



**NY Power
Authority**

**Canal
Corporation**

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

PROPOSED AGENDA

*January 26, 2021 at 9:15 A.M. (approximately)
Videoconference*

- 1. Adoption of the January 26, 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. COVID-19 Update
 2. 2020 Accomplishments
 - 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 -- (Chair Tracy McKibben)**
 - i. Transfer of Canal Corporation OPEB Liabilities into the NYPA Trust -- Resolution (Adam Barsky)**
 - ii. Smart Generation & Transmission Strategic Initiative – Communications Backbone Program – Capital Expenditure Authorization Request -- Resolution (Patricia Lombardi)**

- iii. Transmission Life Extension & Modernization Program – Niagara Switchyard Life Extension & Modernization – Revised Capital Expenditure Authorization Request -- Resolution (Patricia Lombardi)
- iv. Transmission Life Extension & Modernization Program – Niagara Protective Relay Replacement Project – Revised Capital Expenditure Authorization Request -- Resolution (Patricia Lombardi)
- v. Marcy to New Scotland Transmission Upgrade Project – Capital Expenditure Authorization Request -- Resolution (Patricia Lombardi)
- vi. St. Lawrence-FDR Power Project, Long Sault Dam - Positive Restraint Barrier - Contract Award & Capital Expenditure Authorization Request -- Resolution (Patricia Lombardi)
- vii. Blenheim-Gilboa Power Project – Replacement of Breakers for BG Units 2-4 – Capital Expenditure Authorization Request and Contract Award -- Resolution (Patricia Lombardi)
- viii. Niagara Power Project – Next Generation Niagara Program – Mechanical and Electrical Upgrades Project – Shaft Procurement – Contract Award -- Resolution (Patricia Lombardi)

f. Cyber Security Committee Report -- (Chair Michael Balboni)

5. CONSENT AGENDA:

a. Commercial Operations

- i. Expansion Power Allocations -- 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. Rate Making

- i. Decrease in Westchester County Governmental Customer Rates – Notice of Adoption -- Resolution (Egle Travis)

d. Canal Corporation

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

e. Governance Matters

- i. Approval of the Minutes:
 - 1. Minutes of the Special Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held on October 26, 2020
 - 2. Minutes of the Special Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held on November 12, 2020
 - 3. Minutes of the Regular Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held on December 9, 2020

6. Next Meeting

January 26, 2021

2. Motion to Conduct an Executive Session

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

January 26, 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

January 26, 2021

What I will cover today.....

1. **COVID-19 Update**
2. **2020 Accomplishments**
 - ✓ Overall Performance
 - ✓ COVID-19 Response
 - ✓ Financial Management
 - ✓ Management of Capital Portfolio
 - ✓ VISION2030
 - ✓ DEI Plan
 - ✓ 2021 State of the State
 - ✓ Transmission Expansion



COVID-19 Update



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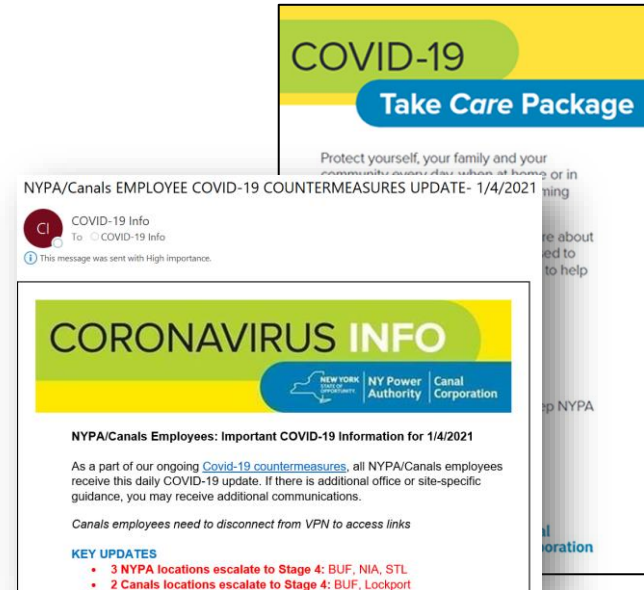
Frequent and transparent communication

Continued employee-first approach with transparent status of positivity rates and countermeasures through regular updates:

- Daily **COVID-19 Countermeasures communications** with latest status and information
- Developing a **vaccine education campaign**, beginning in February

Our COVID-19 response goals:

- 1. Employee Safety** – The health, safety and well-being of NYPA and Canals personnel is our #1 priority and the first consideration in every decision we make
- 2. Continuity of Operations** – We must continue to deliver the many vital services we provide to the people of New York State



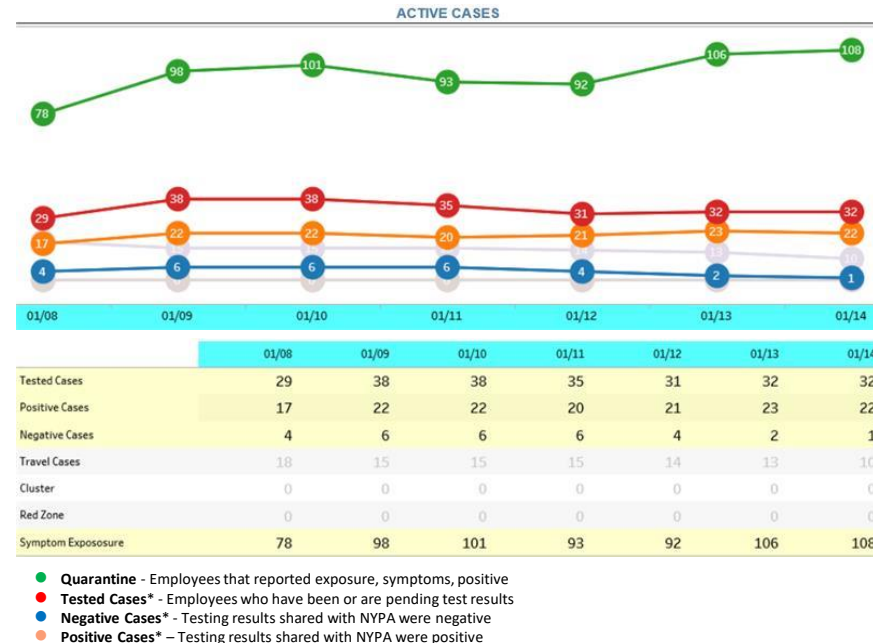
Continuing to apply our countermeasures

As anticipated, following end of year holidays, positivity rates remain elevated.

Thanks to our data-driven countermeasures and employee vigilance, our employee positivity rates remain extremely low and well below state averages.

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

High level summary of Countermeasure Guidelines document



* Subset of Quarantine count

Data as of 1/14/2021

Minimizing risk to safety with a comprehensive testing program

We are using a comprehensive testing program to keep people safe and reduce the need to sequester.

Testing strategy:

- Conducting mandatory testing in areas with greater than 7.5% positivity and pre-emptive voluntary testing in high-risk areas
- Employing multiple testing options to ensure testing is available when and where needed
- The SUNY Clarifi COVID-19 test is our primary testing approach – **one of least invasive and most accurate methodologies in the world**
- Piloting wastewater sampling for community surveillance of our sites

Vaccination strategy:

- Preparing a comprehensive employee vaccine education program
- Performing all-scenario planning for effective vaccination distribution
- Supporting New York State efforts by staffing vaccination sites and phone lines



SUNY Upstate Medical University to Partner with New York Power Authority to Test Essential Utility Workers for COVID-19 Using #1 Ranked Saliva Test – SUNY Press Release



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2020 Accomplishments



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2020 Accomplishments – Overall Performance through December 2020

	YTD Target	YTD Actual
Maintain Infrastructure		
● Generation Market Readiness	99.40%	● 99.93%
● Transmission System Reliability	90.50%	● 92.84%
Financial Management		
● Debt Coverage Ratio (Q)	2.50	● 9.90
● O&M Budget Performance (\$M)	\$519.02	● \$508.76**
Energy Services		
● Greenhouse Gas (GHG) Saved (Tons)	13,235*	● 13,235
● MMBTUs Saved in State Facilities	99,334*	● 99,334
Workforce Management		
● Skilled Workforce: Retention (Q)	2,005	● 6,197
Safety Leadership		
● DART Rate	0.78	● 0.39
Environmental Responsibility		
● Environmental Incidents	50	● 29

*COVID Adjusted

**Preliminary EOY Results

YTD Performance Measure Status

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

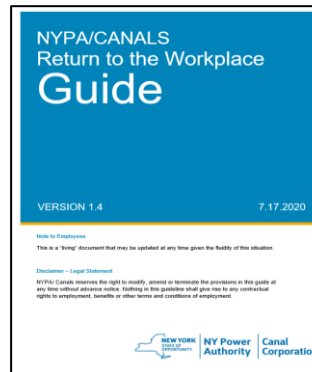


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2020 Accomplishments – COVID-19 Response

- ✓ **Responsible “Return To Work”** (RTW) plans
- ✓ **Robust Contact Tracing Program** and case tracking tool used to monitor known and possible exposures so quarantining can be swift and targeted
- ✓ **Communications** – maintaining engagement and empowering employees with information
- ✓ **Launched Economic Development Customer Assistance Program**
- ✓ **Countermeasures** – established six stages of countermeasures in preparation for second wave of COVID19
- ✓ **Coordination** – coordinate the shared activities of NY state utilities and power plant owners
- ✓ **Supported State COVID19 Response**
- ✓ **SUNY Upstate Partnership to Test Essential Utility Workers for COVID-19**



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



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2020 Accomplishments – Financial Management



\$1.2B Bond Issuance

*Bond Buyer's Deal of the Year 2020
in the Northeast Region*



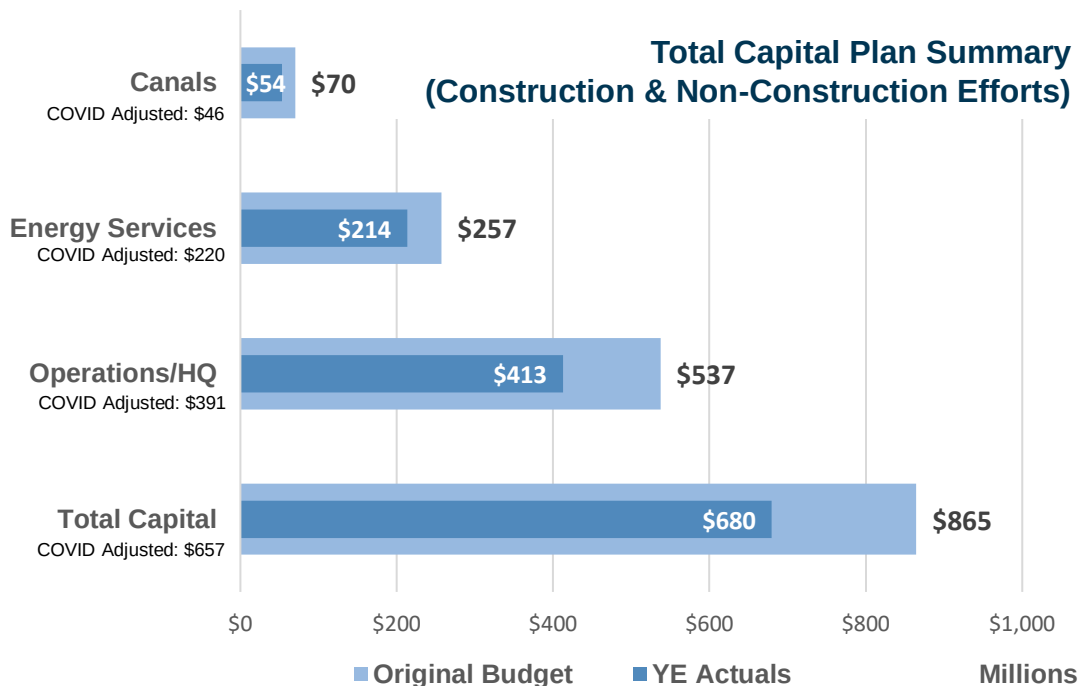
**Fixed Cost
Coverage Ratio**



Credit Rating

2020 Accomplishments – Management of Capital Portfolio

Capital Summary – Original Budget vs. YE Performance



YE Actuals are as of P.13 Preliminary Close – 01.15.21
Energy Services actuals exclude grants

Current Construction Status (Entire Organization)

2020 *Preliminary* Total Capital Spend is **\$680M** on a modified forecast (COVID-adjusted) of **\$657M**

3.5%
Over
Goal

There are currently **182** Projects actively in construction across New York State valued at **\$502M**

\$502M
Active

Of the active construction work, **28** projects across **41** locations are ***paused*** due to COVID impacts. This response is in alignment with the established Project Countermeasures plan.



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2020 Accomplishments – VISION2030

- ✓ Refreshed Mission, Vision, and Values
- ✓ Established Strategic Priorities, and Foundational Pillars

Our Values

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

STRATEGIC PRIORITIES



Preserve and
Enhance Hydropower



Expand
Transmission



Decarbonize
Natural Gas



Serve and Decarbonize
Customers and the State



Reimagine
the Canals

FOUNDATIONAL PILLARS

Digitization



Environment, Social,
and Governance



Diversity, Equity,
and Inclusion



Enterprise
Resilience



Resource
Alignment



NYPA'S VISION

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

NYPA'S MISSION

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



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VISION2030 – Ten Point Racial Justice and Equity Plan



Overall, NYPA's investment of \$682M in industry-leading programs will exemplify its commitment to diversity, equity and inclusion and expand opportunities in underserved communities, increase minority and women owned businesses and create a culture where all employees are valued.

- **\$500M Customer Energy Solutions programs in underserved communities** to advance energy equity.
- **Increase the annual incremental MWBE spend to \$160M** by investing in the participation of minority and women owned businesses in the supply chain through mentoring, education and outreach.
- **Triple the incremental investment of DEI programs to \$22.3M** and expand NYPA's commitment to develop, retain and engage staff by investing in training, career and leadership programs and establish programs to build trust and demonstrate equity. Build a pipeline of diverse clean energy workers by providing scholarships and education programs for students of color.

2021 State of the State – Reimagine | Rebuild | Renew

A Bold Agenda for Building the Green Economy



1. Build Large Scale Renewables
2. Start NY Manufacturing
3. Build Transmission Capacity
4. Create a Green Energy Workforce Training Program



Green Energy Program

Will Create a Total of 12,400 Megawatts of Green Energy; to Power 6 Million Homes; Directly Create More Than 50,000 Jobs, and Spur \$29 Billion in Private Investment All Across the State



Largest Off-Shore Wind Program in the Nation

Anchored by the Two Largest Offshore Wind Projects in the Nation



Initiative to Make New York a Global Wind Energy Manufacturing Powerhouse

Include Upgrades to Create Five Dedicated Port Facilities in Albany, Coeymans, South Brooklyn, Port Jefferson and Port of Montauk Harbor



Construction of a Green Energy Transmission Superhighway

Bring Clean Energy Generated Upstate to Needed Areas Downstate; Involves Several Project in Western New York, Mid-Hudson, and the Capital Region



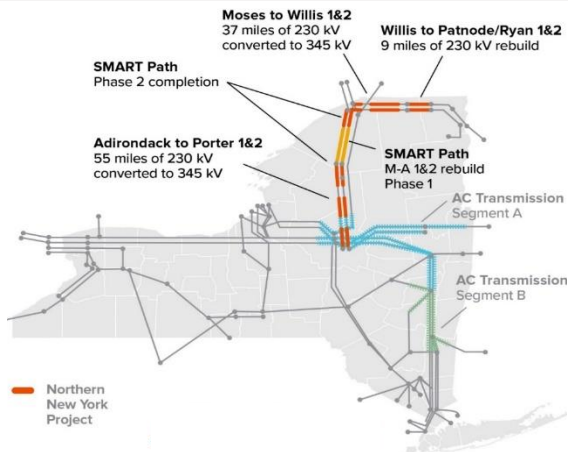
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VISION2030 – Expand Transmission

SMART Path

Project to provide a more resilient and reliable electric system upstate to **provide 900MW of renewable energy** to 900k homes statewide. **104 Structures installed; 21-mile section energized.**



AC Transmission Segment A

'Marcy to New Scotland Project' Public Policy Transmission Need (PPTN) project to **increase UPNY/SENY transfer limit by 350 MW** and address system congestion while improving ageing infrastructure. **NYPA acquired 37.5% ownership stake in a project.**



Northern New York

Establish a continuous 345 kV path in Northern NY **expanding the deliverability of approximately 1,000 MW of renewable generation** and address congestion. **First 'priority project'** under Accelerated Renewable Energy Growth and Community Benefit Act.





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Chief Operations Officer's Report

Joseph F. Kessler, P.E.

Executive Vice President & Chief Operating Officer

January 26, 2021

Level 1 KPIs: Year End December 2020

KPI Name	Year End Target	Year End Actual	Status

Optimize financial performance of generation & transmission assets

Generation Market Readiness	99.40%	99.93%	
Transmission System Reliability	90.50%	92.84%	

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

Environmental Incidents	50	29	
DART Rate	0.78	0.39	

Legend:



Meeting or exceeding target



Missing target



Significantly missing target



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Next Generation Niagara: Controls Upgrade in Progress

- Completed tasks
 - Demolished Exciter, Unit Control Board (UCB), & Governor Cabinets
 - New UCB & Independent Governor Control installed
 - Pulling cables in tunnels from Service & Relay Bldg. to Robert Moses
- Upcoming tasks for next month/quarter
 - Main Control Room Upgrades
 - Lighting
 - Operator Workstations
 - Video Display Wall
- Unit 12 Return to Service - May 2021
- Estimate At Completion:
\$213M contained in the \$1.1B Program



Lewiston Pump Generating Plant LEM

- PG-10 (the 11th unit overhaul) returned to service on Dec. 18th per the revised outage schedule (Covid-19 pause of 3 months)
- Project challenges:
 - Additional and unplanned work scope to replace the Motor Generator – Rotor Rim/Ledge and laminations
 - Covid-19 Pandemic/delay and the implementation of new work precautions.
- PG-1 is the 12th unit in the sequence, outage commenced on Jan. 4th
- Program costs remain on target within the approved \$460 Million Plan
- Program completion including re-work units, on schedule for December 2022





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Chief Commercial Officer's Report

Sarah Orban Salati

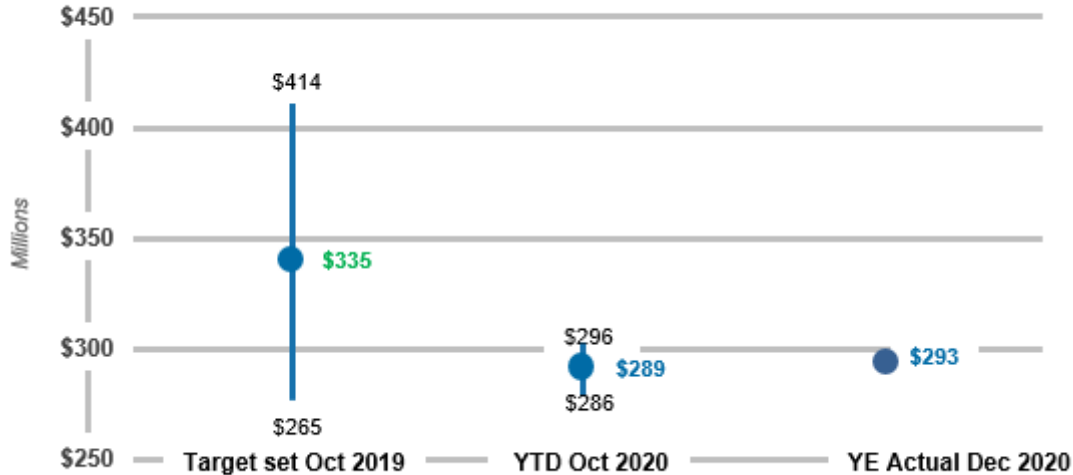
EVP & Chief Commercial Officer

January 26, 2021

Electricity Supply – Year End Results



Merchant Gross Margin



YE Target \$335M / COVID Adjusted \$311M

- 2020 Actual Merchant Gross Margin \$293M
- 2020 Energy and Capacity Hedge Settlements - \$19M & \$29M respectively



Economic Development



1,772 Megawatts

Power Allocated



406,106

Jobs Retained



\$21.3 Billion

Capital Committed

- Within Target
- Outside of Target
- Significantly Outside of Target Range



NY Power Authority

Customer Offerings – Year End Performance

Key Performance Indicator	Year End Results	Budgeted 2020 Target / COVID Adjusted YE Target
 Clean Energy Solutions	● \$214M Capital Spend ● \$16.8M Non-Utility Revenues	\$251M / \$220M \$26M / \$19M
 EVolve	● 25 Public DCFC Charging Ports at six sites	200 / 40 Ports
 New York Energy Manager	● 580M Data Records	600M / 600M  NY Power Authority
	● Within Target ● Outside of Target ● Significantly Outside of Target Range	

2020 Contributions to Customers and Clean Energy Priorities

Economic Development



Economic Development
Customer Assistance Programs
1.0 & 2.0

Providing financial relief and
price certainty

Nearly 50% subscribed

Distributed Energy Resources / Flexibility



Robust 230 MW solar PV &
35 MW battery storage
pipeline

Environmental Justice focus

Product & organizational
synergies from digital and
distributed energy

Transmission & Renewables

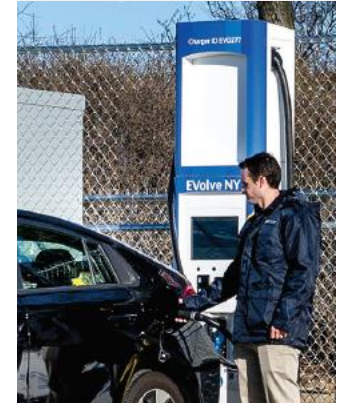


Over \$3B in development
acceleration

Onshore and Offshore
transmission focus

Over 200MW large scale
renewable and storage projects
secured for NY

eMobility



Largest non-Tesla DCFC charging
hub in Northeast at JFK

14 bus chargers installed at three
transit agencies

Kickstarted Master Bus Transit
Plan with NYSEERDA





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Chief Financial Officer's Report

Adam Barsky

EVP & Chief Financial Officer

January 26, 2021

PRELIMINARY 2020 YEAR-END RESULTS

In \$ Thousands	2020 Budget (\$)	2020 Current (\$)	Variance (\$)
Net Operating Income			Current vs Budget
Operating Revenue			
Customer Revenue	\$1,785,929	\$1,597,789	(\$188,139)
Market-Based Power Sales	524,543	403,910	(120,632)
Non Utility Revenue	30,128	18,711	(11,416)
Ancillary Service Revenue	45,417	32,546	(12,870)
NTAC and Other	194,244	215,137	20,894
Operating Revenue Total	2,580,259	2,268,094	(312,164)
Operating Expense			
Purchase Power	(623,424)	(432,313)	191,112
Ancillary Service Expense	(58,270)	(51,298)	6,972
Fuel Consumed	(147,683)	(109,047)	38,636
Wheeling	(644,109)	(650,343)	(6,234)
Operations & Maintenance	(612,582)	(597,590)	14,992
Other Expense	(79,885)	(69,286)	10,599
Covid-19 Expense*	0	(6,117)	(6,117)
Operating Expense Total	(2,165,954)	(1,915,994)	249,960
EBIDA Total	414,305	352,101	(62,204)
EBIDA NYPA	505,332	433,489	(71,843)
EBIDA Canals	(91,027)	(81,388)	9,639
Non Operating			
Interest and Other Expenses			
Interest & Other Expenses	(120,919)	(119,869)	1,050
Investment and Other Income	28,726	34,838	6,111
Mark to Market Adjustments	(359)	(8,029)	(7,670)
Depreciation & Amortization	(280,280)	(275,835)	4,446
Interest and Other Expenses Total	(372,832)	(368,896)	3,936
NET INCOME	\$41,473	(\$16,795)	(\$58,268)
		Unaudited	

Margins - Generation** (\$54,644)

Margins - Transmission*** (14,018)

Margins - Non Utility (13,017)

** Includes Merchant Gross Margin Variance of (\$42,840):
Budget @ \$335,449 vs Current @ \$292,609

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

Operating Expenses 19,474

Non-Operating Net 3,936

EBIDA: Earnings Before Interest Depreciation & Amortization

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

FCCR	2.1X	2.3X
DSCR	5.5X	9.9X



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YEAR-END VARIANCE ANALYSIS

BUDGETED YEAR-END NET INCOME **\$41,473**

Operating Variances

Variance Drivers

Margins – Generation	(54,644)	Due primarily to lower market prices and the resulting decrease of projected market-based power sales, partially offset by increased hydro generation at the Niagara and St. Lawrence facilities, favorable hedge settlements, and favorable capacity sales.
Margins – Transmission	(14,018)	Due primarily to higher than budgeted HTP RTEP payments, partially offset by increased transmission revenue requirements that went into effect in July.
Margins – Non-Utility	(13,017)	Due primarily to lower than budgeted Energy Efficiency revenue.
Operating Expenses	19,474	Due primarily to underspends in site operations & maintenance expenses, as well as other expenses.

Non-Operating Variances

Interest Expense, Net	3,936	Due primarily to a realized gain on sale of securities and lower than budgeted depreciation, partially offset by mark-to-market losses on the Authority's investment portfolio.

PRELIMINARY YEAR-END NET INCOME **(\$16,795)**



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January 26, 2021

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

[Oral Report Only]



Date: January 26, 2021

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Transfer of Canal Corporation OPEB Liabilities into the NYPA Trust

SUMMARY

The New York Power Authority's ("NYPA") Chief Financial Officer recommends that the NYPA Board of Trustees approve the addition of Canal Corporation's Other Post-Employment Benefits ("OPEB") Liabilities into the NYPA OPEB Trust effective January 1, 2021. Such an action will provide considerable benefit to NYPA largely by removing a significant liability from the NYPA Balance Sheet and providing more borrowing capacity to fund NYPA's strategic investments consistent with Vision 2030.

The Finance and Risk Committee, at its January 19, 2021 meeting, adopted a resolution recommending that the Trustees approve this action.

BACKGROUND

Other Post-Employment Benefits refers to the provision of health care coverage and other benefits by government agencies to retired employees and often to their spouses and other dependents. Aside from these benefits being provided to currently retired employees and their dependents, the government agencies also carry an obligation to provide benefits to currently active employees upon their future retirement, subject to certain eligibility rules defined by the government agency. In many cases, these benefits are reflected in collective bargaining agreements and are therefore contractual obligations.

The future obligation to provide post-employment benefits to both active and retired employees creates a liability of the agency. These obligations represent a multi-year stream of future benefits payments for retiree health care. NYPA adopted GASB 75 in 2017 which required reporting of future stream of any unfunded liabilities on its balance sheet.

Because the OPEB liabilities represent a multi-year stream of future benefits payments for retirees, spouses and dependents, the determination of the liabilities is provided through an actuarial assessment. The actuarial assessment is based upon an estimate of future benefits obligations that is discounted to the present value. The present value of the future obligations, when unfunded, is reported as an OPEB liability on the agency Balance Sheet.

To mitigate the potential impacts to NYPA's financial standing and credit ratings resulting from unfunded OPEB liabilities, in 2007 NYPA created the Power Authority of the State of New York Other Post-Employment Benefits Trust Agreement ("Trust Agreement"). The Board approved the initial funding of the Trust with \$100 million out of the Operating Fund and up to \$125 million of funding obtained through proceeds from the Authority's Commercial Paper Series 3 Notes. \$100 million was deposited into the Trust in 2007 and \$125 million was added in 2008.

DISCUSSION

NYPA assumed ownership of the NY State Canal Corporation in January 2017. The Canal Corporation has accrued OPEB liabilities for its current and future retired employees and beneficiaries. However, the Canal OPEB liability was never funded. Therefore, the full Canal Corporation OPEB liability appears on the NYPA consolidated Balance Sheet. The 2021 projected OPEB liability for the Canal Corporation is \$342 million. As is the case with NYPA, the Canal Corporation OPEB liability is determined based upon an actuarial analysis considering employee and retiree demographics, the retirement benefits provided to Canal Corporation retirees, projections of future healthcare costs and other relevant factors.

As the actuarial analysis is based upon a projection of multi-year healthcare benefits payments, these costs are present valued to the current year for reporting of the OPEB liability on the Balance Sheet. According to GASB 75, the present value rate used to discount the future projected benefit payments is based on the AA-rated Municipal Bond 20-Year Index rate (currently about 1.68 percent).

GASB 75 allows the use of a higher present value rate for Qualified Trusts. The discount rate used for the NYPA OPEB Trust is about 7 percent. At the much higher discount rate, OPEB liabilities have a much smaller present value. Therefore, less funds are required to be accrued in the Trust to pay for the OPEB liabilities. Canal Corporation OPEB liabilities, because they are converted to present value at a much lower discount rate, are considerably higher than they would be if pre-funded through a Qualifying Trust. Therefore, the impact to NYPA is twofold. First, the unfunded OPEB liabilities are reported on the NYPA Balance Sheet. Second, they are also larger in magnitude because of the lower discount rate used to compute the liabilities.

FISCAL INFORMATION

Since 2007, NYPA has contributed \$340 million to its OPEB Trust. The Trust has performed well with a projected value by 2021 of \$732 million. NYPA's OPEB liabilities are projected to be about \$537 million in 2021, leaving an estimated surplus of \$195 million. Because the NYPA OPEB liabilities are fully funded, there are no OPEB liabilities for NYPA's core business appearing on the NYPA Balance Sheet, providing an enhancement to NYPA's financial position, and borrowing capacity.

The Canal Corporation's OPEB liabilities on the NYPA Balance Sheet limit NYPA's borrowing capacity. Without the OPEB liability on the NYPA balance sheet, there would be more capacity to borrow additional funds without impacting the target debt to equity ratio consistent with the Transmission rate cases. Removal from the Balance Sheet of the 2021 projected OPEB Liability of \$342 million could increase borrowing capacity by an equivalent amount and increase NYPA's investment capacity by up to \$684M, which could be used to fund NYPA's strategic programs under Vision 2030.

The combination of the existing surplus in the NYPA OPEB Trust along with the negative impact of the unfunded Canal OPEB liabilities on NYPA's borrowing capacity suggest a reasonable solution to move the OPEB liabilities into the NYPA Trust Fund. There are significant benefits of including Canal Corporation in the OPEB Trust including lower expense on income statement (\$20M/year over 5.6 years), lower liability on the Balance Sheet (liability goes to zero from \$342M), the flexibility to optimize Trust surplus and improved capital capacity (\$684M).

The decision to transfer the OPEB liabilities into the NYPA Trust is not irrevocable and NYPA could later choose to reverse the decision if other factors change.

RECOMMENDATION

The Executive Vice President and Chief Financial Officer and the Finance and Risk Committee recommends that the Trustees approve the Transfer the Canal Corporation's Other Post-Employment Benefits ("OPEB") Liabilities into the NYPA OPEB Trust by an amendment to the OPEB Trust Agreement to include payment of benefits to retirees of NYPA and its subsidiaries.

While other options have been examined, no other near-term options exist that can provide as much long-term advantage to NYPA as the one that has been recommended. NYPA will continue to pursue efforts to reduce the costs for providing retiree benefits. However, such efforts will provide benefits to NYPA regardless of the decision to transfer Canal Corporation's OPEB liabilities to the NYPA Trust.

