII. Mutual Assistance

- a. Customer (on behalf of the Distributing Entities listed in Appendix A to this Agreement) receives power allocations from power resources located in New York State and has an interest in the safe and reliable operation of New York's electric transmission system and the prompt restoration of service following interruptions in electric transmission service caused by storms and other events. Certain of Customer's Distributing Entities may currently participate directly or through a third party in mutual assistance agreements with New York State utilities ("Assistance Agreements").
- b. Accordingly, each Distributing Entity is in the position to consider requests by the Authority for rendering of assistance, which may be implemented through existing Assistance Agreements, as applicable. To the extent any Distributing Entity is not a party to any existing Assistance Agreement(s) addressing the provision of aid to the Authority and/or other New York State emergency response officials, (i) the Authority will notify Customer of any such non-participating Distributing Entity, and (ii) within ten business days after receiving such notification from the Authority, Customer will inform the Authority of the name and contact information of one or more individuals engaged by the relevant Distributing Entity in order that the Authority may initiate discussions with such Distributing Entity regarding participation in a mutual assistance network that is available to New York State utilities.
- c. Each Customer agrees to furnish, upon request from the Authority, updated contact information for any of its Distributing Entities with which the Authority does not have an Assistance Agreement for purposes of the Authority (or other New York State emergency response officials) requesting assistance from such Distributing Entities, including, without limitation, a request for the deployment of trained personnel; other forms of support services; equipment; materials; supplies; or fuels. Each Distributing Entity will determine, in its sole and absolute discretion, its ability and willingness to provide the requested assistance, taking into account its operational needs, the health and safety of its workers, and all other circumstances deemed pertinent by the Distributing Entity.

- d. The Parties agree to work together to ensure that appropriate Assistance Agreements are maintained where applicable.
- e. The Customer agrees to consider invitations from the Authority and/or other New York State emergency response officials to participate in emergency management symposiums or other similar emergency planning efforts or initiatives.

XXIII. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained, which consent shall not be unreasonably withheld.

XXIV. Previous Agreements and Communications

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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.

XXV. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

XXVI. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall,

at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be void and unenforceable.

XXVII. Waiver

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

XXVIII. Execution

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

XXIX. Effectiveness of Agreement

The agreement shall take effect upon the Effective Date, which requires execution by both Parties. The Authority will execute the Agreement only after the Governor's approval of the Agreement in accordance with Section 1009 of the New York Public Authorities Law.

CUSTOMER

By: _____

Print: _____

Title: _____

Date: _____

Accepted:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Print: _____

Title: _____

Date: _____

APPENDIX A

I. DISTRIBUTING ENTITIES INFORMATION – Allegheny Electric Cooperative, Inc.

Distributing Entities	Resale (Y/N)?
ALLEGHENY	N
BERLIN	N
BLAKELY	N
CATAWISSA	N
CHAMBERSBURG	N
DUNCANNON	N
EAST CONEMAUGH	N
ELLWOOD CITY	N
EPHRATA	N
GIRARD	N
GROVE CITY	N
HATFIELD	N
HOOVERSVILLE	N
KUTZTOWN	N
LANSDALE	N
LEHIGHTON	N
MIDDLETOWN	N
MIFFLINBURG	N
MONT ALTO	N
OLYPHANT	N
PERKASIE	N
QUAKERTOWN	N
ROYALTON	N
SCHUYLKILL HAVEN	N
SMETHPORT	N
SUMMERHILL	N
WATSONTOWN	N
WEATHERLY	N

APPENDIX A

II. DISTRIBUTING ENTITIES – CONSUMERS FOR ALLOCATION/ALLOTMENT

Info From: 2007 Niagara Agreement - Allegheny Electric Cooperative, Inc.

Distributing Entities	Number of R & D Consumers (2005 CY)	NIAGARA Allocation %
ALLEGHENY	195,760	74.97
BERLIN	1,029	0.39
BLAKELY	3,003	1.15
CATAWISSA	808	0.31
CHAMBERSBURG	8,851	3.39
DUNCANNON	828	0.32
EAST CONEMAUGH	740	0.28
ELLWOOD CITY	3,641	1.39
EPHRATA	5,685	2.18
GIRARD	1,270	0.49
GROVE CITY	2,528	0.97
HATFIELD	1,318	0.50
HOOVERVILLE	349	0.13
KUTZTOWN	1,855	0.71
LANSDALE	7,113	2.72
LEHIGHTON	2,466	0.94
MIDDLETOWN	3,577	1.37
MIFFLINBURG	1,911	0.73
MONT ALTO	597	0.23
OLYPHANT	2,368	0.91
PERKASIE	3,432	1.31
QUAKERTOWN	3,650	1.40
ROYALTON	466	0.18
SCHUYLKILL HAVEN	2,611	1.00
SMETHPORT	881	0.34
SUMMERHILL	300	0.11
TARENTUM	2,066	0.79
WATSONTOWN	857	0.33
WEATHERLY	1,161	0.44
TOTAL	261,121	100.00

APPENDIX B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to Customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. It is presently calculated consistent with Service Tariff No. NS-2 regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Customers’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include ancillary services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining assigned costs (after allocation of costs to the demand function) by the annual metered generation.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the Niagara/St. Lawrence projects that is sold in the various ISO auction markets.

POWER AUTHORITY
OF THE
STATE OF NEW YORK

30 South Pearl Street
Albany, New York

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT POWER AND ENERGY TO
RHODE ISLAND PUBLIC UTILITIES COMMISSION

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy Service
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy Service
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

POWER AUTHORITY OF THE STATE OF NEW YORK

30 South Pearl Street

Albany, New York 12207

AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY

Rhode Island Public Utilities Commission, which is the bargaining agent for the State of Rhode Island, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the "Parties"), for electric service as follows:

I. Definitions

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 of the Authority who are served by the Project.

Agreement means this Agreement.

Authority is the Power Authority of the State of New York.

Contract Demand will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

Customer is the bargaining agent identified above.

Designated States means the states represented by the Neighboring State Customers.

Distributing Entities are the entities listed in Appendix A to this Agreement.

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

Electric Service is any type of power and energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

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

FERC License means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.

Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy means Firm Hydroelectric Energy, Firm Hydroelectric Power, Firm Hydroelectric Peaking Energy, and Firm Hydroelectric Peaking Power supplied from the Project under this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Energy means energy (kWh) associated with Firm Hydroelectric Power intended to be available at all times except for limitations provided in this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Peaking Energy means energy (kWh) associated with Firm Hydroelectric Peaking Power supplied at 12.5% monthly load factor.

Firm Hydroelectric Peaking Power means additional capacity (kW) from the Project intended to be available during Customer's peak load periods and limited as to the associated Firm Hydroelectric Peaking Energy to be supplied as set forth in this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Power means capacity (kW) from the Project intended to be available at all times except for limitations provided in this Agreement, the Rules, or applicable Service Tariff. Firm Hydroelectric Power shall not include Firm Hydroelectric Peaking Power.

Mutual Assistance is the practice of coordinated sharing of resources between electric systems for the purpose of restoring safe electric service and maintaining electric grid resilience and reliability, and is an essential part of the electric power industry's service restoration process and contingency planning.

Neighboring State Customers means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.

Non-Firm Hydroelectric Energy is all energy from the Authority's Niagara Power Project that is in addition to the energy associated with Firm and Peaking Hydroelectric Power and Energy that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.

NRA means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

NYISO means the New York Independent System Operator, Inc. or any successor organization.

NYISO Capability Period is as defined in the NYISO Open Access Transmission Tariff: Six-month periods which are established as follows: (1) from May 1 through October 31 of each year; and (2) from November 1 of each year through April 30 of the following year; or such other periods as may be determined by the Operating Committee of the NYISO.

Planned Hydropower Curtailment means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which the Authority makes in response to an Adverse Water Condition that the Authority (i) anticipated, and (ii) provided advance notice of pursuant to Section XIII.b of this Agreement.

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

Project Power and Energy means Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II(d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.

Relicensing Settlement Agreement means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring State Customers dated August 5, 2005.

RTO means an entity that, as a Regional Transmission Organization, operates transmission facilities and centralized wholesale power markets in a region pursuant to authority granted by one or more agreements or tariffs that have been accepted or approved by FERC. This term shall also refer to an independent system operator (ISO) that operates in a similar manner to an RTO and pursuant to agreements or tariffs accepted or approved by FERC, but does not refer to the NYISO.

Rules are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).

Service Tariffs are schedules establishing rates and other conditions for sale of Electric Services to Customer.

Substitute Energy means energy that is provided to a Customer by or through the Authority for the purpose of replacing Firm Hydroelectric Energy (and Firm

Hydroelectric Peaking Energy, if being supplied at the time) that is not supplied to the Customer due to a Planned Hydropower Curtailment or Unplanned Hydropower Curtailment.

Unplanned Hydropower Curtailment means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which is made by the Authority in response to an Adverse Water Condition that the Authority did not anticipate.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below*:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NS-1 - 600 kilowatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NS-2 - 100 kilowatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to
Service Tariff No. NS-3 - As available

*Allocations will be adjusted for the remainder of the term on or about January 1, 2026, per Article XII.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be

such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II.b.). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers. To the extent that there is a balance of Project Energy owed to either the Customer or the Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.
- d. Neither the identification of the Electric Service to be provided under this Article nor other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer. For avoidance of doubt, Additional Products does not include environmental attributes, which is addressed separately in Article XIV, below.

III. Modification of Neighboring State Customers Allocations

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this

Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

IV. Rules, Regulations and Service Tariffs

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

V. Resale of Project Power and Energy

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: (i) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, (ii) do so without profit other than reasonable compensation for administrative and service costs, (iii) resell such Project Power and Energy only to the Distributing Entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and maintained on a current basis, and which are "public bodies or nonprofit cooperatives" under the NRA ("Distributing Entities"), (iv) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric

Service, (v) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and (vi) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License. Neither the Customer nor any Distributing Entity may resell the Project Power and Energy purchased from the Authority into their RTO's market for financial settlement; provided, however, Customer and any Distributing Entity shall be permitted to continue offering Project Power and Energy purchased from the Authority into an RTO market where doing so is necessary to satisfy applicable requirements of the RTO in meeting Customer's load obligations.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of such Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

VI. Determination of Monthly Energy Allocations and Distributing Entities

Monthly energy allotments shall be determined by the Authority using the monthly load factors, which will be updated on an annual basis. Load factors will be calculated from the Customer's aggregated system-wide hourly interval load data for each month of the year two years prior for all end user recipients of Project Power and Energy under this Agreement. If Customer has recipients that do not have readily available historical load data, the Customer may substitute aggregated monthly billing determinants for energy and demand for those recipients as a data contribution to the load factors as set forth below. The Customer's monthly load factor calculation will be as follows:

$$(\text{System-wide monthly energy MWh}) \div [(\text{monthly coincident peak demand MW}) \times (\text{number of hours in the month})]$$

The hourly load data and substitute aggregated billing determinant data shall be submitted to the Authority within 30 days of the execution date of this Agreement, for the calendar year two years earlier. For each subsequent year, the data submitted by Customer shall be for the calendar year two years earlier, and shall be submitted

to the Authority by the second Monday in March. The system-wide monthly load factors shall be updated annually by the Authority based on the load factors of all of the Customer's recipients of Project Power and Energy provided under this Agreement for which load data from the calendar year two years earlier are readily available.

If Customer has individual recipients that do not have readily available historical load data, these recipients may be excluded from the annual calculation of the Customer's system-wide load factors provided that the aggregate of excluded recipients does not exceed 7% of the aggregate monthly energy (MWh) of the Customer's entire system-wide load.

If a Customer does not have interval load data readily available for at least 93% of the aggregate monthly energy (MWh) of its recipients of Project Power and Energy under this Agreement, those recipients may substitute all or a portion of this 93% with hourly load data for calendar month billed energy (MWh) and billed demand (MW) as recorded and quantified by revenue grade metering equipment, for the calendar year two years earlier. The substituted monthly load factors will be weighted for the portion of the Customer's system-wide MWh they represent and combined with the load factors calculated with the otherwise supplied interval load data for the remainder of the Customer's system. Assuming a threshold of 93% of energy is reached, the Authority will determine the load factor calculation for the Customer.

In the case of a substantial reallocation of power among the Distributing Entities, the monthly load factor, and resulting energy allotment, shall be adjusted no later than the next load factor update date. Appendix A, attached hereto contains, inter alia, a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then-existing allocation among authorized recipients in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of power to New York's neighboring states in order to fulfill statutory and/or license obligations.

VII. Transmission and Delivery of Power and Energy

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO.

In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with requisite notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

VIII. Scheduling Procedures

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. In the event the Authority determines that a modification to the Scheduling Procedures or methodologies is necessary to be consistent with this Agreement, or to conform such procedures to the requirements of the NYISO or to improve the efficiency of operations, the Authority shall first consult with Customer in order to identify and mitigate any adverse impacts on Customer that may result from the proposed modification. If the Authority and Customer do not reach agreement on modified Scheduling Procedures or methodologies within 30 days after their initial consultation, the Authority shall furnish Customer prior written notice in accordance with Article XVIII of the Authority's proposed modification of Scheduling Procedures or methodologies, provided that any such modification shall not reduce or impair the Customer's contractual entitlement to Project Power and Energy available hereunder to serve Customer's load.

IX. Dispatching Agent

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule energy in general accordance with Customer's system load shape, except that Customer may (i) at its option, schedule energy against the aggregate load shape of the RTO region or subregion in which the end-use recipients of Authority electricity purchased by Customer are located, or (ii) with the agreement of the Authority, schedule energy on any other load shape basis that represents the end-use recipients of the Authority electricity purchased by Customer. Customer may change its specification of the load shape or other basis on which it will schedule energy for a new calendar year by providing not less than three months prior notice to the Authority.

X. Rates

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Firm and Peaking Hydroelectric Power and Energy and Non-Firm Hydroelectric Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers. The Authority shall charge and Customer shall pay the preference power rates as adopted by the Authority from time to time for as long as those rates remain in effect during the term of this Agreement. Customer 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.

Customer waives any challenges to any of the following methodologies and principles¹ to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted on April 29, 2003 and November 15, 2011:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this 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).

¹ These methodologies and principles were employed in and explained by (1) the Authority’s January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on April 29, 2003; (2) the RSR explanatory statement attached hereto as Appendix B; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

(vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix C.

(viii) Unforced Capacity ("UCAP") sales credited to Cost of Service.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.

XI. Other Classes of Power and Energy

In the event that the Authority at any time determines that any class of power and energy other than those sold pursuant to Service Tariff Nos. NS-1, NS-2 and NS-3 is available for sale to Customer or that additional power and energy under those Service Tariffs is available for sale to Customer, the Authority shall notify Customer, and Customer may purchase such power and energy hereunder at the rate schedule or schedules then in effect for such power and energy, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

XII. Reallocation of Project Power and Energy

- a. The Authority and Customer agree that the Distributing Entities and the consumers for each Distributing Entity in the 2007 agreement's Appendix A, which will be updated in 2025 for the allocation re-allotment on or about January 1, 2026 supporting allocations of Project Power and Energy among the Neighboring State Customers will be as identified in Appendix A. If Customer is or becomes unable to receive, or chooses not to receive, any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.
- b. If a Distributing Entity included on Customer's Appendix A is or becomes ineligible to receive preference power pursuant to the NRA or chooses not to receive preference power, Customer shall cease its resale and distribution of Project Power and Energy to such Distributing Entity as soon as practicable after Customer becomes aware of such ineligibility or election. Customer shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility or election as soon as practicable upon its becoming aware of such ineligibility or election. Moreover, in such event,

the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demands for the Neighboring State Customers pursuant to this Agreement and if after January 1, 2026, the revised Appendix A used to establish the updated Contract Demands for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the the Distributing Entity that becomes ineligible or elects not to receive preference power. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

The Authority and Customer agree that, except for any pro rata reallocation required pursuant to the foregoing subsection a. or subsection b., the rural and domestic customer data supporting allocations among the Neighboring State Customers will be as set forth in Appendix A and will not be revised prior to January 1, 2026.

XIII. Hydropower Curtailments and Substitute Energy

- a. The Authority shall have the right to implement Planned Hydropower Curtailments for any Adverse Water Condition that the Authority anticipated and for which the Authority provided advance notice pursuant to Article XIII.b. of this Agreement. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- b. The Authority will provide the Customer with advance notice of any Planned Hydropower Curtailment that in the Authority's judgment will impact Electric Service. Such notice will be provided no later than the tenth (10th) 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.
- c. The Authority shall have the right to implement Unplanned Hydropower Curtailments for any Adverse Water Condition that the Authority did not anticipate. The Authority will implement Unplanned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- d. The Authority shall notify the Customer of the occurrence and expected duration (if known) of an Unplanned Hydropower Curtailment which in the Authority's judgment will impact Electric Service to the Customer. Such notice will be provided via e-mail (or such other means as the Authority and Customer may agree) to the individuals identified in Article XVIII.d. as

promptly as is practicable under the circumstances but in any event shall be provided not later than five (5) business days after the occurrence of each Unplanned Hydropower Curtailment. The notice also 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.

- e. The Authority will supply each requesting Customer with Substitute Energy during Planned Hydropower Curtailments (subject to the specific provisions of subsection f., below), and will supply each Customer with Substitute Energy during Unplanned Hydropower Curtailments; provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration that is commercially reasonable under the circumstances.
- f. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer during Planned Hydropower Curtailments to replace the Firm Hydroelectric Power and Energy that would otherwise have been supplied under this Agreement. Such request shall be received by the Authority at least thirty (30) days prior to the start of the six-month NYISO Capability Period, during which time such Substitute Energy shall be supplied by the Authority. The provision of Substitute Energy may be terminated by the Authority or the Customer upon written notice of at least thirty (30) days prior to the start of the subsequent six-month NYISO Capability Period.
- g. Unless otherwise agreed upon by the Parties in writing, Substitute Energy will be sourced from markets administered by the NYISO.
- h. The Authority will provide each Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- i. Each Customer shall reimburse the Authority for all costs that the Authority incurs for providing Substitute Energy to such Customer. The charges for such costs shall appear on the Authority's bills, and payment of such charges are subject to the provisions of the applicable Service Tariff and the Rules relating to the payment of bills. The Authority's failure to provide notice pursuant to Article XIII.b. or Article XIII.d. shall not affect the obligation of any Customer to pay for Substitute Energy.

XIV. Environmental Attributes

Provided it remains permissible under the laws, regulations, orders or rulemakings affecting the Authority's hydroelectric resources, the environmental attributes associated with the Project Power and Energy sold to Customer under this Agreement shall be made available to Customer through the New York Generation

Attribute Tracking System ("NYGATS"), New York State's on-line tracking system that records renewable energy certificates. The Authority's provision of environmental attributes to Customer confers on Customer the exclusive right to make beneficial use of such environmental attributes, including the right to utilize, transfer or monetize such environmental attributes as Customer determines in its sole discretion is most advantageous.

XV. Reports

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of (i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), (ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and (iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

XVI. Appointment of Customer Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

XVII. Term and Termination of Service

- a. Once initiated, service shall continue until the earliest of (a) termination by Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) April 30, 2032. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent

jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency), or (b) as otherwise provided herein or in the Rules.