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 Executive Vice President and Chief Financial Officer be, and hereby is, authorized to enter into that certain First Amendment to Power Authority of the State of New York Other Post-Employment Benefits Trust Agreement to amend that certain Other Post-Employment Benefits Trust Agreement dated November 21, 2007 (the “*OPEB Trust Agreement*”) for the purpose of expressly including service providers of the Authority’s subsidiaries thereunder and otherwise updating the OPEB Trust Agreement, subject to the approval of such amendment by the Executive Vice President and General Counsel or his designee; and be it further

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

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



Date: January 26, 2021

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Smart Generation & Transmission Strategic Initiative -
Communications Backbone Program –
Capital Expenditure Authorization Request

SUMMARY

The Trustees are requested to approve additional capital expenditures in the amount of \$24,752,178 for the Communications Backbone Program ("Program"). The increased funding would be in addition to the \$153 million currently authorized by the Trustees, bringing the total Program cost to \$177,782,358.

The Finance and Risk Committee, at its January 19, 2021 meeting, adopted a resolution recommending that the Trustees approve the additional capital expenditures in the amount of \$24,752,178 for continued implementation of the Program.

BACKGROUND

In accordance with the Authority's Capital Planning and Budgeting Procedures, capital expenditures more than \$6 million require Trustee approval.

The Program was initially identified as a foundational element of the Authority's Smart Generation & Transmission ("Smart G&T") Strategic Initiative. The goal of the Program is to establish a dedicated, redundant communications network that builds on the Authority's existing infrastructure and is integrated into the long-term asset strategy while leveraging available infrastructure from independent dark-fiber service providers to reduce dependency on commercial telecommunication providers. With VISION2030, the Program continues to be a key enabler to achieving NYPA's strategic priorities among, including the development of new products and services.

Once completed, the Authority will have a dedicated, robust, secure, and scalable communications network that supports:

- Replacement of legacy point-to-point circuits that will inevitably need to be retired
- Increased data flow from a host of intelligent end-point devices deployed throughout the Authority's generation and transmission assets
- Enabling capabilities of key components of the Strategic Vision including the Integrated Smart Operating Center ("iSOC") and the Emergency Energy Control Center, and
- Improved analytics to promote improved business and operational decisions.

At the onset of the Program, the Authority evaluated three options when considering a solution for an improved communications system. The first option was to continue with a total

leased solution. Second, a total-owned solution, in which the Authority would deploy fiber optical ground wire ("OPGW") along all its transmission lines. Last, a hybrid solution utilizing a mix of fiber OPGW, digital microwave networks, and dark fiber leasing.

The hybrid solution offers the Authority the best value, including many of the controls and security benefits of a fully owned solution while reducing implementation costs and resource needs. The scope of the hybrid solution is to install OPGW, microwave communications, and utilize capitalized leases for dark fiber in the Authority's regions. The redundant network will leverage existing infrastructure and new installations including fiber OPGW which will be installed on the Authority's existing transmission towers. A new redundant microwave system will be installed in Northern NY and a new system will be installed in the Southeast NY region, leveraging existing Authority infrastructure as well as tower leasing sites for optimum communication and stability. Leasing of dark fiber provides a secondary fiber path to all major sites in each region.

DISCUSSION

Capital expenditures in the amount of \$153,030,180 were previously approved by the Trustees for implementation of Program as follows:

- \$19.78 million - March 2017,
- \$77.5 million - October 2018, and
- \$52.72 million - December 2019

OPGW has been installed on the following NYPA transmission lines: NR2, CCDA, DART44, GF5, GNS1, MMS, PS1 and PV20 which totals to completing installation of OPGW for approximately 210 miles out of 530 miles. Furthermore, the engineering for all OPGW work has been completed except the MSU section that has been descoped. Also, fiber electronics Phase 1 has been installed, and all equipment for Phases 2 and 3 have been purchased. A lease fiber connection from CEC to Plattsburgh has been completed. Lastly, a lease connection from Dolson Ave to White Plains has been commissioned.

After the spring 2020 outage work was canceled and contracts were paused, due to the COVID-19 pandemic, the Program cost and scope was re-evaluated, and the Estimate at Completion has increased to \$177,782,358 due to the following changes:

- Increased cost:
 1. OPGW installation cost increase:
 - a. Fall 2019 & Spring 2020 outage cancelations
 - b. Additional constraints required per regulatory permits
 - c. Addition of aviation subject-matter experts
 - d. Contingencies required for installation during the summer peak period, with potential 72-hour recalls
 - e. OPGW third party tie-in implementation re-evaluation
 2. Increase in the cost of the Northern New York microwave installation
 - a. Unplanned, unforeseen station upgrades
 - b. Temporary migration to and from the DANC dark fiber to commission the project
 3. New fiber lease connection between Plattsburgh and Albany was added as secondary path out of Northern New York to increase network resiliency. This was not an option at the onset of the Program but was added since MSU was descoped.
 4. The original estimate of 3% for project direct cost has been increased to 6% based

5. Capital indirect costs increased from 5% to 12%, due to the Authority's policy change in July 2020
- Decreased cost:
 1. OPGW installation on MSU1, MW1, and WPN1 transmission lines have been removed from the project scope

FISCAL INFORMATION

Payment associated with this Program will be made from the Authority's Capital Fund and approximately 65% of the cost will be recovered under the Authority's FERC approved formula rate. The proposed spending has been included in the approved 2021 Capital Budget and Four-Year Capital Plan.

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Senior Vice President – Technology & Innovation, the Senior Vice President – Power Supply, the Vice President – Project Management, the Vice President – Strategic Operations, and the Program Director recommend that the Trustees approve additional funding in the amount of \$24,752,178 to continue implementation of the Communications Backbone Program.

The Finance and Risk Committee, at its January 19, 2021, meeting, adopted a resolution recommending that the Trustees approve the additional capital expenditures for continued implementation of the Program.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, that pursuant to the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$24,752,178 are hereby authorized in accordance with, and as recommended in, the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the capital costs of the Smart Generation & Transmission Initiative Communications Backbone Program.

Capital

Smart Generation & Transmission Initiative
Communications Backbone Program

Expenditure Authorization

\$24,752,178

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: January 26, 2021

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

**Subject: Transmission Life Extension and Modernization Program –
Niagara Switchyard Life Extension & Modernization Project –
Revised Capital Expenditure Authorization Request**

SUMMARY

The Trustees are requested to authorize capital expenditures in the amount of \$121 million for continued implementation and completion of the Transmission Life Extension and Modernization Program – Niagara Switchyard Life Extension & Modernization Project (“Project”). The total estimated Project cost is \$276 million. The Trustees approved \$154.7 million in 2014. This request will release the final balance of the capital expenditures for the Project.

The Finance and Risk Committee, at its January 19, 2021 meeting, adopted a resolution recommending that the Trustees approve the additional capital expenditures.

BACKGROUND

In accordance with the Authority’s Capital Planning and Budgeting Procedures, capital expenditures in excess of \$6 million require Trustee approval.

The Transmission Life Extension and Modernization (“TLEM”) Program is a multiyear program that will upgrade the Authority’s existing transmission system to maintain availability, increase reliability and ensure regulatory compliance. The TLEM Program encompasses transmission assets in the Central, Northern, and Western regions and has been divided into several projects at an estimated cost of \$726 million.

The Niagara Switchyard is a critical component of the Authority’s Transmission system. The existing equipment at the Niagara Switchyard are at or near the end of life and require replacement. The Project, which commenced in 2014, is structured to prioritize the replacement of poor performing systems and sequenced in conjunction with planned equipment outages, internal resource availability and external utility upgrades.

DISCUSSION

The Niagara Switchyard Life Extension & Modernization Project is a multiyear project within the TLEM Program and includes replacement or upgrades to the 115kV and 230kV Switchyard equipment, including:

1. Oil Circuit Breakers (115kV & 230kV)
2. 13.8kV Switchgear
3. Autotransformers
4. Disconnect Switches and Motorized Disconnect Switches

5. Grounding (Sections)
6. Measurement Transformers
7. Insulators
8. Conductors

The Project is structured to align with the Niagara Protective Relay Replacement Project. Through 2020, two Autotransformers, sixteen (16) 115kv Circuit Breakers, nine (9) 230kV Circuit Breakers the 115kV Bus, disconnects switches and other ancillary equipment have been replaced. Beginning in 2021 the remaining project activities will replace two (2) Autotransformers, five (5) 115kv Circuit Breakers, twenty-one (21) 230kV Circuit Breakers, the 13.8kV Switchgear, motor and manually operated disconnect switches and other ancillary equipment. Completion is targeted in 2025, subject to approved outages. Completion is targeted in 2025, subject to approved outages.

Capital expenditures in the amount of \$154.7 million were previously authorized, of which \$105,610,052 has been spent through November 2020. The current request of \$121 million includes the remaining balance of capital funds needed to complete the Project, scheduled through 2025 and is comprised as follows:

Engineering/Design	\$ 10,650,000
Procurement	\$ 39,720,000
Construction/Installation	\$ 43,080,000
<u>Authority Direct and Indirect Expenses</u>	<u>\$ 27,550,000</u>
TOTAL	\$121,000,000

The total estimated cost to continue and complete execution of the project is \$276 million, of which \$266.9 million was previously presented to the Trustees in May 2014. The higher estimate is due to the increase in indirect costs as a result of the Authority's Policy Change adopted in July 2020, which increased the indirect capital allocation from 5% to 12%, retroactive to January 2020.

FISCAL INFORMATION

Payments associated with this Project will be made from the Authority's Capital Fund and will be recovered under the Authority's FERC approved formula rate. The proposed spending has been included in the approved 2021 Capital Budget and Four-Year Capital Plan.

RECOMMENDATION

The Senior Vice President Operations Support Services and Chief Engineer, the Senior Vice President – Power Supply, the Regional Manager – Transmission, the Vice President – Project Management and the Program Director recommend that the Trustees approve capital expenditures in the amount of \$121 million for the continued implementation and completion of the Niagara Transmission Life Extension & Modernization ("TLEM") Project.

The Finance and Risk Committee, at its January 19, 2021 meeting, adopted a resolution recommending that the Trustees approve the additional capital expenditures for continued implementation of the 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 pursuant to the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$121 million are hereby authorized in accordance with, and as recommended in, the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of the Transmission Life Extension and Modernization Program Niagara Switchyard Life Extension and Modernization Project.

<u>Capital Authorization</u>	<u>Expenditure</u>
Niagara Switchyard LEM Project	\$121,000,000

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



Date: January 26, 2021

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Transmission Life Extension & Modernization Program
Niagara Protective Relay Replacement Project –
Revised Capital Expenditure Authorization Request

SUMMARY

The Trustees are requested to authorize capital expenditures in the amount of \$18.3 million for continued implementation and completion of the Transmission Life Extension and Modernization Program – Niagara Protective Relay Replacement Project (“Project”). The total estimated Project cost is \$44.2 million. The Trustees approved \$25.9 million in 2012. This request will release the final balance of the capital expenditures for the Project.

The Finance and Risk Committee, at its January 19, 2021, meeting, adopted a resolution recommending that the Trustees approve the additional capital expenditures.

BACKGROUND

In accordance with the Authority’s Capital Planning and Budgeting Procedures, capital expenditures in excess of \$6 million require the Trustees’ approval.

The Transmission Life Extension Modernization (“TLEM”) Program is a multiyear program that will upgrade the Authority’s existing transmission system to maintain availability, increase reliability and ensure regulatory compliance. The TLEM Program encompasses transmission assets in the Central, Northern, and Western regions and has been divided into several projects at an estimated cost of \$726 million.

The Authority is facing a growing need to replace existing protective relaying systems at its facilities. This is due to many factors including unavailability of spare parts, lack of original equipment manufacturer support and poor reliability. This Project will continue to replace the existing protective relay systems at the Niagara Switchyard.

DISCUSSION

The Niagara Protective Relay Replacement Project is a multiyear project within the TLEM Program and includes protective relay upgrades to the 115kV and 230kV switchyard equipment. The protective relay system is a critical component of the power system and ensures its reliable and safe operation. The protective relay systems at the Niagara Switchyard are at or near the end of life and requires replacement. The Project, which commenced in 2012,

is structured to prioritize the replacement of poor performing relay systems and sequenced in conjunction with planned equipment outages, internal resource availability and utility upgrades.

This Project was initiated in 2012 and through 2020, protective relays have been upgraded in Bays 11,12,13,15,16,17,19, 20, 23 and the 115kV Bus sections. The remaining project activities include replacement of protective relays for Bays 10, 14, 18, 22, 24, 25 and 26 and the 230kV Bus sections. Completion is targeted in 2025, subject to approved outages. Capital expenditures in the amount of \$25.9 million were previously authorized, of which \$23,236,620 has been spent through November 2020. The current request of \$18.3 million includes the remaining balance of capital funds needed to complete the Project, scheduled through 2025 and is comprised as follows:

Engineering/Design	\$ 2,220,000
Procurement	\$ 2,460,000
Construction/Installation	\$ 4,980,000
<u>Authority Direct and Indirect Expenses</u>	<u>\$ 8,640,000</u>
TOTAL	\$18,300,000

The estimated cost to continue implementation and complete the Project is \$18.3 million. A total estimate of \$52.2 million was previously presented to the Trustees in October 2012. Through lessons learned and efficiencies gained, the new Project total estimate is \$44.2 million, which represents a decrease of \$8 million from the previous estimate.

FISCAL INFORMATION

Payments associated with this Project will be made from the Authority's Capital Fund and will be recovered under the Authority's FERC approved formula rate. The proposed spending has been included in the approved 2021 Capital Budget and Four-Year Capital Plan.

RECOMMENDATION

The Senior Vice President Operations Support Services and Chief Engineer, the Senior Vice President – Power Supply, the Regional Manager – Transmission, the Vice President – Project Management and the Program Director recommend that the Trustees approve capital expenditures in the amount of \$18.3 million for the continued implementation and completion of the Niagara Transmission Life Extension & Modernization Program – Niagara Protective Relay Replacement Project.

The Finance and Risk Committee, at its January 19, 2021 meeting, adopted a resolution recommending that the Trustees approve the additional capital expenditures for continued implementation of the 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 pursuant to the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$18.3 million are hereby authorized in accordance with, and as recommended in, the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of the Transmission Life Extension and Modernization Niagara Protective Relay Replacement Project.

<u>Capital Authorization</u>	<u>Expenditure</u>
Niagara Protective Relay Replacement Project	\$18,300,000

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



Date: January 26, 2021

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Marcy to New Scotland Transmission Upgrade Project
Capital Expenditure Authorization Request

SUMMARY

The Trustees are requested to approve capital expenditures in the amount of \$208,320,800 for the Marcy to New Scotland Transmission Upgrade Project ("Project"), formerly referred to as the AC Transmission Project. This funding will support final engineering, property acquisition, procurement, and construction of the transmission line upgrades, upgrades at the Marcy substation, and the remaining system upgrades to the connecting Transmission Owners.

NYPA filed, and the Federal Energy Regulatory Commission ("FERC") approved a Project cost of \$280.9 million or 37.5% of the total Project cost of \$750M. LS Power Grid New York Corporation I ("LS") also submitted and received FERC's approval for the balance of the Project. To date, the Trustees have approved capital expenditures in the amount of \$31.1 million for the Project. At this time, the total Project cost estimate is expected to be \$239.4 million, but the costs will continue to be assessed as the design and construction progresses. If additional funds are required, a future request will be made to the Finance and Risk Committee and Trustees.

The Finance and Risk Committee, at its January 19, 2021, meeting, adopted a resolution recommending that the Trustees approve capital expenditures for continued implementation of the Project. Project staff does not anticipate this need prior to 2023.

BACKGROUND

In accordance with the Authority's Capital Planning and Budgeting Procedures, capital expenditures in excess of \$6 million require the Trustees' approval.

In 2016, the Authority, together with North America Transmission ("NAT"), started Project development and subsequently submitted responses to the New York Independent System Operator ("NYISO") issued AC Transmission Public Policy Transmission Needs Project Solicitation. A Participation Agreement ("PA") was entered into by the Authority and NAT on June 7, 2018. The PA was signed by NAT which changed its name to LS Power Grid New York LLC ("LS LLC"). In January 2020, LS LLC assigned its rights in the Project and the PA to LS Power Grid New York Corporation I.

On April 8, 2019, the NYISO Board of Directors selected the Project as the winning proposal for segment A of the Transmission Need. In consideration of maintaining its purchase option under the PA, the Authority continued to fund 33% of Project development costs until July

28, 2020 when the Authority exercised its ownership option. Upon exercising its option, the Authority is responsible for 37.5% of the total Project costs. A reconciliation process for the change in responsibility of percentage of costs is currently ongoing.

DISCUSSION

The Project will benefit New York State's electric consumers by enabling the delivery of environmentally desirable power required to meet state energy goals, relieving uneconomic congestion, and replacing aging infrastructure while enhancing New York state's already high standard of system reliability.

The Project is anticipated to be in-service by December 2023 and consists of the following:

- Replacement of approximately twelve (12) miles of conductor on existing Authority-owned 345kV structures;
- Removal of approximately eighty (80) miles of existing National Grid-owned circuits (115kV, 230kV and 345kV);
- Installation of approximately eighty (80) miles of new double- or two new single-circuit 345kV circuits;
- Installation of a new 345kV switchyard at Princeton;
- Removal of the existing National Grid-owned 230kV Rotterdam substation; and
- Installation of a new 345kV substation at Rotterdam.

The Project also includes the upgrade of substation facilities, as determined during the system impact and facility studies. These costs are not included in the \$750 million estimate but are the responsibility of LS and the Authority.

The Trustees are requested to approval of capital expenditures of \$208.3 million. This funding will be utilized for:

Engineering/Licensing/Proposal	\$ 1,125,600
Property Rights Acquisition	\$ 22,318,900
Procurement	\$ 46,185,600
Construction	\$ 137,102,800
Authority Direct and Indirect Expenses	<u>\$ 1,587,900</u>
TOTAL	<u>\$ 208,320,800</u>

FISCAL INFORMATION

Payment associated with this Project will be made from the Authority's Capital Fund and will be eligible for cost recovery as approved by FERC. The proposed spending has been included in the approved 2021 Capital Budget and Four-Year Capital Plan.

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Senior Vice President – Power Supply, the Vice President – Project Management, the Vice President – Project and Business Development, and the Project Manager recommend that the Trustees approve capital expenditures in the amount of \$208,320,800 for the Marcy to New Scotland Transmission Upgrade Project.

The Finance and Risk Committee, at its January 19, 2021, meeting, adopted a resolution recommending that the Trustees approve the capital expenditures for continued implementation of the 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 pursuant to the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$208,320,800 for the Marcy to New Scotland Transmission Upgrade Project, are hereby authorized in accordance with, and as recommended in, the foregoing memorandum of the President and Chief Executive Officer;

Capital

**Marcy to New Scotland
Transmission Upgrade Project**

Expenditure Authorization

\$208,320,800

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: January 26, 2021

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: St. Lawrence-FDR Power Project
Long Sault Dam - Positive Restraint Barrier –
Capital Expenditure Authorization Request and Contract Award

SUMMARY

The Trustees are requested to approve capital expenditures in the amount of \$11,831,700 and to approve the award of a two-year contract to HOHL Industrial Inc., of Buffalo, NY, in the amount of \$8.1 million for engineering, procurement, and construction services required to install a Positive Restraint Barrier upstream of the Long Sault Dam (“LSD”) at the St. Lawrence-FDR Power Project (the “Project”). Interim funding in the amount of \$1,000,000 was previously approved by the Chief Operating Officer to initiate the design and engineering of the barrier system and begin the geotechnical planning.

Capital Expenditures in the amount of \$1,000,000, for preliminary engineering and planning, were previously approved by the President and Chief Executive Officer, bringing the total estimated Project cost to \$12.8 million.

The Finance and Risk Committee, at its January 19, 2021, meeting adopted a resolution recommending that the Trustees approve capital expenditures and the two-year contract award, for the implementation of the Project.

BACKGROUND

In accordance with the Authority’s Capital Planning and Budgeting Procedures, capital expenditures in excess of \$6 million require Trustee approval.

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

The LSD is a 2,960-foot-long curved concrete gravity structure with 30 gated spillway bays. At the south end of the spillways are three non-overflow blocks and an earth embankment. At the north end of the spillways are 16 non-overflow blocks, four of which contain service and equipment rooms.

The present operation of the LSD is to serve power generation, via operation of the spillway gates. The gates function to spill excess flows from the St. Lawrence River when necessary in the operation of the Robert Moses/Robert H. Saunders Power Dam. LSD spillway gates have been operated more frequently in recent years due to higher-than-normal river flows

and to account for economic conditions as Zone D has a high concentration of wind generation. Power Dam operations must still meet river flow requirements by spilling at LSD when these situations arise.

Following a fatality near the LSD in 2019 and to ensure safety and minimize access by unauthorized persons, the Authority at the direction of the Federal Energy Regulatory Commission (“FERC”) was tasked with installing a positive-restraint barrier system, upstream of the LSD. The Authority was required to submit a schedule for design to FERC for review by December 31, 2020 and complete construction by October of 2021. To meet this aggressive schedule, it is critical to award and start design immediately.

The scope of this Project includes engineering, design, fabrication, and installation of an approximately 4,500-ft boat denial barrier, upstream of the LSD. To support the installation and future maintenance of the barrier, design, engineering, and installation of a boat launch is also required and part of the scope.

DISCUSSION

The Authority issued Request for Proposal Q20-7073NF (“RFP”) through the Ariba system, which was advertised in the New York State *Contract Reporter* on October 26, 2020. Twenty (20) firms were invited into the Ariba Event and eighty-two (82) firms viewed the RFP on the Authority’s SSM website. A bid walk was held November 4, 2020, with eight (8) firms in attendance. One (1) addendum was issued November 13, 2020. Two (2) proposals were received on December 1, 2020.

Bidder

Hohl Industrial Services
JF Brennan Company

Location

Buffalo, NY
La Crosse, WI

Proposals were reviewed by an Evaluation Committee comprised of representatives from Engineering, Strategic Supply Management, St. Lawrence Maintenance, Program Controls, and Project Management. The proposals were evaluated based upon proposal completeness, experience, schedule, price, responsiveness to the requirements of the RFP, proposed team, and technical and commercial exceptions taken to the RFP.

HOHL’s proposal was found to be compliant with the requirements of the bid documents. Additionally, HOHL provided quality control, environmental, and safety plans. HOHL can meet the schedule and has demonstrated execution of similar work for another customer.

Preliminary funding in the amount of \$1,000,000 was recently approved to start engineering and required geotechnical plans and surveys. The total capital expenditure authorization request is comprised of the following:

Preliminary Engineering	\$ 750,000
Detailed Engineering	\$ 496,900
Construction/ Installation	\$ 9,560,000
Authority Direct and Indirect Expense	\$ 1,974,000
Total	\$12,831,700

FISCAL INFORMATION

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

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Regional Manager – Northern New York, the Vice President – Strategic Supply Management, the Vice President – Project Management, the Program Director – Project Management and the Finance Committee recommend that the Trustees approve capital expenditures in the amount of \$11,831,700 and approve a two-year contract to HOHL Industrial, Inc., of Buffalo, NY, in the amount of \$8.1 million, to support the work associated with the Long Sault Dam Positive Restraint Barrier 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 pursuant to the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$11,831,700 are hereby authorized for the Long Sault Dam Positive Restraint Barrier at the St. Lawrence-FDR Power Project in accordance with, and as recommended in, the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs for the Long Sault Dam Positive Restraint Barrier Project;

<u>Capital</u>	<u>Expenditure Authorization</u>
Long Sault Dam Positive Restraint Barrier Program	<u>\$11,831,700</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 HOHL Industrial, Inc. of Buffalo, NY, to provide construction services to complete the aforementioned project as recommended in the foregoing memorandum of the President and Chief Executive Officer;

<u>Contractor</u>	<u>Contract Approval</u>
HOHL Industrial, Inc. Buffalo, NY	<u>\$8,100,000</u>
(Q20-7073NF)	

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: January 26, 2021

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Blenheim-Gilboa Power Project –
Replace Breakers for BG Units 2-4 –
Capital Expenditure Authorization Request and Contract Award

SUMMARY

The Trustees are requested to authorize capital expenditures in the amount of \$10,544,000 and approve the award of a four-year contract to ABB Enterprise Software Inc., of Cary, NC, ("ABB") in the amount of \$1,458,135 to complete design, fabrication, testing, delivery, and installation of ISO Phase Bus work associated with three indoor SF6 generator/motor protection circuit breakers at the Blenheim-Gilboa ("B-G") Power Project (the "Project").

Capital Expenditures in the amount of \$250,000, for preliminary engineering and planning, were previously approved by the President and Chief Executive Officer, bringing the total estimated Project cost to \$10,794,000. Also, Interim funding for the contract award to ABB, in the amount of \$200,000, was approved by the Executive Vice President and Chief Operating Officer in December 2020.

The Finance and Risk Committee, at its January 19, 2021 meeting, adopted a resolution recommending that the Trustees approve the aforementioned request.

BACKGROUND

In accordance with the Authority's Capital Planning and Budgeting Procedures, capital expenditures in excess of \$6 million requires the Trustees' approval.

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

B-G Unit-1 breaker was replaced in May 2019, due to a catastrophic sudden failure in September 2018. Following a root cause analysis and to mitigate the risk of another failure, the breakers for BG Units 2-4 will be replaced with newly designed breakers. Consequently, the ISO Phase Bus will be modified to accommodate the new breaker design and a maintenance link will be added to facilitate maintenance, as was done for Unit-1.

DISCUSSION

The scope of this project includes design, fabrication, testing, site delivery, removal of existing, and installation of three indoor SF6 generator/motor protection circuit breakers (plus one spare breaker), its associated ISO Phase Bus work and maintenance disconnect links at the B-G Power Project. ABB will design and furnish the three breakers under a separate equipment contract. B-G operations and maintenance crew and resources will remove the existing and install the new breakers. ABB will also design, furnish, and install the ISO Phase Bus work and maintenance disconnect links associated with breakers as part of the RFP described below. One breaker and associated ISO Phase bus work installation per year is planned starting 2021 with anticipated project closeout to occur by December 2024.

The Authority issued Request for Proposal (“RFP”) No. Q20-7040MH, which was advertised in the *NYS Contract Reporter* on September 24, 2020. The Discovery tool of the ARIBA event was activated for this RFP. Thirteen potential bidders were invited/requested to participate to this RFP. On October 28, 2020, two proposals were received as summarized in the table below.

<u>Bidder</u>	<u>Location</u>
ABB Enterprise Software Inc. (ABB)	Cary, NC
Haugland Energy Group LLC (Haugland)	Plainview, NY

Proposals were reviewed by an Evaluation Committee comprised of representatives from Engineering, Quality Assurance, Strategic Supply Management, B-G Operations, and Project Management. The proposals were evaluated based upon proposal completeness, experience, schedule, price, responsiveness to the requirements of the RFP, proposed team, and technical and commercial exceptions taken to the RFP. Since the breakers are critical assets to the Bulk Electric System (“BES”), replacement must be procured from suppliers that are compliant with NERC CIP-013 requirements and qualified as BES equipment suppliers to the Authority. NERC-CIP13 review was completed and approved by the Authority’s cross functional team; the review consisted of questionnaire related to Network Security Risk, Platform and Data Security Risk, Technology Risk, Cyber Threat, and Manufacturing and Development Risk. The RFP event was also reviewed for compliance with Executive Order (“EO”) 13920 “Securing the United States Bulk Power System”. After reviewing the EO, it was considered not applicable to this Contract. Minority/Women-Owned Business Enterprise (“M/WBE”) and Service-Disabled Veteran-Owned Business (“SDVOB”) participation goals were waived on this RFP.

The committee concluded that ABB submitted the lowest-priced and technically acceptable bid. ABB has extensive experience in construction of this magnitude, has performed well on previous Authority projects, has demonstrated knowledge of the scope-of-work and is capable of completing this project in accordance with the schedule.

Preliminary funding in the amount of \$250,000 was previously approved to start this Project. The total capital expenditure authorization request is comprised of the following:

Preliminary Engineering	\$	50,000
Detailed Engineering	\$	262,500
Equipment Procurement / Fabrication	\$	5,500,000
Construction/ Installation	\$	1,935,000
Authority Direct and Indirect Expense	\$	3,046,500
Total	\$	10,794,000

FISCAL INFORMATION

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

RECOMMENDATION

It is requested that the Trustees approve capital expenditures in the amount of \$10,544,000 and approve a four-year contract to ABB in the amount of \$1,458,135 for engineering, procurement, and construction services, for implementation of the Project.

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Senior Vice President – Power Supply, the Vice President – Project Management, the Vice President – Project and Business Development, the Project Manager and the Finance and Risk Committee recommend that the Trustees approve capital expenditures in the amount of \$10,544,000 and the award of a four-year contract to ABB Enterprise Software Inc., in the amount of \$1,458,135 for engineering, procurement, and construction services for the ISO Phase Bus work at the Blenheim-Gilboa Power 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 pursuant to the Authority's Capital Planning and Budgeting Procedures, the Trustees hereby approve capital expenditures in the amount of \$10,544,000 for the replacement of breakers for the Blenheim-Gilboa ("BG") Power Project Units 2-4 in accordance with, and as recommended in, the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use capital funds, which may include proceeds of debt, to finance the costs of the B-G Units 2-4 Breaker Replacement Project.

<u>Capital</u>	<u>Expenditure Authorization</u>
Blenheim-Gilboa Power Project Replace BG 2-4 Unit Breakers	<u>\$10,544,000</u>

AND BE IT FURTHER RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to award a four-year contract to ABB Enterprise Software Inc. in the amount of \$1,458,135 for the design, fabrication, testing, delivery, and installation of ISO Phase Bus work associated with three indoor SF6 generator/motor protection circuit breakers at the B-G Power Project.

<u>Contractor</u>	<u>Contract Approval</u>
ABB Enterprise Software Inc. Cary, NC (Q20-7040MH)	<u>\$1,458,135</u>

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: January 26, 2020

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: **Niagara Power Project – Next Generation Niagara Program –
Mechanical and Electrical Upgrades Project –
Shaft Procurement – Contract Award**

SUMMARY

The Trustees' approval is requested to award a 15-year design, manufacture, and delivery contract to GE Renewables US LLC ("GE") of Greenwood Village, CO in the amount of \$18.1 million, which includes \$3.2 million in escalation over the life of the contract, for the Next Generation Niagara ("NGN") – Mechanical and Electrical Upgrades – Shaft Procurement Project. In addition, the Trustees are requested to waive the New York Buy America Act requirements regarding the purchase of steel components.

The Finance and Risk Committee, at its January 19, 2020 meeting, adopted a resolution recommending that the Trustees approve the aforementioned award and waiver.

BACKGROUND

Section 2879 of the Public Authorities Law and the Authority's Guidelines for Procurement Contracts require the Trustees' approval for procurement contracts involving services to be rendered for a period in excess of one year. In accordance with the Authority's Expenditure Authorization Procedures, the award of non-personal services contract in excess of \$6 million requires the Trustee approval.

NGN is comprised of four main projects: (1) controls upgrade, (2) mechanical and electrical upgrades, (3) 630-ton gantry crane replacement, and (4) penstock platform and inspections. This contract is for the design, manufacture, and delivery of the shafts, required to support the Mechanical and Electrical Upgrades project. The Mechanical and Electrical Upgrades project will have future separate contract(s) for procurement of other major material and to perform the remaining work.

The scope-of-work under this contract is for design, manufacture, and delivery of thirteen (13) shafts and one (1) thrust runner. The shafts will be received and installed by Authority craft in support of the NGN Mechanical and Electrical Upgrades.

It is anticipated that the next contract to be put forth for recommendation for this project will be the unit overhauls starting in 2023 which is tentatively scheduled to be presented to the Trustees for approval at the May 2021 meeting. The overall Program is estimated for completion by 2034.