- b. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the FERC License.

XVIII. Communications

The Authority acknowledges that each of the Neighboring State Customers has been appointed by the executive authority of each Designated State as that state's sole representative for all matters pertaining to this Agreement. Accordingly, the Authority agrees as follows:

- a. Before implementing any changes in procedures contemplated in this Agreement related to the sale of electricity, the Authority will notify the Customer for each such Designated State of the nature of and reasons for the proposed change and the date of its proposed implementation. In the absence of exigent circumstances, such notice shall be provided no fewer than sixty (60) days before the change is implemented.
- b. Any notification or communication required in subsection a. above, or by any other provision of this Agreement shall be provided in writing directly to the individual who has been designated by the Customer for each Designated State as the appropriate contact person, as set forth below:

[Name]
[Title]
[Organization]
[Address]
[phone #]
[e-mail address]

It shall be the responsibility of the individual designated above, and not the Authority, to provide the notification or communication required by subsection a. above, to the individual employed by each Customer in the highest executive or senior managerial position with direct responsibility for electric utility matters.

- c. Any notification or communication by the Customer regarding this Agreement shall be provided in writing directly to the individual in the position designated by the Authority as the appropriate contact person, as set forth below:

**Manager – Power Contracts & Tariffs
New York Power Authority
123 Main St.
White Plains, New York 10601
(914) 681-6200
PowerContracts@nypa.gov**

- d. In addition to providing notice to the individual identified in Article XVIII.b. above via e-mail and phone, any notification of an Unplanned Hydropower Curtailment described in Article XIII.e. will be provided to the appropriate contact person(s) via e-mail (or such other means as the Parties may agree) as set forth below:

**[Individual Name]
[E-mail Address]
[Cell Phone]**

XIX. Legal or Regulatory Change; Cooperation

- a. If at any time after the Effective Date of this Agreement there is any change to any law or regulation applicable to this Agreement, or to any tariff or rule of the NYISO or the RTO in which Customer is located, that substantially alters the contractual relationship between the Parties or the allocation of benefits hereunder, the Parties shall negotiate in good faith to determine whether any amendments, revisions or additions to this Agreement are necessary in order to maintain or restore the benefits of this Agreement to each Party as contemplated at the time of execution hereof. The Parties shall negotiate in good faith concerning any such amendments, revisions or additions to this Agreement, none of which shall be binding unless it is by agreement of the Parties in writing.
- b. Customer and the Authority agree to reasonably cooperate with one another in the performance of their respective obligations under this Agreement and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

XX. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act.

XXI. Venue

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

XXII. Mutual Assistance

- a. Customer (on behalf of the Distributing Entities listed in Appendix A to this Agreement) receives power allocations from power resources located in New York State and has an interest in the safe and reliable operation of New York's electric transmission system and the prompt restoration of service following interruptions in electric transmission service caused by storms and other events. Certain of Customer's Distributing Entities may currently participate directly or through a third party in mutual assistance agreements with New York State utilities ("Assistance Agreements").
- b. Accordingly, each Distributing Entity is in the position to consider requests by the Authority for rendering of assistance, which may be implemented through existing Assistance Agreements, as applicable. To the extent any Distributing Entity is not a party to any existing Assistance Agreement(s) addressing the provision of aid to the Authority and/or other New York State emergency response officials, (i) the Authority will notify Customer of any such non-participating Distributing Entity, and (ii) within ten business days after receiving such notification from the Authority, Customer will inform the Authority of the name and contact information of one or more individuals engaged by the relevant Distributing Entity in order that the Authority may initiate discussions with such Distributing Entity regarding participation in a mutual assistance network that is available to New York State utilities.
- c. Each Customer agrees to furnish, upon request from the Authority, updated contact information for any of its Distributing Entities with which the Authority does not have an Assistance Agreement for purposes of the Authority (or other New York State emergency response officials) requesting assistance from such Distributing Entities, including, without limitation, a request for the deployment of trained personnel; other forms of support services; equipment; materials; supplies; or fuels. Each Distributing Entity will determine, in its sole and absolute discretion, its ability and willingness to provide the requested assistance, taking into account its operational needs, the health and safety of its workers, and all other circumstances deemed pertinent by the Distributing Entity.

- d. The Parties agree to work together to ensure that appropriate Assistance Agreements are maintained where applicable.
- e. The Customer agrees to consider invitations from the Authority and/or other New York State emergency response officials to participate in emergency management symposiums or other similar emergency planning efforts or initiatives.

XXIII. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained, which consent shall not be unreasonably withheld.

XXIV. Previous Agreements and Communications

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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.

XXV. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

XXVI. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall,

at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be void and unenforceable.

XXVII. Waiver

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

XXVIII. Execution

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

XXIX. Effectiveness of Agreement

The agreement shall take effect upon the Effective Date, which requires execution by both Parties. The Authority will execute the Agreement only after the Governor's approval of the Agreement in accordance with Section 1009 of the New York Public Authorities Law.

CUSTOMER

By: _____

Print: _____

Title: _____

Date: _____

Accepted:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Print: _____

Title: _____

Date: _____

APPENDIX A

I. DISTRIBUTING ENTITIES INFORMATION – Rhode Island Public Utilities Commission

<u>Distributing Entities</u>	<u>Resale (Y/N)</u>
Pascoag Utility District	N
Block Island Utility District	N

II. DISTRIBUTING ENTITIES – CONSUMERS FOR ALLOCATION/ALLOTMENT

Info From: 2007 Niagara Agreement - Rhode Island Public Utilities Commission

<u>Distributing Entities</u>	<u>Number of R & D Consumers (2002 CY)</u>	<u>NIAGARA Allocation %</u>
Pascoag Utility District	4,291	100

APPENDIX B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to Customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. It is presently calculated consistent with Service Tariff No. NS-2 regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Customers’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include ancillary services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining assigned costs (after allocation of costs to the demand function) by the annual metered generation.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the Niagara/St. Lawrence projects that is sold in the various ISO auction markets.

POWER AUTHORITY
OF THE
STATE OF NEW YORK

30 South Pearl Street
Albany, New York

AGREEMENT FOR THE SALE
OF NIAGARA PROJECT POWER AND ENERGY TO
VERMONT DEPARTMENT OF PUBLIC SERVICE

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy Service
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy Service
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

POWER AUTHORITY OF THE STATE OF NEW YORK

30 South Pearl Street

Albany, New York 12207

AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY

Vermont Department of Public Service, which is the bargaining agent for the State of Vermont, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the "Parties"), for electric service as follows:

I. Definitions

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 of the Authority who are served by the Project.

Agreement means this Agreement.

Authority is the Power Authority of the State of New York.

Contract Demand will be the amounts set forth in Article II or such other amount as may be determined in accordance with the provisions of this Agreement.

Customer is the bargaining agent identified above.

Designated States means the states represented by the Neighboring State Customers.

Distributing Entities are the entities listed in Appendix A to this Agreement.

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

Electric Service is any type of power and energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

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

FERC License means the license issued by FERC to the Authority on March 15, 2007 for the continued operation and maintenance of the Niagara Power Project, FERC Project No. 2216, which became effective September 1, 2007.

Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy means Firm Hydroelectric Energy, Firm Hydroelectric Power, Firm Hydroelectric Peaking Energy, and Firm Hydroelectric Peaking Power supplied from the Project under this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Energy means energy (kWh) associated with Firm Hydroelectric Power intended to be available at all times except for limitations provided in this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Peaking Energy means energy (kWh) associated with Firm Hydroelectric Peaking Power supplied at 12.5% monthly load factor.

Firm Hydroelectric Peaking Power means additional capacity (kW) from the Project intended to be available during Customer's peak load periods and limited as to the associated Firm Hydroelectric Peaking Energy to be supplied as set forth in this Agreement, the Rules, and applicable Service Tariff.

Firm Hydroelectric Power means capacity (kW) from the Project intended to be available at all times except for limitations provided in this Agreement, the Rules, or applicable Service Tariff. Firm Hydroelectric Power shall not include Firm Hydroelectric Peaking Power.

Mutual Assistance is the practice of coordinated sharing of resources between electric systems for the purpose of restoring safe electric service and maintaining electric grid resilience and reliability, and is an essential part of the electric power industry's service restoration process and contingency planning.

Neighboring State Customers means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.

Non-Firm Hydroelectric Energy is all energy from the Authority's Niagara Power Project that is in addition to the energy associated with Firm and Peaking Hydroelectric Power and Energy that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.

NRA means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

NYISO means the New York Independent System Operator, Inc. or any successor organization.

NYISO Capability Period is as defined in the NYISO Open Access Transmission Tariff: Six-month periods which are established as follows: (1) from May 1 through October 31 of each year; and (2) from November 1 of each year through April 30 of the following year; or such other periods as may be determined by the Operating Committee of the NYISO.

Planned Hydropower Curtailment means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which the Authority makes in response to an Adverse Water Condition that the Authority (i) anticipated, and (ii) provided advance notice of pursuant to Section XIII.b of this Agreement.

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

Project Power and Energy means Firm Hydroelectric and Firm Hydroelectric Peaking Power and Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II(d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.

Relicensing Settlement Agreement means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring State Customers dated August 5, 2005.

RTO means an entity that, as a Regional Transmission Organization, operates transmission facilities and centralized wholesale power markets in a region pursuant to authority granted by one or more agreements or tariffs that have been accepted or approved by FERC. This term shall also refer to an independent system operator (ISO) that operates in a similar manner to an RTO and pursuant to agreements or tariffs accepted or approved by FERC, but does not refer to the NYISO.

Rules are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).

Service Tariffs are schedules establishing rates and other conditions for sale of Electric Services to Customer.

Substitute Energy means energy that is provided to a Customer by or through the Authority for the purpose of replacing Firm Hydroelectric Energy (and Firm

Hydroelectric Peaking Energy, if being supplied at the time) that is not supplied to the Customer due to a Planned Hydropower Curtailment or Unplanned Hydropower Curtailment.

Unplanned Hydropower Curtailment means a temporary reduction in the amount of Firm Hydroelectric Energy (and Firm Hydroelectric Peaking Energy, if being supplied at the time) which the Customer is entitled to receive under this Agreement, which is made by the Authority in response to an Adverse Water Condition that the Authority did not anticipate.

II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below*:

Firm Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NS-1 - 11,800 kilowatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to
Service Tariff No. NS-2 - 2,500 kilowatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to
Service Tariff No. NS-3 - As available

*Allocations will be adjusted for the remainder of the term on or about January 1, 2026, per Article XII.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be

such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II.b.). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers. To the extent that there is a balance of Project Energy owed to either the Customer or the Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.
- d. Neither the identification of the Electric Service to be provided under this Article nor other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer. For avoidance of doubt, Additional Products does not include environmental attributes, which is addressed separately in Article XIV, below.

III. Modification of Neighboring State Customers Allocations

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this

Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

IV. Rules, Regulations and Service Tariffs

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

V. Resale of Project Power and Energy

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: (i) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, (ii) do so without profit other than reasonable compensation for administrative and service costs, (iii) resell such Project Power and Energy only to the Distributing Entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and maintained on a current basis, and which are “public bodies or nonprofit cooperatives” under the NRA (“Distributing Entities”), (iv) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric

Service, (v) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and (vi) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License. Neither the Customer nor any Distributing Entity may resell the Project Power and Energy purchased from the Authority into their RTO's market for financial settlement; provided, however, Customer and any Distributing Entity shall be permitted to continue offering Project Power and Energy purchased from the Authority into an RTO market where doing so is necessary to satisfy applicable requirements of the RTO in meeting Customer's load obligations.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of such Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

VI. Determination of Monthly Energy Allocations and Distributing Entities

Monthly energy allotments shall be determined by the Authority using the monthly load factors, which will be updated on an annual basis. Load factors will be calculated from the Customer's aggregated system-wide hourly interval load data for each month of the year two years prior for all end user recipients of Project Power and Energy under this Agreement. If Customer has recipients that do not have readily available historical load data, the Customer may substitute aggregated monthly billing determinants for energy and demand for those recipients as a data contribution to the load factors as set forth below. The Customer's monthly load factor calculation will be as follows:

$$(\text{System-wide monthly energy MWh}) \div [(\text{monthly coincident peak demand MW}) \times (\text{number of hours in the month})]$$

The hourly load data and substitute aggregated billing determinant data shall be submitted to the Authority within 30 days of the execution date of this Agreement, for the calendar year two years earlier. For each subsequent year, the data submitted by Customer shall be for the calendar year two years earlier, and shall be submitted

to the Authority by the second Monday in March. The system-wide monthly load factors shall be updated annually by the Authority based on the load factors of all of the Customer's recipients of Project Power and Energy provided under this Agreement for which load data from the calendar year two years earlier are readily available.

If Customer has individual recipients that do not have readily available historical load data, these recipients may be excluded from the annual calculation of the Customer's system-wide load factors provided that the aggregate of excluded recipients does not exceed 7% of the aggregate monthly energy (MWh) of the Customer's entire system-wide load.

If a Customer does not have interval load data readily available for at least 93% of the aggregate monthly energy (MWh) of its recipients of Project Power and Energy under this Agreement, those recipients may substitute all or a portion of this 93% with hourly load data for calendar month billed energy (MWh) and billed demand (MW) as recorded and quantified by revenue grade metering equipment, for the calendar year two years earlier. The substituted monthly load factors will be weighted for the portion of the Customer's system-wide MWh they represent and combined with the load factors calculated with the otherwise supplied interval load data for the remainder of the Customer's system. Assuming a threshold of 93% of energy is reached, the Authority will determine the load factor calculation for the Customer.

In the case of a substantial reallocation of power among the Distributing Entities, the monthly load factor, and resulting energy allotment, shall be adjusted no later than the next load factor update date. Appendix A, attached hereto contains, inter alia, a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then-existing allocation among authorized recipients in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of power to New York's neighboring states in order to fulfill statutory and/or license obligations.

VII. Transmission and Delivery of Power and Energy

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO.

In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with requisite notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

VIII. Scheduling Procedures

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. In the event the Authority determines that a modification to the Scheduling Procedures or methodologies is necessary to be consistent with this Agreement, or to conform such procedures to the requirements of the NYISO or to improve the efficiency of operations, the Authority shall first consult with Customer in order to identify and mitigate any adverse impacts on Customer that may result from the proposed modification. If the Authority and Customer do not reach agreement on modified Scheduling Procedures or methodologies within 30 days after their initial consultation, the Authority shall furnish Customer prior written notice in accordance with Article XVIII of the Authority's proposed modification of Scheduling Procedures or methodologies, provided that any such modification shall not reduce or impair the Customer's contractual entitlement to Project Power and Energy available hereunder to serve Customer's load.

IX. Dispatching Agent

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule energy in general accordance with Customer's system load shape, except that Customer may (i) at its option, schedule energy against the aggregate load shape of the RTO region or subregion in which the end-use recipients of Authority electricity purchased by Customer are located, or (ii) with the agreement of the Authority, schedule energy on any other load shape basis that represents the end-use recipients of the Authority electricity purchased by Customer. Customer may change its specification of the load shape or other basis on which it will schedule energy for a new calendar year by providing not less than three months prior notice to the Authority.

X. Rates

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Firm and Peaking Hydroelectric Power and Energy and Non-Firm Hydroelectric Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers. The Authority shall charge and Customer shall pay the preference power rates as adopted by the Authority from time to time for as long as those rates remain in effect during the term of this Agreement. Customer 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.

Customer waives any challenges to any of the following methodologies and principles¹ to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted on April 29, 2003 and November 15, 2011:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this 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).

¹ These methodologies and principles were employed in and explained by (1) the Authority’s January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on April 29, 2003; (2) the RSR explanatory statement attached hereto as Appendix B; and (3) the November 2011 Authority Staff Analysis of Public Comments and Recommendations adopted by the Authority’s Trustees on November 15, 2011.

(vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix C.

(viii) Unforced Capacity ("UCAP") sales credited to Cost of Service.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.

XI. Other Classes of Power and Energy

In the event that the Authority at any time determines that any class of power and energy other than those sold pursuant to Service Tariff Nos. NS-1, NS-2 and NS-3 is available for sale to Customer or that additional power and energy under those Service Tariffs is available for sale to Customer, the Authority shall notify Customer, and Customer may purchase such power and energy hereunder at the rate schedule or schedules then in effect for such power and energy, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

XII. Reallocation of Project Power and Energy

- a. The Authority and Customer agree that the Distributing Entities and the consumers for each Distributing Entity in the 2007 agreement's Appendix A, which will be updated in 2025 for the allocation re-allotment on or about January 1, 2026 supporting allocations of Project Power and Energy among the Neighboring State Customers will be as identified in Appendix A. If Customer is or becomes unable to receive, or chooses not to receive, any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.
- b. If a Distributing Entity included on Customer's Appendix A is or becomes ineligible to receive preference power pursuant to the NRA or chooses not to receive preference power, Customer shall cease its resale and distribution of Project Power and Energy to such Distributing Entity as soon as practicable after Customer becomes aware of such ineligibility or election. Customer shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility or election as soon as practicable upon its becoming aware of such ineligibility or election. Moreover, in such event,

the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demands for the Neighboring State Customers pursuant to this Agreement and if after January 1, 2026, the revised Appendix A used to establish the updated Contract Demands for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the the Distributing Entity that becomes ineligible or elects not to receive preference power. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

The Authority and Customer agree that, except for any pro rata reallocation required pursuant to the foregoing subsection a. or subsection b., the rural and domestic customer data supporting allocations among the Neighboring State Customers will be as set forth in Appendix A and will not be revised prior to January 1, 2026.

XIII. Hydropower Curtailments and Substitute Energy

- a. The Authority shall have the right to implement Planned Hydropower Curtailments for any Adverse Water Condition that the Authority anticipated and for which the Authority provided advance notice pursuant to Article XIII.b. of this Agreement. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- b. The Authority will provide the Customer with advance notice of any Planned Hydropower Curtailment that in the Authority's judgment will impact Electric Service. Such notice will be provided no later than the tenth (10th) 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.
- c. The Authority shall have the right to implement Unplanned Hydropower Curtailments for any Adverse Water Condition that the Authority did not anticipate. The Authority will implement Unplanned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project.
- d. The Authority shall notify the Customer of the occurrence and expected duration (if known) of an Unplanned Hydropower Curtailment which in the Authority's judgment will impact Electric Service to the Customer. Such notice will be provided via e-mail (or such other means as the Authority and Customer may agree) to the individuals identified in Article XVIII.d. as

promptly as is practicable under the circumstances but in any event shall be provided not later than five (5) business days after the occurrence of each Unplanned Hydropower Curtailment. The notice also 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.

- e. The Authority will supply each requesting Customer with Substitute Energy during Planned Hydropower Curtailments (subject to the specific provisions of subsection f., below), and will supply each Customer with Substitute Energy during Unplanned Hydropower Curtailments; provided, however, that the supply of Substitute Energy during an Unplanned Hydropower Curtailment will be for the shortest duration that is commercially reasonable under the circumstances.
- f. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer during Planned Hydropower Curtailments to replace the Firm Hydroelectric Power and Energy that would otherwise have been supplied under this Agreement. Such request shall be received by the Authority at least thirty (30) days prior to the start of the six-month NYISO Capability Period, during which time such Substitute Energy shall be supplied by the Authority. The provision of Substitute Energy may be terminated by the Authority or the Customer upon written notice of at least thirty (30) days prior to the start of the subsequent six-month NYISO Capability Period.
- g. Unless otherwise agreed upon by the Parties in writing, Substitute Energy will be sourced from markets administered by the NYISO.
- h. The Authority will provide each Customer with an explanation of all Planned Hydropower Curtailments and Unplanned Hydropower Curtailments, and an accounting of all charges assessed to such Customer for Substitute Energy.
- i. Each Customer shall reimburse the Authority for all costs that the Authority incurs for providing Substitute Energy to such Customer. The charges for such costs shall appear on the Authority's bills, and payment of such charges are subject to the provisions of the applicable Service Tariff and the Rules relating to the payment of bills. The Authority's failure to provide notice pursuant to Article XIII.b. or Article XIII.d. shall not affect the obligation of any Customer to pay for Substitute Energy.

XIV. Environmental Attributes

Provided it remains permissible under the laws, regulations, orders or rulemakings affecting the Authority's hydroelectric resources, the environmental attributes associated with the Project Power and Energy sold to Customer under this Agreement shall be made available to Customer through the New York Generation

Attribute Tracking System ("NYGATS"), New York State's on-line tracking system that records renewable energy certificates. The Authority's provision of environmental attributes to Customer confers on Customer the exclusive right to make beneficial use of such environmental attributes, including the right to utilize, transfer or monetize such environmental attributes as Customer determines in its sole discretion is most advantageous.

XV. Reports

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of (i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), (ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and (iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

XVI. Appointment of Customer Agent

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

XVII. Term and Termination of Service

- a. Once initiated, service shall continue until the earliest of (a) termination by Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) April 30, 2032. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent

jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency), or (b) as otherwise provided herein or in the Rules.

- b. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the FERC License.

XVIII. Communications

The Authority acknowledges that each of the Neighboring State Customers has been appointed by the executive authority of each Designated State as that state's sole representative for all matters pertaining to this Agreement. Accordingly, the Authority agrees as follows:

- a. Before implementing any changes in procedures contemplated in this Agreement related to the sale of electricity, the Authority will notify the Customer for each such Designated State of the nature of and reasons for the proposed change and the date of its proposed implementation. In the absence of exigent circumstances, such notice shall be provided no fewer than sixty (60) days before the change is implemented.
- b. Any notification or communication required in subsection a. above, or by any other provision of this Agreement shall be provided in writing directly to the individual who has been designated by the Customer for each Designated State as the appropriate contact person, as set forth below:

[Name]
[Title]
[Organization]
[Address]
[phone #]
[e-mail address]

It shall be the responsibility of the individual designated above, and not the Authority, to provide the notification or communication required by subsection a. above, to the individual employed by each Customer in the highest executive or senior managerial position with direct responsibility for electric utility matters.

- c. Any notification or communication by the Customer regarding this Agreement shall be provided in writing directly to the individual in the position designated by the Authority as the appropriate contact person, as set forth below:

**Manager – Power Contracts & Tariffs
New York Power Authority
123 Main St.
White Plains, New York 10601
(914) 681-6200
PowerContracts@nypa.gov**

- d. In addition to providing notice to the individual identified in Article XVIII.b. above via e-mail and phone, any notification of an Unplanned Hydropower Curtailment described in Article XIII.e. will be provided to the appropriate contact person(s) via e-mail (or such other means as the Parties may agree) as set forth below:

**[Individual Name]
[E-mail Address]
[Cell Phone]**

XIX. Legal or Regulatory Change; Cooperation

- a. If at any time after the Effective Date of this Agreement there is any change to any law or regulation applicable to this Agreement, or to any tariff or rule of the NYISO or the RTO in which Customer is located, that substantially alters the contractual relationship between the Parties or the allocation of benefits hereunder, the Parties shall negotiate in good faith to determine whether any amendments, revisions or additions to this Agreement are necessary in order to maintain or restore the benefits of this Agreement to each Party as contemplated at the time of execution hereof. The Parties shall negotiate in good faith concerning any such amendments, revisions or additions to this Agreement, none of which shall be binding unless it is by agreement of the Parties in writing.
- b. Customer and the Authority agree to reasonably cooperate with one another in the performance of their respective obligations under this Agreement and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

XX. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act.

XXI. Venue

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

XXII. Mutual Assistance

- a. Customer (on behalf of the Distributing Entities listed in Appendix A to this Agreement) receives power allocations from power resources located in New York State and has an interest in the safe and reliable operation of New York's electric transmission system and the prompt restoration of service following interruptions in electric transmission service caused by storms and other events. Certain of Customer's Distributing Entities may currently participate directly or through a third party in mutual assistance agreements with New York State utilities ("Assistance Agreements").
- b. Accordingly, each Distributing Entity is in the position to consider requests by the Authority for rendering of assistance, which may be implemented through existing Assistance Agreements, as applicable. To the extent any Distributing Entity is not a party to any existing Assistance Agreement(s) addressing the provision of aid to the Authority and/or other New York State emergency response officials, (i) the Authority will notify Customer of any such non-participating Distributing Entity, and (ii) within ten business days after receiving such notification from the Authority, Customer will inform the Authority of the name and contact information of one or more individuals engaged by the relevant Distributing Entity in order that the Authority may initiate discussions with such Distributing Entity regarding participation in a mutual assistance network that is available to New York State utilities.
- c. Each Customer agrees to furnish, upon request from the Authority, updated contact information for any of its Distributing Entities with which the Authority does not have an Assistance Agreement for purposes of the Authority (or other New York State emergency response officials) requesting assistance from such Distributing Entities, including, without limitation, a request for the deployment of trained personnel; other forms of support services; equipment; materials; supplies; or fuels. Each Distributing Entity will determine, in its sole and absolute discretion, its ability and willingness to provide the requested assistance, taking into account its operational needs, the health and safety of its workers, and all other circumstances deemed pertinent by the Distributing Entity.

- d. The Parties agree to work together to ensure that appropriate Assistance Agreements are maintained where applicable.
- e. The Customer agrees to consider invitations from the Authority and/or other New York State emergency response officials to participate in emergency management symposiums or other similar emergency planning efforts or initiatives.

XXIII. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained, which consent shall not be unreasonably withheld.

XXIV. Previous Agreements and Communications

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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.

XXV. Acceptance and Approvals

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

XXVI. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall,

at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be void and unenforceable.

XXVII. Waiver

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

XXVIII. Execution

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

XXIX. Effectiveness of Agreement

The agreement shall take effect upon the Effective Date, which requires execution by both Parties. The Authority will execute the Agreement only after the Governor's approval of the Agreement in accordance with Section 1009 of the New York Public Authorities Law.

CUSTOMER

By: _____

Print: _____

Title: _____

Date: _____

Accepted:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Print: _____

Title: _____

Date: _____

APPENDIX A

I. DISTRIBUTING ENTITIES INFORMATION – Vermont Department of Public Service

Distributing Entities	Resale (Y/N)?
Barton Village	N
Burlington Electric Light	N
Enosburg Falls Village	N
Hardwick Town	N
Hyde Park Village	N
Village of Jacksonville	N
Village of Johnson	N
Village of Ludlow	N
Lyndonville Electric	N
Village of Morrisville	N
Northfield Village	N
Village of Orleans	N
Town of Stowe	N
Village of Swanton	N
Vermont Electric Co-op	N
Washington Electric Co-op	N

APPENDIX A

II. DISTRIBUTING ENTITIES – CONSUMERS FOR ALLOCATION/ALLOTMENT

Info From: 2007 Niagara Agreement - Vermont Department of Public Service

Distributing Entities	Number of R & D Consumers (2005 CY)	NIAGARA Allocation %
Barton Village	1,916	2.11
Burlington Electric Light	16,168	17.83
Enosburg Falls Village	1,389	1.53
Hardwick Town	3,771	4.16
Hyde Park Village	1,113	1.23
Village of Jacksonville	669	0.74
Village of Johnson	722	0.80
Village of Ludlow	2,998	3.31
Lyndonville Electric	4,551	5.02
Village of Morrisville	3,232	3.56
Northfield Village	1,637	1.81
Village of Orleans	584	0.64
Village of Readsboro	265	0.29
Tonw of Stowe	3,052	3.37
Village of Swanton	3,021	3.33
Vermont Electric Co-op	35,817	39.51
Washington Electric Co-op	9,758	10.76
Total	90,663	100.00

APPENDIX B

NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

The Rate Stabilization Reserve (“RSR”) is a rate making mechanism by which NYPA reconciles its actual annual cost of service and revenues to the projections used to set rates. The purpose is to reconcile the projected cost of service and associated revenues to actuals. The difference is then added to or subtracted from the reserve (the accumulation of previous annual differences). If the absolute value of the reserve exceeds \$25MM, the excess will be charged or credited to Customers. The Parties recognize that the current RSR methodology may be changed if such change is deemed to be advantageous to the Parties. Any Party may propose changes to the RSR calculation method. Following notification of a proposed change, the Parties will engage in good faith discussions about the proposed change. It is presently calculated consistent with Service Tariff No. NS-2 regarding the Flow Adjustment Computation (FAC). The calculation is described below:

1. Calculate the total Cost of Service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, Relicensing Costs paid to others, post-employment benefits other than pensions (OPEBs), Indirect Overheads (Shared Services, Research and Development, debt service), Administrative and General Costs (A&G), and Capital Costs (using Trended Original Cost for equity funded and Original Cost for debt funded).
2. Reduce the CoS by any revenues arising from excess capacity (UCAP) sales to the ISO,² including calculated revenues associated with internal transfers of UCAP for NYPA’s non-hydro customers, and accounting for UCAP adjustments for firm supply customers with locational capacity requirements. Normalized ReCharge NY customer UCAP sales are applied in the UCAP credit calculation.
3. Allocate costs to the demand function by multiplying the sum of the Customers’ billed demands (entire 455 MW of Recharge NY Power, i.e., Normalized demand for ReCharge NY Customers) by the preference demand rate, which has been adjusted to include ancillary services production costs and UCAP sales revenue. This demand charge is used only for the purposes of calculating the RSR methodology.
4. Calculate the cost-based energy rate by dividing the remaining assigned costs (after allocation of costs to the demand function) by the annual metered generation.

² As part of the CoS, NYPA will track the amount of excess UCAP and associated revenues from the Niagara/St. Lawrence projects that is sold in the various ISO auction markets.

New York State Power Authority

Public Hearing
May 6, 2021



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New York State Power Authority
Thursday, May 6, 2021
2:00 p.m. - 6:00 p.m.
535 Washington Street, Suite 202
Buffalo, New York 14203

Patricia A. Schreier
(via webcam)

1 SPEAKERS:

2 MS. DELINCE (via webcam)..... 3,12
3 MR. SMITH (via webcam)..... 5,12

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1 MS. DELINCE: Good afternoon.

2 This is a public hearing required by law and
3 authorized by the New York Power Authority's Board of
4 Trustees on the proposed Customer Contracts for the sale
5 of hydropower to Amcor Rigid Packaging USA, LLC, Pine
6 Pharmaceuticals LLC, Plug Power Inc., and seven
7 neighboring states, namely, Connecticut, Massachusetts,
8 New Jersey, Ohio, Pennsylvania, Rhode Island, and
9 Vermont.

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

12 New York State Public Authorities Law, Section
13 1009, sets forth procedures for executing certain
14 contracts negotiated by the Authority.

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

22 In addition, notices appeared once a week, for the
23 four weeks leading up to this hearing, in the following

1 newspapers: the Niagara Gazette, Buffalo News, Buffalo
2 Business First, Niagara County Tribune Sentinel, Albany
3 Times-Union and Dunkirk Observer

4 The public was also given access to the proposed
5 contracts on the Authority's website during the 30-day
6 period prior to today's hearing.

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

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

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

16 If you plan to make an oral statement at this
17 hearing, I ask that you so indicate on the sign-in
18 sheet.

19 Also, if you have a written statement, please give
20 a copy to Richard Smith.

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

1 The record of the hearing will remain open for
2 additional comments through close of business, Friday,
3 May 7, 2021. Additional comments should be mailed,
4 faxed, or emailed to the Corporate Secretary at 123 Main
5 Street, 9-B, White Plains, New York 10601 or (914)
6 390-8040 or secretarys.office@nypa.gov.

7 At this point, I would like to introduce Richard
8 Smith, the Authority's Director of Economic Development,
9 who will provide additional details on the proposed
10 Customer Contracts. Thank you.

11 Mr. Smith

12 MR. SMITH: Thank you, Ms. Delince.

13 Good afternoon. My name is Richard Smith, and I am
14 the Director of Economic Development within NYPA's Clean
15 Energy Solutions department. I am here today to present
16 a summary of three proposed contracts for Amcor Rigid
17 Packaging USA, LLC, Pine Pharmaceuticals, LLC, Plug
18 Power Inc., as well as contracts for the seven
19 Neighboring States (namely Connecticut, Massachusetts,
20 New Jersey, Ohio, Pennsylvania, Rhode Island and
21 Vermont) for the sale of hydropower generated at the
22 Niagara Power Project.

23 Regarding the three proposed contracts, under

1 Public Authorities Law Section 1005 Subsection 13 the
2 Authority may allocate and sell directly or by
3 sale-for-resale, 250 MW of Expansion Power, known as EP,
4 and 445 MW of Replacement Power, known as RP, to
5 businesses located within 30 miles of the Niagara Power
6 Project, provided that the amount of EP allocated to
7 businesses in Chautauqua County on January 1, 1987 shall
8 continue to be allocated in Chautauqua County.

9 At their March 30, 2021 meeting, the NYPA Trustees
10 approved a 1,750 kW allocation of EP to Amcor for a term
11 of ten years, based on commitments to create at least 24
12 new full-time jobs and make a capital investment of at
13 least \$18.8 million at the facility that will use the EP
14 allocation.

15 The company is a global manufacturer of packaging
16 products used for various applications in the food,
17 beverage, pharmaceutical and household industries.
18 Amcor proposes to establish a new manufacturing facility
19 in Cheektowaga to produce beverage containers. The
20 capital investment will be for infrastructure upgrades
21 at the facility and new equipment. The 1,750 kW
22 allocation will help support the manufacturing of
23 beverage containers.

1 At their March 30, 2021 meeting, the NYPA Trustees
2 approved a 400 kW allocation of EP to Pine
3 Pharmaceuticals for a term of ten years, based on
4 commitments to create at least 40 new, full-time jobs
5 above a base of 94 full-time jobs and make at least a
6 \$8.615 million capital investment at the company's
7 facility where the EP allocation will be used.

8 The company provides custom compound solutions
9 directly to medical practices, clinics and hospitals for
10 in-office patient care. Pine proposes to construct an
11 addition to its current facility in Tonawanda to produce
12 repackaged and compounded pharmaceuticals.

13 The capital investment reflects costs related to
14 building upgrades, construction and purchases of
15 machinery and equipment. The 400 kW allocation will
16 help support the production of repackaged and compounded
17 pharmaceuticals.

18 At their March 30, 2021 meeting, the NYPA Trustees
19 approved a 10,000 kW allocation of EP to Plug Power for
20 a term of ten years, based on a commitment to create at
21 least 68 new full-time jobs and make a capital
22 investment of at least \$290.82 million at the facility
23 that will use the EP allocation.

1 The company is a producer of green hydrogen for use
2 in fuel cells and is a leading provider of clean
3 hydrogen and zero-emission fuel cell solutions. Plug
4 Power proposes to construct and operate a liquid
5 hydrogen production plant at the Science & Technology
6 Advanced Manufacturing Park in Alabama, New York.

7 The capital investment reflects costs related to
8 land acquisition, construction, and purchase and
9 installation of infrastructure machinery and equipment.
10 The 10,000 kW allocation will help support the
11 production of green liquid hydrogen.

12 The following is a summary of pertinent provisions
13 in the proposed contracts:

14 The contracts provide for the direct billing of all
15 hydropower supply charges and all New York Independent
16 System Operator, Inc., (NYISO) charges and taxes.

17 The contracts include customer agreed-upon
18 commitments with respect to employment, capital
19 investment and power utilization.

20 Under the contracts, the Authority may reduce or
21 terminate the allocations if employment, power
22 utilization or capital investment commitments are not
23 met.

1 Relatedly, the contracts include an annual job
2 reporting requirement and a job compliance threshold of
3 90 percent. Should the company's average annual
4 employment fall below the compliance threshold of 90
5 percent of the employment commitment, the Authority may
6 reduce the amount of the allocations.

7 The contracts provide for the companies to perform
8 an energy audit at their facilities at least once within
9 five years, helping to ensure that customers use the
10 hydropower efficiently.

11 To address non-payment risk that could result from
12 the direct billing arrangement, the contracts include
13 commercially reasonable provisions concerning the
14 Authority's ability to charge late payment fees and to
15 require deposits in the event of the customer's failure
16 to make payment for any two monthly bills. These
17 contract provisions are consistent with other Authority
18 direct sale contracts, including the Recharge New York
19 sales contracts.

20 The contracts provide for collection of a Zero
21 Emission Credit charge and a Renewable Energy Credit
22 charge to allow the Authority to recover costs it would
23 incur relating to its purchase of Zero Emission Credits

1 and Renewable Energy Credits attributable to the
2 customer's load.

3 The contracts will address the allocations along
4 with the Authority's Service Tariff WNY-2 which
5 specifies rates and other terms applicable to other EP
6 and RP allocations.

7 Transmission and delivery service for the
8 allocations will be provided by National Grid or NYSEG,
9 in accordance with the utilities' Public Service
10 Commission approved delivery service tariffs.

11 Lastly, regarding the contracts for the seven
12 Neighboring States, the Niagara Redevelopment Act (NRA)
13 requires the Authority to make available at least 50
14 percent of the Niagara Project's power to 'preference
15 customers' (i.e., public bodies and non-profit
16 cooperatives within economic transmission distance).

17 It further requires the Authority to make available
18 a reasonable portion of such preference power, but not
19 more than 10 percent of total Niagara Project power, to
20 preference customers within reasonable economic
21 transmission distance in the Neighboring States.

22 NYPA's current 50-year FERC license for the Niagara
23 Project made effective on September 1, 2007, fully

1 incorporates the NRA-based requirement to make
2 preference power available to the Neighboring States.
3 The PAL 1005(5) also authorizes the Authority to sell a
4 reasonable share of Niagara Project power to the
5 Neighboring States.

6 At the March 30, 2021 Trustees' meeting, board
7 members considered the request from and awarded
8 allocations to the seven Neighboring States.

9 The proposed contracts with the Neighboring States
10 also provides:

11 (1) the option to take substitute energy when there
12 is a planned curtailment, but requires taking substitute
13 energy for an unplanned curtailment.

14 (2) The transfer of environmental attributes
15 associated with each Neighboring State's Niagara Project
16 allocation, as long as permissible by law, via the
17 on-line New York Generation Attributes Tracking System,
18 and.