DISCUSSION

A Request for Proposal (“RFP”), Inquiry No. Q20-6925HM, was issued through the Authority’s Ariba system and was advertised in the NYS *Contract Reporter* on March 24, 2020. A total of twelve (12) firms were invited into the Ariba Event with forty-five (45) firms having viewed the RFP on the Strategic Supply Management website. Seven (7) proposals were received through Ariba on June 12, 2020. The list of Bidders is below:

Company	Location
GE Renewables US LLC	Greenwood Village, CO
Andritz Hydro Corp	Charlotte, NC
Voith Hydro, Inc.	York, PA
Gracon LLC	Lafayette, CO
American Hydro	Buffalo, NY
Hydro Tech USA Inc.	Sault Ste Marie, ON, CA
Toshiba America Energy Systems	Charlotte, NC

The Evaluation Committee, comprised of representatives from Strategic Supply Management, Mechanical Engineering, Project Delivery, Control Room Operations, Mechanical Maintenance, Quality Assurance, Environmental, Health and Safety, Project Management, and Program Controls, reviewed and evaluated the proposals based on the evaluation criteria established in the RFP which included: best value, proposal completeness, technical capabilities, ability to meet the schedule, experience in performing this type of work, and safety records.

The RFP event was also reviewed for compliance with the Executive Order (“EO”) 13920 “Securing the United States Bulk Power System.” After reviewing this EO, it was considered not applicable to this Contract. The proposals were also reviewed for compliance with the New York Buy American Act. After review, it was recommended that this requirement be waived based on the cost savings of 50% that would be realized to the Authority. Requirements for Minority and Women-Owned Business Enterprise and Service-Disabled Veteran-Owned Business were waived on this contract.

The current Robert Moses shafts are original to the plant and have been in service for 60 years. As such, it is not likely that the existing shafts will provide Authority’s Robert Moses Niagara Power Plant with another 60+ years of reliable service. At Authority’s adjacent Lewiston Pump Storage Plant (“LPGP”), replacement of the shafts was not included in the base scope of the LPGP LEM program, but the option was immediately exercised when circumferential cracking was discovered upon the first unit disassembly. With this lesson learned and Authority’s collaborations with hydropower’s technical leads from domestic and international plants from CEATI’s Hydraulic Plant Life Interest Group, it is in the Authority’s best interest to replace all the shafts.

GE was determined to be the “best value” bidder based on its strength of experience, ongoing support throughout the life of the project, a well, thought-out project execution plan, high quality manufacturing processes, ability to address the Authority’s requirements and expectations, and best value proposal. This best value proposal also provides the competitive pricing that allows for the replacement of all 13 shafts and streamlining manufacturing and the

schedule over the course of this project. In addition, GE was awarded the Wicket Gate procurement contract which will allow for efficiencies on collaboration, communications, and a cost savings of \$350,000 if awarded this contract.

The proposed spending for this contract is in alignment with the original program estimates for this work, which was approved by the Trustees at their July 2019 meeting and has been included in the approved Four-Year Capital Plan.

FISCAL INFORMATION

Payment associated with this Project will be made from the Authority's Capital Fund. Funding in the amount of \$224 million has been authorized, to date, for the Next Generation Niagara Program, which is estimated at \$1.1 billion, to complete preliminary engineering, conduct engineering and design, material procurement, implement limited construction, and Authority direct/indirect costs. The balance, to be authorized at future Trustee meetings, is estimated at \$876 million for the remaining work associated with this program.

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Senior Vice President – Power Supply, the Vice President – Project Management, the Vice President – Strategic Supply Management, the Regional Manager and the Project Manager recommend that the Trustees approve the award of a 15-year contract in the amount of \$18.1 million, which includes \$3.2 million in escalation over the life of the contract, to GE Renewables US LLC of Greenwood Village, CO for design, manufacture, and delivery of the Shafts in support of the Next Generation Niagara Program. In addition, it is recommended that Trustees waive the requirements of the New York Buy America Act for this award.

The Finance and Risk Committee, at its January 19, 2020 meeting, adopted a resolution recommending that the Trustees approve the aforementioned award and waiver.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That pursuant to the Guidelines for Procurement contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted to award a 15-year contract to GE Renewables US LLC in the amount of \$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 memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the requirements of the New York Buy America Act for this contract award are hereby waived as recommended in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of the Next Generation Niagara – Mechanical and Electrical Upgrades Project – Shaft Procurement;

Contractor

**GE Renewables US LLC
Greenwood Village, CO**

RFP # Q20-6925HM

Contract Approval

\$18.1 million

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

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

January 26, 2021

4f. Cyber and Physical Security Committee Report: (Chair Michael Balboni)

[Oral Report Only]



Date: January 26, 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 3,600 kilowatts ("kW") of Expansion Power ("EP") to Life Technologies Corporation, a subsidiary of Thermo Fisher Scientific Inc. ("Life Technologies") to support the company's proposed expansion at its facility located at 3175 Staley Road, Grand Island (Erie County); (b) an allocation of 2,700 kW of EP to Stavatti Aerospace Ltd ("Stavatti") to support the company's proposed expansion at 9400 Porter Road, Niagara Falls (Niagara County); (c) an allocation of 5,000 kW of EP to Sucro Real Estate NY, LLC ("Sucro") to support the company's proposed expansion at 2303 Hamburg Turnpike, Lackawanna (Erie County); and (d) an allocation of 350 kW of EP to Trek, Inc. ("Trek") to support the company's proposed expansion at its facility located at 190 Walnut Street, Lockport (Niagara County). These projects are discussed in more detail below and in Exhibits "A", "B", "C", and "D".
2. Authorize a public hearing, in accordance with Public Authorities Law ("PAL") §1009, on a proposed form of contracts ("Proposed Contract") with Stavatti, Sucro, and Trek that would, along with Authority Service Tariff No. WNY-2 ("ST WNY-2"), apply to the sale of EP to Stavatti, Sucro, and Trek. Copies of the Proposed Contract and ST WNY-2 are attached as Exhibits "B-1", "C-1", and "D-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, 41,675 kW of unallocated EP and 70,376 kW of unallocated RP is available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).

DISCUSSION

Life Technologies Corporation

Established in 1962 in Grand Island, Life Technologies produces cell culture products for the pharmaceutical industry. These products are used in life sciences research and a wide variety of medical, diagnostic, therapeutic, and biotechnology applications.

Life Technologies is proposing to construct a 43,500 square foot (“sf”) addition to its Grand Island plant to accommodate the production of Animal Origin Free (“AOF”) and Advanced Granulation Technology products. The project would also support an upgraded Water for Injection system associated with a 12,000 sf facility renovation.

Life Technologies’ expansion project would involve a capital investment expenditure of at least \$175 million. This includes new building additions (a capital investment expenditure of nearly \$107 million), new equipment purchases (a capital investment expenditure of at least \$61 million), and facility renovations (a capital investment expenditure of more than \$7 million).

Life Technologies is planning to begin construction on several phases of the expansion project in 2021. The company would commit to the creation of 140 new, permanent, full-time jobs that would be located at the Grand Island facility. The average compensation/benefits are estimated to be \$48,210 per job.

The company applied for 5,316 kW of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 3,600 kW for a term of ten years.

The job creation ratio for the proposed allocation of 3,600 kW is 39 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 \$175 million would result in a capital investment ratio of \$48.6 million per MW. This ratio is above the historic average of \$17.3 million per MW.

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

Stavatti Aerospace Ltd

Founded in 2014, Stavatti is an aircraft manufacturer focused on the design and production of military, commercial, and general aviation aircraft.

Stavatti is proposing to establish an aircraft research, design, and prototyping facility at the Niagara Falls International Airport ("NFIA"). This would be housed at the site of the former U.S. Army Reserve Center. The NFIA meets the company's hangar, facilities, and runway requirements.

Stavatti's expansion project would involve a capital investment expenditure of nearly \$156 million. This includes the facility acquisition (a capital investment expenditure of \$1.3 million), manufacturing equipment (a capital investment expenditure of \$62.3 million), tooling jigs and fixtures (a capital investment expenditure of \$81.7 million), and workstations and software (a capital investment expenditure of \$10.7 million).

Stavatti is planning to have the project completed in 2022. The company would commit to the creation of 363 new, permanent, full-time jobs that would be located at the Niagara Falls facility. The average compensation/benefits are estimated to be \$204,820 per job.

The company applied for 3,625 kW of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 2,700 kW for a term of ten years.

The job creation ratio for the proposed allocation of 2,700 kW is 134 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 \$155.9 million would result in a capital investment ratio of \$57.8 million per MW. This ratio is above the historic average of \$17.3 million per MW.

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

Sucro Real Estate NY, LLC

Founded in 2014, Sucro operates sugar refineries at several locations throughout the United States, Canada, European Union, Caribbean, and Andean region.

Sucro is proposing to establish a full-scale sugar refinery at the former Bethlehem Steel site in Lackawanna. The plant would produce organic and conventional refined sugar, as bulk and packaged products, in both granular and liquid forms. The project site encompasses 12 acres which includes three large buildings requiring extensive renovations.

Sucro's expansion project would involve a capital investment expenditure of at least \$19 million. This includes land investment (a capital investment expenditure of \$250,000), renovations (a capital investment expenditure of \$11.95 million), initial refinery construction (a capital investment expenditure of \$5 million), and refinery expansion (a capital investment expenditure of \$1.8 million).

Sucro is planning to begin construction on multiple phases of the project in 2021. The company would commit to the creation of 50 new, permanent, full-time jobs that would be located at the Lackawanna facility. The average compensation/benefits are estimated to be \$62,638 per job.

The company applied for 9,000 kW of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 5,000 kW for a term of ten years.

The job creation ratio for the proposed allocation of 5,000 kW is 10 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 \$19 million would result in a capital investment ratio of \$3.8 million per MW. This ratio is below the historic average of \$17.3 million per MW.

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

Trek, Inc.

Founded in 1968, Trek is a manufacturer of electrostatic measurement and high voltage solutions. These products include high voltage power supplies and amplifiers and electrostatic voltmeters and discharge devices.

Trek is proposing to establish a High Voltage Center of Excellence (“HVCOE”) at its Lockport facility. The HVCOE would allow the company to centralize engineering resources, develop new manufacturing capabilities, and eliminate redundancies within its organization. Several sites are competing for this project and a hydropower allocation may help in the Lockport site being selected for the expansion.

Trek’s expansion project would involve a capital investment expenditure of at least \$6 million. This includes building expenses (a capital investment expenditure of \$2.8 million), production equipment (a capital investment expenditure of \$2 million), and facility expenses (a capital investment expenditure of nearly \$1.2 million).

Trek is planning to begin the expansion project in 2021. The company would commit to the creation of 30 new, permanent, full-time jobs that would be located at the Lockport facility. The average compensation/benefits are estimated to be \$76,710 per job.

The company applied for 395 kW of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 350 kW for a term of ten years.

The job creation ratio for the proposed allocation of 350 kW is 86 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 \$6 million would result in a capital investment ratio of \$17.1 million per MW. This ratio is below the historic average of \$17.3 million per MW.

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

CONTRACT INFORMATION

If approved, the new allocation to Life Technologies would be added to the customer’s existing hydropower contract. Authority Service Tariff No. WNY-2 (“ST WNY-2”) would also apply to the sale of the allocation.

The following is a summary of some of the matters that would be addressed in ST WNY-2 and the Proposed Contracts with Stavatti, Sucro, and Trek:

- 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 Stavatti, Sucro, and Trek and anticipates reaching agreement on a contract substantially similar to the form attached as Exhibits "B-1", "C-1" and "D-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 "B-1", "C-1" and "D-1". The form of the Proposed Contracts is consistent with recently approved contracts for the sale of EP and RP.

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

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

FISCAL INFORMATION

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

RECOMMENDATION

The Senior Vice President – Clean Energy Solutions, recommends that the Trustees:

1. Approve an allocation of 3,600 kW of EP to Life Technologies as described herein and in Exhibit "A" for a term of ten years; approve an allocation of 2,700 kW of EP to Stavatti as described herein and in Exhibit "B" for a term of ten years; approve an allocation of 5,000 kW of EP to Sucro as described herein and in Exhibit "C" for a term of ten years; and approve an allocation of 350 kW of EP to Trek as described herein and in Exhibit "D" for a term of ten years.
2. Authorize a public hearing, in accordance with PAL § 1009, on the Proposed Contracts with Stavatti, Sucro, and Trek attached as Exhibits "B-1", "C-1", and "D-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 3,600 kilowatts of Expansion Power (“EP”) be awarded to Life Technologies Corporation 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 2,700 kilowatts of EP be awarded to Stavatti Aerospace Ltd 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 5,000 kilowatts of EP be awarded to Sucro Real Estate NY, 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 an allocation of 350 kilowatts of EP be awarded to Trek, Inc. for a term of 10 years as detailed in the foregoing Memorandum and Exhibit “D”, 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 Stavatti Aerospace Ltd, Sucro Real Estate NY, LLC, and Trek, Inc. for the sale of the EP allocations (the “Contract”), the current forms of which is attached as Exhibits “B-1”, “C-1”, and “D-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:	Life Technologies Corporation (“Life Technologies”)
Location:	Grand Island, NY
County:	Erie County
IOU:	National Grid
Business Activity:	The company produces cell culture products for use in the pharmaceutical industry. These products are used in life sciences research and a wide variety of medical, diagnostic, therapeutic, and biotechnology applications.
Project Description:	Life Technologies is proposing to construct a 43,500 square foot addition to its existing manufacturing plant in Grand Island. The expansion would accommodate the production of Animal Origin Free and Advanced Granulation Technology products. The project would also support an upgraded Water for Injection system to increase the production capacity of approximately 12,000 square feet of renovated space.
Existing Allocation(s):	775 kW of Replacement Power 506 kW of ReCharge New York Power
Power Request:	5,316 kW of EP
Power Recommended:	3,600 kW of EP
Job Commitment:	
Base:	1,063
New:	At least 140 jobs
New Jobs/Power Ratio:	39 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$48,210
Capital Investment:	At least \$175 million
Capital Investment/MW:	\$48.6 million/MW
Other ED Incentives:	Applicant submitted applications to Erie County Industrial Development Agency and Empire State Development
Summary:	An allocation of low-cost hydropower, along with other support offered for this project, could incentivize Life Technologies to consider additional expansion opportunities at the Grand Island facility in the future.

APPLICATION SUMMARY
Expansion Power (“EP”)

Company:	Stavatti Aerospace Ltd (“Stavatti”)
Location:	Niagara Falls, NY
County:	Niagara County
IOU:	National Grid
Business Activity:	The company is a manufacturer of military, civilian, and general aviation aircraft.
Project Description:	Stavatti is proposing to establish an aircraft research, design, and prototyping facility at the Niagara Falls International Airport (“NFIA”).
Existing Allocation(s):	None
Power Request:	3,625 kW of EP
Power Recommended:	2,700 kW of EP
Job Commitment:	
Base:	0
New:	At least 363 jobs
New Jobs/Power Ratio:	134 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$204,820
Capital Investment:	At least \$155.926 million
Capital Investment/MW:	\$57.8 million/MW
Other ED Incentives:	(1) Niagara County Industrial Development Agency and (2) Empire State Development
Summary:	Stavatti has identified the NFIA as the potential location at which to establish an aircraft research, design, and prototyping facility. This would be housed at the site of the former U.S. Army Reserve Center. The NFIA meets the company’s hangar, facilities, and runway requirements. The project would support the creation of at least 363 new jobs and nearly \$156 million in capital spending. In addition to the building acquisition, the project includes the purchase of manufacturing equipment, tooling jigs, fixtures, workstations, and software. An allocation of low-cost hydropower, along with other support offered for this project, could incentivize Stavatti to consider additional expansion opportunities at the NFIA 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

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

Table of Contents

Schedule of Rates for Firm Power Service	Leaf No.
I. Applicability	3
II. Abbreviations and Terms.....	3
III. Monthly Rates and Charges.....	5
A. Expansion Power (EP) and Replacement Power (RP) Base Rates.....	5
B. EP and RP Rates no Lower than Rural/Domestic Rate	5
C. Monthly Base Rates Exclude Delivery Service Charges.....	5
D. Minimum Monthly Charge.....	5
E. Estimated Billing	6
F. Adjustments to Charges	7
G. Billing Period	7
H. Billing Demand	7
I. Billing Energy.....	7
J. Contract Demand	7
IV. General Provisions	8
A. Character of Service	8
B. Availability of Energy	8
C. Delivery	8
D. Adjustment of Rates	8
E. Billing Methodology and Billing.....	9
F. Payment by Customer to Authority.....	10
1. Demand and Energy Rates, Taxes	10
2. Transmission Charge	10
3. NYISO Transmission and Related Charges.....	10
4. Taxes Defined	11
5. Substitute Energy.....	11
6. Payment Information	11
7. Billing Disputes	
G. Rendition and Payment of Bills.....	12
H. Adjustment of Charges – Distribution Losses.....	13
I. Conflicts.....	13
V. Annual Adjustment Factor	14

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

APPLICATION SUMMARY
Expansion Power ("EP")

Company:	Sucro Real Estate NY, LLC ("Sucro")
Location:	Lackawanna, NY
County:	Erie County
IOU:	National Grid
Business Activity:	The company operates sugar refineries at several U.S. and international locations.
Project Description:	Sucro is proposing to establish a full-scale sugar refinery at the former Bethlehem Steel site in Lackawanna.
Existing Allocation(s):	None
Power Request:	9,000 kW of EP
Power Recommended:	5,000 kW of EP
Job Commitment:	
Base:	0
New:	At least 50 jobs
New Jobs/Power Ratio:	10 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$62,638
Capital Investment:	At least \$19 million
Capital Investment/MW:	\$3.8 million/MW
Other ED Incentives:	(1) Erie County Industrial Development Agency, (2) Empire State Development, (3) National Grid, and (4) National Fuel Gas Company
Summary:	Sucro is proposing to develop a full-scale sugar refinery at the former Bethlehem Steel site in Lackawanna. The project site encompasses 12 acres which includes three large buildings requiring extensive renovations. The plant would produce organic and conventional refined sugar in both granular and liquid forms. The project would support the creation of at least 50 new jobs and \$19 million in capital spending. This includes land investment, renovation, and refinery construction costs. An allocation of low-cost hydropower, along with other support offered for this project, could incentivize Sucro to consider additional expansion opportunities at the Lackawanna site 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

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

Table of Contents

Schedule of Rates for Firm Power Service	Leaf No.
I. Applicability	3
II. Abbreviations and Terms.....	3
III. Monthly Rates and Charges.....	5
A. Expansion Power (EP) and Replacement Power (RP) Base Rates.....	5
B. EP and RP Rates no Lower than Rural/Domestic Rate	5
C. Monthly Base Rates Exclude Delivery Service Charges.....	5
D. Minimum Monthly Charge.....	5
E. Estimated Billing	6
F. Adjustments to Charges	7
G. Billing Period	7
H. Billing Demand	7
I. Billing Energy.....	7
J. Contract Demand.....	7
IV. General Provisions	8
A. Character of Service	8
B. Availability of Energy	8
C. Delivery	8
D. Adjustment of Rates	8
E. Billing Methodology and Billing.....	9
F. Payment by Customer to Authority.....	10
1. Demand and Energy Rates, Taxes	10
2. Transmission Charge	10
3. NYISO Transmission and Related Charges.....	10
4. Taxes Defined	11
5. Substitute Energy.....	11
6. Payment Information	11
7. Billing Disputes	11
G. Rendition and Payment of Bills.....	12
H. Adjustment of Charges – Distribution Losses.....	13
I. Conflicts.....	13
V. Annual Adjustment Factor	14

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:	Trek, Inc. (“Trek”)
Location:	Lockport, NY
County:	Niagara County
IOU:	New York State Electric & Gas
Business Activity:	The company is a manufacturer of electrostatic measurement and high voltage solutions.
Project Description:	Trek is proposing to establish a High Voltage Center of Excellence (“HVCOE”) at their Lockport facility. Several sites are competing for this project and a hydropower allocation may help in the Lockport site being selected for the expansion.
Existing Allocation(s):	None
Power Request:	395 kW of EP
Power Recommended:	350 kW of EP
Job Commitment:	
Base:	122
New:	At least 30 jobs
New Jobs/Power Ratio:	86 jobs/MW
New Jobs - Avg. Wage and Benefits:	\$76,710
Capital Investment:	At least \$6 million
Capital Investment/MW:	\$17.1 million/MW
Other ED Incentives:	Applicant submitted applications to Niagara County Industrial Development Agency and Empire State Development
Summary:	Trek is considering its Lockport site for the creation of a HVCOE. Several other sites are competing for this project and an allocation of low-cost hydropower, along with other support offered, could incentivize Trek to select its Lockport facility for the expansion. The establishment of a HVCOE would allow the company to centralize engineering resources, develop new manufacturing capabilities, and eliminate redundancies within their organization. The project would support the creation of at least 30 new jobs and \$6 million in capital spending. This includes construction costs, production equipment, and capital facility expenses.

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

Table of Contents

Schedule of Rates for Firm Power Service	Leaf No.
I. Applicability	3
II. Abbreviations and Terms.....	3
III. Monthly Rates and Charges.....	5
A. Expansion Power (EP) and Replacement Power (RP) Base Rates.....	5
B. EP and RP Rates no Lower than Rural/Domestic Rate	5
C. Monthly Base Rates Exclude Delivery Service Charges.....	5
D. Minimum Monthly Charge.....	5
E. Estimated Billing	6
F. Adjustments to Charges	7
G. Billing Period	7
H. Billing Demand	7
I. Billing Energy.....	7
J. Contract Demand.....	7
IV. General Provisions	8
A. Character of Service	8
B. Availability of Energy	8
C. Delivery	8
D. Adjustment of Rates	8
E. Billing Methodology and Billing.....	9
F. Payment by Customer to Authority.....	10
1. Demand and Energy Rates, Taxes	10
2. Transmission Charge	10
3. NYISO Transmission and Related Charges.....	10
4. Taxes Defined	11
5. Substitute Energy.....	11
6. Payment Information	11
7. Billing Disputes	11
G. Rendition and Payment of Bills.....	12
H. Adjustment of Charges – Distribution Losses.....	13
I. Conflicts.....	13
V. Annual Adjustment Factor	14

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Monthly Rates and Charges

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

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

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

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

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

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

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Estimated Billing

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

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

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

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

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

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

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

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

F. Adjustments to Charges

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

G. Billing Period

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

H. Billing Demand

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

I. Billing Energy

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

J. Contract Demand

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

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology

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

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

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges

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

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

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

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

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

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

7. Billing Disputes

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

G. Rendition and Payment of Bills

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

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

H. Adjustment of Charges – Distribution Losses

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

I. Conflicts

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

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

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

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

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

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

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

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

Measuring Year -1 (2011)

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

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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



Date: January 26, 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 \$6 million, as well as personal services contracts in excess of \$2 million if low bidder or best value, or \$1 million if sole-source, single-source or other non-competitive awards.

The Authority’s EAPs also require the Trustees’ approval when the cumulative change order value of a personal services contract exceeds \$500,000, or when the cumulative change order value of a non-personal services, construction, equipment purchase, or non-procurement contract exceeds the greater of \$6 million or 25% of the originally approved contract amount not to exceed \$6 million.

DISCUSSION

Awards

The Trustees are requested to approve the award and funding of the multiyear procurement (services) contracts listed in Exhibit “A,” where the EAPs require approval based upon contract value or the terms of the contracts will be more than one year. Except as noted, all of these contracts contain provisions allowing the Authority to terminate the services for the Authority’s convenience, without liability other than paying for acceptable services rendered to the effective date of termination. Approval is also requested for funding all contracts. Except as noted, these contract awards do not obligate the Authority to a specific level of personnel resources or expenditures.

The issuance of multiyear contracts is recommended from both cost and efficiency standpoints. In many cases, reduced prices are negotiated for these long-term contracts. Since these services are typically required on a continuous basis, it is more efficient to award long-term contracts than to rebid these services annually.

Extensions

Although the firms identified in Exhibit “B” have provided effective services, the issues or projects requiring these services have not been resolved or completed and the need exists for continuing these contracts. The Trustees’ approval is required because the terms of these contracts will exceed one year including the extension, the term of extension of these contracts will exceed one year and/or because the cumulative change-order limits will exceed the levels authorized by the EAPs in forthcoming change orders. The subject contracts contain provisions allowing the Authority to terminate the services at the Authority’s convenience, without liability other than paying for acceptable services rendered to the effective date of termination. These contract extensions do not obligate the Authority to a specific level of personnel resources or expenditures.

Extension of the contracts identified in Exhibit “B” is requested for one or more of the following reasons: (1) additional time is required to complete the current contractual work scope or additional services related to the original work scope; (2) to accommodate an Authority or external regulatory agency schedule change that has delayed, reprioritized or otherwise suspended required services; (3) the original consultant is uniquely qualified to perform services and/or continue its presence and rebidding would not be practical or (4) the contractor provides proprietary technology or specialized equipment, at reasonable negotiated rates, that the Authority needs to continue until a permanent system is put in place.

The following is a detailed summary of each recommended contract award and extension.

Contract Awards in Support of Business Units/Departments and Facilities:

Utility Operations – Environmental, Health & Safety

Due to the need to meet and maintain the Authority’s project schedule, the proposed personal services contract with **First Environment, Inc. (“FEI”) (4500326590)**, for Verification Services of Reported Inventory to the Climate Registry became effective December 10, 2020, with an interim award amount of \$15,000, subject to the Trustee’s ratification, in accordance with the Authority’s Guidelines for Procurement Contracts and EAP’s. Staff recommends the award of contract to FEI which is technically and commercially qualified and was awarded using discretionary spend. The contract is for an intended term of five years, subject to the Trustees’ approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$109,225. It should be noted that FEI is a Service-Disabled Veteran-Owned Business and a Small Business Enterprise.

Utility Operations – Engineering

The proposed personal services contracts with **AEIS LLC dba Atlas Evaluation & Inspection Services (“AEIS”), LPI, Inc. (“LPI”) and Hatch Associates Consultants, Inc. (“Hatch”), (Q20-7056CC)** would provide Failure Analysis and Metallurgical Testing service. Failure Analysis and Metallurgical Testing is the process of investigating the root cause of a failure in the facilities and how to prevent a recurrence. The services consist of providing equipment materials and labor required to sample, examine, test, and analyze metallic and other materials used in the Authority’s or Canals facilities. 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. Five proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to AEIS, LPI and Hatch which are technically and commercially qualified and meet the bid requirements on the basis of "best value," which optimizes quality, cost and efficiency among responsive and responsible offerors. These contracts are for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contract, \$2 million. It should be noted that AEIS is NYS certified Minority-owned Business Enterprise and a NYS certified Women-owned Business Enterprise. It should also be noted that AEIS is a Small Business Enterprise.

Utility Operations – Enterprise Resilience

The proposed personal services contracts with **Burns & McDonnell Consultants, Inc. ("BMC")**, **Ernst & Young U.S. LLP ("EY")**, **Guidehouse, Inc. (Guidehouse")**, **Deloitte & Touche LLP ("Deloitte")** and **TRC Engineers, Inc. ("TRC") (Q20-7003SS)** would provide Enterprise Resilience Program Consulting 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. Forty-two firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Fourteen proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to BMC, EY, Guidehouse, Deloitte and TRC which are technically and commercially qualified and meet the bid requirements on the basis of "best value," which optimizes quality, cost and efficiency among responsive and responsible offerors. These contracts are for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contract, \$6 million. It should be noted that TRC is a Small Business Enterprise.

Utility Operations – Facility & Infrastructure PM

The proposed non-personal services contract with **Oak Ridge Hauling LLC ("ORH") (Q20-7088JM)** would provide Recycling and Trash Removal services for the Clarence D. Rappleyea (Centroplex) building. This contract will cover the pickup of paper and cardboard recycling in addition to supplying construction and metal dumpsters. The selected vendor will also provide maintenance and repair services to two compactors. 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. Four firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Two proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to ORH which is technically and commercially qualified and meets the bid requirements on the basis of "lowest value," which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of three years, beginning on or about March 1, 2021, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$100,000.

Utility Operations – Facility & Infrastructure PM

The proposed sole-source maintenance services contract with **Technical Building Services, Inc. ("TBS") (4500326436)** would provide BAS Repair and Maintenance services for the Clarence D. Rappleyea (Centroplex) building. The building is equipped with an outdated,

proprietary Honeywell Building Management System (“BMS”) which was installed in 2002 and is beyond its useful life. The Authority will be undergoing a BMS study in 2021 with the goal of identifying a replacement system for installation and commissioning in 2022. The proprietary nature of the system greatly limits the number of available support vendors and the learning curve associated with bringing a new vendor in is estimated to be 18-24 months. TBS possesses the licenses required by Honeywell to service the system. The contract is for an intended term of two years, beginning on or about February 1, 2021, subject to the Trustees’ approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$200,000. It should be noted that TBS is a Small Business Enterprise.

Utility Operations – Power Supply

The proposed 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”) (A20-00237DW)** would provide Wastewater Removal Services for the Richard M. Flynn Power Plant. The Richard M. Flynn Power Plant will utilize the contractors to provide supervision, labor, materials and equipment to load, transport and dispose of between 7,000-60,000 gallons of wastewater from a 100,000-gallon storage tank and up to 1,000 gallons of biomass sludge from a holding tank to a designated facility in the Suffolk County Sewerage treatment Plant at Bergen point in West Babylon. 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. Eight 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, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to Clear River and USS which are technically and commercially qualified and meet the bid requirements on the basis of “lowest value,” which optimizes quality, cost and efficiency among responsive and responsible offerors. The contracts are for an intended term of five years, subject to the Trustees’ approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contract, \$1 million. It should be noted that Clear River and USS are Small Business Enterprises.

Utility Operations – Project Management

The proposed construction services contract with **Crown Castle International Corporation dba Crown Castle Fiber LLC (“CCF”) (Q20-7054MR)** would provide support the Communication Backbone Program (“CBP”) Dark Fiber installation from the NYPA White Plains Office to NYSTA Route I-287 East Exit 6. The dark fiber connection project will support the Authority’s CBP, part of the Smart Generation & Transmission (“SG&T”) Initiative, which was established to deploy a robust, secure, and scalable communications network. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority’s website. Fifteen firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Two proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to CCF 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 twenty years, subject to the Trustees’ approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$338,000 for construction. In addition, the term includes the twenty-year lease and maintenance agreements.

Extensions and/or Additional Funding Requests:

Business Services – Corporate Finance

The Authority solicited proposals for Financial Advisory Services for Energy Projects under RFP inquiry **Q19-6713RM**. On March 31, 2020, the Trustees approved a five-year personal services contracts to **Advanced Automation Corporation (“AAC”)**, **BNP Paribas Securities Corporation (“BNP”)**, **CCA Capital LLC (“CCA”)**, **Credit Agricole Corporate and Investment Bank (“CAC”)**, **Ernst & Young LLP (“EY”)**, **Guidehouse (fka Navigant Consulting, Inc. (“Guidehouse”))**, **J.P. Morgan Securities LLC (“JPM”)**, and **Rockfleet Financial Services, Inc. (“RFS”)** in the amount of \$2 million to provide Financial Advisory services for Energy Projects consulting services. On July 28, 2020, the Trustees approved **CohnReznick Capital Market Securities LLC (“CohnReznick”)** who was also selected for recommendation of award but was inadvertently left off the memo. On December 15, 2020, the aggregate value was increased by \$500,000 making the total \$2.5 million. Staff requests Trustee approval for additional funding, to date \$1.85 million has been released, and it is recommended to increase the aggregate funding in the amount of \$5 million which will increase the total aggregate amount to \$7.5 million. Staff envisions that the multitude of benefits that the Authority continues to see from these contracts warrants an additional increase in the aggregate funding amount to support new and ongoing initiatives needed to support the Authority’s Financial Services.