19 (3) For each Neighboring State to work with the
20 Authority to maintain mutual assistance agreements that
21 any of their end-user municipal systems may be a party
22 to, along with the Authority, as well as facilitate
23 contact with those end-user municipal systems that are

1 not a party to a mutual assistance agreement along with
2 the Authority.

3 As Ms. Delince stated earlier, the Authority will
4 accept your comments on the proposed contracts until the
5 close of business on Friday, May 7, 2021.

6 I will now turn the hearing back to Ms. Delince.

7 MS. DELINCE: Thank you, Mr. Smith.

8 At this time, I would like to call on speakers who
9 are signed in. Mr. Smith, are there any speakers
10 present at your location who wish to provide a
11 statement?

12 MR. SMITH: No, there are not.

13 MS. DELINCE: In that case, we will recess now
14 and reconvene when speakers arrive.

15 (recess)

16 MS. DELINCE: The May 6, 2021 public hearing on
17 the proposed customer contracts for the sale of
18 hydropower to Amcor Rigid Packaging, USA, LLC, Pine
19 Pharmaceuticals LLC, Plug Power Inc., and seven
20 neighboring states, namely Connecticut, Massachusetts,
21 New Jersey, Ohio, Pennsylvania, Rhode Island, and
22 Vermont is officially closed.

23 As I previously stated, the record of the hearing

1 will remain open for any additional comments through
2 close of business, Friday, May 7, 2021. Thank you and
3 good night.

4
5 (Hearing concluded at 6:03 p.m.)
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STATE OF NEW YORK
COUNTY OF ERIE

I, Patricia A. Schreier, a Notary Public in and for the State of New York, do hereby certify:

That the witness, whose testimony appears herein before, was, before the commencement of his testimony, duly sworn to testify the truth, the whole truth and nothing but the truth; that such testimony was taken pursuant to notice at the time and place herein set forth; that said testimony was taken down in shorthand by me and thereafter under my supervision transcribed into the English language, and hereby certify the foregoing testimony is a full, true and correct transcription of the shorthand notes so taken.

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

IN WITNESS WHEREOF, I have here unto subscribed my name this 11th day of May, 2021.



Notary Public
State of New York

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Date: May 25, 2021
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 \$10 million, as well as personal services contracts in excess of \$10 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 \$10 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 contracts with **NEPC LLC ("NEPC")**, **PFM Financial Advisors LLC ("PFM")**, **Piper Sandler & Company ("Piper")** and **Prager & Company LLC ("Prager") (Q21-7120RM)** would provide Financial Advisory services, specifically; NEPC for Other Post-Employment Benefits Trust and 401k/457 Plan Advisory Services, PFM and Prager for Capital Markets / Debt Issuance Advisory Services, and Piper for Treasury Investment Portfolio Advisory Services. 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. Fifty firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Nine proposals were received electronically via Ariba and were evaluated. Staff recommends the award of contracts to NEPC, PFM, Piper and Prager which are technically and commercially qualified and meet the bid requirements based on "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 Trustee approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contract, \$5 million. NEPC and PFM are Small Business Enterprises.

Human Resources & Administration – Benefits

The proposed non-personal services contract with **Sierra Health and Life Insurance Company (“Sierra”) (Q21-7114JW)** would provide a Medicare Advantage Plan. The Authority currently administers a pharmacy Employer Group Waiver Plan and is familiar with how group Medicare products operate. The Authority is exploring the same opportunity within the medical component and confirmed that a Group Medicare Advantage Passive PPO could bring enhanced benefits in addition to plan savings to the Authority. Bid documents were developed by staff and were accessible through Ariba. A Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority’s website. Eleven firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Four proposals were received electronically via Ariba and were evaluated. Staff recommends a contract award to Sierra 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 January 1, 2022 and ending on December 31, 2026, subject to Trustee approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$1.4 million.

Human Resources & Administration – Civil Rights & Inclusion

The proposed personal services contracts with **Aon Consulting, Inc. (“Aon”), Cheer Partners LLC (“CP”), Churchill Leadership Group, Inc. (“CLG”), Deloitte Consulting LLP (“Deloitte”), Ernst & Young (US) LLP (“E&Y”) and Mercer (US) Inc. (“Mercer”) (Q20-7079SS)** would provide Diversity, Equity and Inclusion services. The Authority is committed to encouraging, creating, and maintaining a diverse, equitable and inclusive workforce. Through the Office of Civil Rights & Inclusion, the Authority promotes engagement and development of internal talent, encourages workforce diversity in our recruitment efforts, and engages in community outreach. The Authority also supports and encourages a culture that actively welcomes and respects different backgrounds and points of view for the benefit of all its employees. 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. Sixteen proposals were received electronically via Ariba and were evaluated. Staff recommends the award of contracts to Aon, CP, CLG, Deloitte, E&Y and Mercer which are technically and commercially qualified and meet the bid requirements based on “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 Trustee 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. Aon, CP and CLG are Small Business Enterprises.

Human Resources & Administration – Talent Acquisition

The proposed personal services contracts with **Russell Reynolds Associates, Inc. (“RRA”), The Leadership Lyceum LLC (“TLL”), and The Search Partnership LLC (“TSP”) (Q20-6930JW)** would provide Executive Recruitment services. 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. Fifty firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Twenty-three proposals were received electronically via Ariba and were evaluated. Staff recommends the award of contracts to RRA, TLL and TSP which are technically and commercially qualified and meet the bid requirements

based on “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 Trustee approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contract, \$1 million.

Operations – Control Room & Operations – HVL

At the January 26, 2021 meeting, the Trustees approved the non-personal services contracts with Clear River Environmental Service Corporation (“Clear River”) and Russell Reid Waste Hauling and Disposal Service Company, Inc. dba United Site Services (“USS”) to provide Wastewater Removal Services for the Richard M. Flynn Power Plant. **Envirotec Leasing & Rental Corporation (“Envirotec”)** submitted a FOIL request for the submitted pricing of **(A20-002237DW)** by all bidders. After receiving the requested documents, Envirotec advised the Authority that their pricing was incorrectly represented on the bid document. In contrast to other bidders who submitted their pricing with the respective fees separated, Envirotec submitted combined rates for transportation and disposal for each wastewater category. After review it was determined that Envirotec is indeed the low bidder and it is recommended that they be added to the suite of contracts awarded under bid A20-002237DW. Trustees are requested to include Envirotec under the previously approved five (5) year term contracts with the aggregate amount of \$1,000,000.

Operations – Dam Safety

The proposed personal services contract with **GEI Consultants, Inc. PC (“GEI”) (Q21-7134CC)** would provide 7th Federal Energy Regulatory Commission (“FERC”) Part 12 Dam Safety Inspection for the Crescent Hydroelectric Project (FERC L.P. No. 4678-NY) and the Vischer Ferry Hydroelectric Project (FERC L.P. No. 4679-NY). FERC regulations require the Authority to hire an independent consultant to perform a dam safety inspection and review licensed projects every five years. FERC’s letter of January 14, 2021 indicated that the 7th FERC Part 12 Dam Safety Inspection Report for the Crescent Hydroelectric Project and the Vischer Ferry Hydroelectric Project is due for submittal by January 1, 2022. 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. Thirteen firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Seven proposals were received electronically via Ariba and were evaluated. Staff recommends the award of a contract to GEI which is technically and commercially qualified and meets the bid requirements based on “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 Trustee approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$573,825.

Operations - Maintenance Resource Management

The proposed non-personal services contract with **Iris Power LP (“Iris”) (A21-002415DW)** would provide PD End Flux and Rotor Data Analysis for the Authority’s South East New York (“SENY”) facilities. The Eugene Zeltmann Power Plant in Astoria, NY utilizes combustion turbines and steam turbines that have been under continued operation since being installed in 2005. They require ongoing maintenance, and monitoring of data to ensure their continued utilization records any potential faults or ‘air gaps’ when in use. The data analysis of rotor flux, partial discharge, and end-turn vibrations are integral to the historic usage of our turbines and any projects that involve maintenance on their equipment. 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. One firm/entity was listed as having been invited to, or requested to participate in, the Ariba event. One proposal was received electronically via Ariba and was evaluated. Staff recommends the award of a contract to Iris which is technically and commercially. The contract is for an intended term of five years, subject to Trustee approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$250,000. Iris is a Small Business Enterprise.

Operations – Power Supply

The proposed non-personal services contract with **D&L Installations, Inc. ("D&L") (A21-002365JV)** would provide Air Compressor System Service and Repair Services for the Authority and South East New York ("SENY") facilities. The SENY power plants perform yearly maintenance on the Atlas Copco air compressor units and have determined that it will be cost effective to include all preventative maintenance services, parts, repairs, and breakdowns including a 24-hour technical support for Atlas Copco manufactured equipment through these Air Compressor Systems. 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. One proposal was received electronically via Ariba and was evaluated. Staff recommends the award of a contract to D&L which is technically and commercially qualified and meets the bid requirements based on "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 Trustee approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$5 million. D&L is a NYS certified Women-owned Business Enterprise.

Operations – Power Supply

Due to the need to meet and maintain the Authority's project schedule, the proposed non-personal services contract with **Structural Integrity Associates, Inc. ("SIA") (4600004073)**, for High Energy Piping Condition Assessment Services for the Authority's South East New York ("SENY") facilities became effective March 18, 2021, with an interim award amount of \$300,000, subject to Trustee ratification which is hereby requested, in accordance with the Authority's Guidelines for Procurement Contracts and EAP's. SIA is a non-destructive examination contractor who conducts a regiment of inspections consisting of surface, volumetric, and metallographic examinations at the SENY power plants in order to furnish the Authority a report documenting the inspection results. SIA successfully performed these services for the Eugene Zeltmann Power Plant during the March 2020 outage before the COVID-19 pandemic forced sequestration of the operations personnel. Their work helped the Authority identify weak points and cracks in the piping infrastructure. Staff recommends the award of contract to SIA which is technically and commercially qualified and was awarded using discretionary spend. The contract is for an intended term of five years, subject to Trustee approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$5 million.

Operations – Project Delivery

Due to the need to meet and maintain the Authority's project schedule, the proposed non-personal services contract with **John W. Danforth Company ("JWD") (4600004079)**, to perform routine and on-call maintenance for portable air filtration units at the Authority and Canal's leased spaces and Canal's section offices became effective April 12, 2021, with an interim award amount of \$50,000, subject to Trustee's ratification which is hereby requested, in accordance with the Authority's Guidelines for

Procurement Contracts and EAP's. Due to the COVID-19 pandemic, the Authority took initiatives for various modifications of the Authority's facilities to improve the air quality of the affected spaces. The initiatives included procurement of the portable air filtration units for control rooms at multiple sites and design and installation of UVC disinfection system and filter upgrades in control rooms at multiples sites. Staff recommends the award of contract to JWD which is technically and commercially qualified and was awarded using discretionary spend. The contract is for an intended term of five years, subject to Trustee approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$493,823. JWD is a Small Business Enterprise.

Operations – Project Management

The proposed maintenance services contract with **Pollock Research and Design dba Simmers Crane Design & Services ("SCD&S") (Q20-6952MH)** would provide NGN 630T Crane Refurbishment and Upgrades. The 630T Gantry Crane at the Robert Moses Niagara Power Plant is original and integral to plant operations, as it is required to perform any major maintenance to the units. The crane facilitates the Authority's ability to disassemble the generating units entirely, conduct routine and emergency maintenance, move material around the facility, etc. A full assessment of the 630T Gantry Crane was completed in December 2019, identifying deficiencies for repair. As an outcome of this assessment, numerous cracked welds were discovered requiring immediate action by the Authority to repair. 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. Ten firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. One proposal was received electronically via Ariba and was evaluated. Staff recommends the award of a contract to SCD&S which is technically and commercially qualified and meets the bid requirements based on "best value," which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of two years, subject to Trustee approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$1,414,790. SCD&S is a Small Business Enterprise.

Operations – Project Management

The proposed personal services contract with **T.Y. Lin International Engineering & Architecture PC ("TY Lin") (Q20-7103NF)** would provide Planning, Architecture, Landscape Architecture, and Engineering Services for the development of a Whitewater Park at Lock CS-1 on the Cayuga-Seneca Canal. The Reimagine the Canals Initiative was announced by Governor Cuomo in January of 2020. The Cayuga Watercourse is the first project under Reimagine the Canals to demonstrate the potential of expanding water recreation on the canals. 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. Sixty-six firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Fifteen proposals were received electronically via Ariba and were evaluated. Staff recommends the award of a contract to TY Lin which is technically and commercially qualified and meets the bid requirements based on "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 Trustee approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$3,262,422.47 base bid plus \$652,484.49 (20%) for additional studies during drafting of the EIS, unforeseen site conditions, and additional design anticipated to support startup, total contract amount \$3,914,906.96.

Operations -Quality Assurance & Code Compliance

Due to the need to meet and maintain the Authority's project schedule, the proposed personal services contract with **Konecranes, Inc. ("Konecranes") (4500330626)** would provide Occupational Safety and Health Administration ("OSHA") Annual Crane Inspection Certification Services became effective May 3, 2021, with an interim award amount of \$10,000, subject to Trustee ratification which is hereby requested, in accordance with the Authority's Guidelines for Procurement Contracts and EAP's. 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. Seven firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Three proposals were received electronically via Ariba and were evaluated. Staff recommends the award of a contract to Konecranes which is technically and commercially qualified and meets the bid requirements based on "best value," which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of three years, with an option to extend two additional years, subject to Trustee approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$284,437.

Operations - Right of Way Maintenance / Environmental

The proposed non-personal services contract with **ACRT, Inc. ("ACRT") (Q20-7098AP)** would provide Vegetation Management Right-of-Way ("ROW") Inventory. The single leading 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 Corporation ("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. The Authority requires annual inventories of vegetation and other features of portions of its transmission ROW. 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. Sixteen firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Four proposals were received electronically via Ariba and were evaluated. Staff recommends the award of a contract to ACRT which is technically and commercially qualified and meets the bid requirements based on "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 Trustee approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$743,405.

Operations – Site Administration – NIA

The proposed non-personal services contract with **Fisher Associates, P.E., L.S., L.A., D.P.C. ("Fisher"), (N21-20154696GJ)** would provide water sampling and laboratory analysis in support of the State Pollution Discharge Elimination System ("SPDES") permit at the Niagara Power Project. The Authority's Niagara Power Project's permit (#NY0000736) for SPDES with New York State Department of Environmental Conservation ("NYSDEC") requires regular water monitoring, water discharge sampling, laboratory analysis and monthly reporting to Environmental Protection Agency / NYSDEC. This permit allows the Authority to discharge water into the forebay and Lower Niagara River. 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. Fourteen firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Three proposals were received electronically via Ariba and were evaluated. Staff recommends the award of contract to Fisher which is technically and commercially qualified and meets the bid requirements based on "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 Trustee approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$300,000. Fisher is a Small Business Enterprise.

Extensions and/or Additional Funding Requests:

Legal Affairs – Relicensing & Implementation

On May 26, 2020, the Authority issued a one-year construction services contract to **Perras Excavating, Inc. ("Perras") (4500320580)** in the amount of \$2,895,000.00 to expand the Massena Intake Boat Launch, construct two nearby picnic pavilions, and to add new dockage and other improvements. The project was an outgrowth of a ten-year post-license review agreement made with the St. Lawrence County Local Government Task Force to expand and enhance the boat launch to host larger fishing tournaments. One Change Order was authorized in the amount of \$158,950.88 to increase the contract amount to its current \$3,053,950.88 value. Staff requests Trustee approval for the extension of the Perras contract for two months through July 31, 2021 to provide for completion of recreation improvements to the Massena Intake Boat Launch recreation facility which were delayed due to the pandemic. No additional funding is being requested at this time. Perras is a Small Business Enterprise.

Operations – Instrument & Controls

On March 29, 2016, the Authority issued a multi-year single-source personal services contract to **Siemens Industry, Inc. ("Siemens") (4600003180)** in the amount of \$837,666 to provide operation and maintenance support for the Switchyard Automation Monitoring and Control ("SAMAC") system installed at the Robert Moses Switchyard, Massena, New York. Staff requests Trustee approval for the extension of the Siemens contract for five years from July 1, 2021 through June 30, 2026, to continue maintenance support for the SAMAC system, continue reliable operation of the existing assets, meet the annual North American Electric Reliability Corporation ("NERC") regulatory requirements, and continue the integration of additional new system assets under Transmission Life Extension and Modernization ("TLEM") project. No additional funding is being requested at this time.

Operations – Project Delivery

On June 29, 2017, the Authority issued a one-year construction services contract to **Dean Energy Solutions Corporation ("DES") (4500287027)** in the amount of \$3,934,706 for construction services for the existing Fuel Oil Yard Foam Fire Suppression System at the Authority's 500MW Power Plant (Zeltman). At both the March 20, 2018 and May 19, 2020 Trustee meetings the contract was extended resulting in an expiration date of May 31, 2022. DES has furnished and installed the new pump house building, emergency diesel generator, most of the piping (which will be replaced) and other equipment, however, it has not been commissioned or accepted to date. Additional construction expenditures are required to properly execute and build the code compliant system. Staff requests Trustee approval for a change order to the DES contract in the amount of \$6,243,599.16 and for an additional two-year term, through May 30, 2024, to complete installation of a new foam fire suppression system at the Fuel Oil Yard of the Eugene W. Zeltman Power Plant. DES is a Small Business Enterprise.

Operations – Site Administration – STL

On May 30, 2020, the Authority issued a one-year personal services contract to **Courtney Patterson (“Patterson”) (4500320339)** in the amount of \$99,000 to provide a full-time Licensed Practical Nurses (“LPN”) position onsite to support COVID-19 mitigation efforts and provide answers to any other general health questions, take vitals for staff as needed (temperature); provide health assessments – evaluate and identify any underlying condition by screening employees for abnormalities; provide information/teaching/answer questions – impart information to employees; assist in the implementation of onsite COVID-19 testing, and support onsite COVID-19 vaccinations. On December 9, 2020, a change order was issued and approved by the Vice President of Strategic Supply Management per the Authority’s Guidelines for Procurement Contracts and Expenditure Authorization Procedures Change Order Approvals, to increase the value of the contract with an additional \$99,000 to maintain the nursing staff onsite at St. Lawrence to meet the needs of the changing pandemic climate. Staff requests Trustee approval for an extension to the Patterson contract for one-year ending May 29, 2022 for the continued nursing support at the St. Lawrence site for COVID-19, and additional funding of \$150,000.