Commercial Operations – Customer Business Development

On September 20, 2019, the Trustees authorized the execution of Power Purchase Agreements (“PPA”) to **SunPower Corporation dba Solar Star Big Apple BTM LLC (“Solar Star”) (Q19-6703HM)**, to commence the design development process of a solar photovoltaic (“PV”) system with battery storage at the Port Authority of New York and New Jersey (“PANYNJ”) John F. Kennedy (“JFK”) International Airport. The Trustees approved the annual cost of the PPA with SunPower and GSRP for \$856,851 per year for a twenty-year term (total amount \$17,137,020) based on a preliminary budget analysis. These two agreements form the “back to back” PPA construct where NYPA purchases power under the primary PPA and then sells the power to the customer under the Power Sales Contract (“PSC”). The maximum estimated annual cost of the PPA with Solar Star is projected to be \$856,851 per year for up to a 25-year term based on a preliminary budget analysis. These costs, plus an administrative fee of three percent, will be directly billed to PANYNJ under the PSC. During the design and development phase of the project, it was deemed to be economically more advantageous for the project to have a term of 25 years versus 20 years. Staff requests Trustee approval for an additional five-year term and additional funding of \$4,284,255 (total value \$21,421,275) with the execution of a PPA with Solar Star and in parallel a PSC with the PANYNJ. Upon execution of the PPA, Solar Star will commence construction of the Project, with the first estimated delivery of the Products under the PPA is expected to be October 30, 2022.

Utility Operations – Engineering

On July 14, 2015, the Authority issued a one-year construction contract to **Greenman-Pedersen, Inc. (“GPI”) (4600003011)** in the amount of \$2.2 million to provide on-call engineering services. The extension is needed as GPI is the Engineer of Record (“EOR”) for an active project and is needed to support the completion of the project. This contract extension will allow time to provide technical support during the construction, commissioning, and close-out of the project. Interim approval is requested for the extension of the contract from December 31, 2020 to January 26, 2021 for the continuation of services, subject to the Trustees’ ratification. Staff requests Trustee approval for the extension of the GPI contract for a two-year term from January 1, 2021 through December 31, 2022. No additional funding is being requested at this time.

Utility Operations – Facility & Infrastructure PM

On March 11, 2020, the Authority issued a one-year construction contract to **Donjon Marine Company, Inc. (“Donjon”) (4600003904)** in the amount of \$5 million to provide preparation, transportation, and placement of obsolete materials in accordance with New York State Department of Environmental Conservation (“NYSDEC”) Material Preparation Guidelines and Protocol for transportation and artificial reef replenishment. The materials to be “reefed” have been supplied by New York Power Authority (“Authority”), New York State Canal Corporation (“Canals”), and other agencies. As the State’s Artificial Reef Program and Governor Cuomo’s Artificial Reef Initiative continues, it is the Authority’s intent to provide an active role and ongoing support of this program. Staff requests Trustee approval for the extension of the Donjon contract for one-year from March 10, 2021 through March 9, 2022. The original RFP was bid as a multi-year service contract, for which the Authority elected to only authorize a one-year term. No additional funding is being requested at this time.

Utility Operations – Facility & Infrastructure PM

On January 29, 2020, the Authority issued a one-year construction contract to **Eaton Corporation (“Eaton”) (4500317982)** in the amount of \$2.9 million to provide the East Dam Hydro Plant rehabilitation for the Village. The Authority is managing and executing this project under a separate agreement between the Authority and the Village. The cost of the project is wholly reimbursable by the Village. Due to delays from the COVID-19 pandemic and extra repairs such as trash racks and trash rake, recently requested by the Village, this contract extension will allow time to complete the rehabilitation. Staff requests Trustee approval for the extension of the Eaton contract from January 28, 2021 through December 31, 2021 to complete the East Dam Hydro Plant Rehabilitation project for the Village of Potsdam. No additional funding is being requested at this time.

Utility Operations – Transmission Project Management

As part of its relicensing of the Niagara Power Project in 2006, the Authority agreed to develop and maintain certain recreational facilities in Erie County. In partial fulfillment of this commitment, in 2009 the Authority entered into a Memorandum of Understanding (“MOU”) with **Buffalo River Fest Park LLC (“BRP”)** to operate and maintain the Park at 41 Hamburg Street, Buffalo NY 14204. Pursuant to this MOU and the Operation and Maintenance Agreements entered into pursuant thereto, BRP has continuously operated and maintained the Park since that time. The current Operation and Maintenance Agreement expires on December 31, 2020 and NYPA desires to extend the maintenance contract with Buffalo River Fest Park LLC. NYPA has been satisfied with the quality of the maintenance performed on the park in the past eight years and wishes to continue this relationship. Staff requests Trustee approval for the extension of the BRP contract for a three one-year terms running January 1st to December 31st each year 2021, 2022 and 2023. Approval is also requested for additional funding, \$213,600 based on an annual cost of \$71,200.

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 Vice President – Strategic Supply Management; the Vice President – Project Management; the Vice President – Environmental, Health & Safety; the Vice President –Engineering; the Vice President – Business Development; the Vice President – New York Energy Manager; the Vice President – Enterprise Resilience; Assistant General Counsel; the Regional Manager of SENY; Treasurer; recommend that the Trustees approve the award of multiyear procurement (services) and other contracts to the companies listed in Exhibit “A,” and the extension and/or funding of the procurement (services) contracts listed in Exhibit “B,” for the purposes and in the amounts discussed within the item and/or listed in the respective exhibits.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award and funding of the multiyear procurement services contracts set forth in Exhibit "A," attached hereto, are hereby approved for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the contracts listed in Exhibit "B," attached hereto, are hereby approved and extended for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing memorandum of the President and Chief Executive Officer; and be it further

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

<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>
UTILITY OPERATIONS – AIR & SUSTAINABILITY PROGRAM	FIRST ENVIRONMENT, INC. Butler, NJ (4500326590)	12/10/20	Provide Verification Services of Reported Inventory to the Climate Registry	12/09/25	B/P	\$15,000		\$109,225*
*Note: represents total for up to 5-year term; Interim requested for December 10, 2020 start and \$15,000 amount								
UTILITY OPERATIONS - ENGINEERING	Q20-7056CC; 2 Awards 1. AEIS LLC dba ATLAS EVALUATION & INSPECTION SERVICES ♦ South Plainfield, NJ 2. HATCH ASSOCIATES CONSULTANTS, INC. Amherst, NY	01/26/21 (on or about)	Provide Failure Analysis and Metallurgical Testing service	01/25/26	B/P			\$2 million *
*Note: represents total aggregate value for a 5-year term								
UTILITY OPERATIONS - ENTERPRISE RESILIENCE	Q20-7003SS; 5 Awards 1. BURNS & MCDONNELL CONSULTANTS, INC. Kansas City, MO 2. ERNST & YOUNG U.S. LLP Secaucus, NJ 3. GUIDEHOUSE, INC. Chicago, IL 4. DELOITTE & TOUCHE LLP Hermitage, TN 5. TRC ENGINEERS, INC. Windsor, CT	01/26/21 (on or about)	Provide Enterprise Resilience Program Consulting Services	01/25/26	B/P			\$6 million*
*Note: represents total aggregate value for a 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

Procurement (Services) and Other Contracts – Awards
(For Description of Contracts See "Discussion")

EXHIBIT "A"
January 26, 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 Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
UTILITY OPERATIONS – FACILITY & INFRASTRUCTURE PM	OAK RIDGE HAULING LLC Danbury, CT (Q20-7088JM)	03/01/21	Provide Recycling and Trash Removal services for the Clarence D. Rappleyea (Centroplex) building in WPO	02/29/24	B/S			\$100,000*
*Note: represents total for up to 3-year term								
UTILITY OPERATIONS – FACILITY & INFRASTRUCTURE PM	TECHNICAL BUILDING SERVICES, INC. Ballston Spa, NY (4500326436)	02/01/21	Provide BAS Repair and Maintenance services for the Clarence D. Rappleyea (Centroplex) building in WPO	01/31/23	S/S			\$200,000*
*Note: represents total for up to 2-year term								
UTILITY OPERATIONS - POWER SUPPLY	A20-00237DW; 2 Awards 1. CLEAR RIVER ENVIRONMENTAL SERVICE CORPORATION Ronkonkoma, NY 2. RUSSELL REID WASTE HAULING AND DISPOSAL SERVICE COMPANY, INC. dba UNITED SITE SERVICES Keasbey, NJ	01/26/21 (on or about)	Provide Wastewater Removal Services for the Richard M. Flynn Power Plant	01/25/26	B/S			\$1 million*
*Note: represents total aggregate for up to 5 year term; Clear River awarded \$250,000 and Russell Reid awarded \$750,000								
UTILITY OPERATIONS – PROJECT MANAGEMENT	CROWN CASTLE INTERNATIONAL CORPORATION dba CROWN CASTLE FIBER LLC Houston, TX (Q20-7054MR)	01/26/21 (on or about)	Provide support for the Communication Backbone Program Dark Fiber installation from the Authority White Plains Office to NYSTA Route I-287 East Exit 6	01/25/41	B/C			\$338,000*
*Note: represents total for up to 20-year lease and maintenance agreements and \$338,000 for construction								

♦ **M / WBE:** New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
1 **Award Basis:** B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search
2 **Contract Type:** P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

Procurement (Services) Contracts – Extensions and/or Additional Funding
 (For Description of Contracts See "Discussion")

EXHIBIT "B"
January 26, 2021

<u>Plant Site/ Bus. Unit</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Authorized Expenditures For Life Of Contract</u>
BUSINESS SERVICES - CORPORATE FINANCE	Q19-6713RM – 9 Vendors 1. ADVANCED AUTOMATION CORPORATION Rome, NY 2. BNP PARIBAS SECURITIES CORPORATION New York, NY 3. CCA CAPITAL LLC Boston, MA 4. CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK New York, NY 5. ERNST & YOUNG LLP New York, NY 6. GUIDEHOUSE (fka NAVIGANT CONSULTING, INC.) New York, NY 7. J.P. MORGAN SECURITIES LLC New York, NY 8. ROCKFLEET FINANCIAL SERVICES, INC. ♦. New York, NY 9. COHNREZNICK CAPITAL MARKET SECURITIES LLC New York, NY	03/31/20	Provide for financial advisory services for energy projects consulting services	03/10/25	B/P		\$1.85 million	\$7.5 million *

*Note: 8 vendors, \$2M value and 5-year term approved at the March Trustee meeting; CohnReznick was selected but inadvertently left off the award memo and approved at the July Trustee meeting; On December 15, 2020 aggregate value was increased by \$500,000 making total \$2.5 million; Additional funding request \$5 million; Total aggregate value \$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; C= Competitive Search; S= Sole Source; Si = Single Source
 2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; L= Legal Service

Procurement (Services) Contracts – Extensions and/or Additional Funding
(For Description of Contracts See "Discussion")

EXHIBIT "B"
January 26, 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
COMMERCIAL OPERATIONS - CUSTOMER BUSINESS DEVELOPMENT	SUNPOWER CORPORATION dba SOLAR STAR BIG APPLE BTM LLC San Jose, CA (Q19-6703HM)	09/20/2019	Provide the design development process of a Solar Photovoltaic ("PV") system with battery storage at the Port Authority of NY and NJ ("PANYNJ") John F. Kennedy ("JFK") International Airport	09/19/2044	B/N		\$0.00	\$21,421,275*
*Note: represents total for 25-year term, including a five-year extension; including additional funding request of \$4,284,255								
UTILITY OPERATIONS – ENGINEERING	GREENMAN -PEDERSEN, INC. Babylon, NY (4600003011)	07/14/15	Provide support of the Engineer of Record ("EOR") for the completion of the project	12/31/22	Si/P		\$1,942,573.66	\$2.2 million*
*Note: represents total for up to 7-year and 5-month term; including two-year extension; No additional funding requested								
UTILITY OPERATIONS – FACILITY & INFRASTRUC- TURE PM	DONJON MARINE COMPANY, INC. Hillside, NJ (4600003904)	03/11/20	Provide preparation, transportation and placement of obsolete materials in accordance with NYSDEC Material Preparation Guidelines and artificial reef replenishment	03/10/22	B/C		\$4,730,200.10	\$5 million*
*Note: represents total for up to 2-year term; including a one-year extension; No additional funding requested								
UTILITY OPERATIONS – FACILITY & INFRASTRUC- TURE PM	EATON CORPORATION Waukesha, WI (4500317982)	01/29/20	Provide the East Dam Hydro Plant rehabilitation for the Village	12/31/21	B/C		\$1,257,432.64	\$2.9 million*
*Note: represents total for up to 1-year; including 11-month term; No additional funding requested								
UTILITY OPERATIONS, - TRANSMISSION PROJECT MANAGEMENT	BUFFALO RIVER FEST PARK LLC Buffalo, NY	01/01/21	Provide continued maintenance at the Park	12/31/23	S/L		\$71,200	\$213,600*
*Note: represents total for three 1-year terms running January 1 st to December 31 st each year 2021, 2022 and 2023								

♦ **M / WBE:** New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
1 Award Basis: B= Competitive Bid; C= Competitive Search; S= Sole Source; Si = Single Source
2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; L= Legal Service



Date: January 26, 2021

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Decrease in Westchester County Governmental
Customer Rates – Notice of Adoption

SUMMARY

The Trustees are requested to approve a decrease in the production rates for the sale of firm power to the Westchester County Governmental Customers (“Customers”) in 2021. This proposed action is consistent with the rate-setting process set forth in the 2006 Supplemental Electricity Agreements executed by the Customers and the Authority and in accordance with the State Administrative Procedure Act (“SAPA”).

As part of this final proposed action, Authority staff is seeking approval to decrease the production rates of the Customers by \$0.78 million, or 3.14%, as compared to the 2020 rates. The proposed decrease is driven by a projected \$1.05 million decrease in variable costs, slightly offset by a \$228 thousand increase in the fixed costs component of currently effective production costs. The production rate decrease would be effective as of the January 2021 billing period.

BACKGROUND

At their meeting on September 23, 2020, the Trustees directed the publication in the New York State Register of a notice that the Authority proposed to increase production rates by \$1.86 million, or 7.49%, for rate year 2021. The proposed increase was driven by an estimated increase in purchase power capacity costs, which are reconciled to actual variable costs incurred by the Authority to serve the Customers, as well as an increase in non-recurring Operations and Maintenance (“O&M”) expenses for the Small Hydro facilities.

The Authority’s policies and procedures call for a public forum if the fixed costs component of the proposed rate change exceeds a 2.0% increase. Due to the Covid-19 pandemic and the Governor’s Executive Order 202.10 as amended, the Authority did not hold a public forum for the Westchester County Governmental Customer rates in 2020. The State Register notice was published on October 14, 2020 in accordance with the SAPA. The sixty-day public comment period was then established and subsequently closed on December 14, 2020. The Customers and the general public were encouraged to send in any comments concerning these rates during the 60-day public comment period under SAPA. There were no public comments received during the comment period.



DISCUSSION

The proposed rate decrease is based on a pro forma Cost of Service ("COS") prepared by the Authority staff, and is aligned with the Authority's 2021 Budget approved by the Trustees on December 9, 2020.

Staff is now proposing a decrease of \$278 thousand in fixed costs as compared to the proposal at the September 2020 meeting. As part of this final proposed rate action, the fixed costs component is expected to increase by \$228 thousand from \$1.26 million in 2020 to \$1.49 million in 2021. The proposed increase is primarily driven by a projected increase in O&M costs at the Small Hydro facilities due to increases in non-recurring project expenses. The largest of these projects is the Crescent dam B abutment concrete repairs, which is expected to incur \$4.0 million in project expenses.

The variable costs component of rates is estimated based on the market price snapshot at the time of the COS development. Due to the market's variability, the Authority passes through all variable costs to the Customers by way of an Energy Charge Adjustment ("ECA") cost-recovery mechanism. This ECA mechanism reconciles through a monthly charge or credit the difference between the projected variable costs of electricity recovered by the tariff rates and the monthly actual variable costs incurred by the Authority to serve the Customers. The estimated variable costs component is projected to decrease \$1.05 million from \$23.69 million in the Final 2020 COS to \$22.64 million in the Final 2021 COS. The primary cost element, energy purchases, is projected to be \$16.60 million in 2021 and accounts for 69% of the total production costs. The projected 2021 energy prices are expected to be lower than those that were projected for 2020 and incorporated into the rates that are currently in effect. Somewhat offsetting the decrease in energy purchases are higher capacity costs due to a projected increase in Lower Hudson Valley and Rest of State capacity prices.

Based on further staff analysis, the Final 2021 Westchester County Governmental Customers' COS is \$24.13 million. Applying current rates to the 2021 Customer sales forecast results in projected revenues of \$24.91 million, representing a revenue surplus of \$0.78 million, triggering this final action to decrease production rates by 3.14%.

The current 2020 and final 2021 proposed rates with the 3.14% rate decrease are shown in Exhibit "A."

FISCAL INFORMATION

The proposed production rates are pro forma cost-based, and with the application of the Energy Charge Adjustment mechanism, staff anticipates that the Authority will recover all costs incurred in serving the Customers. The adoption of the 2021 production rate decrease would have no effect on NYPA's financial position.

RECOMMENDATION

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

Register for the adoption of a production rate decrease applicable to the Authority's Westchester County Governmental Customers.

The Trustees are also requested to authorize the Senior Director of Key Account Management, or his designee, to issue written notice of adoption and the revised tariff leaves, as necessary, to the affected Customers.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the Trustees hereby authorize the Senior Director of Key Account Management, or his designee, to issue written notice to the affected Customers of this final action by the Trustees for a 3.14% decrease in the production rates applicable to the Westchester County Governmental Customers as set forth in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Corporate Secretary of the Authority be, and hereby is, directed to file such notices as may be required with the Secretary of State for publication in the New York *State Register* and to submit such other notice as may be required by statute or regulation concerning the rate decrease; 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.

WESTCHESTER GOVERNMENTAL CUSTOMERS

EXHIBIT "A"

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

Service Classification	Demand (\$/kW)		ENERGY (¢/kWh)											
			SUMMER		SUMMER ON PEAK		SUMMER OFF PEAK		WINTER		WINTER ON PEAK		WINTER OFF PEAK	
	2020	2021	2020	2021	2020	2021	2020	2021	2020	2021	2020	2021	2020	2021
SC 62 Conventional	\$0.00	\$0.00	4.469	4.439					4.125	4.095				
SC 66 Conventional	\$0.00	\$0.00	3.971	3.809					3.971	3.809				
SC 68 Conventional	\$0.87	\$1.21	4.685	4.515					4.341	4.171				
SC 69 Conventional	\$0.80	\$0.91	4.864	4.660					4.521	4.317				
SC 69 TOD	\$1.00	\$1.23			5.485	5.323	3.718	3.556			4.683	4.521	3.734	3.573

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

Service Class	CONTRACT STANDBY DEMAND (\$/KW)				AS-USED DAILY DEMAND (\$/KW-day)			
	Low Tension		High Tension		Low Tension		High Tension	
	2020	2021	2020	2021	2020	2021	2020	2021
SC 68 Conventional	\$0.026	\$0.036	\$0.024	\$0.034	\$0.028	\$0.038	\$0.026	\$0.036
SC 69 Conventional	\$0.024	\$0.027	\$0.022	\$0.025	\$0.026	\$0.029	\$0.024	\$0.027
SC 69 TOD	\$0.030	\$0.037	\$0.028	\$0.035	\$0.032	\$0.039	\$0.030	\$0.037



Date: January 26, 2021

To: CANAL CORPORATION BOARD OF DIRECTORS

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Procurement (Services) and Other Contracts –
Business Units and Facilities –
Awards, Extensions and/or Additional Funding

SUMMARY

The Board of Directors' are requested to approve the extension and/or funding of the procurement (services) contracts listed in Exhibit "A," in support of projects and programs for the Canal Corporation's Business Units/Departments and Facilities. Detailed explanations of the recommended awards and extensions, including the nature of such services, the basis for the new awards if other than to the lowest-priced, lowest total cost of ownership or "best value" bidders and the intended duration of such contracts, or the reasons for the extension and the projected expiration dates, are set forth in the discussion below.

BACKGROUND

Section 2879 of the Public Authorities Law and the Canal Corporation's Guidelines for Procurement Contracts require Board of Directors' ("Board") approval for procurement contracts involving services to be rendered for a period in excess of one year.

The Canal Corporation's Expenditure Authorization Procedures ("EAPs") require Board approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts in excess of \$6 million, as well as personal services contracts in excess of \$2 million if low bidder or best value, or \$1 million if sole-source, single-source or other non-competitive awards.

The Canal Corporation's EAPs also require Board approval when the cumulative change order value of a personal services contract exceeds \$500,000, or when the cumulative change order value of a non-personal services, construction, equipment purchase, or non-procurement contract exceeds the greater of \$6 million or 25% of the originally approved contract amount not to exceed \$6 million.

DISCUSSION

Extensions

Although the firms identified in Exhibit "A" have provided effective services, the issues or projects requiring these services have not been resolved or completed and the need exists for continuing these contracts. Board approval is required because the terms of these contracts will exceed one year including the extension, the term of extension of these contracts will exceed one year and/or because the cumulative change-order limits will exceed the levels authorized by the EAPs in forthcoming change orders. The subject contracts contain provisions allowing the Canal Corporation to terminate the services at the Canal Corporation's convenience, without liability other than paying for acceptable services rendered to the effective date of termination.

These contract extensions do not obligate the Canal Corporation to a specific level of personnel resources or expenditures.

Extension of the contracts identified in Exhibit "A" is requested for one or more of the following reasons: (1) additional time is required to complete the current contractual work scope or additional services related to the original work scope; (2) to accommodate an Canal Corporation external regulatory agency schedule change that has delayed, reprioritized or otherwise suspended required services; (3) the original consultant is uniquely qualified to perform services and/or continue its presence and rebidding would not be practical or (4) the contractor provides proprietary technology or specialized equipment, at reasonable negotiated rates, that the Canal Corporation needs to continue until a permanent system is put in place.

The following is a summary of each recommended contract award and extension.

Extensions and/or Additional Funding Requests:

Utility Operations – Construction, Engineering and Maintenance

On January 24, 2020, Canal Corporation issued a twelve-month construction non-personal services contract to **James H. Maloy, Inc. ("JHM") (4400004721)** in the amount of \$1.109 million for the Structural Slab over Existing Culvert, Lower Needle Sill Repairs, Roadway Pavement Rehabilitation, and Crane Pad Construction at Lock E-7 in the Town of Niskayuna, Schenectady County, New York. Due to COVID-19 pandemic this project was suspended in March 2020, and in June 2020 was directed to suspend all construction activities on the project. This suspension of work has necessitated a project completion date extension. In addition, budgeting changes have postponed some tasks until 2021 as directed by the budget committee. Staff requests Board approval for an extension from January 24, 2021 thru August 31, 2021 including interim approval for the period January 24, 2021 through January 26, 2021. Additional funds of \$170,731.33 (calculated from the estimated cost of \$137,501.12 for dewatering during shutdown and \$33,230.19 for sinkhole and crack sealing repairs) is being requested. It should be noted that JHM is a Small Business Enterprise.

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 Vice President – Strategic Supply Management; the Regional Manager – Canal Corporation; and the Canal Eastern Division Construction Manager recommend that the Board of Directors approve the extension and/or funding of the procurement (services) contracts listed in Exhibit "A," for the purposes and in the amounts discussed within the item and/or listed in the respective exhibits.

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

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Canal Corporation, the contracts listed in Exhibit "A," attached hereto, are hereby approved and extended for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing memorandum of the President and Chief Executive Officer; and be it further

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

Procurement (Services) Contracts – Canal Extensions and/or Additional Funding
(For Description of Contracts See "Discussion")

EXHIBIT "A"
January 26, 2021

<u>Plant Site/ Bus. Unit</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis¹ Contract Type²</u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Authorized Expenditures For Life Of Contract</u>
UTILITY OPERATIONS – CONSTRUCTION ENGINEERING & MAINTENANCE	JAMES H. MALOY, INC. Loudonville, NY (4400004721)	01/24/20	Provide for the Rehabilitation of Lock E-7	08/31/21	B/C		\$854,219.87	\$1,279,731.33*
*Note: represents total for 19-month term, including a seven-month extension thru August 31, 2021; Additional funding amount of \$170,731.33								

♦ **M / WBE:** New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
1 **Award Basis:** B= Competitive Bid; C= Competitive Search; S= Sole Source; Si = Single Source
2 **Contract Type:** P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; L= Legal Service



**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**

October 26, 2020

Table of Contents

<u>Subject</u>	<u>Page No.</u>	<u>Exhibit</u>
Introduction	2	
1. Adoption of the October 26, 2020 Proposed Meeting Agenda	3	
2. Motion to Conduct an Executive Session	4	
3. Motion to Resume Meeting in Open Session	5	
4. DISCUSSION AGENDA:	6	
a. Vision 2030 Strategy Development	6	4a-A
i. NYPA Background, Vision & Mission	7	
ii. Preserve the Value of Hydropower	9	
iii. Lead Transmission Development	11	
iv. Digitization as a Foundation	13	
v. Environmental, Social & Governance as a Foundation	16	
5. CONSENT AGENDA:	18	
a. Extension of Contract FD-13 with New Service Tariff – Brookhaven National Laboratory Resolution	19	5a-A
6. Next Meeting	22	
Closing	26	



Minutes of the Special Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held via video conference at approximately 3:00 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 Quiniones	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
Robert Piascik	Senior Vice President & Chief Information Officer
Kimberly Harriman	Senior Vice President – Public & Regulatory Affairs
Keith Hayes	Senior Vice President – Clean Energy Solutions
Yves Noel	Senior Vice President – Strategy & Corporate Development
Scott Tetenman	Senior Vice President – Finance
Karen Delince	Vice President and Corporate Secretary
Janis Archer	Vice President – Enterprise Excellence
Girish Behal	Vice President – Project & Business Development
Emilie Bolduc	Vice President – New York Energy Manager
Ricardo DaSilva	Vice President – Strategic Operations
Daniella Piper	Vice President – Digital Transformation Office and Chief of Staff
Christopher Fry	Director – Business Development
Kerry-Jane King	Director – Sustainability
Ali Munawar Mohammed	Director – Digital Transformation Office
Michael Mulhall	Corporate Strategy Director
Mary Cahill	Manager – Executive Office
Hunaid Sulemanji	Manager – Resource Planning
Carley Hume	Program Manager – Strategy Grid Flexibility
Lorna Johnson	Senior Associate Corporate Secretary
Ram Narayan	Senior Strategy Analyst
Summer Shaw	Senior Policy Advisor
Joseph Glazer	Strategy Analyst
Sheila Quatrocci	Associate Corporate Secretary
Michele Stockwell	Project Coordinator – Executive Office
Rory Clune	Partner – McKinsey & Co.
Ksenia Kaladiouk	Associate Partner – McKinsey & Co.
Koen Wolfs	Engagement Manager – McKinsey & Co.
Randy Kreis	President – Customer Care Network, Inc.

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 this is the first of two special meetings to focus on the long-term key strategic initiatives and opportunities of the Authority and Canal Corporation for which is expected positive outcomes to deliver for the benefit of all the constituents that they serve.

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 October 26, 2020 Proposed Meeting Agenda**

On motion made by Trustee Trainor and seconded by Trustee McKibben, the members adopted the meeting Agenda.

Conflicts of Interest

Chairman Koelmel and members Nicandri, Picente, McKibben, Balboni and Trainor declared no conflicts of interest based on the list of entities previously provided for their review.

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 and matters regarding public safety and security.” 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 Trustee Trainor and seconded by Trustee Balboni, the meeting resumed in Open Session.

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

4. DISCUSSION AGENDA:

a. Vision 2030 Strategy Development

Chairman Koelmel invited President Gil Quiniones to introduce the Authority's Vision 2030 Strategy Development Plan to the Board.

President Quiniones said that this is the first of two Strategic Planning retreats with the Board of Trustees before bringing the Authority's VISION2030 Strategic Plan to the members for their review and approval at the December Board meeting. He said that at this meeting, the Authority will cover its vision and mission, how it should preserve the value of hydropower, its role in transmission development, digital transformation, and sustainability and social and corporate governance, posture and plans. He continued that subject matter experts from NYPA will cover each of the topics of discussion and invited Mr. Yves Noel, the Authority's Senior Vice President of Strategy & Corporate Development to provide highlights on NYPA's background, vision, and mission.

i. **NYPA Background, Vision & Mission**

Mr. Yves Noel, Senior Vice President of Strategy & Corporate Development, provided highlights of NYPA's background, vision, and mission to the Board. He thanked the Board members and the senior NYPA and Canals team for participating in this VISION2030 Strategy Retreat. He said that the Authority is reinventing the organization for the decade ahead. His goal is to explain how the Authority crafted its strategy and highlight the major assertions with a well-crafted approach reflected in the topics for discussion. He continued that he would begin with a description of the Authority, who it serves and end with the Authority's aspirational view of its future.

Given the major industry trends, the Authority has four strategic challenges. Subject matter experts will provide an overview of two of those challenges which will include the historic context, the Authority's aspirations, and initial recommendations. They will then transition to describing five foundational pillars, areas of focus which will support the Authority's strategy.

While no decisions will be made today, the members will have a better sense of where the largest state-owned utility must go to serve the long-term interest of the people of New York State and carry out the governor's ambition of a clean energy vision and provide leadership in this changing environment.

NYPA's Background

NYPA was created to ensure that the hydroelectric power generated by the St. Lawrence River "shall remain forever in the actual possession of the people of the state." NYPA, created by Governor Franklin Roosevelt, over considerable opposition, would become an early and successful experiment in public power and innovation. As NYPA is about to enter its 10th decade, all 2,500 members of the NYPA and Canal teams are focused on serving the people of New York State.

- NYPA provides value in generation, transmission, and customer energy solutions for the state's goals.

Generation

NYPA generates 25 percent of the power in NYS, 80 percent of which is carbon-free hydroelectric power.

Transmission

NYPA operates over one-third of the NYS high voltage transmission lines.

Customer Energy Solutions

NYPA has implemented more than 2,300 projects, reducing 1.2 million tons in greenhouse gas emissions.

- **NYPA exists to serve the people of the state of New York and operates for their benefit.**

NYPA's major customer groups include:

1. Retail, energy, and service customers
2. Local governments, municipalities, and rural electric cooperatives
3. Commercial and Industrial businesses; and
4. Wholesale market

NYPA's 2030 Vision and Mission

- NYPA's new vision of the future and mission reflects its aspirations.

NYPA's vision and mission was rewritten to reflect the fundamental fact NYPA exists to serve the people of NY. NYPA's primary focus is on the customer; its new vision statement is simple, but powerful - *A thriving resilient New York powered by clean energy*. Its mission is how to accomplish that vision - *Lead the transition to a carbon-free, economically vibrant New York through customer partnerships, innovative energy solutions, and the responsible supply of affordable, clean, reliable electricity*.

Mr. Noel ended by saying that part of this process is imagining how the Authority's stakeholders will understand its message. NYPA wants to demonstrate a focus on resiliency and serving all the people of New York State.

ii. **Preserve the Value of Hydropower**

Mr. Christopher Fry, Director of Business Development, provided highlights on NYPA's hydropower and its role in the 2030 Vision. He said that NYPA has been successfully operating its hydro facilities for more than 60 years, however, as Mr. Noel explained, the New York energy industry is rapidly transforming to achieve the ambitious goals of the Climate Leadership and Community Protection Act ("CLCPA"). That transformation creates both opportunities and challenges for NYPA's hydro units. This is critically important because NYPA's hydropower is really the foundation that makes the achievement of New York's 70 percent by 2030 renewable energy goal possible. It is, therefore, a key aspiration of NYPA's VISION2030 strategy to preserve and enhance the value of its hydropower assets as the grid evolves.

Hydropower – NYPA's 2030 Vision

NYPA's St. Lawrence Project went into operation in 1958 and its Niagara Project, shortly after, in 1961. Today, more than 60 years later, NYPA's hydro plants still provide more than 20 percent of New York's electricity needs. In 2019, NYPA generated over 25 TWh of hydropower; this is enough to power roughly 3.5 million New York homes.

In addition to being completely clean, NYPA's hydropower is among the lowest-cost electricity in the State. NYPA's hydropower has been, and continues to be, a tremendous driver of economic development through its various low-cost power programs. However, the grid is evolving and NYPA needs to prepare for the future. To that end, NYPA recently launched its Next Generation Niagara program. This is a 15-year, \$1.1 billion Life Extension, Modernization, and Digitization program to prepare Niagara for the next half century.

As the grid evolves to meet New York's clean energy goals, NYPA's hydro is becoming more important. Achieving the State's decarbonization goals will require the addition of a tremendous amount of new renewable resources, e.g. New York's ambitious 6,000 MW distributed solar goal and even larger 9,000 MW Offshore Wind goal. However, NYPA's hydro is the foundation that makes New York's 70% by 2030 renewable energy goal possible.

Without NYPA's hydropower, New York would require significantly more new renewables, potentially doubling the amount of Offshore Wind or quadrupling the amount of distributed solar, which would entail significantly greater ratepayer expense. It is therefore crucial to the cost-effective achievement of the CLCPA goals to maintain NYPA's hydropower output into the future.

In addition to continuing to provide clean baseload power, NYPA's hydropower will increasingly be sought to provide grid stabilization services.

The influx of intermittent wind and solar will place new demands on the grid. Due to their dispatchable nature, NYPA's hydro projects are uniquely positioned to provide minute-to-minute balancing and ramping capability to offset the short-term variability in intermittent renewables.

New York's transition to a clean-energy future will require long-duration storage to mitigate both hour-to-hour and day-day fluctuations in renewable generation. NYPA's hydro assets are uniquely positioned to provide this critical service to the grid. NYPA foresees a tremendous increase in the utilization of both the Lewiston Pumped-Generating Facility at Niagara as well as its Blenheim-Gilboa Pumped-Storage Facility.

However, with these opportunities also come challenges. The influx of intermittent renewable resources is expected to upend Niagara's and St. Lawrence's historical operating paradigms. This presents challenges from both operational and financial perspectives. Operationally, running the facilities this way is expected to significantly increase wear and tear on the units and correspondingly, increase O&M expenses.

In addition, the influx of renewables is expected to both reduce the volume of NYPA's hydro generation as well as suppress New York System Independent Operator ("NYISO") energy prices, delivering a double blow to NYPA's revenue.

As mentioned previously, any reduction in NYPA's hydro generation would require a corresponding increase in the volume of new renewables to get to New York's 70% by 2030 goal, resulting in greater ratepayer expense, and why this is a core component of NYPA's 2030 vision.

To that end, NYPA is proposing a plan to preserve and enhance the value of its hydro.

The first aspect is to re-double NYPA's advocacy both at the NYISO and the Public Service Commission ("PSC"). Some of the services mentioned that will be necessary to support the intermittent renewables, such as ramping, do not exist yet in the NYISO market. NYPA is an active stakeholder at the NYISO and will continue to advocate for market rules that fairly compensate NYPA's hydro units for the services they provide to the grid. In addition, New York's energy regulations continue to evolve and NYPA actively participates in policy development to help align the State's policies with operational and market realities.

Secondly, as previously mentioned, NYPA is undertaking a Life Extension, Modernization and Digitization Program at its Niagara Project which is intended to address retaining NYPA's assets in a state of good repair and improve the competitiveness of its hydro plants in the market. This comprehensive program will not only extend the useful life of the Niagara Project but also increase efficiency and reduce operational expense, improving the competitiveness of the facility in the market.

Lastly, NYPA is evaluating new customer arrangements to better capture the environmental value of NYPA's hydro generation. NYPA is developing a voluntary, green power program which it plans to launch next year. Through this program, customers who are interested in "greening" their energy supply could purchase the environmental attributes of NYPA's available hydro generation. This would both support NYPA's customers in achieving their sustainability goals as well as enable NYPA to obtain value for the environmental benefits that its hydropower provides.

iii. **Lead Transmission Development**

Ms. Kimberly Harriman, Senior Vice President, Public and Regulatory Affairs, provided highlights on the opportunities that NYPA has in the field of transmission development. She said that, as previously stated, the Climate Leadership and Community Protection Act aspires to have 70 percent of consumed energy from renewable resources and a 100% emission-free grid by 2040. To that end, following negotiations with the Legislature, an amendment was made to the way renewable energy is cited and grid investments are planned. The Accelerated Renewable Energy Growth and Community Benefit Act ("AREGCBA") of 2020 will accelerate and shape NYPA's transmission strategy.

In order to get the generation that is needed to be built to accomplish the 70% energy from renewable resources by 2030 goals, we have to make sure that we can move that renewable energy from areas where it is produced to where it can be consumed. To that end, the Legislature, along with the Governor, recognized the need for a Comprehensive Grid Study not only at the bulk level, but also at the local transmission and distribution levels. The Grid Study is currently underway and is due at the end of the year.

The Comprehensive Grid Study will identify cost-effective distribution, local and bulk electric system upgrades. The study will include an investment plan for local transmission distribution projects that New York utilities will undertake. It also includes a bulk transmission investment plan which will identify where on the electric grid investments and upgrades need to be made to facilitate this clean energy future for New York.

NYPA owns one-third of the backbone of the transmission system. A bulk transmission investment program will be developed to support identified projects that leverages NYPA's unique capability to construct new transmission. To that extent, there are two pathways in which projects will get constructed. The first is identified through the Order 1000 process, a federal paradigm in which, once a need to upgrade the bulk system is identified, the New York Independent System Operator solicit ideas and project proposals on how to solve the need identified on the system. NYPA has responded to the Request for Proposals from the New York Independent System Operator.

The second tool that The Accelerated Renewable Energy Growth and Community Benefit Act of 2020 created was a recognition that NYPA is singularly suited to develop certain transmission projects that need to go faster than what is permitted under the RFP process run by the New York Independent System Operator. To that extent, the Public Service Commission, the State Regulator, will conduct a comprehensive study to identify cost-effective distribution, local and bulk electric systems upgrades, and designate NYPA projects that it believes NYPA can build and expeditiously construct.

The last component of the deciding law looks at the fact that not only do we need to move generation to where it can be consumed, a grid investment study is needed in order to do this cost effectively. To that end, the Act included a new streamlined siting process to be applied for transmission infrastructure build within existing rights-of-way.

Mr. Girish Behal, Vice President of Project and Business Development, discussed the opportunities presented to NYPA and provided information on how the AREGCBA Act allows the Commission to designate expedited projects it wants NYPA to pursue. He said that NYPA is looking towards a 2030 Vision of being the leading transmission developer, owner, and operator for New York State, accommodating the transmission needs of the State.

As previously discussed, NYPA owns roughly 1,454 circuit miles of transmission lines in New York; basically, most of the 765 kV lines and a large backbone transmission system. NYPA is currently working on prioritizing and accelerating projects, incentivizing the transmission of renewable energy to the load centers, while, at the same time, working with the private sector to expand its transmission capabilities.

Recent NYPA transmission investments help set the stage for New York State's 2030 goals.

Types of projects that are in progress at NYPA:

1) AC Transmission – Segment A (Public Policy Transmission Project)

NYPA is working on the AC Transmission - Segment A of the Public Policy Transmission Project. NYPA is looking to increase Upstate New York/Southeast New York transfer limits and address system congestion while improving ageing infrastructure.

NYPA has partnered and collaborated with a private entity, expanded its capabilities, and won a competitive Request for Proposal for the project.

NYPA's investment will be \$281 million; the project is targeted to be completed in 2023.

2) Moses-Adirondack Smart Path Reliability Project

As a part of its local transmission plan, NYPA is currently working on the Moses-Adirondack Smart Path Project to provide a resilient and reliable electric system in upstate New York. NYPA is investing approximately \$484 million. The target in-service date is 2023.

3) Northern New York (Priority Transmission Project)

The Public Service Commission assigned NYPA to execute the Northern New York project which will address congestion and improve ageing infrastructure.

NYPA anticipates an investment of approximately \$498 million of the total \$905 million for this project. The targeted in-service date of the project is Q4 of 2025.

NYPA will be issuing a Solicitation of Interest for potential collaborators as mandated by the Accelerated Renewable Energy Growth and Community Benefit Legislation ("AREGCBA").

NYPA's strategy is to become the leading transmission owner, developer, and operator for the State of New York, supporting the State's needs, by not only growing its transmission asset base by two to three times by 2030, but also focusing its transmission portfolio on the right projects that will deliver to the wider state objectives, including accelerating the most critical projects to support the decarbonization goals set out in the Climate Leadership and Community Protection Act.

Mr. Girish ended by saying that NYPA continues to increase its focus on transmission as a core business and develop leading capabilities in planning and development, project delivery, and asset management of transmission.

iv. **Digitization as a Foundation**

Ms. Daniella Piper, Vice President of Digital Transformation Office and Chief of Staff, provided highlights of the Digitization strategy. She said that digitization is one of the four pillars of the VISION2030 Strategy. NYPA's last, 2020 Strategic Plan set forth an ambitious goal of becoming the first end-to-end digital utility by leveraging technology, advancing analytics, Artificial Intelligence ("AI") and Machine Learning ("ML") to optimize its assets, help its customers find solutions to the challenges of a decentralized grid, and enable its employees to better serve the Authority's customers and key stakeholders.

To that end, NYPA laid the foundation for achieving end-to-end digitalization and attained significant business value through the convergence of technology and business. Over the last three years, NYPA focused on improving the technical capabilities and the organizational structure that was needed to achieve this goal. As a result, NYPA established the Digital Transformation Office ("DOT") to support the organization through this transformation. The DTO team acts as a bridge between strategy and business operations and a catalyst for the transformation. DOT also filled key roles in the areas of Data Governance and Quality, Enterprise Architecture and increased NYPA's focus on cybersecurity.

NYPA Developed 3 Digital Hubs:

1) The Integrated Smart Operating Center ("iSOC") allows staff to monitor the Authority's equipment, identify trends and anomalies and work with the Plants' staff to take action to avoid unnecessary equipment outages or damages.

Asset data is currently streamed to the iSOC from 62,000 data points. NYPA intends to have another 53,000 data points streaming by the end of 2021. It is estimated that, to date, NYPA has achieved approximately \$40M in avoided costs.

2) The Advanced Grid Innovation Lab for Energy ("AGILE") allows NYPA to bring together industry stakeholders to develop solutions to the challenges of a decentralized grid. NYPA has developed a model of New York's transmission system above 230KV which will allow the Authority to simulate grid performance as it integrates renewables and distributed energy resources into the grid. NYPA will continue to partner with Transmission Owners, NYISO, NYSERDA, and the Electric Power Research Institute ("EPRI") which is supporting the Authority with the operation of the Lab.

3) The New York Energy Manager ("NYEM") was built to help NYPA's customers reach their energy goals. It is an energy information platform and service that organizes and visualizes energy information, manages load, and optimizes energy usage for almost 16,000 of the Authority's customer's facilities. To date, NYPA has helped its customers achieve over 2.3M kBTU in annual energy savings.

NYPA is also collaborating with external partners to develop new products that will improve building energy performance, lower energy bills, facilitate decarbonization, and enable the integration of distributed energy resources into the grid. This is critical to helping the Authority's customers achieve the goals laid out in the Climate Leadership and Community Protection Act.

In addition to these three energy hubs, NYPA has made investments in foundational Information Technology ("IT") infrastructure that has enabled the Authority to achieve business capabilities.

IT Infrastructure and Capabilities Investments

Mr. Robert Piascik, Senior Vice President & Chief Information Officer, provided highlights on the Authority's progress and next steps as it relates to Information Technology infrastructure and capabilities investments. He said that the strategic digital hubs, highlighted by Ms. Piper, are foundational to NYPA as a digital utility and to its 2030 Strategy. Those hubs are built on digital capabilities such as

infrastructure, numerous digital technologies and digital services which are based on scalable vendor diagnostic digital architecture.

The implementation of the five key digital investment areas, 1) Enterprise Compute & Storage; 2) Cyber AI/ML Insider and External Threat Management; 3) Data Management & Analytics; 4) Moving to Cloud; and 5) Digital Worker Program, established the foundation and services to build new, and expand on digital business solutions with greater flexibility, cost efficiency, governance, security, usability, speed and agility by:

1) Virtualizing the infrastructure and taking all components of the computing resources for existing digital services and for new data analytics, making it sharable. This shifted the infrastructure to meet the ebb and flow of the business demands for new applications or new business models. For example, IT was able to move 100% of NYPA employees offsite within 72 hours in response to COVID-19. In addition, IT created thirteen COVID-specific applications to make sure the Authority's employees were safe and tracked the dynamic changes related to COVID-19.

2) Applying Artificial Intelligence and Machine Learning technologies to derive insights from NYPA's data assets in every Business Unit. For example, AI and ML were applied at the commercial operations space for New York Energy Manager ("NYEM"), Utility Operations for Asset Performance Management, and IT to better protect the digital ecosystems such as cyber behaviors-use, internal and external threats/risks, allowing staff to be proactive and take action.

3) Building strong data management and analytics capabilities with new roles and new skill-sets with the goal to improve the quality, security, governance, ability to integrate multiple data sources, and visualization of enterprise data collected from the Authority's digital sensors, customers, third-party partners, and the business ecosystem.

4) Leveraging the use of cloud services and applications to support NYPA's mobile workforce, stakeholders, and business continuity to have ready access to applications as they become available in the marketplace. This will help to build resiliency and flexibility within NYPA's environment using collaboration tools such as WebEx, Teams, and Zoom.

5) Arming the Authority's digital workforce with easy-to-use tools and services to increase mobility, productivity, engagement, and safety (e.g., iPhones, collaboration tools/software).

NYPA has made critical, digital technology investments, achieving greater flexibility, improved governance, security usability, standardization, and agility from its investments while positioning the Authority to rapidly respond to the business needs of the 2030 Strategy.

Strategic Technology solutions

NYPA is not only implementing the digital technology ecosystem but is also deriving value by transforming and digitizing its business processes through Strategic Technology Solutions/platforms for NYPA employees and customers. For example:

- In line with NYPA's Workforce Transformation Strategies, IT implemented digital HR applications that leverage cloud services (Software as a Service apps) with data integration/sharing – resulting in higher engagement of the employees, empowered and higher skilled employees.
- Use of digital building blocks from the digital infrastructure to rollout and add to the new Customer "Account Center" (also referred to CDEx) Platform that enables NYPA's customers to digitally access their data and any new incremental services at anytime from anywhere with any device, knowing that their information is secure. The benefit is better customer experience, informed customers, and value-add services. The customers can do online billing to verify their bills and energy audits and view their consumption and changes in consumption.

- Modernizing NYPA's Treasury Management System to achieve greater efficiency and speed.
- Leverage the physical Emergency Energy Control Center to provide "hot site" availability of critical applications resulting in greater operational and business resiliency and business continuity.

Mr. Piascik ended by reinforcing that NYPA is leveraging the digital investments, transforming its business processes to become more efficient and shift to focus on the customer and employee experience and support its 2030 Strategy.

v. **Environmental, Social & Governance as a Foundation**

Ms. Kerry-Jane King, Director of Sustainability, provided highlights of the Authority's new sustainability strategy, which encompasses the environmental, social and governance ("ESG") performance that will guide the implementation of NYPA's VISION2030. She said that there is an increasing interest from the public and the financial sector in companies' sustainability performance and this is accelerating with the health, racial justice, and climate crisis we are facing.

The new sustainability strategy is an opportunity for NYPA to reassess how the company can best meet the needs of its stakeholders and take advantage of opportunities to create value for the long-term.

The Authority's strategy will include the preparation of a five-year Sustainability Plan and annual sustainability reports, and will be built around environmental, social and governance issues that have been identified in the Authority's recent Materiality Assessment as having the greatest impact on NYPA's business and being of greatest importance to its stakeholders.

Sustainability and Environmental Social Governance (ESG)

Sustainability is a business approach that applies the environmental, social, and economic framework to manage a company's performance. The idea behind this approach is that companies can do better by doing good because they will be more resilient over the long term.

Environmental, Social and Governance generally refers to the standards created to measure and report on sustainability. Investors and credit rating agencies usually use ESG standards to assess a company's capacity, response to risks and takes advantage of opportunities, and how these will impact the company's financial performance.

ESG Impact on Long-Term Business Performance

Recent events are presenting real-time tests of what companies have set up to manage complex and evolving ESG issues. Reports from BlackRock, McKinsey, JP Morgan, and others indicated that companies with strong material sustainability performance and high ESG scores are demonstrating greater financial resilience.

NYPA has made significant progress in sustainability management which provides a strong foundation for its new strategy. NYPA has been meeting and exceeding New York State's targets for environmental sustainability and is also leading among its state agency peers in sustainability management, especially with the creation of its Sustainability Advisory Council. NYPA is the only agency/authority that has a structure like this, which has been very effective in moving its sustainability performance forward.

In 2018, NYPA issued its five-year Sustainability Plan which sets enterprise-wide climate and environmental goals. NYPA is making progress in these areas and its new Sustainability Plan will address 15 material ESG issues which include climate change, diversity, equity, and inclusion, as well as renewable energy, energy resilience, and health and safety.

These priorities have been shaped by NYPA's current social and political climate, including its national reckoning with systemic racism and the ongoing COVID-19 pandemic. This new Sustainability Strategy will help NYPA adapt and respond to these new risks.

Stages and Capabilities

NYPA has performed well in the corporate sustainability journey at the compliance and functional stages, and its strategic focus on ESG will lead NYPA into the integrated stage.

To achieve of goal of becoming a "Best-in-Class" ESG leader, NYPA will embed ESG within its strategy, governance, and other programs.

A fully integrated ESG is a strategic priority for NYPA. Sustainability management oversight needs to be elevated. ESG Key Performance Indicators (KPIs) will be incorporated into the corporate scorecard with frequent reporting to the Executive Management Committee and the Board. ESG risks will also be integrated into NYPA's Risk Registry.

The Sustainability Department's function will transition to a more strategic role as advisor on ESG strategy, performance management, and reporting, and will move forward with the implementation of the strategies, programs and initiatives identified in the new Sustainability Plan. To be more responsive to NYPA's stakeholders' expectations for transparency, and to demonstrate the Authority's commitment to ESG, the Sustainability Department plans to publish annual sustainability reports that align with standards established by the Global Reporting Initiative, the Sustainability Accounting Standards Board, and the task force on financial disclosures.

Ms. King ended by saying that this new course that NYPA is taking in sustainability is a timely opportunity for the Authority to establish itself as an industry leader.

5. CONSENT AGENDA:

On motion made by Trustee Picente and seconded by Trustee Balboni, the Consent Agenda was adopted.

**a. Extension of Contract FD-13 with New Service Tariff –
Brookhaven National Laboratory**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve an extension of the contract ('Contract FD-13') to provide firm power service to the United States Department of Energy ('DOE') for use by Brookhaven National Laboratory ('Brookhaven' or 'BNL') for a period of ten years (January 1, 2021 through December 31, 2030), together with approval of the new service tariff, Service Tariff No. BNL-1 ('ST BNL-1'), as negotiated between the Authority and DOE. This contract extension, when combined with the Authority's existing hydropower allocation for the benefit of BNL, will enable this important scientific laboratory to continue its ground-breaking research which provides long-term economic benefits to New York State. The contract extension, along with the ST BNL-1, is attached as Exhibit '5a-A.'

BACKGROUND

The Authority has been serving Brookhaven since November 1982. The Contract FD-13 permits Brookhaven to receive 77 megawatts ('MW') of firm power and energy. The electricity provided by the Authority has saved the laboratory hundreds of millions of dollars over the life of the contract while, at the same time, giving Brookhaven the ability to attract new, cutting-edge science projects to Long Island. These projects include the Alternate Gradient Synchrotron, the National Synchrotron Light Source-II ('NSLS-II') and the Relativistic Heavy Ion Collider ('RHIC'). Most importantly, it allowed for Brookhaven to be awarded the new \$2 billion Electron-Ion Collider ('EIC') project, which will keep the laboratory at the forefront of science and is an additional investment in human capital as well.

With more than 3,000 employees and a \$500 million annual budget, Brookhaven is a major employer on Long Island, attracting members of the scientific community from New York, other states and around the world. In addition, more than 3,000 visiting researchers from universities, industry and other research institutions use the laboratory's advanced science facilities annually, with approximately one-third from New York institutions and businesses from various parts of the state. Among the institutions are the State University of New York at Plattsburgh, Cornell University and Rensselaer Polytechnic Institute. Business organizations utilizing BNL facilities include Corning, General Electric and IBM. BNL's annual financial impact on New York State's economy is estimated at nearly \$1 billion.

DISCUSSION

The extension of Contract FD-13 and the hydropower allocation for the benefit of BNL work in concert to provide economically viable power and energy to BNL.

The 15 MW hydropower allocation to the Long Island Power Authority for resale for the exclusive benefit of BNL ('Hydropower Resale Contract') is blended with the market energy purchases of up to 77 MW under Contract FD-13 to meet BNL's requirements. DOE will continue to be able to receive economic benefits associated with certain 'grandfathered' transmission congestion contracts set forth in the contract. DOE continues to be responsible for the transmission charges associated with these transmission congestion contracts. This is intended to provide stable transmission service rates and a hedge against unpredictable transmission system congestion charges.

Due to DOE's internal policy limiting energy purchase contracts to terms of no more than ten years, the proposed contract modification is for ten years.

The contract extension will continue to provide for a flow-through of market prices for that portion of Brookhaven's electricity requirements in excess of the 15 MW allocation under the Hydropower Resale Contract. The effective price of electricity for Brookhaven is substantially lower than the full market price for electricity on Long Island and allows Brookhaven to compete within the National Laboratory System

for world-class science projects. Brookhaven's continued success is directly tied to its ability to build and operate large, complex, one-of-a-kind scientific facilities that draw researchers from around the world. If Brookhaven were not able to obtain a stable source of power priced at nationally competitive rates for the long term, it would suffer future loss of jobs, reduced or eliminated technology-transfer opportunities and the eventual closure of the facility.

The contract extension renews a total 'all in' cost cap of \$375 million for power and energy provided to BNL during the term of the extension. If the total 'all in' cost cap is estimated by the Authority to be exceeded, the Authority will notify DOE in order to receive authorization to exceed the cap in accordance with the terms of the extended contract. Upon receiving such authorization, the Authority will continue performance and DOE will be obligated to compensate the Authority for costs incurred in excess of the total 'all in' cost cap. Absent receiving such authorization, the Authority is not obligated to continue performance under the extended contract. Both parties shall communicate with each other in writing about establishing a revised 'all-in' cap and will work cooperatively to establish written procedures for notification to the Customer if the revised 'all-in' cap is at risk of being exceeded.

As the Authority performs Load Serving Entity functions for both the firm power service and the hydropower allocations, under Contract FD-13, the extension requires DOE to pay the Authority's monthly clean energy implementation charge for the allocations.

FISCAL INFORMATION

Brookhaven will pay the full cost of power and energy provided under this contract extension.

RECOMMENDATION

The Senior Vice President – Clean Energy Solutions recommends that Brookhaven National Laboratory's contract be extended and ST BNL-1 as described herein and the terms of service for the sale of power to Brookhaven be modified in accordance with the foregoing (Exhibit '5a-A').

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

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

RESOLVED, That the extension of Contract FD-13 for a period of ten years (January 1, 2021 through December 31, 2030) and new Service Tariff No. BNL-1, be approved on the terms set forth in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the Senior Vice President – Clean Energy Solutions or his designee be, and hereby is, authorized to negotiate and execute any and all documents necessary or desirable to effectuate the foregoing; 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

October 26, 2020

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

6. Next Meeting

Chairman Koelmel said that the New York Power Authority Board of Trustees and the Canal Corporation Board of Directors will hold a special joint meeting on November 12, 2020.

The next regular joint meeting of the New York Power Authority's Board of Trustees and the Canal Corporation's Board of Directors will be held on December 9, 2020, unless otherwise designated by the Chairman with the concurrence of the members.

Closing

On motion made by Trustee Balboni and seconded by Vice Chair Nicandri, the meeting was adjourned at approximately 5:42 p.m.

Karen Delince

Karen Delince
Corporate Secretary

POWER AUTHORITY OF THE STATE OF NEW YORK
AND
NEW YORK STATE CANAL CORPORATION

EXHIBITS

For

October 26, 2020

Joint Special

Meeting Minutes



**NY Power
Authority**

VISION2030 Strategy Development

October 26th Board Presentation

Agenda

-  1. NYPA Background, Vision & Mission
-  2. Preserve the Value of Hydropower
-  3. Lead Transmission development
-  4. Digitization as a foundation
-  5. Environmental, Social & Governance (ESG) as a foundation

Agenda



1. NYPA Background, Vision & Mission



2. Preserve the Value of Hydropower



3. Lead Transmission development

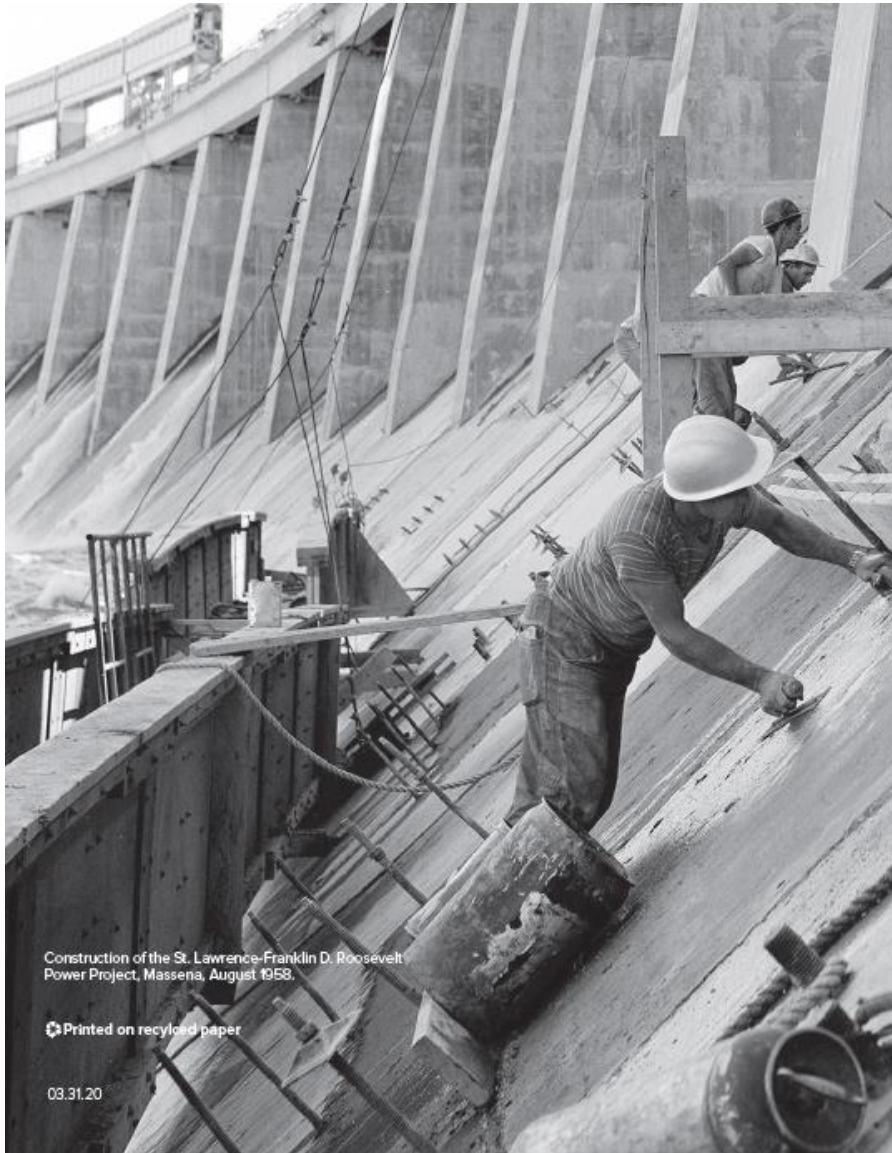


4. Digitization as a foundation



5. ESG as a foundation

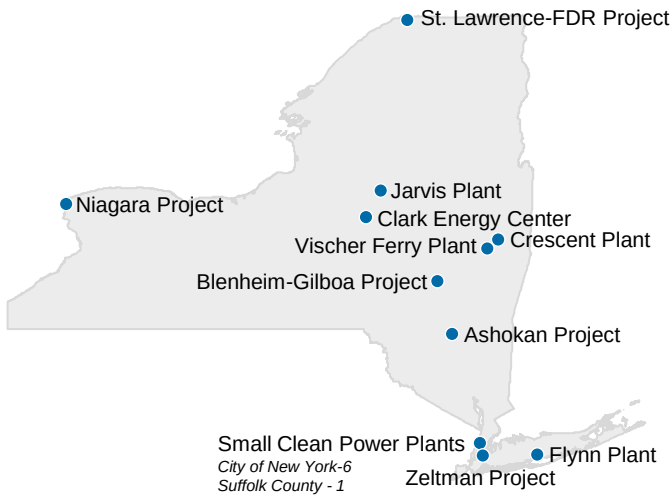
In 2030, the New York Power Authority (NYPA) will celebrate its 99th anniversary



- The New York Power Authority (NYPA) is America's largest state power organization and a unique presence in American energy markets
- Through the Power Authority Act, Governor Franklin D. Roosevelt created NYPA to ensure that the hydroelectric power generated on the St. Lawrence River should "remain forever in the actual possession of the people of the state or of an agency created by them"
- NYPA is a public-benefit state corporation in New York State that uses no tax monies and whose powers are limited by law
- A Board of Trustees, appointed by the Governor and confirmed by the State Senate, govern the Power Authority
- NYPA's staff of 2,530 employees is led by President and CEO Gil Quiniones and managed by an Executive Management Committee of the President and business unit heads
- NYPA is primarily involved in electric power generation and transmission, but also runs customer energy advisory businesses, economic development programs, and the NYS Canal system

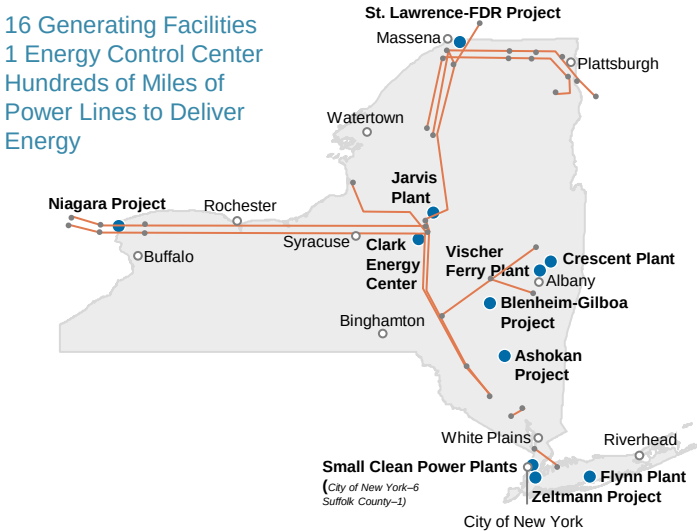
NYPA generates, transmits, purchases electric power and energy as authorized by law

Generation



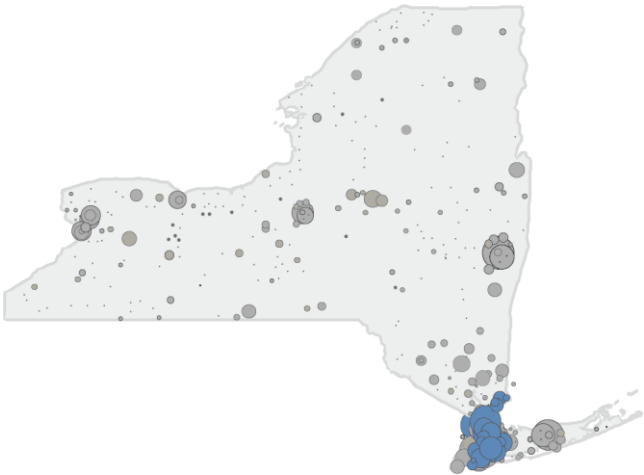
NYPA generates ~25% of power in NYS, of which 81% is carbon-free hydroelectric power

Transmission



NYPA operates over one-third of the NYS transmission lines

Customer on-site energy solutions and NYS goals



Over 2,300 projects implemented reducing 1.2 MILLION tons in GHG

NYPA provides low-cost power to incentivize business formation and operation in NYS through its Economic Development programs

NYPA exists to serve the people of the state of New York



NYPA exists to serve the people of the state of New York and is an instrument of the state

Major customer groups

1. Municipal electric systems and rural electric coops
2. Governmental entities
3. Commercial and industrial businesses
4. Wholesale market

NYPA's new vision of the future and mission reflects our aspirations

Current

NYPA's Vision

Our vision is a Power Authority that enables a thriving New York state through the provision of sustainable, affordable energy, stewardship of the state's natural resources, and leadership in innovative technologies and energy efficiency services.