Operations – Site Administration – STL

On May 30, 2020, the Authority issued a one-year personal services contract to **Jessalyn R. Clary (“Clary”) (4500320326)** in the amount of \$99,000 to provide a full-time LPN position onsite to support COVID-19 mitigation efforts and provide answers to any other general health questions, take vitals for staff as needed (temperature); provide health assessments – evaluate and identify any underlying condition by screening employees for abnormalities; provide information/teaching/answer questions – impart information to employees; assist in the implementation of onsite COVID-19 testing, and support onsite COVID-19 vaccinations. On December 9, 2020, a change order was issued and approved by the Vice President of Strategic Supply Management per the Authority’s Guidelines for Procurement Contracts and Expenditure Authorization Procedures Change Order Approvals, to increase the value of the contract with an additional \$99,000 to maintain the nursing staff onsite at St. Lawrence to meet the needs of the changing pandemic climate. On February 3, 2021, a second change was issued to increase the rate of pay to Clary for the additional administrative job responsibilities to include scheduling of all nursing staff, organization and management of onsite COVID-19 testing, security coordination with onsite nursing support, inventory/supply management for nursing staff (COVID-19 Tests, gloves, face masks, etc.) and coordination of communication with Human Resources/Contract Tracing Team. Staff requests Trustee approval for an extension to the Clary contract for one-year ending May 29, 2022 for the continued onsite nursing support at the St. Lawrence site for COVID-19, and additional funding of \$150,000.

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 – Project Delivery; the Vice President – Strategic Supply Management; the Vice President - Total Rewards & HRIS; the Vice President – Human Resources & Organizational Development; the Regional Manager of SENY; the Regional Manager of STL; Treasurer; Chief Diversity, Equity & Inclusion Officer; Special Counsel I; 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.

<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	Q21-7120RM – 4 Vendors 1. NEPC LLC Boston, MA 2. PFM FINANCIAL ADVISORS LLC Philadelphia PA 3. PIPER SANDLER & COMPANY New York, NY 4. PRAGER & COMPANY LLC New York, NY	05/25/21 (on or about)	Provide Treasury Financial Advisory services	05/24/26	B/P			\$5 million*
*Note: represents total aggregate for up to 5-year term								
HUMAN RESOURCES & ADMINISTRATION - BENEFITS	SIERRA HEALTH AND LIFE INSURANCE COMPANY Las Vegas, NV (Q21-7114JW)	01/01/22	Provide Medicare Advantage Plan	12/31/26	B/S			\$1.4 million*
*Note: represents total for up to 5-year term								
HUMAN RESOURCES & ADMINISTRATION - CIVIL RIGHTS & INCLUSION	Q20-7079SS – 6 Vendors 1. AON CONSULTING, INC. New York, NY 2. CHEER PARTNERS LLC Locust Valley, NY 3. CHURCHILL LEADERSHIP GROUP, INC. Green Cove Springs, FL 4. DELOITTE CONSULTING LLP New York, NY 5. ERNST & YOUNG (US) LLP	05/25/21 (on or about)	Provide Diversity, Equity Inclusion services	05/24/26	B/P			\$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

<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>
	New York, NY 6. Mercer (US), INC. New York, NY							
								*Note: represents total aggregate for up to 5-year term
HUMAN RESOURCES & ADMINISTRATION - TALENT ACQUISITION	Q20-6930JW – 3 Vendors 1. RUSSELL REYNOLDS ASSOCIATES, INC. New York, NY 2. THE LEADERSHIP LYCEUM LLC Chicago, IL 3. THE SEARCH PARTNERSHIP LLC Andover, NJ	05/25/21 (on or about)	Provide Executive Recruitment services	05/24/26	B/P			\$1 million*
								*Note: represents total aggregate for up to 5-year term
OPERATIONS – CONTROL ROOM & OPERATIONS - HVL	ENVIROTEC LEASING & RENTAL CORPORATION Lindenhurst, NY (A20-002237DW)	01/26/21	Provide Wastewater Removal Services	01/25/26	B/S			\$1 million*
								*Note: Two vendors (Clear River and United Site Services) approved at the January Trustee meeting; Requesting Envirotec to be included to the existing 5-year term contract with the aggregate amount of \$1 million
OPERATIONS – DAM SAFETY	GEI CONSULTANTS, INC. PC Woburn, MA (Q21-7134CC)	05/25/21 (on or about)	Provide 7 TH FERC Part 12 Dam Safety Inspection for the Crescent Hydroelectric Project and the Vischer Ferry Hydroelectric Project	05/24/26	B/P			\$573,825*
								*Note: represents total for up to 5-year term
OPERATIONS – MAINTENANCE RESOURCE MANAGEMENT	IRIS POWER, LP Ontario, Canada (A21-002415DW)	05/25/21 (on or about)	Provide PD End Flux and Rotor Data Analysis for the Authority's SENY facilities	05/24/26	B/S			\$250,000*
								*Note: represents total for up to 5-year term

♦ **M / WBE:** New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
1 Award Basis: B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search
2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

Plant Site	Company Contract #	Start of Contract	Description of Contract	Closing Date	Award Basis¹ Contract Type²	Compensation Limit	Amount Expended To Date	Expected Expenditures For Life Of Contract
OPERATIONS – POWER SUPPLY	D&L INSTALLATIONS, INC. ♦ Bohemia, NY (A21-002365JV)	05/25/21 (on or about)	Provide Air Compressor System Service and Repair Services for the Authority's SENY facilities	05/24/26	B/S			\$5 million*
*Note: represents total for up to 5-year term								
OPERATIONS – POWER SUPPLY	STRUCTURAL INTEGRITY ASSOCIATES, INC. Huntersville, NC (4600004073)	03/18/21	Provide High Energy Piping Condition Assessment Services for the Authority's SENY facilities	03/17/26	B/S	\$300,000		\$5 million*
*Note: represents total for up to 5-year term; interim requested for March 18, 2021 start and \$300,000 amount								
OPERATIONS – PROJECT DELIVERY	JOHN W. DANFORTH COMPANY Tonawanda, NY (4600004079)	04/12/21	Provide routine and on-call maintenance for portable air filtration units at the Authority and Canals	04/11/26	B/S	\$50,000		\$493,823*
*Note: represents total for up to 5-year term; interim requested for April 12, 2021 start and \$50,000 amount								
OPERATIONS – PROJECT MANAGEMENT	POLLOCK RESEARCH AND DESIGN dba SIMMERS CRANE DESIGN & SERVICES Salem, OH (Q20-6952MH)	05/25/21 (on or about)	Provide NGN 630T Crane Refurbishment and Upgrades	05/24/23	B/S			\$1,414,790*
*Note: represents total for up to 2-year term								
OPERATIONS – PROJECT MANAGEMENT	T.Y. LIN INTERNATIONAL ENGINEERING & ARCHITECTURE PC Rochester, NY (Q20-7103NF)	05/25/21 (on or about)	Provide planning, architecture, landscape architecture and engineering services for the development of a Whitewater Park at Lock CS-1 on the Cayuga-Seneca Canal	05/24/26	B/P			\$3,914,906.96*
*Note: represents total for up to 5-year term								
OPERATIONS – QUALITY ASSURANCE & CODE COMPLIANCE	KONECRANES, INC. Springfield, OH (4500330626)	05/03/21	Provide Occupational Safety and Health Administration Annual Crane Inspection Certification services	05/02/24	B/P	\$10,000		\$284,437*
*Note: represents total for up to 3-year term with an option to extend for 2-years; interim requested for May 3, 2021 start and \$10,000 amount								

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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"
May 25, 2021

<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</u> <u>Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
OPERATIONS – RIGHT OF WAY MAINTENANCE / ENVIRONMENTAL	ACRT, INC. Stowe, OH (Q20-7098AP)	05/25/21 (on or about)	Provide Vegetation Management Right of Way Inventory	05/24/26	B/S			\$743,405*
						*Note: represents total for up to 5-year term		
OPERATIONS – SITE ADMINISTRA - TION – NIA	FISHER ASSOCIATES, P.E., L.S., L.A., D.P.C. Rochester, NY (N21-20154696GJ)	05/25/21 (on or about)	Provide water sampling and laboratory analysis in support of the State Pollution Discharge Elimination System permit at the Niagara Power Project	05/24/25	B/S			\$300,000*
						*Note: represents total for up to 4-year term		

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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 – NYPA Extensions and/or Additional Funding
(For Description of Contracts See "Discussion")

EXHIBIT "B"
May 25, 2021

Plant Site/ Bus. Unit	Company Contract #	Start of Contract	Description of Contract	Closing Date	Award Basis¹ Contract Type²	Compensation Limit	Amount Expended To Date	Authorized Expenditures For Life Of Contract
LEGAL AFFAIRS - RELICENSING & IMPLEMENTA- TION	PERRAS EXCAVATING, INC. Massena, NY (4500320580)	05/26/20	Provide completion of recreation improvements to the Massena Intake Boat Launch recreation facility	07/23/21	B/C		\$2,412,969.54	\$3,053,950.88*
*Note: represents total for up to 1-year and 2-month term; including a 2-month extension thru July 23, 2021; No additional funding								
OPERATIONS – INSTRUMENT & CONTROLS	SIEMENS INDUSTRY, INC. Wendell, NC (4600003180)	03/29/16	Provide operation and maintenance support for the Switchyard Automation Monitoring and Control system Installed at the Robert Moses Switchyard in Massena, NY	06/30/26	Si/P		\$293,056.22	\$837,666*
*Note: represents total for up to 10-year term; including a 5-year extension thru June 30, 2026; No additional funding								
OPERATIONS – PROJECT DELIVERY	DEAN ENERGY SOULTIONS CORPORATION Hoboken, NJ (4500287027)	06/29/17	Provide completion of a new foam fire suppression system at the fuel oil yard of the Eugene W. Zeltman Power Plant	05/30/24	B/C		\$4,940,474.06	\$10,178,305.16*
*Note: represents a 6-year and 11-month term; including a 2-year extension thru May 30, 2024 and additional funding of \$6,243,599.16								
OPERATIONS – SITE ADMINI- STRATION - NIA	COURTNEY PATTERSON Massena, NY (4500320339)	05/30/20	Provide a full time LPN position onsite to support COVID-19 mitigation efforts and answers to any other general health questions; provide vitals for staff, health assessments and COVID-19 testing and vaccinations	05/29/22	B/P		\$198,000.00	\$348,000*
*Note: represents total for 2-year term; Change order on December 9, 2020 for additional funding \$99,000; Extension for 1-year until May 29, 2022 and additional funding of \$150,000								
OPERATIONS – SITE ADMINI- STRATION - NIA	JESSALYN R. CLARY Norwood, NY (4500320326)	05/30/20	Provide a full time LPN position onsite to support COVID-19 mitigation efforts and answers to any other general health questions; provide vitals for staff, health assessments and COVID-19 testing and vaccinations	05/29/22	B/P		\$198,000.00	\$348,000*
*Note: represents total for 2-year term; Change order on December 9, 2020 for additional funding \$99,000; Second Change Order on February 3, 2021 to increase the rate of pay to Clary; Extension for 1-year until May 29, 2022 and additional funding of \$150,000								

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Date: May 25, 2021

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Smart Path Connect Project –
Joint Development Agreement with Niagara Mohawk Power Corporation

SUMMARY

The Trustees are hereby requested to approve a Joint Development Agreement (“JDA”) with Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) for the Smart Path Connect (formerly Northern New York Priority Transmission Project) (“Project”) pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act (the “Act”).

BACKGROUND

The Act dramatically speeds up the siting and construction of major renewable energy generation projects to combat climate change. The Act further authorizes the Authority, through a public process, to solicit interest from potential co-participants in each priority transmission project (“PTP”) the Authority determines to be feasible and appropriate to develop once designated as a PTP by the NYS Public Service Commission (“NYPSC”).

In July 2020, the Authority and Department of Public Service jointly filed with the NYPSC a petition for designation of the Project as a PTP, which the NYPSC approved by order issued October 15, 2020. On October 30, 2020, the Authority issued a public Solicitation of Interest (“SOI”) to solicit interest from potential co-participants for possible co-development of the Project and identified six Eligible Parties who submitted proposals by the December 21, 2020 deadline. The Authority conducted a review of all proposals and recommended the selection of National Grid as the co-participant for the Project.

During the Trustees’ March 30, 2021 meeting, the Trustees authorized the Authority to accept, develop and operate the Project as a PTP pursuant to the Act and select National Grid as a co-participant, subject to the Authority and National Grid reaching agreement on satisfactory terms and conditions for co-development of the Project.

The Authority and National Grid have reached an agreement on the terms and conditions for the co-development of the Project and executed a JDA on May 19, 2021, the effectiveness of which is conditioned upon the Board of Trustees’ approval and adoption of the resolution.

DISCUSSION

The Authority, including senior staff from NYPA Development, Project & Business Development, Strategic Supply Management, Corporate Insurance, and Legal, reviewed the JDA, which sets forth terms and conditions between the Authority and National Grid related to

ownership of facilities, Project development, procurement and construction, cost recovery, indemnifications, operation and maintenance of the Project, Project oversight, and establishment of Project milestones, among other issues. Pursuant to the JDA, the Authority is the lead developer of the Project with input and limited approval over the portion of the Project involving National Grid's facilities and assets.

RECOMMENDATION

The President of NYPA Development recommends that the Trustees approve the Joint Development Agreement between the Authority and National Grid for the development and construction of the Smart Path Connect Project.

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 Board of Trustees approves the Joint Development Agreement entered into between the Power Authority of the State of New York (the “Authority”) and Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) for the development and construction of the Smart Path Connect Project.

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 Chief Financial Officer and Executive Vice President and General Counsel.



**NY Power
Authority**

**Canal
Corporation**

**MINUTES OF THE JOINT ANNUAL MEETING
OF THE
POWER AUTHORITY OF THE STATE OF NEW YORK AND
NEW YORK STATE CANAL CORPORATION**

March 30, 2021

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**NY Power
Authority**

**Canal
Corporation**

Minutes of the Annual Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held via video conference at approximately 9:47 a.m.

Members of the Board present were:

John R. Koelmel, Chairman
Eugene L. Nicandri, Vice Chairman
Anthony J. Picente, Jr.
Tracy McKibben
Michael A.L. Balboni
Dennis T. Trainor

Gil Quiniones	President and Chief Executive Officer
Philip Toia	President – NYPA Development
Justin Driscoll	Executive Vice President and General Counsel
Adam Barsky	Executive Vice President and Chief Financial Officer
Joseph Kessler	Executive Vice President and Chief Operating Officer
Kristine Pizzo	Executive Vice President and Chief Human Resource & Administrative Officer
Sarah Salati	Executive Vice President and Chief Commercial Officer
Daniella Piper	Regional Manager and CTO
Yves Noel	Senior Vice President and Chief Strategy Officer
Angela Gonzalez	Senior Vice President – Internal Audit
Robert Piascik	Senior Vice President – Chief Information & Technology Officer
Keith Hayes	Senior Vice President – Clean Energy Solutions
Patricia Lombardi	Senior Vice President – Project Delivery
Paul Tartaglia	Senior Vice President – EHS & Crisis Management
Scott Tetenman	Senior Vice President – Finance
Karen Delince	Vice President and Corporate Secretary
Joseph Gryzlo	Vice President and Chief Ethics & Compliance Officer
Adrienne Lotto	Vice President and Chief Risk & Resilience Officer
John Canale	Vice President – Strategic Supply Management
Ruth Colon	Vice President – Enterprise Shared Services
Angelyn Chandler	Vice President – Planning – Empire Line
Robert Knowlton	Vice President – O&M Services & Technical Compliance
Anne Reasoner	Vice President – Budgets and Business Controls
Lisa Payne Wansley	Vice President – Environmental Justice & Sustainability
Nancy Harvey	Chief Diversity, Equity & Inclusion Officer
James Levine	Assistant General Counsel – Finance & Bonds
Lawrence Mallory	Senior Director – Security & Crisis Management
Kerry Jane King	Director – Sustainability
Thomas Savin	Director – Projects – Risk Management
Thakur Sundeep	Controller
Christina Reynolds	Treasurer
Carley Hume	Deputy Chief of Staff – President's Office
Mary Cahill	Manager – Executive Office
Victoria Daniels	Manager – Supplier Diversity
Christopher Vitale	Financial Performance & Reporting Manager
Richard Goldsmith	Finance Project Manager
Lorna Johnson	Senior Associate Corporate Secretary
Sheila Quatrocci	Associate Corporate Secretary
Michele Stockwell	Project Coordinator – Executive Office

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

Introduction

Chairman Koelmel welcomed the Trustees/Directors and NYPA and Canal staff members who were present at the meeting. He said that the meeting had been duly noticed as required by the Open Meetings Law and called the meeting to order pursuant to the Authority's Bylaws, Article III, Section 3.

1. **Adoption of the March 30, 2021 Proposed Meeting Agenda**

On motion made by Trustee Trainor and seconded by Vice Chair Nicandri, the members adopted the meeting Agenda, as amended.

Conflicts of Interest

Based on the list of entities previously provided for the members' review, Chairman Koelme indicated a conflict of interest as it relates to Center for Kashmir, Inc. (Item 6a v) and Vice Chairman Nicandri as it relates to the Nature Center (Item 6bi).

Members McKibben, Trainor, Balboni, and Picente declared no conflicts of interest.

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

“Mr. Chairman, I move that the NYPA and Canal Boards conduct an executive session to discuss the employment history of a particular person, pursuant to §105 of the Public Officers Law.” On motion made by Trustee Trainor and seconded by Vice Chair Nicandri, the members held an executive session.

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

“Mr. Chairman, I move to resume the meeting in Open Session.” On motion made by Trustee Trainor and seconded by Trustee McKibben, the meeting resumed in Open Session.

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

4. DISCUSSION AGENDA:

a. Strategic Initiatives

i. President and Chief Executive Officer's Report

President Quiniones provided an update on NYPA's performance, to date. (Exhibit "4a i-A"). He said that the March Annual Board Meeting is the time that the Board members approve the Authority's audited financial statements. In addition, the Authority will publicly issue the financial statements as well as the Sustainability Report which will be issued in April, Earth Week. The Authority will also be issuing its Annual Corporate Report.

At the height of the pandemic, NYPA was able to issue \$1.2B in bonds, \$800M of which were green bonds; NYPA was able to support more than 400,000 jobs that are supplied by NYPA's clean hydroelectric power. NYPA also launched its Diversity, Equity, and Inclusion ("DEI") initiative.

Corporate Scorecard: YTD February 2021

President Quiniones reported that the Authority performed well for the first quarter of the year. He said Mr. Joseph Kessler will report on Generation Market Readiness and Transmission System Reliability.

NYPA VISION2030

In December, the Board approved the Authority's VISION2030 Strategic Plan; the Authority is well on its way in implementing this Plan. Today's report will focus on two of the Foundational Pillars of the Strategic Plan, Transmission, and Environmental, Social, and Governance ("ESG").

Transmission

Northern New York Priority Transmission Project

The Northern New York Priority Transmission Project was approved under Legislation that was passed last year accelerating the build-out of renewables and associated transmission. This is an augmentation of the Authority's Smart Path Project and will enable the importation of renewables from upstate to downstate, approximately 1000 MW. It will also catalyze the development of wind farms and solar farms in that area, which will connect to the superhighway to bring renewable energy downstate.

Environmental, Social, and Governance (ESG)

ESG, one of the Foundational Pillars of the Authority's VISION2030 Strategic Plan, begins with a Sustainability Plan which will help the Authority implement its VISION2030 Plan.

2021-2025 Sustainability Plan

In 2020, NYPA conducted a comprehensive materiality assessment which resulted in 15 material areas of focus. NYPA conducted benchmarking with peers, observed industry trends, state regulations and initiatives and other frameworks and standards. This plan is aligned, not only with the industry, but where ESG is headed, generally.