NYPA's Mission

Power the economic growth and competitiveness of New York State by providing customers with low-cost, clean, reliable power and the innovative energy infrastructure and services they value.

VISION2030

NYPA's Vision

A thriving, resilient New York State powered by clean energy

NYPA's Mission

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



Agenda



1. NYPA Background, Vision & Mission



2. Preserve the Value of Hydropower



3. Lead Transmission development



4. Digitization as a foundation



5. ESG as a foundation

Hydropower

our 2030 vision



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

Historically, our hydro assets have been a significant source of clean power for NY state

20%

Our hydropower accounts for 20%+ of New York State's electricity

25 TWh

Our hydro plants collectively generated ~25TWh of electricity in 2019, accounting for more than 80% of NYPA's total generation

60 years

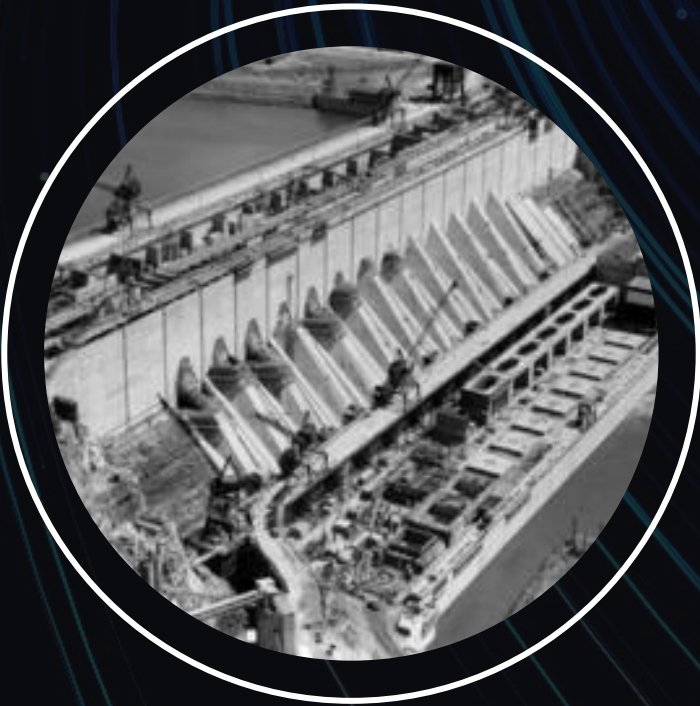
Our hydro plants have continuously operated since 1958

Economic engine

We have and continue to be a source of economic development through a variety of low-cost customer supply programs

Preparing for the future

Over 50 years of planned life extension at Robert Moses Niagara Power Plant in a 15-year, \$1.1B modernization and digitalization program



As New York decarbonizes its grid, new attributes of our hydro assets are becoming essential



Clean baseload generation

As New York pursues increasingly aggressive clean energy targets, a stable baseload will become invaluable against the background of higher renewables penetration and the higher fluctuations of power generation that goes along with it.

Long-duration storage

Mid to long-term fluctuations in NYS energy demand, e.g., through variations in weather and climate, need to be addressed by long-duration storage. Our Blenheim-Gilboa pumped storage plant and Lewiston Pump Generating Plant efficiently store energy for retimed usage during peak hours. The simulation of the NYS system predicts that the usage of pumped storage will increase from 5-10 days a year to more than 250 days by 2040.

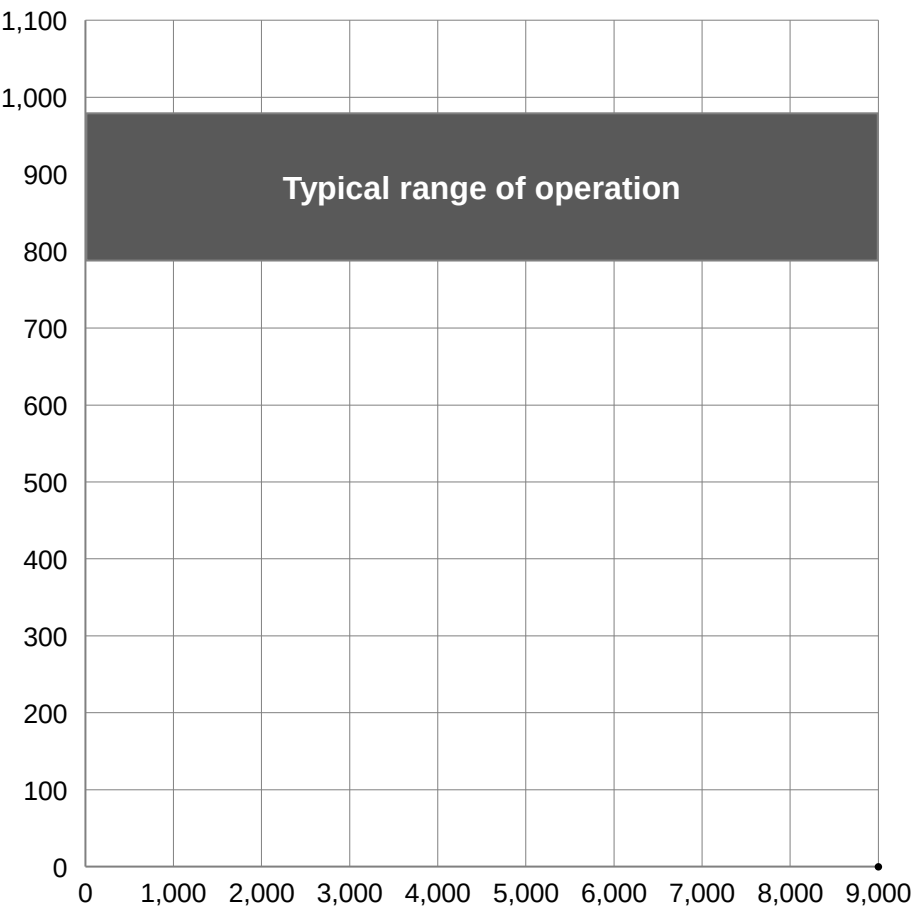
Flexibility benefits and grid stabilization

To address fluctuations in generation within a renewables-dominated power system, our hydro assets have the ability for fast ramp and dispatch. Furthermore, the spinning reserves, black start capabilities, and inertia that hydro provides are essential for counteracting potential instabilities in the power system.

Curtailment concerns imply an increase in O&M and overall system costs to ratepayers

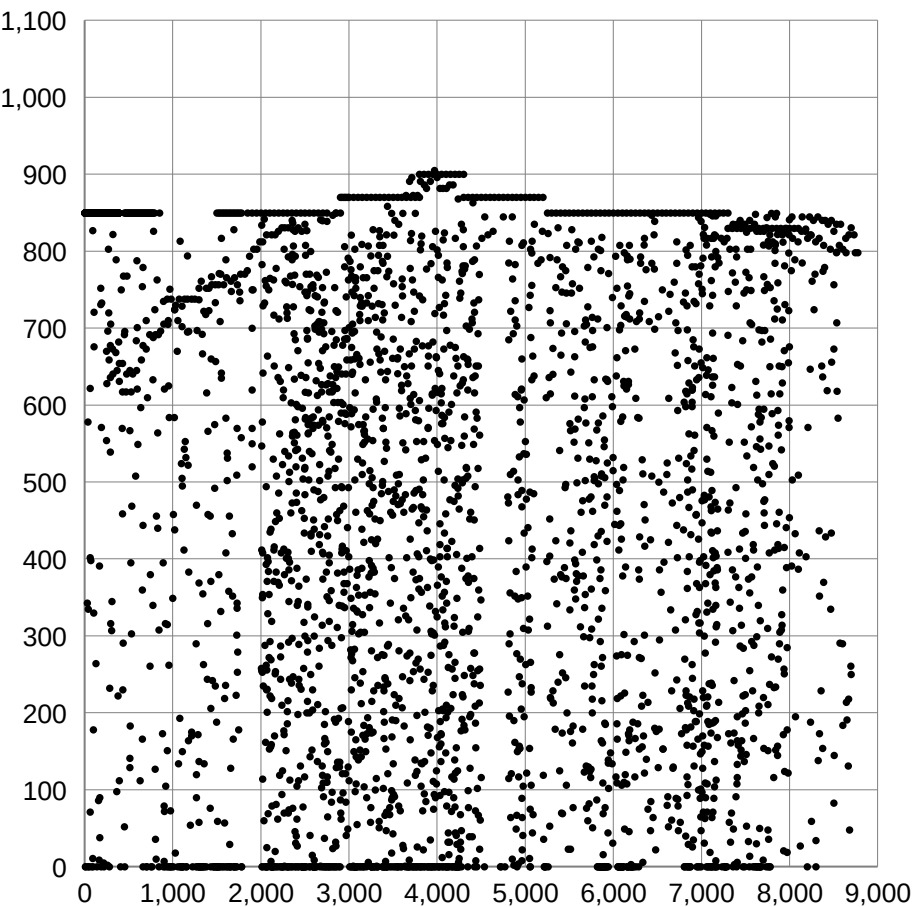
Output in 2019

St. Lawrence 2019 actual hourly output MW



Increased curtailments

St. Lawrence hourly output MW, 2030 scenario



Increased frequency of ramps and operating below the nameplate capability drive higher O&M costs, which may not be adequately compensated under current market rules

Our strategy to preserve and enhance the value of the hydropower assets



Agenda



1. NYPA Background, Vision & Mission



2. Preserve the Value of Hydropower



3. Lead Transmission development



4. Digitization as a foundation

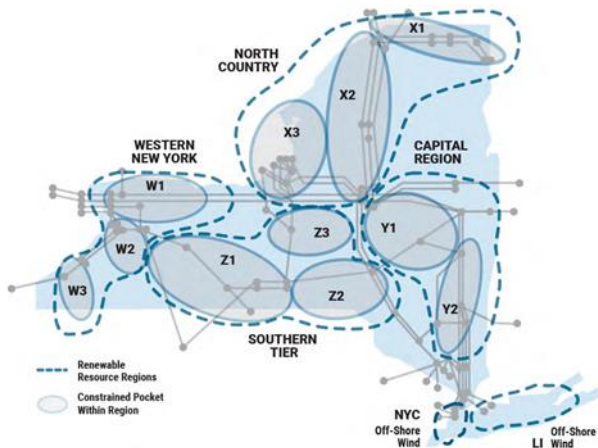


5. ESG as a foundation

The Accelerated Renewable Energy Growth and Community Benefit Act of 2020 will accelerate and shape NYPA's transmission strategy

The Act will help prioritize the **planning, investment and development of a state-of-the-art grid infrastructure**, and aggressively accelerating the ability for **renewable energy power** to be delivered statewide

The renewable power resources will help inform NYPA's transmission strategy and projects



The Act will provide a comprehensive approach to accelerate the investment in and development of a state-of-the-art grid



A Comprehensive study

The Department of Public Service will conduct a **comprehensive study** to identify cost-effective distribution, local and bulk electric system upgrades

B Utility specific guidance

A **distribution and local transmission system capital program will be established** for each utility in need of local upgrades in their service territory

C Investment program

A **bulk transmission investment program will be developed** to support identified projects that leverages NYPA's unique capability to construct new transmission

D Streamlined siting process

A **new streamlined siting process of no more than nine months** will be applied for transmission infrastructure built within existing rights-of-way

Transmission

our 2030 vision



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

NYPA is integral for the state's transmission priorities, operating 1/3 of its high-voltage transmission network

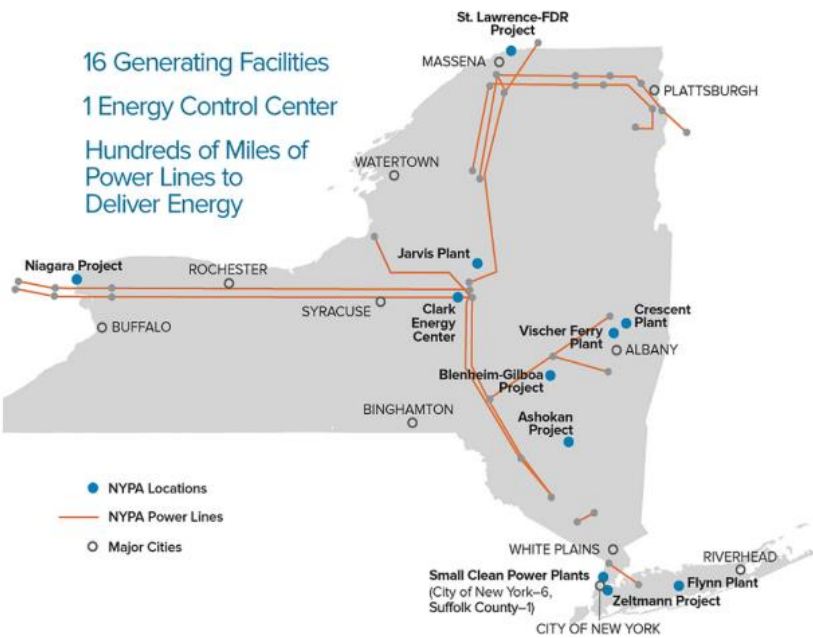
New York State: Transmission Priorities



- 1 Accelerate** construction existing projects
- 2 Prioritize** new transmission projects
- 3 Incentivize** transmission of renewable power into NYC
- 4 Partner** with private sector to expand capabilities



NYPA network: 1,454 circuit-miles of alternating current transmission lines



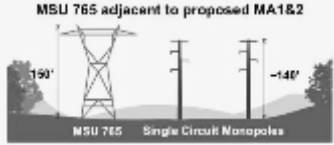
87% 230 kV or 345 kV lines

11% 765 kV lines

7GW Of renewable energy connected via NYPA lines

\$726M Investment to extend and modernize lines (2013-25)

Recent NYPA transmission investments help set the stage for New York State's 2030 goals

	AC Transmission – Segment A (Public Policy Transmission Project) 	Moses-Adirondack Smart Path Reliability Project 	Northern New York (Priority Transmission Project) 
Goal	Increase UPNY/SENY transfer limit by 350 MW and address system congestion while improving ageing infrastructure	Provide a more robust, resilient and reliable electric system upstate to provide 900MW of renewable energy to 900k homes statewide	Establishes a continuous 345 kV path in Northern NY expanding the deliverability of approximately 1,000 MW of renewable generation and addresses congestion and improves ageing Infrastructure
Status / Cost	Start: 2019 → In progress (target 2023) Total cost: \$750 Million NYPA Investment: \$281 Million	Start: 2020 → In progress (target 2023) Total cost: \$484 Million NYPA Investment: \$484 Million	Start: 2020 → In progress (target Q4 2025) Total cost: \$905 Million NYPA Investment: \$498 Million
Details 	86 miles of New double circuit 345 kV Edic to New Scotland Two new 5 miles of 345 kV line segments to Rotterdam Rebuild 6 miles of 345 kV south of Princetown Junction Marcy and Edic terminal upgrades Princetown 345 kV GIS switchyard.	Rebuild NYPA's 86-mile-long Moses-Adirondack transmission line Construct a new 345kV switchyard at the Robert Moses switchyard and the Adirondack substation 	Upgrading segment and stations to 345kV Rebuild National Grid Adirondack-Porter to 345 KV Rebuild NYPA Moses-Willis to 345 kV Rebuild NYPA Willis-Pantode at 230 KV Additional station and ancillary system/network improvements
Collaborators	LS Power	N/A	TBD

Our strategy is to become the leading transmission developer, owner, and operator for New York State and its changing needs



A Invest \$150-200M annually to grow NYPA's transmission asset base 2-3x by 2030



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



C Accelerate New York State's most critical transmission projects in support of the CLCPA goals



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

Agenda



1. NYPA Background, Vision & Mission



2. Preserve the Value of Hydropower



3. Lead Transmission development



4. **Digitization as a foundation**



5. ESG as a foundation

Digitization

our 2030 vision



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

NYPA 2020 stated ambitions to become the first end-to-end “digital utility”

Aspiration

NYPA will become an end-to-end digital utility leveraging connectivity, big data and analytics to drive actionable business insight that enables us to better serve our customers, employees and other key stakeholders

Accomplishments

Developed 3 Digital Hubs

AGILE, NYEM, iSOC

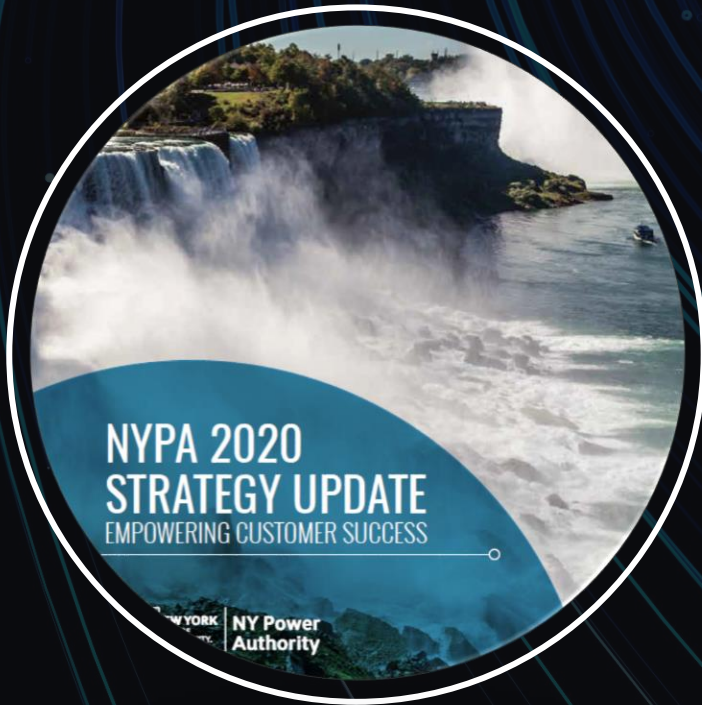
Established Digital Transformation Office

DTO established to drive NYPA's digital transformation, establish strategy and enable execution through partnerships with IT and business units

Drove Digital Project Execution while Strengthening IT Infrastructure & Capabilities

Over 50+ Projects completed or in active delivery

Strategic hires in Cyber Security, Enterprise Architecture, Data Governance & Data Quality, Solutions Architecture



IT Infrastructure and Capabilities Investments



Enterprise Compute & Storage - Digital Enterprise Services

100% conversion of workforce to remote working within 72 hours with minimal disruption in response to the COVID-19 Pandemic

Cyber AI/ ML insider and external threat management - Active Cyber Security
Automated threat hunting through the stitching of hundreds of anomalies observed across multiple-entities into a single threat to simplify and accelerate response time

Data Management & Analytics - Digital Enterprise Services

Established the ability to provision and access well-governed data for business insights, data-driven decision making and day-to-day operations.

Moving to Cloud - Digital Enterprise Services

Increased productivity and efficiency through improved communication, virtual collaboration, seamless data access and integrated information sharing

Digital Worker Program - Digital Plant & Field Worker

The iPhones for All initiative was foundational to advancing our goal of becoming an end-to-end digital utility. Every employee at NYPA and Canals were issued (~1000 iPhones) a business-ready device for communication, collaboration, training, emergency response, scheduling, and more while upholding our highest standards of information protection and cyber-security

Strategic Technology Solutions



Mosaic SuccessFactors - Digital Enterprise Services

Successful implementation of Mosaic SuccessFactors that provides a digital and mobile comprehensive suite of fully integrated applications for Talent and Learning Management that elevates HR business capabilities to the latest standards, best practices and digital delivery

Treasury Management System - Digital Enterprise Services

Modernization and replacement of the existing system and streamlining of processes used to manage NYPA's cash, debt, and investments

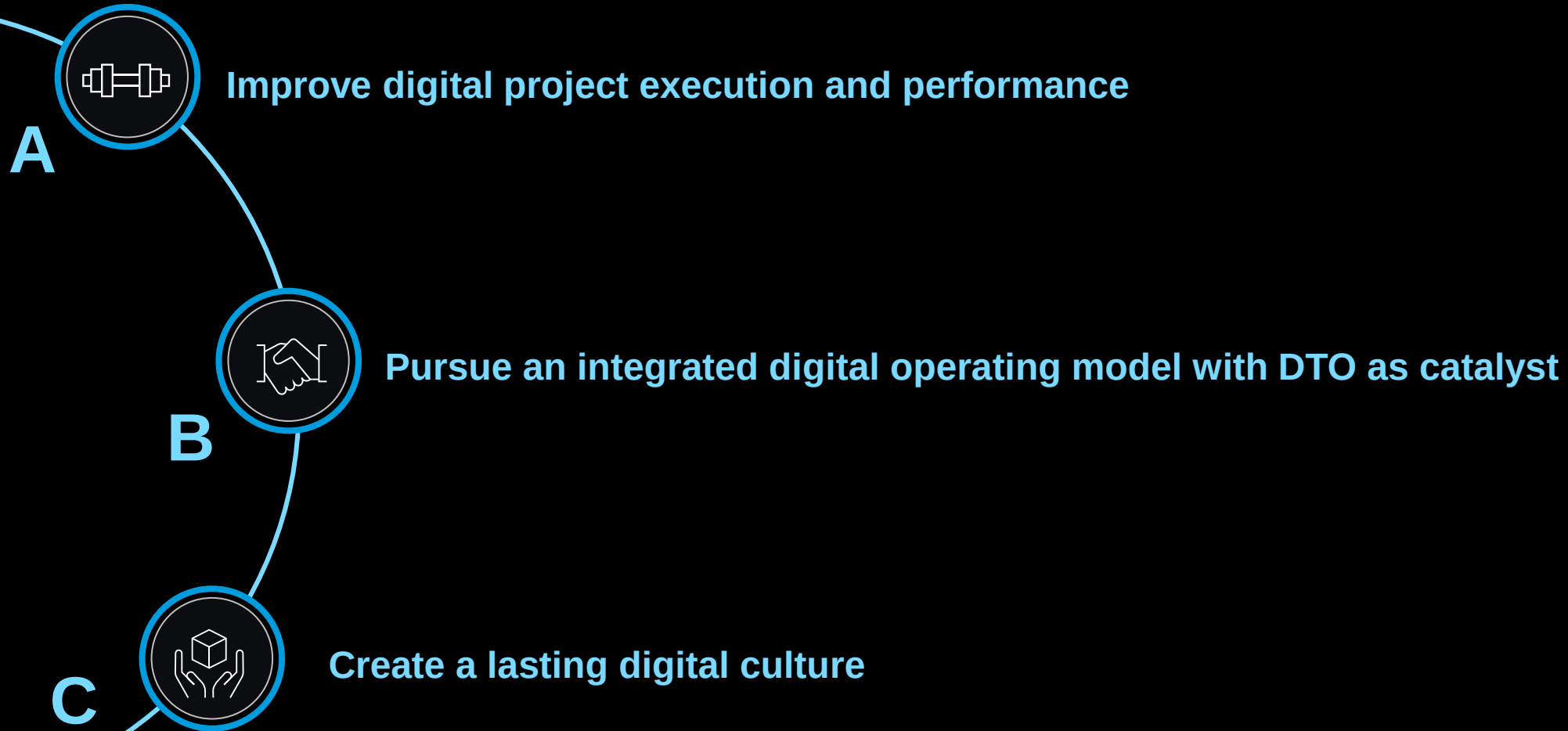
Account Center (CDEx) - Digital Energy Products & Customer Engagement

100% of commercial supply customers have access to the account center, eliminating low-value touchpoints. Enables account and business development representatives to provide other NYPA services that will help reach state GHG reduction goals

Emergency Energy Control Center - Digital Intelligent Grid

Added redundancy with building a state-of-the-art backup to the existing Energy Control Center in the event they become inoperable due to disaster

Our strategy to digitize NYPA and create the first end to end digital utility



North Star Vision to achieve business goals by investing in digital initiatives / products



Data Driven Culture

Discover and leverage meaningful patterns from our multitude of data sources, to accelerate data-driven actions and support smarter decisions using Artificial Intelligence, Machine Learning, Natural Language Processing etc.



Automation & Standardization

Deliver increased automation and digital-enabled standard solutions that augment the workforce and support business processes across the enterprise



Employee Enablement

Enable access to IT infrastructure and services with optimized experiences for each device, anywhere, anytime with seamless integration



Security Excellence

Continue to develop and sustain intelligent operations and security excellence across NYPA by protecting users, applications, assets, data, infrastructure and supply chain from risks associated with digital technology



Innovation

Incubate and drive development and testing of emerging technologies to accelerate growth of enterprise wide digital capabilities

Agenda



1. NYPA Background, Vision & Mission



2. Preserve the Value of Hydropower



3. Lead Transmission development



4. Digitization as a foundation



5. ESG as a foundation

Environmental, Social, & Governance our 2030 vision



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

Defining ESG and Sustainability

“ESG” is the framework used to assess a company’s policies, processes, practices, performance, and its economic impact relating to environmental, social and governance performance

Environmental



The natural environment and ecosystems that affect and are affected by the organization

Social



The people – both internal and external – with whom the organization interacts

Governance

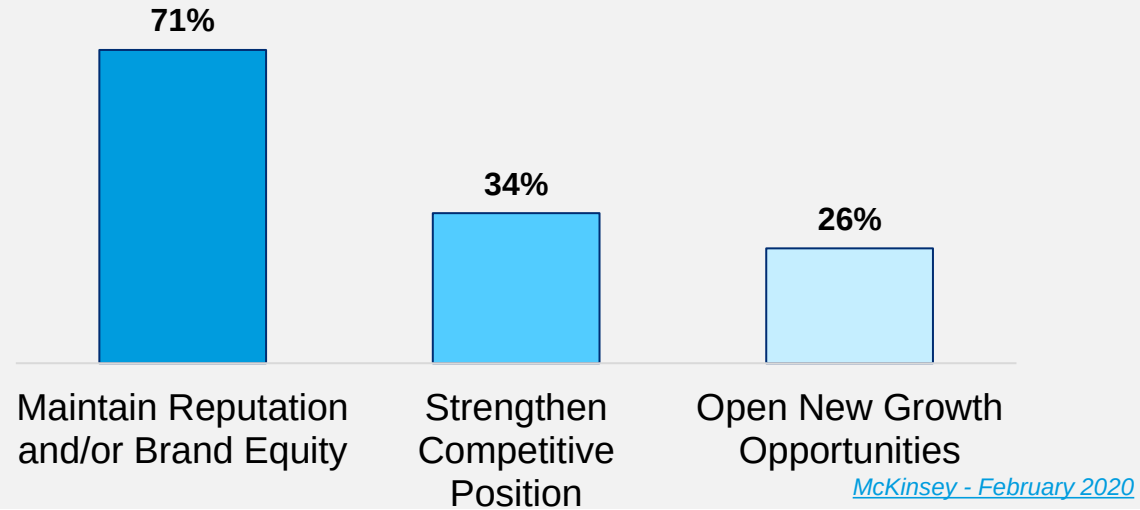


The system of processes, controls, and procedures used to manage risks, make effective decisions, and meet stakeholder needs

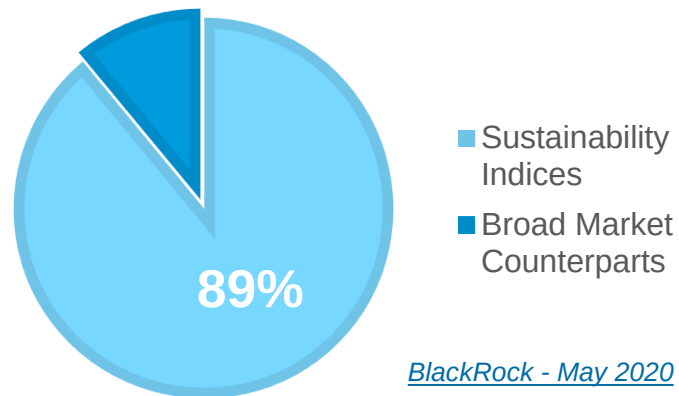
Sustainability encompasses the environmental, social, governance and economic performance of a company that contribute to long-term value creation for the company and its stakeholders

ESG Impact on Long-Term Business Performance

Top Ways That ESG Programs Improve Financial Performance



89% of both Morningstar's and MSCI's Sustainability Indices Outperformed Broad Market Counterparts in Q1 of 2020



“Companies with strong profiles on material sustainability issues have the potential to outperform those with poor profiles. In particular, we believe companies managed with a focus on sustainability should be better positioned versus their less sustainable peers to weather adverse conditions while still benefiting from positive market environments.”