NYPA will publish an Annual Sustainability Report and a Sustainability Plan which will be issued during "Earth Week."

NYPA will be the first utility making a commitment to adopt and issue an integrated Report in the year 2023 for the year 2022.

The trend, going forward, not only in the utility industry, but in other industries, is to have an integrated report with ESG and sustainability integrated in annual reports based on international standards.

President Quiniones then invited Mr. Paul Tartaglia to report on NYPA's management of COVID-19 and Ms. Adrienne Lotto to provide an update on Enterprise Risk, tracking and management.

1. COVID-19 Update

Mr. Paul Tartaglia, Senior Vice President and Chief Incident Command Officer, provided highlights of the Authority's EHS & Crisis Management activities to the Board. (Exhibit 4a i-1-A)

Countermeasure Stages

- NYPA's C-19 countermeasure, has 6 different levels of alert starting with "0" where any one of several triggers, mostly data driven, can activate a countermeasure level. When activated, there are appropriate steps each facility must take to ensure employee safety and continuity of operations.
- In January, most of the sites were at Stage 4 of the countermeasures. As of March 15, only B-G was at Stage 4, and, as of March 29, only WPO was at Stage 2. All remaining facilities were at stage 1 or lower. Most of the upstate facilities were at stage "0" and downstate stage 1.
- Employee positivity rates have been, and remain low, throughout the winter COVID-19 wave. Approximately 7K PCR tests were conducted, as dictated per the countermeasures, with a positivity rate of 0.4%. This is approximately 10 times less than the current positivity rate.
- NYPA paused a small number of construction projects, some at the customer's request, and others determined to be a risk per the countermeasures. All have now been restarted.
- NYPA is preparing a detailed plan to bring its workforce back into the office through the summer, working with the HR team to transition to the new normal later this year.
- Most of the decisions have been driven by data, trends, and rates of change. Some of the same math that is used in the iSOC to monitor equipment health, is used to monitor the health of the organization.
- The current trends have continued to improve, although the improvement rate is slowing.

Comprehensive Vaccine Efforts

- EHS & Crisis Management have been working on a "best of class" campaign to encourage employees to get vaccinated.
- EHS & Crisis Management have used multiple tools to encourage employees to seek out vaccinations. They have provided Q&A's, video seminars conducted by third-party SMEs, employee stories, appointment search Apps, 4 hours off with pay if an employee have an appointment during the workday, and, also, a video presentation with President Quiniones.
- As of March 18, 230 employees have self-reported being vaccinated. As of March 29, 520 have reported being vaccinated. This represents about 22% of all staff being vaccinated.

EHS & Crisis Management's efforts in protecting staff and ensuring continuity of operations, particularly during the winter wave, have been successful. Based on the reports of vaccination efficacy and uptake across the state and nation, NYPA/Canals and the ICS team remain vigilant and on the watch for new risk vectors and preplanning for events such as spring break, the next variant, or limited duration from vaccinations.

2. **Risk and Resilience Update**

Ms. Adrienne Lotto, Vice President and Chief Risk and Resilience Officer, provided highlights of the Authority's Risk and Resilience Department's activities to the Board. She said this report is a follow up to the presentation to the Board on the integrated vision of the Risk and Resilience teams. To date, the group have begun to operationalize that vision and will provide updates to the Board on a regular basis.

One of the first steps when integrating the two teams was to develop Risk and Resilience joint Business unit goals, which goals have been provided to the Board. In addition, the team is working on updating Risk and Resilience policies and procedures which will be entered into the eScribe system.

The Business Unit's goals center around three main objectives, People, Process, and Technology and each work simultaneously to advance the Authority's VISION2030 Strategic Plan. For example:

- Digitization – Enterprise Governance Risk Management (“EGRC”) and Electronic Customer Relationship Management (“ECRM”)
- Resource Alignment – Risk Appetite
- Enterprise Resilience – Business Continuity Plans and Business Impact Analysis (“BCP/BIA”)

The eGRC technology tool continues to advance and is the number one priority for the Risk & Resilience team in 2021. The team have already begun to train personnel in each of the Business Units to advance data collection and expediting it. The annual risk assessment was also conducted using the eGRC tool with wide Business Unit participation. The results of the risk assessment will be provided to the Board in May 2021.

b. Chief Operations Officer's Report

Mr. Joseph Kessler, Executive Vice President and Chief Operations Officer, provided highlights of Utility Operations' key performance metrics and updated the Board on three key initiatives. (Exhibit 4b-A).

Performance Measures – Year-to-Date

Generation Market Readiness

- Generation Market Readiness factor was at 99.11%. This is below the target of 99.40%.

Generation Market Readiness, a measure of the reliability of the Authority's generators, is below its target for two reasons. First, during an inspection at the Authority's 500 Megawatts Zeltmann Plant, Unit 7B had a hot reheat weld failure, i.e., a steam pipe weld was compromised and had to be repaired, extending the planned outage. He plans to work with the new Regional Manager of the southeast region, Saul Rojas, and the engineering team to conduct a more comprehensive survey of the rest of that piping to make sure that there are no other issues. The unit is now available and back in service.

The other contributor to the target being missed is forced outage hours incurred due to work associated with ice formation in St. Lawrence.

Transmission System Reliability

- Transmission System Reliability factor was 92.82%. This is below the target of 88.75%.

Transmission System Reliability is below the target because of an issue with the Y49 cable which had three consecutive faults due to thermomechanical bending in the line. Two of the three faults have been repaired and ready to go back in service. Repairs on the third is underway and, based on the expected return-to-service date, that metric will not be recovered by the end of the year. Going forward, that measure will be adjusted to an achievable target.

Environmental Incidents

- Year-to-date, there were 2 incidents. The Target is not to exceed 50 incidents.

Safety

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

- The year-to-date DART Rate is 0.30. The target is 0.78.

Robert Moses Unit 4 – Cracked Runner Repair

During a routine runner inspection at Niagara, Operations staff discovered a significant crack in the Unit 4 turbine router. An investigation was conducted to assess the root cause for this crack in the turbine. Staff was previously provided with welder training for this particular type of work under the leadership of Angel Rivera, the Superintendent at the Niagara Plant. Work was done in-house to repair and put the unit back in operation.

The repair is in place and they are going to continue to inspect the balance of the units. The metallurgy team believes this is an isolated case; however, they are going to continue to monitor the unit.

The scheduled outage was extended in order to fix this issue. The Plant is now back to its regular outage schedule.

c. Chief Commercial Officer's Report

Ms. Sarah Salati, Executive Vice President and Chief Commercial Operations Officer, provided highlights of the report to the Board (Exhibit "4c-A").

Electricity Supply – Through February 2021

2021 Merchant Gross Margin Projections

Commercial Operations is on track to meet its Merchant Gross margin projections. Specifically, the hedging activity and the hedging program that was installed and implemented last year are ahead of the minimum targets set for 2021 through 2024.

Whereas last year there was a depression in power prices due to the depression and demand from the pandemic, this year, on tracking the hydro flows and the subsequent generation related to it, Commercial Operations have seen a 50 percent reduction in precipitation in Lake Ontario and Lake Erie, which ultimately, have an impact on the hydro flows. Nevertheless, even with the power prices remaining within a range of what was targeted in the budget, the hydro flows may have an impact, going forward. Commercial Operations will continue to monitor the hydro flows.

Economic Development

With respect to Economic Development, the team continues to vigorously move forward in attempting to support economic growth and competitiveness of New York State.

For the Board's approval, in the Consent Agenda, are 31 organizations that are looking to invest over \$600 million in New York State and attract and retain more than 3400 jobs. The applicants and the potential allocations are for eight of the ten economic development areas in New York, targeting a very broad geographic spread.

Customer Business Lines – February YTD Results

Commercial Operations is working to meet NYPA's VISION2030 Strategic Plan. As the executive sponsor of the customer and the state initiatives to meet NYPA's customers' energy goals in alignment with the Climate Leadership and Community Protection Act ("CLCPA"), providing innovative and clean energy solutions, Commercial Operations' leadership looks at two things, first, performance in executing the Plan in 2021, and, second, ensuring development of a strong portfolio of future growth that can sustain performance and help NYPA meet the objectives of the CLCPA from its VISION2030 Strategy.

To that end, NYPA has signed contracts with the New York State Housing Authority for work on boiler upgrades and replacements. This is aligned with NYPA's diversity, equity, inclusion targets as well the LMI components of the CLCPA. In addition, NYPA have signed contracts with the MTA for the electrification of overhead charging infrastructure for 40 buses. NYPA also have signed an agreement with the Niagara Transport Authority specifically for the electrification of ten buses in Buffalo and associated charging ports.

Commercial Operations is moving forward with the installation of Solar and Storage as well as ensuring that they are incorporating additional data points to help better serve NYPA's customers as related to the New York Energy Manager and NYPA's flexibility initiatives.

Driving Efficiencies, Renewables and Customer Growth

Quality Assurance and Quality Control Director, Michael Quatannens, has been hired to work with the Engineering and Construction Management team to assist with process improvement events where the Authority will be identifying bottom-line savings, as well as time and efficiency targets with a goal to eliminate waste.

As it relates to Distributed Resource Advisory Service, specifically for the City of White Plains, President Quiniones and Mayor Roach attended a groundbreaking for nine sites that will have solar + storage on the rooftops, parking garages, as well as installed on the ground. This project will triple the amount of solar energy in Westchester County.

Commercial Operations will continue to increase the intimacy and connection with customers, ensuring that the existing customer base and future customers understand NYPA's products and services. At the beginning of the year, a new Product and Services website was launched to help meet customers' needs both in terms of the types of products they want, as well as customer segmentation where the customer can recognize whether they are a commercial or industrial customer, a school, or state agency. This will enable the customer to better understand the portfolio of products that NYPA has to offer them in meeting their energy goals. This initiative is under the direction of Diane Levin, Vice President of Marketing & Product Development as well as Margaret Luh, Director of Marketing, with support from Corporate Communications.

Improving Customer Service and Customer Satisfaction

The Customer Service and Customer Satisfaction Survey scores culminate how NYPA's customers feel about the Authority. The year-end 2020 results showed progress and accomplishments in all of the key categories of focus.

The Customer Satisfaction survey ensures that NYPA will continue to have a loyal customer base, is meeting their needs and continually improving the customers' digital experiences with its online account center. This is an enterprise-wide effort with the assistance of the Legal and Finance departments helping Commercial Operations better serve the customers, reviewing contracts and relative responsiveness to customers' enquiries.

Further reporting of the progress of the 2021 targets will be provided at the next Board meeting.

d. Chief Financial Officer's Report

Mr. Adam Barsky, Executive Vice President and Chief Financial Officer, provided highlights of the report to the Board (Exhibit "4d-A").

Year-to-Date Actuals (January-February 2021)

Revenues were slightly below target because, as previously mentioned, generation was down due to ice conditions, as well as hydro flows coming in slightly below what was originally projected. This was offset by other expense reductions; therefore, for the first two months, the Authority was on track towards being on target with the budget.

Year-end Projection (January-December 2021)

Because of the hedging activities undertaken last year, there is less downside risk in the merchant portfolio. The trend is continuing in terms of generation from lower hydro flow and weakness in capacity prices; therefore, revenues, as projected to date, may be slightly off towards the end of the year. This, however, is being offset by some revenue increases in the transmission area and other expense reductions. Therefore, the Authority is still forecasting to be on target towards the end of the year.

2020 Financial Report

As a follow-up from the Finance Committee meeting held on March 18, the Board will be requested to approve the 2020 Financial Report, of which the Authority will be receiving an unqualified opinion from the outside Auditors, KPMG. No material items have been noted by the Auditors.

e. Finance & Risk Committee Report

Chairperson McKibben reported that the Finance Committee met on March 18, 2021, adopted minutes, received two (2) staff reports, and considered eight (8) Discussion items which are now before the full Board for adoption.

The items before the Trustees for adoption are as follows:

- i. The quarterly release of an additional up to \$22.9 million in funding to the Canal Corporation to support the operations of the NYS Canal Corporation.
- ii. Adoption of the Second Amended and Restated Resolution Authorizing Commercial Paper Notes. This amendment and restatement will provide the Authority's officers with the necessary tools to support the commercial paper program for both tax-exempt and taxable issuances in accordance with our current needs and requirements.
- iii. A capital expenditure authorization request in the amount of \$9.0 million, and a three-year construction services contract in the amount of \$4.9 million to Con Tech Building Systems, Inc. of Gouverneur, NY for the St. Lawrence-FDR Power Project Water Ball Replacement Project.
- iv. Award of on-call contracts, related to RFP Q20-7096CC, to several firms. The award is recommended for an aggregate amount of \$100 million over a term of ten (10) years.
- v. Capital expenditures authorization request in the amount of \$19.1 million and a five-year non-personal services contract in the amount of \$12.1 million to Eaton Corporation of Warrendale, PA for the Robert Moses Unit Substation Replacement Project.
- vi. The award of six personal services contracts for a total authorization amount of \$10 million for a five-year term through March 31, 2026.
- vii. The award of competitively bid consulting contracts to the twenty-eight firms for a period of five years and in the aggregate of \$16.0 million.
- viii. Authorize the Authority to accept, develop and operate the Northern New York Priority Transmission Project ("NNYPTP") as a Priority Transmission Project under the Accelerated Renewable Energy Growth and Community Benefit Act; and authorize the selection of Niagara Mohawk Power Corporation d/b/a National Grid as a co-participant in the development of the NNYPTP based on the Solicitation of Interest process the Authority conducted in accordance with the Act, subject to the Authority and National Grid reaching agreement on a joint development agreement for this project.

Lastly, at the January 19, 2021 Finance and Risk Committee meeting, the members had recommended the following item for the Board of Trustees approval. Subsequently, the Board of Trustees, at their January 26, 2021 meeting, decided to postpone approval until this meeting:

- A contract award in the amount of \$18.1 million to GE Renewable US LLC to design, manufacture and deliver thirteen shafts and one thrust runner.

Chair McKibben made motion to approve the Finance Committee's Discussion Agenda items; seconded by Trustee Trainor.

i. **St. Lawrence-FDR Power Project
Water Ball Replacement Project
Capital Expenditure Authorization
Request and Contract Award**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That pursuant to the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$9,041,540 are hereby authorized for the St. Lawrence-FDR Power Project's Water Ball Replacement Project in accordance with, and as recommended in, the foregoing report 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 St. Lawrence-FDR Power Project's Water Ball Replacement Project.

<u>Expenditure Authorization</u>	<u>Capital</u>
St. Lawrence-FDR Power Project Water Ball Replacement Project	<u>\$9,041,540</u>

AND BE IT FURTHER RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted to award a three-year contract to Con Tech Building Systems, Inc. of Gouverneur, NY, in the amount of \$4,908,292.60, for construction services to complete the aforementioned project as recommended in the foregoing report of the President and Chief Executive Officer;

<u>Contractor</u>	<u>Contract Approval</u>
Con Tech Building Systems, Inc. Gouverneur, NY	<u>\$4,908,292.60</u>

(Q20-7075DKT)

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.

ii. **Robert Moses Unit Substation Replacement Project –
Capital Expenditure Authorization Request and Contract Award**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That pursuant to the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$19.1 million, for a total Project cost of \$19.5 million, are hereby authorized for the Robert Moses Unit Substation Replacement Project in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer;

<u>Capital</u>	<u>Expenditure Authorization</u>
Robert Moses Unit Substation Replacement Project	<u>\$19,119,300</u>

AND BE IT FURTHER RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted to award a five-year non-personal services contract to Eaton Corporation in the amount of \$12,060,000 to support the work associated with the Robert Moses Unit Substation Replacement Project, as recommended in the foregoing report of the President and Chief Executive Officer;

<u>Contractor</u>	<u>Contract Approval</u>
Eaton Corporation Warrendale, PA (RFP # Q20-7031BS)	<u>\$12,060,000</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.

iii. **Procurement (Services) Contract – Niagara Power Project
Next Generation Niagara Program – Mechanical and Electrical
Upgrades Project – Shaft Procurement – Contract Award**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That pursuant to the Guidelines for Procurement contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted to award a 15-year contract to GE Renewables US LLC in the amount of \$18,100,000 for the design, manufacture, and delivery of the Shafts in support of the Next Generation Niagara Program - Mechanical and Electrical Upgrades Project, as recommended in the foregoing report 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 report 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 – Shaft Procurement.

Contractor

Contract Approval

**GE Renewables US LLC
Greenwood Village, CO**

\$18.1 million

RFP # Q20-6925HM

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.

iv. **Procurement (Services) Contract –
Advanced Research Services – Contract Awards**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted to award six personal services contracts for Advanced Research Services to UCHICAGO Argonne, LLC (Argonne National Laboratory) of Washington D.C, Brookhaven National Laboratory of Upton, New York, Idaho National Laboratory of Idaho Falls, Idaho, National Renewable Energy Laboratory of Golden, Colorado, Pacific Northwest National Laboratory of Richland, Washington and Sandia Laboratory of Albuquerque, New Mexico for a total authorization amount of \$10 million and a five-year term, as recommended in the foregoing report of the President and Chief Executive Officer.

<u>Contractor</u>	<u>Contract Amount</u>
	<u>\$10,000,000</u>
Argonne National Laboratory Washington, D.C.	
Brookhaven National Laboratory Upton, New York	
Idaho National Laboratory Idaho Falls, Idaho	
National Renewable Energy Laboratory Golden, Colorado	
Pacific Northwest National Laboratory Richland, Washington	
Sandia National Laboratory Albuquerque, New Mexico	

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

V. **Procurement (Services) Contracts – On Call Transmission and Substation Engineering Master Service Agreement**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award and funding of the ten year contracts to the firms listed below in the aggregate not-to-exceed amount of \$100,000,000, is hereby approved, as recommended in the foregoing report of the President and Chief Executive Officer;

- **AECOM Power E&C, Inc. dba United E&C**
- **Black & Veatch Corporation**
- **Burns & McDonnell Consultants**
- **ECI Engineering Services**
- **Mott Macdonald NY**
- **POWER Engineers Incorporated**

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.

vi. **Product Customer Experience and Marketing Services Agreement**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted to award twenty-eight contracts to the following firms for a total authorization amount of \$16 million for a five-year terms, as recommended in the foregoing report of the President and Chief Executive Officer.