BlackRock - May 2020

NYPA has made significant progress in the Sustainability journey that formally began in 2007

A selection of
NYPA’s key
sustainability
achievements

2007

Sustainability
Manager
position
established

2016

Sustainability
Department
and Corporate
Sustainability
policy
established

2018

Sustainability
Advisory
Council
established –
all BUs and 28
departments
represented

2019

2019-2023
Sustainability Plan
published – setting
enterprise-wide
climate and
environmental goals

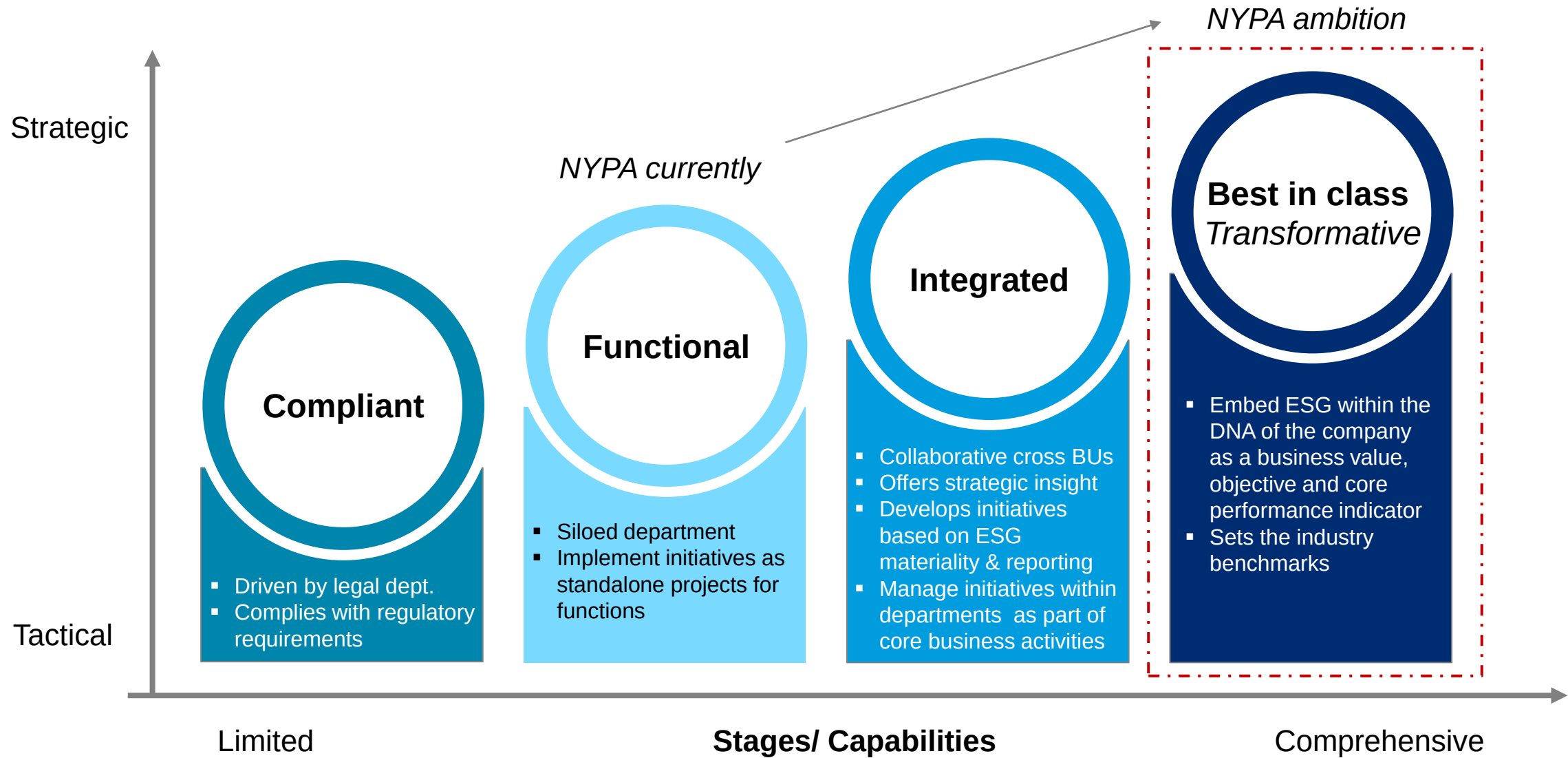
2020

Sustainability Plan
Refresh and ESG
Report process
begun – broadening
scope beyond the
environmental and
integrating
sustainability
processes across
core functions

Meeting and exceeding NYS sustainability-related goals (EOs 4, 18, 88, 166)

NYPA leads state agency peers in sustainability management

Embedding a concern for current and future ESG issues in NYPA culture will transform NYPA into a “best-in-class” ESG leader



Our ambition is to become best-in-class for ESG performance and reporting



A Evaluate ESG governance model to bring best-in-class ESG ambitions to life and fully integrate ESG into NYPA's DNA



B Expand the role of Sustainability to encompass strategic guidance, oversight and reporting for material ESG issues – across environmental, social, and governance



C Implement strategies and achieve milestones articulated in refreshed and expanded Sustainability Plan



D Prepare and issue annual Sustainability Reports which reflect prioritized ESG issues

This document consists of 9 pages excluding this cover page and attachments.

MODIFICATION NO. M010
SUPPLEMENTAL AGREEMENT TO
CONTRACT NO. DE-AC02-82CH10132

MODIFICATION NO. M010

CONTRACTOR AND ADDRESS:

New York Power Authority
123 Main Street
White Plains, NY 10601

MODIFICATION FOR:

Extension of ten (10) years.

THIS MODIFICATION No. 010 ("Modification" or "MOD 10"), effective the 1st day of January 2021, by and between the UNITED STATES OF AMERICA, as represented by the UNITED STATES DEPARTMENT OF ENERGY ("DOE") (collectively, "Government" or "Customer"), and the NEW YORK POWER AUTHORITY ("Contractor", or "NYPA", or "The Power Authority of the State of New York," and together with Government, the "Parties"),

WITNESSETH THAT:

WHEREAS, Government and Contractor entered into Contract No. DE-AC02-82CH101032 (also known as "Contract FD-13" and alternatively referred to herein as "the Contract") on the 26th day of October, 1982, for the sale of Direct Firm Power Service for use at the site of Brookhaven National Laboratory ("BNL Site"); and

WHEREAS, the Contract has been modified previously, most recently on January 01, 2011 when the Parties agreed to make effective Modification No. M009 ("MOD 9"), and the Parties desire to modify the Contract further, as hereinafter provided; and

WHEREAS, in MOD 9 the Parties agreed to an extended long-term agreement for the sale of Direct Firm Power Service to succeed MOD 8; and

WHEREAS, the NYPA Board of Trustees has authorized extension of the sale of Direct Firm Power Service by NYPA to Government for ten (10) years; and

WHEREAS, the NYPA Board of Trustees has authorized the sale of 15 megawatts ("MW") of Hydroelectric Power to the Long Island Power Authority ("LIPA") for resale to, and for the exclusive use of Government, which has been memorialized in a contract entered into between NYPA and LIPA dated June 22, 2010 for a ten-year term which may be extended for an additional five years subject to certain conditions (the "Resale Agreement"); and

WHEREAS, the contract between LIPA and DOE for the resale of the 15 MW of Hydroelectric Power from LIPA to DOE was extended in 2018 to have a termination date of February 28, 2025; and

WHEREAS, the DOE has requested NYPA and LIPA to extend the Resale Agreement, which is now set to expire in February 2021, for an additional four (4) years to match the termination date of the contract between LIPA and DOE for the resale of the 15 MW of Hydroelectric Power; and

WHEREAS, NYPA understands that Customer desires the Resale Agreement to be extended for the same term as this Modification, to which NYPA agrees to work in good faith to achieve, provided such use of Hydroelectric Power is consistent with New York State law and deemed permissible by NYPA's Board of Trustees; and

WHEREAS, the Resale Agreement, among other things, authorizes NYPA to partially

assign and transfer to LIPA the rights and obligations associated with NYPA's supply of 15 MW of electricity to Government under the Contract provided LIPA receives full delivery of 15 MW of Hydroelectric Power; and

WHEREAS, LIPA's acceptance of NYPA's partial assignment and transfer, and the resulting sale of 15 MW of Hydroelectric Power to Government by LIPA under the Resale Agreement may result in a reduction in the amount of power and energy sold directly to Government under the Contract from time to time; and

WHEREAS, such reduction in the amount of power and energy sold directly to Government under the Contract described in the preceding whereas clause shall continue for any extended term of the Resale Agreement but not beyond the term of this Modification; and

WHEREAS, the Parties agree that the firm power and energy sold directly under this Modification shall henceforth be known as "Direct Firm Market Power Service" as defined herein; and

WHEREAS, this Modification is authorized by law, including 41 U.S.C. 252(c)(15), P.L. 95-91;

NOW, THEREFORE, in consideration of the mutual covenants herein, NYPA and Government agree that the Contract, as modified previously, is hereby further modified as follows:

1. DEFINITIONS.

- A. **Allocation** means the amount of Direct Firm Market Power Service (in MW) to which the Customer is entitled.
- B. **Ancillary Services** shall have the meaning set forth in the NYISO Tariffs as such definition may be modified from time to time.
- C. **BNL Site** shall have the meaning set forth in the first whereas clause of this Modification.
- D. **Contract** shall have the meaning set forth in the first whereas clause of this Modification.
- E. **Direct Firm Market Power Service** means the power and energy sold by NYPA to Customer under the Contract, as modified by this MOD 10, consistent with the terms of NYPA's Service Tariff No. BNL-1. Direct Firm Market Power Service consists of Firm Market Power and Firm Market Energy as defined in Service Tariff No. BNL-1.
- F. **Hydroelectric Power** means the firm power and firm energy generated from

NYPA's hydroelectric resources sold to LIPA for resale to Customer in accordance with the Resale Agreement.

- G. **Load Serving Entity (or LSE)** shall have the meaning set forth in the NYISO Tariffs as such definition may be modified from time to time.
- H. **Modification (or MOD 10)** shall have the meaning set forth in the preamble to this Modification.
- I. **Monthly Clean Energy Implementation Charge** has the meaning provided in Schedule A of this Modification.
- J. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- K. **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.
- L. **NYPA Transmission Adjustment Charge (or NTAC)** has the meaning set forth in the NYISO Tariffs as such definition may be modified from time to time.
- M. **Prudent Utility Practice** means any of the practices, methods, techniques, standards, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods techniques, standards, or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with applicable laws and good business practices, reliability, safety and expedition. Prudent Utility Practices are not intended to be limited to only the optimum practice, method or act to the exclusion of all others, but rather are intended to include practices, methods or acts generally accepted, in the region, having due regard for, among other things, contractual obligations, costs, operating rules or procedures of transmission operators, reliability councils or other market conditions.
- N. **Resale Agreement** has the meaning set forth in the fifth whereas clause of this Modification.
- O. **Rules** refers to NYPA'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 or as the Authority may later promulgate.
- P. **Service Tariff No. BNL-1 (or ST BNL-1)** is NYPA's service tariff effective

January 2021 billing period governing the sale of Direct Firm Market Power Service to Customer.

Q. **Taxes** means any taxes, assessments or charges mandated by federal, state or local agencies or authorities that are levied on NYPA or that NYPA is required to collect from the Customer associated with Direct Firm Market Power Service hereunder or Hydroelectric Power, if and to the extent such taxes, assessments or charges are not recovered by NYPA pursuant to another provision of this Modification or ST BNL-1, or with respect to Hydroelectric Power, pursuant to the Resale Agreement.

R. **Transmission Congestion Contracts (or TCCs)** shall have the meaning ascribed to Grandfathered Transmission Congestion Contracts as set forth in the NYISO Tariffs as such definition may be modified from time to time.

2. **CONTRACT TERM:** The term of the Contract is extended from January 01, 2021 to December 31, 2030.

3. The Customer's Allocation shall be 77 MW.

4. A. For the period commencing January 1, 2021 and ending December 31, 2030, NYPA will procure all energy on behalf of Customer from the NYISO necessary to meet Customer's needs up to the Allocation after taking due account of the electricity supplied to Customer under the Resale Agreement. NYPA will make Firm Market Energy purchases in the manner set forth in ST BNL-1, as appropriate, to ensure provision of the required amount of energy to the point of interconnection between the BNL Site and LIPA. NYPA agrees to coordinate and consult with Customer quarterly concerning the energy purchases.

B. For the period commencing January 1, 2021 and ending December 31, 2030, NYPA will serve as the LSE for the Customer with the NYISO in order to ensure provision of Direct Firm Market Power Service and Hydroelectric Power to the BNL Site (also referred to as "PTID 211508"). As LSE, NYPA's functions will include:

- i. Scheduling and procurement of all Firm Market Power necessary to meet the electricity requirements for the BNL Site, but not to exceed the Allocation.
- ii. Procurement of all Ancillary Services, marginal losses, NTAC and congestion costs associated with deliveries to the BNL Site.
- iii. Procurement of any other products or services required by the NYISO to provide electricity to the BNL Site.

C. NYPA will use Prudent Utility Practices for all procurements referenced in paragraphs 4.A and 4.B above.

D. Customer agrees to compensate NYPA for all charges for Direct Firm Market Power Service in accordance with ST BNL-1, including the Monthly Clean Energy Implementation Charge (as set forth in Schedule A to this Modification), plus any additional charges incurred by NYPA to effectuate such service through the procurements and LSE functions described in paragraphs 4.A and 4.B above, including all transmission and wheeling charges, and Taxes.

E. For avoidance of doubt, NYPA's role as LSE with respect to sales of Hydroelectric Power from LIPA to Customer under the Resale Agreement obligates Customer to compensate NYPA under this Modification for all NYISO charges NYPA incurs associated with sales and deliveries of Hydroelectric Power to Customer. Such NYISO charges are in addition to NYISO charges associated with Direct Firm Market Power Service. In addition to NYISO charges, the Customer shall compensate NYPA for any Monthly Clean Energy Implementation Charges that may be incurred by NYPA associated with sales made under the Resale Agreement.

F. NYPA commits to credit the Customer with 100% of the credits NYPA receives each month from the TCCs associated with the Customer and Customer agrees to pay NYPA for any net monthly rents owed to the NYISO for the TCCs associated with the Customer. The parties agree to work in good faith to preserve the TCCs for the benefit of Customer, which are recorded as Contract Nos. 76.1, 76.2, 76.3 and 76.4 in Section 18, Attachment L of the NYISO Open Access Transmission Tariff.

5. A. The Parties estimate that the total "all-in" cost to Customer for the term of this Modification shall not exceed \$375.0 million (in nominal dollars) and Customer is not obligated to reimburse NYPA for any costs incurred in excess of such \$375.0 million all-in cost cap. NYPA shall notify Customer in writing when the all-in costs are at \$275.0 million, so that the Customer is duly notified that the all-in cap of \$375.0 million might be reached during the term of the Contract and is provided enough time for Customer to obtain authorization to raise the all-in cap sufficiently to reach the end date of this MOD 10, or determine if it will not obtain authorization to raise the all-in cap. In the absence of such written notice by NYPA and Customer remains unaware that the all-in cap might be exceeded, Customer is not obligated to reimburse NYPA for any costs in excess of such \$375.0 million all-in cost cap. NYPA is not obligated to provide Customer any TCC credits once the \$375.0 million all-in cost cap has been exceeded. Absent authorization provided by Customer consistent with the "Availability of Funds for the Next Fiscal Year" provision provided as item #2 in Modification No. 3, NYPA is not obligated to continue performance under this Modification or otherwise incur costs in excess of such \$375.0 million all-in estimated cost cap. If authorization is provided, the contract obligations will remain in effect. Both parties shall communicate with each other in writing about establishing a revised all-in cap, and work cooperatively to establish written procedures for notification to Customer if the

revised all-in cap is at risk of being exceeded.

B. The Parties specifically acknowledge that (i) absent the authorization from Customer to NYPA to incur costs in excess of the \$375.0 million all-in cost cap described in this paragraph 5; or (ii) any failure by Customer to make payments after it has provided authorization to NYPA to incur costs in excess of \$375.0 million all-in cost cap as described in this paragraph 5, NYPA has the right to cease performance under this Modification with respect to any costs or credits that may be associated with exceeding the \$375.0 million all-in cost cap, including the LSE functions described in paragraphs 4.B and 4.C above, and the Customer will assume full responsibility for all costs associated with those LSE functions formerly performed by NYPA, including any Customer-related NYISO costs (net of any applicable credits) imposed on NYPA (via NYISO re-bills) attributable to service for periods prior to NYPA's cessation as LSE for Customer.

6. CONTRACT DEMAND CHANGES: Customer will have the option to set schedules for monthly demand levels ("Contract Demand") twice within a given calendar year. Contract Demand encompasses both Direct Firm Market Power Service (not to exceed the Allocation) and Hydroelectric Power. Setting Contract Demand permits Customer to schedule NYPA deliveries around major programmatic schedules. Customer shall notify NYPA in writing a minimum of 90 days prior to the exercise of a Contract Demand change. In the absence of such notification, Customer's Contract Demand will default to the amount set forth in the Customer's prior submitted schedule for the corresponding months.
7. WHEELING/TRANSMISSION CHARGES: The Customer acknowledges that it is also subject to payment to NYPA for the wheeling charges incurred on Customer's behalf that arise from transmission contracts associated with the TCCs described herein.

A. Transmission charges include the following related to NYPA's facilities:

i) Marcy-South Transmission Line. Monthly transmission charges to Customer for use of NYPA's Marcy-South transmission line will be based on Customer's actual peak demand, using an integrated 30 minute average, adjusted for appropriate losses. The monthly charge will be determined by multiplying the Marcy-South wheeling rate in effect for that month by the actual monthly peak integrated 30 minute demand, adjusted for appropriate losses.

ii) Fitzpatrick Facilities Transmission Lines. Monthly transmission charges to Customer for use of NYPA's Fitzpatrick Facilities transmission lines will be based on Customer's actual peak demand, using an integrated 30 minute average, adjusted for appropriate losses. The monthly charge will be determined by multiplying the Fitzpatrick Facilities wheeling rate in effect for that month by the actual monthly peak integrated 30 minute demand,

adjusted for appropriate losses.

iii) Y-49 Transmission Cable. If applicable, monthly transmission charges to Customer for the use of NYPA's Y-49 transmission cable will be based on a 10% share of the Y-49 transmission cable's capacity in MWs, to the maximum of 60 MW on the current 600 MW line's capacity. The monthly charge will be determined by multiplying the Y-49 transmission rate in effect for that month by the calculated 10% share of the Y-49 transmission cable's capacity in MWs. Under this Modification, NYPA has the discretion to set the Y-49 transmission rate using the weighted average cost of capital in accordance with the Federal Energy Regulatory Commission-approved formula rate for NYPA's "backbone" transmission facilities, as adjusted annually, but in any event no lower than any credited amounts to Public Service Electric & Gas Company – Long Island for the Customer's share of the Y-49 transmission cable's costs.

B. Wheeling charges include those related to services provided on the facilities of Consolidated Edison Company of New York, Inc. and LIPA.

8. Customer will provide electric load forecasts by hour to NYPA on a weekly or monthly basis, or less frequently if the Parties mutually agree, but for any new forecast it shall be provided no later than noon two business days prior to the initial target day, for that target date through the balance of the calendar month.
9. BILLING DATA: All billing data as determined by the NYISO for the supply of electricity to Customer shall be included in monthly bills rendered by NYPA to Customer, including the supply of Hydroelectric Power. All such data shall reflect Customer's usage measured at PTID 211508, as determined by the NYISO.
10. The furnishing of Direct Firm Market Power Service is subject in all respects, except as noted by the provisions of Contract No. DE-AC02-82CH10132 as amended by this Modification, to ST BNL-1 and to the Rules.
11. The attached 7-page document, designated as "FAR 52.212-4--Contract Terms and Conditions - Commercial Items (October 2018)," is incorporated into this Modification.
12. The attached 9-page document, designated as "FAR 52.212-5--Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items (January 2020)," is incorporated into this Modification.
13. PAYMENT AND INVOICING: The Parties agree that, notwithstanding the fact that this Modification is between Customer and NYPA, payments will be made by the Management and Operating contractor ("M&O") for the BNL Site under its M&O contract. The M&O shall make payments for accepted services performed and/or items delivered as set forth in this Modification. Payments may be made either by

check or electronic funds transfer, at the M&O's option. Payments shall be deemed to have been made as of the date of mailing or the date on which the electronic funds transfer was made.

Until notified by the DOE Contracting Officer, all invoices shall be submitted to the following address for payment:

Brookhaven Science Associates
Brookhaven National Laboratory
Accounts Payable Bldg 400D
PO Box 5000
Upton, NY 11973

14. ORDER OF PRECEDENCE: In the event of any inconsistency between the terms of this Modification and any rate schedule, rider or exhibit incorporated herein by reference or otherwise, or any of the Rules, the terms of this Modification shall control.
15. The provisions of Contract No. DE-AC02-82CH10132 are modified to include ST BNL-1. All other provisions not modified by this Modification remain in full force and effect.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this document.

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

BY: _____
Katrina B. Porter
Contracting Officer

DATE: _____

NEW YORK POWER AUTHORITY

By: _____
Keith T. Hayes
Senior Vice President,
Clean Energy Solutions

DATE: _____

SCHEDULE A

MONTHLY CLEAN ENERGY IMPLEMENTATION 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. BNL-1, or in the Rules.

“Alternative Compliance Payment” means a form of payment of money by an LSE that is authorized by the State in law, regulation, or Regulatory Order as a mechanism for an LSE to satisfy an Annual LSE Obligation.

“Annual LSE Obligation” means the annual obligation of an LSE to supply a defined percentage proportion (or other applicable measure) of its retail load with supply derived from new eligible renewable resources through compliance measures that are authorized in law, regulation, or Regulatory Order for a State Energy Standard. With reference to the Zero Emission Credit Requirement, “Annual LSE Obligation” refers to an obligation of an LSE to purchase a specified number of ZECs representing the LSE’s proportional share of ZECs purchased by NYSERDA based on the load served by the LSE in relation to the total load served by all LSE’s in the New York Control Area.

“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 the CES Order or the CES.

“Clean Energy Compliance Measures” is a collective reference to Zero Emission Credit Requirement Compliance Measures, Renewable Energy Standard Compliance Measures, Offshore Wind Energy Standard Compliance Measures, and any other compliance measures that an LSE is authorized by law, regulation or Regulatory Order to undertake in order to meet an Annual LSE Obligation.

“Clean Energy Standard” or “CES” means the Clean Energy Standard adopted by the State, as may be amended from time to time.

“Credit” means a certificate or other claim to the environmental attributes associated with energy produced by or from qualifying resources that typically represents proof that one megawatt-hour (1 MWh, or 1000 kilowatt-hours) of qualifying electricity was generated and delivered to the power grid. A Credit includes but is not limited to a ZEC, REC and OREC.

“Load Serving Entity” has the meaning provided in the CES Order and generally refers a utility or other entity that supplies load (electricity) to a consumer of electricity.

SCHEDULE A

“Monthly Clean Energy Implementation Charge” means the monthly charge to the Customer established in this Schedule A.

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

“Offshore Wind Energy Credit” or “OREC” refers to a qualifying Offshore Wind Energy Credit as authorized by the State in law, regulation, or Regulatory Order.

“Offshore Wind Energy Standard” means the Offshore Wind Energy Standard adopted by the State as may be amended from time to time.

“Offshore Wind Energy Standard Compliance Measures” means the purchase of ORECs from NYSERDA; the Authority’s procurement of ORECs by Self-Supply; and any other compliance measures that an LSE is authorized by law, regulation, or Regulatory Order to undertake for the purpose of satisfying an Annual LSE Obligation for the Offshore Wind Energy Standard.

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

“Regulatory Order” means an order issued by a regulatory agency or authority of the State of New York, and includes orders issued by the PSC. Regulatory Order includes, by way of example only, the CES Order and any other order of the PSC that establishes, supplements, modifies, or clarifies standards, requirements, obligations, or procedures for implementation of the State Energy Plan or a State Energy Standard, including the CES.

“Renewable Energy Credit” or “REC” refers to a qualifying renewable energy credit as authorized by the State in law, regulation, or Regulatory Order.

“Renewable Energy Standard” means the Renewable Energy Standard adopted by the State as may be amended from time to time.

“Renewable Energy Standard Compliance Measures” means the purchase of RECs from NYSERDA; the Authority’s procurement of RECs by Self-Supply; Alternative Compliance Payments to NYSERDA; and any other compliance measures that an LSE is authorized by law, regulation, or Regulatory Order to undertake for the purpose of satisfying an Annual LSE Obligation for the Renewable Energy Standard.

“Self-Supplied Credit Charge” means a supplemental per-Credit charge or adder that the Authority adds to the cost of any Credit that it procures by Self-Supply for the purpose of: (1) enabling the Authority to recover administrative costs that it incurs in connection with the Self-Supply of Credits; and (2) managing risk in the cost of Credits over the term of any contract that serves as a source of Credits for Self-Supply, including

SCHEDULE A

but not limited to mitigating the extent of fluctuations in the cost of Credits that the Authority procures through Self-Supply.

“Self-Supplied Credit Cost” means the annual average per-Credit cost (including any applicable Self-Supplied Credit Charge) that the Authority establishes pursuant to Section II.3.b of this Schedule A for any Credit that it procures by Self-Supply for the purpose of complying with any Annual LSE Obligation applicable to a State Energy Standard.

“Self-Supply” means the Authority’s procurement of Credits from a source other than NYSERDA.

“State” means the State of New York.

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

“State Energy Standard” refers to any standard or requirement that is adopted by the State in law, regulation, or Regulatory Order for the purpose of implementing State energy and environmental goals or policies, including goals and policies set forth in the State Energy Plan, that applies to the Authority, or with which the Authority determines it will comply in implementing its business and/or power supply programs. For purposes of this Agreement, State Energy Standard includes the Clean Energy Standard, Renewable Energy Standard, Zero Emission Credit Requirement, Offshore Wind Energy Standard, and any other standard or requirement adopted by the State in law, regulation, or Regulatory Order that applies to the Authority, or with which the Authority determines it will comply, in implementing its business and/or power supply programs.

“Total Monthly Firm Market Load” has the meaning provided in Section II.3.c of this Schedule A.

“Total Monthly CE Compliance Costs” has the meaning provided in Section II.3.c of this Schedule A.

“Zero Emission Credit” or “ZEC” refers to a Zero Emission Credit as authorized by the State in law, regulation, or Regulatory Order.

“Zero Emission Credit Requirement Compliance Measures” means the purchase of ZECs from NYSERDA; and any other compliance measures that an LSE is authorized by law, regulation, or Regulatory Order to undertake for the purpose of satisfying an Annual LSE Obligation for the Zero Emission Credit Requirement.

“Zero Emission Credit Requirement” means the Zero Emission Credit Requirement adopted by the State as may be amended from time to time.

II. MONTHLY CLEAN ENERGY IMPLEMENTATION CHARGE

SCHEDULE A

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. BNL-1 or the Rules, the Customer shall be subject to a Monthly Clean Energy Implementation Charge as provided in this Schedule A. The Monthly Clean Energy Implementation Charge is in addition to all other charges, fees and assessments provided in the Agreement, Service Tariff No. BNL-1 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the Monthly Clean Energy Implementation Charge.
2. The Monthly Clean Energy Implementation Charge is part of a compliance program ("Compliance Program") that the Authority has adopted for the purpose of administering Direct Firm Market Power Service in a manner that is consistent with the State Energy Plan, the CES, and other applicable State Energy Standards. Pursuant to the Compliance Program, the Authority will support the preservation of at risk nuclear zero emission attributes, and support the development of renewable energy resources to serve its Direct Firm Market Power Service customers, through the implementation of various Clean Energy Compliance Measures that the Authority in its discretion determines are appropriate to enable the Authority to meet Annual LSE Obligations that have been established for each State Energy Standard that applies to the Authority, or with which the Authority determines it will comply in implementing its business and/or power supply programs. The purpose of the Monthly Clean Energy Implementation Charge is to enable the Authority to recover costs and other charges as described herein that the Authority incurs for implementing Clean Energy Compliance Measures.
3. The Monthly Clean Energy Implementation Charge will be determined and assessed as follows:
 - a. The Authority will, each calendar year, implement such Clean Energy Compliance Measures as the Authority determines in its discretion to be appropriate to meet the Annual LSE Obligation established for each State Energy Standard with respect to the load that the Authority serves using Direct Firm Market Power Service, including the Renewable Energy Standard, Zero Emission Credit Requirement and Offshore Wind Energy Standard. The specific Clean Energy Compliance Measures that the Authority determines to use, and the amount or extent of each Clean Energy Compliance Measure taken in any calendar year to meet each Annual LSE Obligation shall be within the Authority's sole discretion.
 - b. The Authority will, for each calendar year, establish a Self-Supplied Credit Cost for any Credits that it procures through Self-Supply that it will use to meet the applicable Annual LSE Obligation for each State Energy Standard for the calendar year. The Authority may, in its discretion, for any quarter in any calendar year, revise any such Self-Supplied Credit Cost established pursuant to this Section II.3.b for the purpose of addressing unanticipated circumstances that impact or that the Authority reasonably believes could impact the

SCHEDULE A

Authority's costs and risk exposure regarding Self-Supply. Any Self-Supplied Credit Cost so revised shall apply prospectively.

- c. The Authority will, for each month of each calendar year in which it incurs costs for Clean Energy Compliance Measures, calculate the total costs that the Authority has incurred or estimates that it will incur for implementing the Clean Energy Compliance Measures ("Total Monthly CE Compliance Costs") for the purpose of meeting each Annual LSE Obligation for the total Firm Market Power kilowatt-hour load for such month ("Total Monthly Firm Market Load"). The Authority may calculate Total Monthly CE Compliance Costs since forecasts of the Total Monthly Firm Market Load that the Authority expects to serve for the month, or on a lagged basis based on the actual Total Monthly Firm Market Load that the Authority served for the month.
 - d. Each month, the Authority will calculate a Monthly Clean Energy Implementation Charge applicable to the Customer. The Monthly Clean Energy Implementation Charge will represent the Customer's share of the Total Monthly CE Compliance Costs assigned to the Total Monthly Firm Market Load assessed as the proportion of the Customer's total kilowatt-hour load served by the Authority for such month to the Total Monthly Firm Market Load served by the Authority for such month.
4. The Authority may, in its discretion, include the Monthly Clean Energy Implementation Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the Monthly Clean Energy Implementation Charge pursuant to another Authority-established procedure. In any case, the bill will indicate the amount of the Monthly Clean Energy Implementation Charge that is attributable to compliance with each Annual LSE Obligation.
5. The Authority will, at the conclusion of each calendar year in which it assesses a Monthly Clean Energy Implementation Charge, conduct a reconciliation process based on the actual costs it incurred for Clean Energy Compliance Measures taken (other than Credits procured through Self-Supply), and the actual load served for the year, compared with cost or load estimates or forecasts, if any, that the Authority used to calculate the Monthly Clean Energy Implementation Charge 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 as provided for in any other procedure established by the Authority pursuant to Section II.4 of this Schedule A.
6. Notwithstanding the provisions of Section II.3 of this Schedule A, if Electric Service for the Allocation is commenced after the Authority has implemented Clean Energy Compliance Measures for the year in which such Electric Service for the Customer

SCHEDULE A

is commenced, and as a result the Customer's load cannot be accounted for in such Clean Energy Compliance Measures, the Authority may in its discretion implement one or more separate Clean Energy Compliance Measures with respect to the Customer's load for the calendar year in order to meet the Annual LSE Obligation for Customer's load for the year, and bill the Customer for the costs associated with such separate Clean Energy Compliance Measures.

7. Nothing in this Schedule A 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. BNL or the Rules.

III. ALTERNATIVE CES COMPLIANCE PROGRAM

Nothing in this Schedule A shall be construed as preventing the Parties from entering into other agreements for alternative arrangements to enable the Authority to meet any Annual LSE Obligation with respect to the Customer's allocation, including alternative compliance programs and cost allocation mechanisms, which may include Customer self-supply in lieu of the Monthly Clean Energy Implementation Charge established in this Schedule A, provided that such self supply meets the REC definition included herein.

Attachment 11
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE

FAR 52.212-4 Contract Terms and Conditions-Commercial Items (OCT 2018)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights-

(1) Within a reasonable time after the defect was discovered or should have been discovered;
and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (*e.g.*, use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.*

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include-

Attachment 11
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE

- (i) Name and address of the Contractor;
 - (ii) Invoice date and number;
 - (iii) Contract number, line item number and, if applicable, the order number;
 - (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
 - (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
 - (vi) Terms of any discount for prompt payment offered;
 - (vii) Name and address of official to whom payment is to be sent;
 - (viii) Name, title, and phone number of person to notify in event of defective invoice; and
 - (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
 - (x) Electronic funds transfer (EFT) banking information.
 - (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
 - (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer-System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.
 - (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.
- (2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C.3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.
- (h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.
- (i) Payment.-

Attachment 11
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C.3903) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall-

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

Attachment 11
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

Attachment 11
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.

**Attachment 11
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE**

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t)[Reserved]

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

Attachment 11
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE

(End of clause)

Attachment 12
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE
CONTRACT NO. DE-AC-82CH10132 (Contract FD-13) Modification M010

FAR 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (JAN 2020).

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (*Jul 2018*) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (*Aug 2019*) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (*Nov 2015*).

(5) 52.233-3, Protest After Award (*Aug 1996*) (31 U.S.C. 3553).

(6) 52.233-4, Applicable Law for Breach of Contract Claim (*Oct 2004*) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

X (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (*Sept 2006*), with Alternate I (*Oct 1995*) (41 U.S.C. 4704 and 10 U.S.C. 2402).