	Supplier	Location
1	Accenture LLP	Walnut Creek, CA
2	Arch Street Communications, Inc.	Tarrytown, NY
3	BBG&G Advertising, Inc.	Campbell Hall, NY
4	Cherissa Adams*	Austin, TX
5	Deloitte Consulting, LLP	Hermitage TN
6	Ernst & Young U.S. LLP	Sacaucas NJ
7	Essence Partners, Inc.	New York, NY
8	Factory 360, Inc.	Hollywood FL
9	FirstInLine Media LLC	Brooklyn, NY
10	Fuseideas, LLC	Winchester MA
11	Guidehouse, Inc.	Chicago, IL
12	ICF Resources, LLC	Fairfax, VA
13	Jodi Ackerman Frank	Argyle, NY
14	Kivvit, LLC	Chicago, IL
15	Lowe and Partners Worldwide, Inc. dba Campbell Ewald New York	Omaha, NE
16	Marketsmith, Inc.	Cedar Knolls, NJ
17	McKinsey and Company, Inc. Washington D.C.	Washington, D.C.
18	MWW Group, LLC	East Rutherford, NJ
19	Nexant, Inc.	San Francisco Ca
20	PA Consulting Group, Inc.	Boston, MA
21	Sapient Corporation d/b/a Publicis Sapient	Boston, MA
22	Sinclair Prints & Poseys, Inc.	Flushing, NY
23	Stragility, LLC	Slingerlands, NY
24	Strategy Muse, Inc.	Los Angeles, CA

25	Submersive Media, LLC*	New York, NY
26	The Cadmus Group LLC	Waltham, MA
27	The Visual Brand LLC	Westport, CT
28	West Monroe Partners, LLC	Chicago, IL

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.

vii. **Amendment and Restatement of Commercial Paper Authorization**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, that the Trustees adopt the Second Amended and Restated Resolution Authorizing Commercial Paper Notes (the “Second Amended CP Resolution”) attached hereto and as discussed in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, that the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer, 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 deliver the Second Amended CP Resolution to the Issuing and Paying Agent (as defined in the Second Amended CP Resolution), with such amendments, supplements, changes, insertions and omissions thereto as may be approved by the Chairman or the President and Chief Executive Officer, which amendments, supplements, insertions and omissions shall be deemed to be part of such resolution as approved and adopted by the Authority and to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents, and amendments thereto, 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.

viii. **Northern NY Priority Transmission Project**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, that the Board of Trustees authorizes the Power Authority of the State of New York (the “Authority”) to accept, develop and operate, the Northern New York Priority Transmission Project (“NNYPTP”) as a priority transmission project pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act, for the reasons summarized in the foregoing report of the President and Chief Executive Officer (“Report”); and be it further

RESOLVED, the Board of Trustees approves and authorizes the selection of Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) as a co-participant in the development of the NNYPTP for the reasons summarized in the Report, subject to the Authority and National Grid reaching agreement on terms and conditions for co-development of the NNYPTP; 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 Chief Financial Officer and Executive Vice President and General Counsel.

ix. **Quarterly Release of Funds in Support of NYS Canal Corporation**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

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 Trustees affirm 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 the Trustees affirm 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 Trustees affirm 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.

f. Audit Committee Report

Chair Eugene Nicandri reported that the Audit Committee met on March 18, adopted the minutes of the last meeting, and received an Internal Audit update from the Authority's Senior Vice President of Internal Audit, Angela Gonzalez.

In addition, the Committee received the Year-end 2020 Annual Financial Report from Authority's Chief Financial Officer, Adam Barsky, and the 2020 Annual Audit Report from KPMG, the Authority's external Auditors.

Chair Nicandri said that the Committee also adopted a motion to recommend to the full Board, the adoption of the 2020 Year-End Financial Report which is before the members for a vote and made a motion for its adoption; seconded by Trustee McKibben.

i. **2020 Financial Reports Pursuant to Section 2800
of the Public Authorities Law and Regulations
of the Office of the State Comptroller**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

WHEREAS, pursuant to Section 2800(1) of the Public Authorities Law, the Authority is required to annually submit to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller and the Authorities Budget Office, within 90 days after the end of its fiscal year, a complete and detailed report or reports setting forth information regarding, among other things, certain financial information; and

WHEREAS, pursuant to Section 2800(3), financial information submitted under Section 2800 shall be approved by the Authority's Board of Trustees and shall be certified in writing by the Chief Executive Officer and the Chief Financial Officer of the Authority that based on the officer's knowledge the information provided therein (a) is accurate, correct and does not contain any untrue statement of material fact; (b) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made and (c) fairly presents in all material respects the financial condition and results of operations of the Authority as of, and for, the periods presented in the financial statements; and

WHEREAS, on the date hereof, the Chief Executive Officer and Chief Financial Officer have so certified as to the financial information contained within the attached reports for the fiscal year ending December 31, 2020;

NOW THEREFORE BE IT RESOLVED, That pursuant to Section 2800 of the Public Authorities Law, the financial reports attached hereto are adopted and the Corporate Secretary be, and hereby is, authorized to submit to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller, and the Authorities Budget Office the attached financial report for the year ending 2020 in accordance with the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to 2 NYCRR Part 203, the attached report of actual vs. budgeted results for the year 2020 is approved in accordance with the foregoing report of the President and Chief Executive Officer; and the Corporate Secretary is authorized to post the report on the Authority's website; and be it further

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

g. Governance Committee Report

Chair Dennis Trainor reported that the Governance Committee met this morning and received an update on the progress toward the 10 commitments in the Diversity, Equity and Inclusion plan. The team is swiftly moving forward with their plan to improve diversity, equity, and inclusion across the organization. He said that the team presented their progress to date, the status of their programs for the year's end and the metrics that they are using to track their progress.

The Committee also received an update on NYPA's Sustainability Plan that encompasses the environmental, economic, social and governance activities that demonstrate NYPA's commitment to the organization, customers, and the state.

The Committee adopted a Consent Agenda which included a number of routine annual reports and the meeting minutes from the last meeting.

Chair Dennis Trainor said that the annual reports and the 2021-25 Sustainability Plan and 2020 Report are before the Board and made a motion for their adoption; seconded by Trustee Balboni.

i. **Annual Review and Approval of Guidelines for Disposal of Personal Property and Expenditure Authorization Procedures**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That pursuant to Section 2879 of the Public Authorities Law and the Authority's and Canal's Guidelines for the Disposal of Personal Property (Exhibits "4g i-A" and "4g i-C"), and the Authority's and Canal's Expenditure Authorization Procedures (Exhibits "4g i-B" and "4g i-D"), as amended and attached hereto, be, and hereby are, approved; and be it further

RESOLVED, That the open service contracts exceeding one year be, and hereby are, reviewed and approved; and be it further

RESOLVED, That the 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 and Canal's to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

ii. **Annual Report of Procurement Contracts, Guidelines for Procurement Contracts, and Annual Review of Open Procurement Service Contracts**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That pursuant to Section 2879 of the Public Authorities Law and the Authority's and Canal's Procurement Guidelines, the Annual Report of Procurement Contracts, as listed in Exhibit "4g ii-A-4," and the Guidelines for the use, awarding, monitoring and reporting of Procurement Contracts (Exhibits "4g ii-A-2" and "4g ii-A-3"), as amended and attached hereto, be, and hereby are, approved; and be it further

RESOLVED, That the open service contracts exceeding one year be, and hereby are, reviewed and approved; and be it further

RESOLVED, That the 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 and Canal's to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

iii. **Annual Review and Approval of Guidelines and Procedures for the Disposal of Real Property, Acquisition of Real Property, Annual Reports for the Disposal and Acquisition of Real Property, and Expenditure Authorization Procedures**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That pursuant to the provisions of the Public Authorities Accountability Act of 2005, as amended by the Public Authorities Reform Act, Chapter 506 of the Laws of 2009, the Authority hereby reviews and approves the 2021 Guidelines and Procedures for the Disposal of New York Power Authority Real Property and the 2021 Guidelines and Procedures for the Acquisition of Real Property by the New York Power Authority as set forth in Exhibits “4g iii-A” and “4g iii-B,” respectively, attached hereto; and be it further

RESOLVED, that the Canal Corporation hereby reviews and approves the 2021 Guidelines and Procedures for the Disposal of Canal Corporation Real Property and the 2021 Guidelines and Procedures for the Acquisition of Canal Corporation Real Property as set forth in Exhibits “4g iii-E” and “4g iii-F,” respectively, attached hereto; and be it further

RESOLVED, that pursuant to the provisions of the Public Authorities Accountability Act of 2005, as amended by the Public Authorities Reform Act, Chapter 506 of the Laws of 2009, the Authority hereby reviews and approves the 2020 Annual Report for the Disposal of Real Property and the 2020 Annual Report of the Acquisition of Real Property as set forth in Exhibits “4g iii-C” and “4g iii-C-1,” respectively, attached hereto; and be it further

RESOLVED, that the Canal Corporation hereby reviews and approves the 2020 Annual Report for the Disposal of Real Property and the 2020 Annual Report of the Acquisition of Real Property as set forth in Exhibits “4g iii-G” and “4g iii-G-1,” respectively, attached hereto; and be it further

RESOLVED, That the Authority hereby reviews and approves the revised Expenditure Authorization Procedures for Claims Settlement and Payment for Real Estate as set forth in Exhibit “4g iii-D” attached hereto; and be it further

RESOLVED, That Authority staff may take any and all steps necessary or convenient to implement such Guidelines and Expenditure Authorization Procedures; 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; and be it further

RESOLVED, That the Chairman, the Vice Chair, the President and Chief Executive Officer, the Chief Operating Officer, the Director of Canals, the Vice President - Enterprise Shared Services and all other officers of the Corporation are, and each of them hereby is, authorized on behalf of the Corporation 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.

iv. **Annual Review and Approval of Certain Policies for NYPA and Canal Corporation**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, that pursuant to Section 2824 of the Public Authorities Law and Section 2 of Article II of the Authority's and Canal Corporation's By-laws the below-listed policies of the Authority and Canal Corporation are hereby approved:

Exhibit	Policy Name	Policy Number	Revision Date
A	Strategic Supply Management Policy	SSM-POL-DEP-001	4/14/2020
B	Credit Card Procurement System Policy	SSM-POL-CCPS-001	4/20/2020
C	Warehouse Controls	Proc-Pol-WH-01	5/1/2020
D	Contract Management: Contract Initiation, Negotiation and Administration	SSM-PRO-CINA-001	4/07/2020
E	Supplier Relationship Management Procedure	SM-PRO-SRM-002;	10/16/2020
F	Strategic Supply Management Sourcing Procedure	SSM-PRO-SRC-001	4/26/2020
G	Procedure for the Destruction of NYPA Records	ITP-DW-4.1	5/08/2020
H	Glossary for Digital Warehouse Policies and Procedures	ITP-IRC: G02.00	5/05/2020
I	NYPA's Workplace Violence Policy	CP 1-8	1/06/2020
J	Severance Policy	EP 1.7	9/29/2020
K	Management Non-Exempt and Facility-Based Exempt Overtime	EP 2.4	5/18/2020
L	Management Time Away from Work	EP 3.12	11/25/2020
M	Reasonable Accommodation Policy for Applicants and Employees with Disabilities and Pregnancy-Related Conditions	CP 1-11	1/06/2020
N	Reasonable Accommodation of Religious Observances or Practices Policy for Applicants and Employees	CP 1-12	1/06/2020
O	Equal Employment Opportunity, Anti-Harassment and Anti-Discrimination Policy	CP 1-14	2/26/2020
P	Travel Policy	CP 2-1	7/6/2020
Q	Travel Procedure	Trvl-Pro-01	4/25/2020
R	Company Airplane Procedures	Trvl-Pro-02	5/15/2020
S	Code of Conduct	CGP-2018-11	2/27/2018
T	Whistleblower Policy	GCP-2018-11	3/21/2013
U	Company Policy Program Administration	CP 1-1	5/04/2020
V	Personal Identifying and Protected Health Information Privacy Policy	CP 1.9	9/24/2020
W	Time Away from Work	EP 3.12	11/25/2020

AND BE IT FURTHER RESOLVED, That the President and Chief Executive Officer is authorized to modify the foregoing policies, as necessary, except in the event that any powers, duties or obligations of the Trustees and Board of Directors would be affected by such modification;

AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority and Canal Corporation are, and each of them hereby is, authorized on behalf of the Authority and Canal Corporation to do any and all things 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.

v. **2020 Annual NYPA and Canal Board Evaluation Pursuant to Sections 2800 and 2824 of the Public Authorities Law and Guidance of the Authorities Budget Office**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

WHEREAS, pursuant to Sections 2800(1)(a)(15) and 2800(2)(a)(15) and Section 2824(7) of the Public Authorities Law and Guidance of the Authorities Budget Office, the Authority and Canal Board is required to annually submit a summary of the Board Evaluation to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller and the Authorities Budget Office, within 90 days after the end of its fiscal year;

NOW THEREFORE BE IT RESOLVED, That pursuant to Sections 2800(1)(a)(15) and 2800(2)(a)(15) and Section 2824(7) of the Public Authorities Law and Guidance of the Authorities Budget Office, the 2020 Annual Board Evaluation Summary is hereby adopted and the Corporate Secretary is hereby authorized to submit to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller, and the Authorities Budget the adopted 2020 summary; 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 Chief Financial 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.

vi. **2021-25 Sustainability Plan and 2020 Report**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That the Authority's 2021-2025 Sustainability Plan and 2020 Sustainability Report, as described in the attached report of the President and Chief Executive Officer, and as detailed in Exhibits "4g vi-A" and "4g vi-B" be, and hereby is, 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.

vii. **Annual Review and Approval of Guidelines for the Investment of Funds and 2020 Annual Report on Investment of Authority Funds**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That the 2020 Annual Report on Investment of Authority Funds and amendment to the Guidelines for the Investment of Funds be, and hereby is, 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.

5. Informational Session: Reimagine the Canals

Ms. Angelyn Chandler, Vice President – Planning, Reimagine the Canals, provided highlights on the progress made with the Reimagine the Canals initiative, as well as two of the programs to be implemented, Canal excursions and glamping, to the Board. (Exhibit “5-A”). She said that Reimagine is a \$300 million initiative to revitalize the Erie Canal which was announced by Governor Cuomo in January 2020. The projects that were announced are the Phase 1 Priority Projects: Cayuga Watercourse, Brockport Loop, Guy Park Manor, Iconic Lighting, Canastota Pocket Neighborhood, fishing, wetlands, and ice jam mitigation. Phase two projects are in development and an update will be provided at the May Board meeting.

Despite the Covid-19 pandemic, significant progress has been made regarding the Reimagine the Canals initiatives:

- Five Canal Councils have been established to serve as communication channels for stakeholder concerns.
- They have moved forward with all five Phase 1 Economic Development projects.
- Two successful pilots for the resilience projects, one for fishing and the other for ice jam mitigation, have been completed.
- Launching of the second year of summer programming; expanding to fall and winter activities:
 - Expanding staycations to include fall and winter activities.
 - First glamping site will go online in May.

Project Milestones:

- The five Canal Councils established will serve as communication channels with stakeholders for both Reimagine the Canals and Canal Corporation concerns.
- There is one Canal Council for each of the four Canal regions and one with representatives who have a system-wide perspective.
- There are ten members on each Council, and they represent interests specific to that region.
- The first set of meetings were held in January and February. The second will take place in March/April.

The Canal Councils are very important to the Reimagine the Canals initiative because every project will be informed by regional experts, local electives, and community leaders.

Economic Development Projects

Cayuga Watercourse

- Cayuga Watercourse will be a whitewater park on the Cayuga-Seneca canal where you can surf, kayak, standup paddle board, and go tubing.
- We are in the process of selecting a designer and exploring options for a park operator.
- This new park, near the Village of Cayuga, will also have areas for fishing, picnicking, and hiking.

Brockport Loop

- The Brockport Loop project will construct a new pedestrian bridge adjacent to an existing canal guard-gate in the Village of Brockport.
- The bridge will connect the SUNY Brockport campus on one side of the canal to the Empire State Trail on the other side of the canal.
- This bridge is the missing link in an important recreational and connectivity loop in the Village.
- We are now in the design phase on this project.

Iconic Lighting

- The Iconic lighting project will illuminate canal infrastructure at six sites along the canal.
- The Little Falls guillotine lock; the two lighthouses at either end of Oneida Lake, at Verona Beach and Brewerton; the Fairport lift bridge; the movable dam in Amsterdam and the CSX bridge in Tonawanda.
- Four of these will be illuminated by this fall, and we are working to plan ribbon cutting events.

Canastota Pocket Neighborhood

- The Canastota pocket neighborhood will be a new neighborhood on the Old Erie Canal in Downtown Canastota.
- This project was one of the two winners of the 2017 Reimagine Canals competition. It was submitted by the Madison County Planning Department, and they have recently selected a preferred developer. The developer is now starting a market research study.

Guy Park Manor

- Guy Park Manor in Amsterdam will be a new hospitality destination with the historic Guy Park Manor as its focal point. The Manor was damaged in Hurricane Irene, and design is now underway for the restoration of the Manor which will also elevate it out of the floodplain.
- We have begun a search for a developer of the hospitality facility, and we are starting the process to select a designer to reconfigure the movable dam as a pedestrian bridge to connect the hospitality site to the Empire State Trail on the other side of the canal.

Resilience Projects

Fisheries

In the Western Region of the canal, we completed the first fishing pilot last fall wherein we extended the draining of the canal twice, which created prime fishing conditions. We saw many anglers taking advantage of this opportunity to expand the pilot from two creeks to more creeks this fall.

Wetlands Restoration

In partnership with DEC, we will restore, approximately, 2500 acres of wetlands in the Montezuma area in the central region. We are now in design, and construction is scheduled to be completed by the end of this year.

Ice Jams

This winter, we had a successful pilot of testing ice breaking measures on the Mohawk in the Schenectady area, which sees most of the damage from ice jams and flooding. At the end of last year, we put in a newly purchased amphibious dredge and two rental ice breaking tugboats on the Mohawk. They broke ice throughout the winter, and as a result, there were no ice jams or flooding. We will continue our ice jam mitigation work next winter, building on this pilot.

Programs

Canals Excursions

This summer, building on the success of last year's vacations, we will have an even larger program encompassing more than ten sites. This year, the program will extend into the fall and winter. We have added activities such as boat tours, rock climbing, snowshoeing and cross-country skiing. There will be some activity in every region of the canal.

Glamping

This year, in May, we will open the first glamping installation in Schuylerville on the Champlain Canal adjacent to Lock C-5. We will have space for five glamping tents and five bring-your-own tents. We are also exploring other sites for glamping and camping for this year and the next.

In summary, all five Phase 1 economic development priority projects announced by the governor in January of 2020, are in design or further along. The first project completion, the four lighting projects, will be done by the end of this year. Phase two projects are in development for announcement later this year.

Ms. Chandler ended that a Canals-wide update will be provided to the members at the next meeting of the Board in May.

President Quiniones reiterated that, as presented by Ms. Chandler, the Authority is making tremendous progress in the priority projects that were part of the announcement that the governor made in January of 2020. He added that the Authority is making significant capital investments and commitments for operating, upgrading, and maintaining the canals to make sure that it is safe and secure for people to enjoy during the seasons and to ensure that the canals remain a vibrant resource for all New Yorkers. To that end, the Authority has been investing, on average, \$140 million per year in the Canal Corporation since it took over its operations in 2017. As part of the Reimagine the Canal initiative, the Authority plans an investment of \$300 million.

The Authority will endeavor, as it boosts its Reimagine the Canals initiative, to improve its communication with stakeholders, community leaders, elected officials, and the media. The Authority plans to be doing a roadshow to provide information on this initiative to all stakeholders, so that they can be aware of the Authority's level of commitment and excitement in reimagining this historic asset for all New Yorkers in the years to come.

6. CONSENT AGENDA:

On motion made by Trustee Trainor and seconded by Trustee Balboni, the Consent Agenda was unanimously adopted.

a. Commercial Operations

Chairman Koelmel invited Mr. Keith Hayes, Senior Vice President of Clean Energy Solutions to explain the metrics on how the Authority evaluated jobs per megawatt relative to capital investments and other considerations for the Expansion Power Allocations. Mr. Hayes said that the applicant evaluated, applied for two hydropower programs; the statute requires the Authority to look at both ReCharge NY and WNY Hydropower programs when considering a recommendation to the Trustees for an award. In this case, the applicant is creating a total of 445 green jobs and \$410M in capital investment commitments between the two program applications before the Board, i.e., 29.5 jobs per megawatt and \$27.2M in capital per megawatt. He said, of note, all of these jobs are classified as “green jobs” under the revised criteria that the Trustees approved last year.

i. **Expansion Power Allocations**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That an allocation of 1,750 kilowatts of Expansion Power (“EP”) be awarded to Amcor Rigid Packaging USA, LLC for a term of 10 years as detailed in the foregoing report of the President and Chief Executive Officer (“Report”) and Exhibit “6a i-A,” be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That an allocation of 400 kilowatts of EP be awarded to Pine Pharmaceuticals LLC for a term of 10 years as detailed in the foregoing Report and Exhibit “6a i-B,” be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That an allocation of 10,000 kilowatts of EP be awarded to Plug Power Inc. for a term of 10 years as detailed in the foregoing Report and Exhibit “6a i-C,” 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 Amcor Rigid Packaging USA, LLC, Pine Pharmaceuticals LLC, and Plug Power Inc. for the sale of the EP allocations (the ‘Contract’), the current forms of which is attached as Exhibits “6a i-A-1”, “6a i-B-1,” and “6a i-C-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.

ii. **Recharge New York Power – New and Extended Allocations**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

On motion made and seconded, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

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 8 Recharge New York (“RNY”) Power allocations previously awarded to the customers listed in Exhibit “6a ii-A” in the manner described in the accompanying report of the President and Chief Executive Officer (“Report”) 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 “6a ii-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; and be it further**

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 “6a ii-B” in the amounts indicated therein for the reasons indicated in the Report and Exhibit “6a ii-B”; and be it further

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 “6a ii-C” in the amounts indicated therein for the reasons indicated in the Report and Exhibit “6a ii-C”; and be it further

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 “6a ii-D” in the amounts indicated therein for the reasons indicated in the Report and Exhibit “6a ii-D”; and be it further

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.

iii. **High Load Factor Allocation**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That an allocation of 143,000 kilowatts (“kW”) of High Load Factor (“HLF”) Power be awarded to Plug Power Inc. for a term of 10 years as detailed in the foregoing Report of the President and Chief Executive Officer (“Report”), be and hereby is approved, subject to Service Tariff No. HLF-1 previously approved by the Trustees; and be it further

RESOLVED, That the contract for the sale of HLF Power to Plug Power Inc., along with Service Tariff No. HLF-1, attached as Exhibit “6a iii-A” to the foregoing Report, is hereby approved; and be it further

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

iv. **Proposed Neighboring States Niagara Project
Hydropower Contracts - Notice of Public Hearing**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That the proposed contracts attached to the foregoing report of the President and Chief Executive Officer hereto as Exhibit "6a iv-B," are hereby approved; and be it further

RESOLVED, That the Corporate Secretary be and hereby is authorized to convene a public hearing on the proposed contracts in accordance with the procedures set forth in PAL §1009; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit copies of the proposed contracts to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee pursuant to Public Authorities Law ("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 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, Secretary and General Counsel.

v. **Recommendations for Awards of Fund Benefits from the Western New York Economic Development Fund by the Western New York Power Proceeds Allocation Board**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

WHEREAS, The Western New York Power Proceeds Allocation Board ("Allocation Board") has recommended that the Authority make an award of Fund Benefits from the Western New York Economic Development Fund ("Fund") to the eligible applicants listed in Exhibit "6a v-A" in the amount indicated;

NOW THEREFORE BE IT RESOLVED, That the Authority hereby accepts the recommendation of the Allocation Board and authorizes an award of Fund Benefits to the applicants listed in Exhibits "6a v-A", "6a v-A-1", "6a v-A-2" and "6a v-A-3" in the amounts indicated for the reasons set forth in the attached report and the exhibits and other information referred to therein, conditioned upon an agreement between the Authority and each 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 Executive Vice President and 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 Executive Vice President and 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 "6a v-A" subject to the foregoing conditions; and be it further

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

b. Procurement (Services) Contracts

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

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and Canal Corporation, the award and funding of the multiyear procurement services contracts set forth in Exhibit “6b i-A,” attached hereto, are hereby approved for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and Canal Corporation, the contracts listed in Exhibit “6b i-B,” attached hereto, are hereby approved and extended for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing report of the President and Chief Executive Officer; and be it further

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

ii. **Procurement (Non-Personal Services) Contract
Fraser SVC Control and Relay Upgrade Project – Capital
Expenditure Authorization Request and Contract Award**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, that pursuant to the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$9,842,000 are hereby authorized for the Fraser SVC Control and Relay Upgrade Project in accordance with, and as recommended in, the foregoing report 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 Fraser SVC Control and Relay Upgrade Project.

<u>Capital</u>	<u>Expenditure Authorization</u>
Fraser SVC Control and Relay Upgrade	<u>\$9,842,000</u>

AND BE IT FURTHER RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, and the Authority's Expenditure Authorization Procedures, approval is hereby granted to award a two-year contract to ABB Enterprise Software, Inc. of Raleigh, NC, in the amount of \$6,631,458 for the engineering, procurement, and Commissioning of the Fraser SVC Control and Relay Upgrade Project.

<u>Contractor</u>	<u>Contract Approval</u>
ABB Enterprise Software, Inc. Raleigh, NC	<u>\$6,631,458</u>
Q20-7053BS	

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

c. Real Estate

**i. Acquisition of 24 Acres of Real Property
Town of Massena, County of St. Lawrence**

The President and Chief Executive Officer recommended the approval of the subject action by adoption of the resolution below.

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

RESOLVED, That the President and Chief Executive Officer and the Vice President – Enterprise Shared Services be, and hereby are, authorized to acquire, by purchase or eminent domain, a fee interest in approximately 24 acres of real property located in the Town of Massena, St. Lawrence County, 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 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.

d. Governance Matters

i. Approval of the Minutes

**1. Minutes of the Joint Meeting of the New York Power
Authority's Trustees and Canal Corporation's
Board of Directors held on January 26, 2021**

On motion made and seconded, the Minutes of the Joint Regular Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held on January 26, 2021 was unanimously adopted.

7. Next Meeting

The joint regular meeting of the New York Power Authority's Board of Trustees and the Canal Corporation's Board of Directors will be held on May 25, 2021, unless otherwise designated by the Chairman with the concurrence of the Trustees.

Closing

On motion made by Trustee Michael Balboni and seconded by Vice Chair Eugene Nicandri, the meeting was adjourned at approximately 11:53 a.m.

Karen Delince
Karen Delince
Corporate Secretary



**NY Power
Authority**

**Canal
Corporation**

**MINUTES OF THE JOINT SPECIAL MEETING
OF THE
POWER AUTHORITY OF THE STATE OF NEW YORK AND
NEW YORK STATE CANAL CORPORATION**

April 29, 2021

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**NY Power
Authority**

**Canal
Corporation**

Minutes of the Joint Special Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held via video conference at approximately 2:00 p.m.

Members of the Board present were:

John R. Koelmel, Chairman
Eugene L. Nicandri, Vice Chairman
Anthony J. Picente, Jr.
Tracy McKibben
Michael A.L. Balboni
Dennis T. Trainor

Gil Quinones	President and Chief Executive Officer
Justin Driscoll	Executive Vice President and General Counsel
Adam Barsky	Executive Vice President and Chief Financial Officer
Joseph Kessler	Executive Vice President and Chief Operating Officer
Kristine Pizzo	Executive Vice President and Chief Human Resource & Administrative Officer
Sarah Salati	Executive Vice President and Chief Commercial Officer
Daniella Piper	Regional Manager and CTO
Yves Noel	Senior Vice President and Chief Strategy Officer
Angela Gonzalez	Senior Vice President – Internal Audit
Robert Piascik	Senior Vice President – Chief Information & Technology Officer
Karen Delince	Vice President and Corporate Secretary
James Levine	Assistant General Counsel – Finance & Bonds
Javier Bucobo	Principal Attorney II – Contracts, Licensing & Environmental
Thakur Sundeep	Controller
Carley Hume	Deputy Chief of Staff – President's Office
Mary Cahill	Manager – Executive Office
Christopher Vitale	Financial Performance & Reporting Manager
Lorna Johnson	Senior Associate Corporate Secretary
Sheila Quatrocci	Associate Corporate Secretary
Michele Stockwell	Project Coordinator – Executive Office

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

Introduction

Chairman Koelmel welcomed the Trustees/Directors and NYPA and Canal staff members who were present at this special meeting for an interim update on some important strategic investments and initiatives that the members continue to evaluate. He said that the meeting had been duly noticed as required by the Open Meetings Law and called the meeting to order pursuant to the Authority's Bylaws, Article III, Section 3.

1. **Adoption of the April 29, 2021 Proposed Meeting Agenda**

On motion made by Trustee Balboni and seconded by Trustee Trainor, the members adopted the meeting Agenda.

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

“Mr. Chairman, I move that the NYPA and Canal Boards conduct an executive session to discuss the financial and credit history of a particular corporation, pursuant to §105 of the Public Officers Law.” On motion made by Trustee Trainor and seconded by Trustee Balboni, the members held an executive session.

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

“Mr. Chairman, I move to resume the meeting in Open Session.” On motion made by Vice Chair Nicandri and seconded by Trustee Trainor, the meeting resumed in Open Session.

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

4. DISCUSSION AGENDA:

a. Chief Financial Officer's Report

Mr. Adam Barsky, Executive Vice President and Chief Financial Officer, provided an overview of the Authority's financial performance for the first quarter and forecast for the full year, 2021 (Exhibit "4d-A").

Year-to-Date Actuals through March 31, 2021

Net Income

The Authority has a Net Income of approximately \$3.6M; \$13.6M against the budget of \$18M with a shortfall of \$4.4M. This is mostly attributed to timing difference in terms of allocations to capital, which is based on the velocity of capital spend, and is expected to get closer to the budget between now and the end of the year.

Revenues are slightly below budget based on a shortfall in the Generation Margin. This is attributable to less hydro flow, creating less generation at the Authority's hydro plants, and is, to some extent, offset by lower-than-expected expenses. In addition, there are some non-operating incoming expenses that is coming in less than the forecast because of mark-to-market adjustments on the Authority's investments, which are non-cash or expenses that will have no material impacts on the Authority's financials by the end of the year.

Full-Year Forecast

The Authority is still in line with its \$40M Net Income targets, although slightly below. This is due mainly to non-cash non-operating interest expense, and higher than expected depreciation. Therefore, the cash generating part of the Authority's business is intact and in line with its full-year expectations and plans.

5. Next Meeting

The joint regular meeting of the New York Power Authority's Board of Trustees and the Canal Corporation's Board of Directors will be held on May 25, 2021, unless otherwise designated by the Chairman with the concurrence of the Trustees.

Closing

On motion made by Trustee Trainor and seconded by Trustee McKibben, the meeting was adjourned at approximately 3:41 p.m.

Karen Delince
Karen Delince
Corporate Secretary

POWER AUTHORITY OF THE STATE OF NEW YORK
AND
NEW YORK STATE CANAL CORPORATION

EXHIBITS

For

April 29, 2021

Special Joint

Meeting Minutes



**NY Power
Authority**

**Canal
Corporation**

Chief Financial Officer Report

Adam Barsky

EVP & Chief Financial Officer

April 29, 2021

YEAR-TO-DATE ACTUALS THROUGH MARCH 31st

YTD ACTUALS (JANUARY-MARCH 2021)

In \$ Thousands	2021 Budget (\$)	2021 Current (\$)	Variance (\$)	
Net Operating Income				
Operating Revenue				
Customer Revenue	\$434,891	\$414,497	(\$20,394)	
Market-Based Power Sales	118,441	113,390	(5,050)	
Non Utility Revenue	5,439	7,135	1,696	
Ancillary Service Revenue	7,241	9,284	2,043	
NTAC and Other	63,379	65,790	2,411	
Operating Revenue Total	629,391	610,097	(19,294)	
Operating Expense				
Purchase Power	(168,836)	(145,116)	23,719	
Ancillary Service Expense	(15,445)	(13,487)	1,957	
Fuel Consumed	(41,772)	(42,457)	(684)	
Wheeling	(132,196)	(143,816)	(11,621)	
Operations & Maintenance	(141,703)	(132,097)	9,606	
Other Expense	(32,702)	(32,210)	492	
Allocation to Capital	14,546	8,680	(5,866)	
Operating Expense Total	(518,107)	(500,504)	17,603	
EBIDA Total	111,284	109,592	(1,692)	(1,692)
<i>EBIDA NYPA</i>	<i>131,495</i>	<i>128,393</i>	<i>(3,102)</i>	
<i>EBIDA Canals</i>	<i>(20,211)</i>	<i>(18,801)</i>	<i>1,410</i>	
Non Operating				
Interest and Other Expenses				
Interest & Other Expenses	(33,687)	(31,962)	1,725	
Investment and Other Income	5,109	3,140	(1,969)	
Mark to Market Adjustments	0	(1,196)	(1,196)	
Depreciation	(64,593)	(65,912)	(1,318)	
Interest and Other Expenses Total	(93,171)	(95,929)	(2,758)	
NET INCOME	\$18,113	\$13,663	(\$4,450)	(\$4,450)

Margins - Generation (\$8,429)

Margins - Transmission \$2,404

Margins - Non Utility \$103

Operating Expenses \$4,231

Non-Operating Net (\$2,758)



**NY Power
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EBIDA: Earnings Before Interest Depreciation & Amortization

FULL-YEAR FORECAST

YEAR END PROJECTION (JANUARY - DECEMBER 2021)

In \$ Thousands	2021 Budget (\$)	2021 Current (\$)	Variance (\$)	
Net Operating Income				Current vs Budget
Operating Revenue				
Customer Revenue	\$1,817,582	\$1,752,422	(\$65,161)	
Market-Based Power Sales	430,499	456,247	25,748	
Non Utility Revenue	27,375	27,597	222	
Ancillary Service Revenue	27,662	31,682	4,020	
NTAC and Other	237,488	242,907	5,419	
Operating Revenue Total	2,540,607	2,510,856	(29,752)	
Operating Expense				
Purchase Power	(629,343)	(589,460)	39,883	
Ancillary Service Expense	(62,475)	(59,281)	3,194	
Fuel Consumed	(119,206)	(136,842)	(17,636)	
Wheeling	(642,170)	(654,269)	(12,099)	
Operations & Maintenance	(607,911)	(617,065)	(9,154)	
Other Expense	(129,657)	(103,488)	26,169	
Covid-19 Expense*	0	252	252	
Allocation to Capital	59,143	59,143	0	
Operating Expense Total	(2,131,619)	(2,101,011)	30,608	
EBIDA Total	408,989	409,845	856	856
EBIDA NYPA	495,601	502,189	6,588	
EBIDA Canals	(86,613)	(92,344)	(5,732)	
Non Operating				
Interest and Other Expenses				
Interest & Other Expenses	(129,262)	(124,275)	4,987	
Investment and Other Income	19,626	18,664	(962)	
Mark to Market Adjustments	0	(2,320)	(2,320)	
Depreciation	(258,373)	(261,942)	(3,568)	
Interest and Other Expenses Total	(368,009)	(369,872)	(1,863)	
NET INCOME	\$40,980	\$39,973	\$49,315	(\$1,007)
	<i>Low Case</i>	<i>Expected</i>	<i>High Case</i>	

Margins - Generation** (\$22,337)

Margins - Transmission 5,705

Margins - Non Utility 222

** Includes Merchant Gross Margin Variance of (\$13,814):
Budget @ \$272,411 vs Current @ \$258,597

Operating Expenses 17,267

Non-Operating Net (1,863)

EBIDA: Earnings Before Interest Depreciation & Amortization

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

Low/High Cases: Taken from Risk's Merchant Portfolio Daily Performance Summary



**NY Power
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**NY Power
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RESOLUTION

WHEREAS, Richard M. Flynn, who stands among the preeminent leaders in the history of the New York Power Authority, will celebrate his 90th birthday on June 9 of this year; and

WHEREAS, as Chairman and Chief Executive Officer from 1985 through 1994, Mr. Flynn successfully guided NYPA through a turbulent period in the electric power industry and became a nationally influential voice for change in that industry; and

WHEREAS, Mr. Flynn's father, Edward J. Flynn, was a close friend and confidant of Governor and President Franklin D. Roosevelt, and, as New York's Secretary of State, certified the Power Authority Act, the 1931 legislation that created the Authority; and

WHEREAS, Richard Flynn, who had served with distinction as a Power Authority Trustee for 10 years before his election as Chairman, took office as construction of the Marcy-South transmission line was about to begin and went on to preside over completion of the 207-mile project within three years, meeting both the budget projections and a

demanding deadline set by a power purchase contract with Hydro-Quebec; and

WHEREAS, he also directed licensing and construction of the Sound Cable Project, beating budget and schedule targets and providing the final link in what is essentially a NYPA transmission pathway from Canada to Long Island; and

WHEREAS, Mr. Flynn launched the High Efficiency Lighting Program and the Power for Jobs initiative, helping to pave the way for the Authority's current far-reaching energy efficiency and economic development efforts; and

WHEREAS, as a staunch advocate of competition among power suppliers and open access to transmission lines, Mr. Flynn foresaw the coming era in the industry and spearheaded NYPA's winning bid against more than 20 competitors to build the natural-gas-fueled plant in Holtsville, Long Island that now fittingly bears his name; and

WHEREAS, during part of his tenure at NYPA, Mr. Flynn served as Chairman of the Large Public Power Council and head of its transmission task force, earning widespread respect and recognition for his innovative thinking; and

WHEREAS, Mr. Flynn was a highly successful New York City attorney, and a pioneer in cable television law, before suspending his legal career to devote full time to his duties as NYPA's Chairman and CEO; and

WHEREAS, his 90th birthday, coming six weeks and one day after the Power Authority's own 90th, offers a perfect opportunity to recognize his singular accomplishments and enduring legacy at NYPA;

NOW THEREFORE BE IT RESOLVED, That the Trustees of the Power Authority of the State of New York convey their heartiest congratulations to Chairman Richard M. Flynn as he approaches this wonderful milestone, express their profound gratitude for his exemplary service to the Authority and the people of New York State and extend to him their best wishes for health and happiness in the years to come.

May 25, 2021

May 25, 2021

6. Next Meeting

The next joint meeting of the New York Power Authority's Board of Trustees and the Canal Corporation's Board of Directors will be held on July 27, 2021, unless otherwise designated by the Chairman with the concurrence of the members.