X (2) 52.203-13, Contractor Code of Business Ethics and Conduct (*Oct 2015*) (41 U.S.C. 3509)).

 (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (*June 2010*) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

 (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (*Oct 2018*) (Pub. L. 109-282) (31 U.S.C. 6101 note).

 (5)[Reserved].

 (6) 52.204-14, Service Contract Reporting Requirements (*Oct 2016*) (Pub. L. 111-117, section 743 of Div. C).

Attachment 12
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE
CONTRACT NO. DE-AC-82CH10132 (Contract FD-13) **Modification M010**

— (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

— (8) 52.209-6, Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (*Oct 2015*) (31 U.S.C. 6101 note).

— (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) (41 U.S.C. 2313).

__ (10)[Reserved].

— (11) (i) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (*Nov 2011*) (15 U.S.C.657a).

___ (ii) Alternate I (Nov 2011) of 52.219-3.

— (12) (i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (*Oct 2014*) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

___ (ii) Alternate I (*Jan* 2011) of 52.219-4.

__ (13)[Reserved]

— (14) (i) 52.219-6, Notice of Total Small Business Set-Aside (Nov 2011) (15 U.S.C.644).

___ (ii) Alternate I (*Nov 2011*).

— (iii) Alternate II (Nov 2011).

____ (15) (i) 52.219-7, Notice of Partial Small Business Set-Aside (*June* 2003) (15 U.S.C. 644).

___ (ii) Alternate I (Oct 1995) of 52.219-7.

___ (iii) Alternate II (*Mar* 2004) of 52.219-7.

X (16) 52.219-8, Utilization of Small Business Concerns (*Oct 2018*) (15 U.S.C. 637(d)(2) and (3)).

____ (17) (i) 52.219-9, Small Business Subcontracting Plan (*Aug* 2018) (15 U.S.C. 637(d)(4))

___ (ii) Alternate I (Nov 2016) of 52.219-9.

___ (iii) Alternate II (Nov 2016) of 52.219-9.

____ (iv) Alternate III (Nov 2016) of 52.219-9.

Attachment 12
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE
CONTRACT NO. DE-AC-82CH10132 (Contract FD-13) **Modification M010**

- ___ (v) Alternate IV (Aug 2018) of 52.219-9
- ___ (18) 52.219-13, Notice of Set-Aside of Orders (Nov 2011) (15 U.S.C. 644(r)).
- ___ (19) 52.219-14, Limitations on Subcontracting (Jan 2017) (15 U.S.C.637(a)(14)).
- ___ (20) 52.219-16, Liquidated Damages-Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).
- ___ (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Oct 2019) (15 U.S.C. 657f).
- X (22) 52.219-28, Post Award Small Business Program Rerepresentation (Jul 2013) (15 U.S.C. 632(a)(2)).
- ___ (23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) (15 U.S.C. 637(m)).
- ___ (24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) (15 U.S.C. 637(m)).
- X (25) 52.222-3, Convict Labor (June 2003) (E.O.11755).
- X (26) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Jan 2020) (E.O.13126).
- X (27) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- X (28) (i) 52.222-26, Equal Opportunity (Sept 2016) (E.O.11246).
- ___ (ii) Alternate I (Feb 1999) of 52.222-26.
- X (29) (i) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).
- ___ (ii) Alternate I (July 2014) of 52.222-35.
- ___ (30) (i) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C.793).
- ___ (ii) Alternate I (July 2014) of 52.222-36.
- X (31) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).
- ___ (32) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

Attachment 12
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE
CONTRACT NO. DE-AC-82CH10132 (Contract FD-13) Modification M010

___ (33) (i) 52.222-50, Combating Trafficking in Persons (*Jan 2019*) (22 U.S.C. chapter 78 and E.O. 13627).

___ (ii) Alternate I (*Mar 2015*) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

X (34) 52.222-54, Employment Eligibility Verification (*Oct 2015*). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

___ (35) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA–Designated Items (*May 2008*) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (ii) Alternate I (*May 2008*) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (36) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (*Jun 2016*) (E.O. 13693).

___ (37) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (*Jun 2016*) (E.O. 13693).

___ (38) (i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (*Jun 2014*) (E.O.s 13423 and 13514).

___ (ii) Alternate I (*Oct 2015*) of 52.223-13.

___ (39) (i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (*Jun 2014*) (E.O.s 13423 and 13514).

___ (ii) Alternate I (*Jun 2014*) of 52.223-14.

___ (40) 52.223-15, Energy Efficiency in Energy-Consuming Products (*Dec 2007*) (42 U.S.C. 8259b).

___ (41) (i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (*Oct 2015*) (E.O.s 13423 and 13514).

___ (ii) Alternate I (*Jun 2014*) of 52.223-16.

___ (42) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (*Aug 2011*) (E.O. 13513).

___ (43) 52.223-20, Aerosols (*Jun 2016*) (E.O. 13693).

___ (44) 52.223-21, Foams (*Jun 2016*) (E.O. 13693).

___ (45) (i) 52.224-3 Privacy Training (*Jan 2017*) (5 U.S.C. 552 a).

Attachment 12
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE
CONTRACT NO. DE-AC-82CH10132 (Contract FD-13) **Modification M010**

___ (ii) Alternate I (*Jan* 2017) of 52.224-3.

— (46) 52.225-1, Buy American-Supplies (*May* 2014) (41 U.S.C. chapter 83).

— (47) (i) 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act (*May* 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43.

____ (ii) Alternate I (*May* 2014) of 52.225-3.

____ (iii) Alternate II (*May* 2014) of 52.225-3.

____ (iv) Alternate III (*May* 2014) of 52.225-3.

____ (48) 52.225-5, Trade Agreements (*Oct 2019*) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

— (49) 52.225-13, Restrictions on Certain Foreign Purchases (*June 2008*) (E.O.’s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

— (50) ~~52.225-26~~, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

— (51) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

— (52) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

— (53) 52.232-29, Terms for Financing of Purchases of Commercial Items (*Feb* 2002) (41 U.S.C.4505, 10 U.S.C.2307(f)).

— (54) 52.232-30, Installment Payments for Commercial Items (*Jan 2017*) (41 U.S.C.4505, 10 U.S.C.2307(f)).

— (55) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (Oct 2018) (31 U.S.C. 3332).

— (56) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (*Jul* 2013) (31 U.S.C.3332).

— (57) 52.232-36, Payment by Third Party (*May 2014*) (31 U.S.C.3332).

— (58) 52.239-1, Privacy or Security Safeguards (*Aug* 1996) (5 U.S.C. 552a).

Attachment 12
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE
CONTRACT NO. DE-AC-82CH10132 (Contract FD-13) **Modification M010**

___ (59) 52.242-5, Payments to Small Business Subcontractors
(*Jan 2017*) (15 U.S.C. 637(d)(13)).

___ (60) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels
(*Feb 2006*) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

___ (ii) Alternate I (*Apr 2003*) of 52.247-64.

___ (iii) Alternate II (*Feb 2006*) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

___ (1) 52.222-17, Nondisplacement of Qualified Workers (*May 2014*)(*E.O. 13495*).

___ (2) 52.222-41, Service Contract Labor Standards (*Aug 2018*) (41 U.S.C. chapter 67).

___ (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (*May 2014*)
(29 U.S.C. 206 and 41 U.S.C. chapter 67).

___ (4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price
Adjustment (Multiple Year and Option Contracts) (*Aug 2018*)
(29 U.S.C. 206 and 41 U.S.C. chapter 67).

___ (5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards-Price
Adjustment (*May 2014*) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

___ (6) 52.222-51, Exemption from Application of the Service Contract Labor Standards to
Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements
(*May 2014*) (41 U.S.C. chapter 67).

___ (7) 52.222-53, Exemption from Application of the Service Contract Labor Standards to
Contracts for Certain Services-Requirements (*May 2014*) (41 U.S.C. chapter 67).

___ (8) 52.222-55, Minimum Wages Under Executive Order 13658 (*Dec 2015*).

___ (9) 52.222-62, Paid Sick Leave Under Executive Order 13706 (*Jan 2017*) (*E.O. 13706*).

___ (10) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (*May 2014*)
(42 U.S.C. 1792).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

Attachment 12
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE
CONTRACT NO. DE-AC-82CH10132 (Contract FD-13) **Modification M010**

- (e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

- (i) 52.203-13, Contractor Code of Business Ethics and Conduct (*Oct* 2015) (41 U.S.C. 3509).
- (ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (*Jan* 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).
- (iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (*Jul* 2018) (Section 1634 of Pub. L. 115-91).
- (iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (*Aug* 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).
- (v) 52.219-8, Utilization of Small Business Concerns (*Oct* 2018) (15 U.S.C.637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (vi) 52.222-17, Nondisplacement of Qualified Workers (*May* 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.
- (vii) 52.222-21, Prohibition of Segregated Facilities (*Apr* 2015).

Attachment 12
FEDERAL ACQUISITION REGULATION (FAR) CLAUSE
CONTRACT NO. DE-AC-82CH10132 (Contract FD-13) **Modification M010**

- (viii) 52.222-26, Equal Opportunity (*Sept 2015*) (E.O.11246).
- (ix) 52.222-35, Equal Opportunity for Veterans (*Oct 2015*) (38 U.S.C.4212).
- (x) 52.222-36, Equal Opportunity for Workers with Disabilities (*Jul 2014*) (29 U.S.C.793).
- (xi) 52.222-37, Employment Reports on Veterans (*Feb 2016*) (38 U.S.C.4212)
- (xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (*Dec 2010*) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
- (xiii) 52.222-41, Service Contract Labor Standards (*Aug 2018*) (41 U.S.C. chapter 67).
- (xiv) (A) 52.222-50, Combating Trafficking in Persons (*Jan 2019*) (22 U.S.C. chapter 78 and E.O 13627).
- (B) Alternate I (*Mar 2015*) of 52.222-50(22 U.S.C. chapter 78 and E.O 13627).
- (xv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (*May 2014*) (41 U.S.C. chapter 67).
- (xvi) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (*May 2014*) (41 U.S.C. chapter 67).
- (xvii) 52.222-54, Employment Eligibility Verification (*Oct 2015*) (E.O. 12989).
- (xviii) 52.222-55, Minimum Wages Under Executive Order 13658 (*Dec 2015*).
- (xix) 52.222-62, Paid Sick Leave Under Executive Order 13706 (*Jan 2017*) (E.O. 13706).
- (xx) (A) 52.224-3, Privacy Training (*Jan 2017*) (5 U.S.C. 552a).
- (B) Alternate I (*Jan 2017*) of 52.224-3.
- (xxi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (*Oct 2016*) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
- (xxii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (*May 2014*) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
- (xxiii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (*Feb 2006*) (46 U.S.C. Appx.1241(b) and 10 U.S.C.2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

Attachment 12

FEDERAL ACQUISITION REGULATION (FAR) CLAUSE

CONTRACT NO. DE-AC-82CH10132 (Contract FD-13)

Modification M010

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for the Sale of Direct Firm Market Power
Service to U.S. Department of Energy For Use at Brookhaven
National Laboratory

Service Tariff No. BNL-1

TABLE OF CONTENTS

General Information	Leaf No.
I. Applicability	3
II. Frequently Used Abbreviations and Terms	3
III. Monthly Rates and Related Charges	
A. Monthly Rates and Charges	6
1. Market Capacity Charges	6
2. Market Energy Charge	6
3. NYPA Administrative Charge	7
B. Other Charges.....	7
1. NYISO Transmission Related Charges.....	7
2. Taxes	8
3. Market Transaction Charges	8
4. Transmission, Wheeling and Delivery Charges.....	9
5. Local Electric Utility Charges.....	9
6. New Charges	9
7. Monthly Clean Energy Implementation Charge	9
8. Maintenance and Related Costs.....	9
C. Estimated Billing	9
D. Adjustments to Charges	10
IV. General Provisions	
A. Scheduling of Market Energy and Firm Market Power	11
B. Reconciliation of Energy Allocations	11
C. Reconciliation of Authority Billing with NYISO Invoices	11
D. Delivery of Firm Market Power	11
E. Rendition and Payment of Bills.....	12
F. Conflicts	13

Schedule of Rates for Sale of Direct Firm Market Power Service

I. Applicability

To direct sales of Electric Service consisting of Firm Market Power and Firm Market Energy to U.S. Department of Energy for use at Brookhaven National Laboratory.

II. Frequently Used Abbreviations and Terms

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

Agreement: The contract between the Customer and the Authority setting forth the terms and conditions relating to the sale of Firm Market Power to the Customer to which this Service Tariff relates.

Allocation: The amount of Firm Market Power allocated to the Customer by the Authority.

Authority or **NYPA:** The Power Authority of the State of New York, also known as the “New York Power Authority.”

Billing Period: Any period of approximately thirty (30) days, generally ending with the last day of each calendar month, but subject to the billing cycle requirements of the Local Electric Utility in whose service territory the Customer’s Facility is located.

Contract Demand: The amount of Firm Market Power (not to exceed the Allocation) plus NYPA hydroelectric power to which Customer is entitled under a separate agreement, which the Customer requests in writing to NYPA as a monthly demand level, or, in the absence of such request, the Customer’s monthly demand level will default to the amount set forth in the Customer’s prior submitted schedule to NYPA for the corresponding months.

Customer: The Authority’s co-party to the Agreement.

Electric Service: Firm Market Power and Firm Market Energy associated with the Allocation and sold to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Facility: The Customer’s place of business specified in the Agreement that will receive or is receiving the Allocation.

Firm Market Energy: Firm energy (kWh) associated with Firm Market Power that is sourced from the NYISO Day-Ahead Market, the NYISO Real-Time Market, and/or any other third-party source

the Authority in its sole discretion deems appropriate that is supplied by the Authority to the Customer.

Firm Market Power: Firm capacity (kW) that is sourced from the NYISO and/or any other source the Authority in its sole discretion deems appropriate that is supplied by the Authority to the Customer.

Load Serving Entity: This term has the meaning provided in the Agreement.

Local Electric Utility: This term has the meaning provided in the Agreement.

Locational Based Marginal Price: This term has the meaning provided in the NYISO Tariffs.

Market Capacity Charge: This term has the meaning provided in Section III.A.1 of this Service Tariff.

Market Energy Charge: This term has the meaning provided in Section III.A.2 of this Service Tariff.

New Charges: This term has the meaning provided in Section III.B.6 of this Service Tariff.

NYISO: The New York Independent System Operator, Inc. or any successor entity.

NYISO Charges: This term has the meaning provided in Section III.B.1 of this Service Tariff.

NYISO Day-Ahead Market: This term has the meaning provided in the NYISO Tariffs.

NYISO Real-Time Market: This term has the meaning provided in the NYISO Tariffs.

NYISO Tariffs: The tariffs of the NYISO, including the NYISO OATT, as such tariffs are amended and in effect from time to time.

NYPA Administrative Charge: This term has the meaning provided in Section III.A.3 of this Service Tariff.

Rules: This term has the meaning provided in the Agreement.

Service Tariff: This service tariff, denominated as “Schedule of Rates for Sale of Firm Market Service to U.S. Department of Energy for Use at Brookhaven National Laboratory, Service Tariff No. BNL-1, as amended from time to time by the Authority.

Takedown: The portion of the Allocation the Customer requests to be scheduled for a specific period as provided in the Agreement.

Taxes: This term has the meaning provided in Section III.B.2 of this Service Tariff.

Zone: Geographical regions within New York State (sometimes referred to as “load zones” or “energy regions”) designated by the NYISO and identified by letter (A-K) that are used to facilitate energy transactions and administration of the State’s power grid.

Additional terms are defined in the text of this Service Tariff.

Unless otherwise indicated, all other capitalized terms and abbreviations used but not defined in this Service Tariff shall have the meaning as set forth in the Agreement. If not defined herein or in the Agreement, any such capitalized terms and abbreviations shall have the meaning ascribed to them in the NYISO Tariffs, if any, unless the context requires otherwise.

III. Monthly Rates and Related Charges

A. Monthly Rates and Charges

Subject to the other provisions of this Service Tariff and the Agreement, the monthly rates and charges to be charged to the Customer by the Authority will be set as follows:

1. Market Capacity Charge

Monthly rates to be charged to the Customer for Firm Market Power ("Market Capacity Charge") will be based on the following:

- a. The amount of capacity (kW) the Authority needs to secure on the Customer's behalf as required by the NYISO's rules. This is currently expressed by the NYISO as the Unforced Capacity or UCAP obligation. The UCAP obligation is inclusive of any locational requirements and adjustments for reserves needed to meet the installed reserve margin, not to exceed the Contract Demand.
- b. The market capacity rate based on the actual monthly capacity price paid by the Authority in securing the NYISO UCAP obligation for the capacity (kW) or any other market capacity rate determined to be the most applicable by the Authority in its sole discretion.
- c. The market capacity rate multiplied by the monthly capacity (kW) quantity will yield the applicable Market Capacity Charge.

2. Market Energy Charge

Monthly rates to be charged to the Customer for Firm Market Energy ("Monthly Energy Charge") will be based on the actual costs incurred by the Authority in each Billing Period, as described below:

- a. The Customer shall be responsible for payment of any and all market energy charges incurred by the Authority for procuring Firm Market Energy on the Customer's behalf ("Market Energy Charge"). Such Market Energy Charge may include, but are not limited to, forward energy purchases (i.e. NYISO Day-Ahead Market purchases), balancing energy transactions (i.e. NYISO Real-Time Market transactions), and any third-party costs.

- b. The total number of kilowatt-hours recorded on the Customer's meter for the Billing Period allocated by the Customer's Local Electric Utility for delivery of Firm Market Power and reported to the Authority will be used to pro-rate or determine each Customer's portion of the monthly Market Energy Charges. The Authority will report these kilowatt-hours on the Customer's bill.
- c. If there is firm energy other than Firm Market Energy being billed to the Customer, the Authority will determine the apportionment of the kilowatt-hours on a case by case basis. Generally, the total number of kilowatt-hours recorded on the meter shall be multiplied by a percentage based on (i) the methodology provided for in any agreement between the Authority and the Customer's Local Electric Utility for delivery of Firm Market Energy and/or (ii) the methodology provided for in Section III.C of this Service Tariff.
- d. Financial hedging instruments may be used for the purposes of mitigating the risk in energy price movements. The Authority will pass-through to the Customer the costs of any financial products used to hedge energy purchases.

3. NYPA Administrative Charge

- a. The Customer shall be responsible for payment of a "NYPA Administrative Charge." Subject to Section III.3.b, the NYPA Administrative Charge will be based on the following:
 - i. The amount of the highest interval integrated demand (kW) during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the value reported to the Authority by the Customer's Local Electric Utility for delivery of Firm Market Power. Demand (kW) may not exceed the amount of the Contract Demand.
 - ii. Monthly NYPA Administrative rate set by the Authority each Rate Year based on any associated overhead and other assigned costs as determined appropriate by the Authority.
 - iii. The NYPA Administrative rate multiplied by the demand (kW) allocated to the Customer will yield the applicable NYPA Administrative Charge.
- b. If in any given month Customer's highest interval integrated demand (kW) is less than 75 percent of its Contract Demand (kW) reduced by 15,000 kW of NYPA hydroelectric power received under a separate agreement, the NYPA Administrative Charge shall be calculated as follows:
$$0.75 * (\text{Contract Demand} - 15,000 \text{ kW}) * \text{NYPA Administrative Rate}$$

B. Other Charges

The Customer shall be responsible for payment of such other charges (collectively, "Other Charges") as a separate charge from the Monthly Rates and Related Charges provided in Section III.A to the extent such Other Charges apply to such Customer.

1. NYISO Transmission Related Charges ("NYISO Charges")

NYISO Charges for services associated with the Authority's responsibilities as Load Serving Entity for the Customer, as provided by the NYISO in NYISO Tariffs, NYISO-related agreements and NYISO procedures associated with the Authority's provision of Electric Service to the Customer. NYISO Charges to be charged to the Customer by the Authority include, by way of example:

- a. Charges for all Ancillary Services, Schedules 1 through 6 and any new ancillary services as provided in accordance with NYISO Tariffs;
- b. Transmission Usage Charges or "TUC" which are Marginal Losses and Congestion costs, to the extent applicable;
- c. The New York Power Authority "Transmission Adjustment Charge" or "NTAC";
- d. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- e. NYISO wide uplift as provided for in the NYISO Tariffs;
- f. Any and all other charges, assessments, or other amounts associated with delivery of Firm Market Power and Firm Market Energy sold to the Customer by the Authority, or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customer, that the NYISO assesses on the Authority under the provisions of the OATT or under other applicable NYISO Tariffs; and
- g. Any charges assessed on the Authority with respect to the provision of Electric Service to the Customer for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

For avoidance of doubt, if any NYISO Charges described above are incurred by the Authority for any reason with respect to Electric Service to the Customer when the Authority is not serving as the Load Serving Entity for any of the power or energy that is sold to the Customer under this Service Tariff and the Agreement, the Customer shall reimburse the Authority for all such NYISO Charges.

2. Taxes

The Authority will charge and collect from the Customer all local, state and federal taxes, assessments or other charges mandated by local, state or federal agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer, including any applicable "in lieu of" payments (collectively, "Taxes") if and to the extent such Taxes are not recovered by the Authority pursuant to another provision of this Service Tariff.

3. Market Transaction Charges

The Authority will pass through to the Customer any costs incurred from procuring any capacity and energy described in Sections III.A.1 and III.A.2 of this Service Tariff.

4. Transmission, Wheeling and Delivery Charges

Generally, transmission, wheeling and delivery charges are billed directly to the Customer by the Local Electric Utility. If the Authority incurs any charges for transmission, wheeling and delivery, as is currently the case, the Customer shall reimburse the Authority for all such charges. In addition, if there are any charges for transmission, wheeling and delivery, charges are made applicable to the Customer under other Authority's tariffs and contracts, they will be charged to the Customer by the Authority as provided for in such tariffs and contracts.

5. Local Electric Utility Charges

The Customer shall reimburse the Authority for all charges, assessments, fees and other amounts, if any, the Local Electric Utility imposes on the Authority in any way related to the provision of data and other information the Authority requires from the Local Electric Utility in connection with providing Electric Service to the Customer. NYPA will endeavor to provide a minimum of 60 days advanced notice for such amounts due.

6. New Charges

The Customer shall be responsible for payment of any and all new costs or charges incurred by the Authority in connection with its provision of Electric Service to the Customer, including but not limited to, charges and costs incurred for supplying Firm Market Power or Firm Market Energy, and any new NYISO Charges as may be defined and applied in any NYISO Tariffs, NYISO-related agreements and NYISO procedures from time to time (collectively, "New Charges"). The Authority, in its sole discretion, may include any such New Charges in the monthly rates or the NYPA Administrative rate, or bill the Customer separately for such New Charges.

7. Monthly Clean Energy Implementation Charge

The Customer shall be subject to the Monthly Clean Energy Implementation Charge provided in the Agreement.

8. Maintenance and Related Costs

Unless the Authority and the Customer agree otherwise in writing, the Authority shall have the right to charge and collect from the Customer all expenses the Authority incurs for the installation, repair, maintenance, calibration and replacement of Authority owned or managed infrastructure (e.g., meters, instruments, transformers, communication-related apparatus, wires, hardware) which the Authority determines in its sole discretion is necessary to provide safe and reliable Electric Service to the Facility.

C. Estimated Billing

If the Authority, in its sole discretion, determines that it lacks reliable data on the Customer's actual demand/UCAP requirements 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 an estimate by the Authority of the Customer's demand and energy usage ("Estimated Bill").

For the purpose of calculating demand (kW), where applicable, for an Estimated Bill, the demand (kW) will be calculated based on an average of the Customer's used and reported 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 Contract Demand (kW) amount reduced by 15,000 kW of NYPA hydroelectric power received under a separate agreement.

For the purpose of calculating energy (kWh), where applicable, for an Estimated Bill, the energy (kWh) will be calculated based on an average of the Customer's used and reported 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 Contract Demand (kW) amount (reduced by 15,000 kW of NYPA hydroelectric power received under a separate agreement) at 74 percent load factor multiplied by the number of hours in the Billing Period.

For the purpose of calculating UCAP (kW), where applicable, for an Estimated Bill, the UCAP (kW) will be calculated based on an average of the Customer's UCAP (kW) requirement values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated UCAP (kW) value for the Estimated Bill will equal the Customer's Contract Demand (kW) amount reduced by 15,000 kW of NYPA hydroelectric power received under a separate agreement.

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 in accordance with Section III.D of this Service Tariff and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The provisions of Section IV.E of this Service Tariff shall also apply to Estimated Bills. The Authority's discretion to render Estimated Bills is not intended to limit the Authority's rights under the Agreement, this Service Tariff or the Rules.

D. Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, the receipt of actual, additional, or corrected data concerning Customer meter data and NYISO rebills, including adjustments to the Market Capacity Charge and the Market Energy Charge in accordance with NYISO policies.

IV. General Provisions

A. Scheduling of Firm Market Energy and Firm Market Power

In each Billing Period the Authority shall, in accordance with the NYISO Tariffs, NYISO manuals and NYISO procedures, schedule and provide to the Customer Firm Market Energy associated with Firm Market Power in a monthly amount equal to the product of: (1) Contract Demand reduced by 15,000 kW of NYPA hydroelectric power received under a separate agreement; (2) the number of hours in the Billing Period; and (3) estimated load factor, inclusive of all applicable losses and unaccounted for energy, prorated on and extrapolated to an hourly basis, for NYISO Scheduling, unless a different process is required by the Local Electric Utility or the NYISO. Such Firm Market Energy shall be scheduled to the load bus established by the NYISO for the Facility or any successor load bus established with or by the NYISO for LSE scheduling functions.

With respect to each month in which the Authority provides Electric Service to the Customer, the Authority shall, in accordance with the NYISO Tariffs, NYISO manuals and NYISO procedures, schedule and provide UCAP in an amount equal to the applicable value calculated in accordance with NYISO rules in an amount not to exceed the Contract Demand reduced by 15,000 kW of NYPA hydroelectric power received under a separate agreement.

The Customer shall cooperate and coordinate with the Authority as necessary to enable the Authority to effectuate the required scheduling and provision of Firm Market Energy and Firm Market Power as required by this Service Tariff and the Agreement. This includes an obligation on the part of the Customer to promptly notify the Authority in advance of any changes in the Customer's load, or the manner in which Authority-supplied power is consumed, that could impact NYISO forecasting and scheduling.

B. Reconciliation of Energy Allocations

Where Firm Market Energy is delivered under this Service Tariff in conjunction with other firm energy, including but not limited to other firm energy allocations associated with another Authority program/product, the amounts supplied by the Authority hereunder shall be reconciled in accordance with the practices of the Local Electric Utility. In the event of multiple NYPA program allocations to the Facility, the order of precedence will be consistent with the procedures established in any agreements between the Authority with the Local Electric Utility, or as other agreed to by the Authority and the Local Electric Utility.

C. Reconciliation of Authority Billing with NYISO Invoices

In any Billing Period in which the Customer's energy usage as reported by the NYISO in its versioned invoices to the Authority reflects a difference from the energy usage reflected in Authority invoices to the Customer, the Authority will adjust its invoices to reflect such difference. The Authority may perform such reconciliations for each Billing Period through the time NYISO issues its final LSE invoice to the Authority.

D. Delivery of Firm Market Power

Customer's Local Electric Utility shall be responsible for delivering Firm Market Power and Firm Market Power to the Customer. The Authority shall have no responsibility for delivering any Firm Market Power or Firm Market Energy to the Customer unless the Authority agrees to do so in writing, and such agreement expressly supersedes this provision.

For the purpose of this Service Tariff, Firm Market Power and Firm Market Energy will be deemed to be offered when the Authority is able to supply Firm Market Power and Firm Market 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 will not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

E. Rendition and Payment of Bills

The Authority will render bills to the Customer for Electric Service relating to the Allocation on or before the fifteenth (15th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing in accordance with the Agreement, this Service Tariff and the Rules, and are subject to adjustment as provided for in the Agreement, this Service Tariff and the Rules. As provided in this Service Tariff, bills will include NYISO Charges and Taxes associated with the Allocation and all other applicable charges, fees and assessments provided for in the Agreement, this Service Tariff and the Rules. NYISO Charges shall be subject to adjustment consistent with any subsequent NYISO billings to the Authority in accordance with this Service Tariff.

Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.

Bills are due and payable by the Customer within twenty (20) days of the date on which the Authority renders the bill. Unless otherwise agreed to by the Authority in writing, bills 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 and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.

The Authority will charge and collect from the Customer all Taxes that the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (1) the Customer is exempt from the payment of any such Taxes, and/or (2) 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 (1) or (2) 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.

If the Customer fails to pay any bill when due, the Authority may add an interest charge of two percent (2%) of the amount unpaid thereto as liquidated damages, and thereafter, as further liquidated damages, may add an additional interest charge of one and one-half percent (1 1/2%) of the unpaid sum shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.

If 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.

If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority may in its discretion: (1) require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority, which sum shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service; (2) suspend Electric Service; or (3) modify or terminate Electric Service. If the Customer fails or refuses to provide a security the deposit within thirty (30) days of a request pursuant to this provision, the Authority may modify, suspend, or terminate Electric Service to the Customer.

The rights and remedies provided to the Authority in IV.E of this Service Tariff are in addition to any and all other rights and remedies available to Authority under the Agreement, this Service Tariff and the Rules, and at law or in equity.

F. Conflicts

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



**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**

November 12, 2020

Table of Contents

<u>Subject</u>	<u>Page No.</u>	<u>Exhibit</u>
Introduction	2	
1. Adoption of the November 12, 2020 Proposed Special Meeting Agenda	3	
2. Motion to Conduct an Executive Session	4	
3. Motion to Resume Meeting in Open Session	5	
4. DISCUSSION AGENDA:	6	
a. Vision 2030 Strategy Development	6	4a-A
i. Decarbonizing Gas Power Plants	7	
ii. Helping Customers and the State Meet their CLCPA Goals	8	
iii. Resource Alignment	11	
iv. Resilience	13	
5. Next Meeting	15	
Closing	16	



**NY Power
Authority**

**Canal
Corporation**

Minutes of the Special Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held via video conference at approximately 10:00 a.m.

Members of the Board present were:

John R. Koelmel, Chairman
Eugene L. Nicandri, Vice Chairman
Tracy McKibben
Michael A.L. Balboni
Dennis T. Trainor

Anthony J. Picente, Jr. – Excused

Gil Quiniones	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
Robert Piascik	Senior Vice President & Chief Information Officer
Kimberly Harriman	Senior Vice President – Public & Regulatory Affairs
Keith Hayes	Senior Vice President – Clean Energy Solutions
Yves Noel	Senior Vice President – Strategy & Corporate Development
Karen Delince	Vice President and Corporate Secretary
Janis Archer	Vice President – Enterprise Excellence
Girish Behal	Vice President – Project & Business Development
Emily Bolduc	Vice President – New York Energy Manager
Steven Kalashian	Vice President – Human Resources & Organizational Development
Jenny Liu	Vice President – Energy Resource Management
Fabio Mantovani	Vice President – Head of e-Mobility
Saul Rojas	Vice President – Enterprise Resilience
Diane Levin	Vice President – Marketing & Product Development
Daniella Piper	Vice President – Digital Transformation Office and Chief of Staff
Adrienne Lotto	Senior Director – Energy Security & Resilience Programs
Brian Stanton	Senior Director – Origination & Structuring
Maribel Cruz	Director – Projects
Christopher Fry	Director – Business Development
Michael Mulhall	Corporate Strategy Director
Ram Narayan	Senior Strategy Analyst
Rebecca Hughes	Senior Manager – e-Mobility Marketing & Customer Experience
Evan Kolkos	Senior Manager – Customer Business Development
Mary Cahill	Manager – Executive Office
Joseph Glazer	Strategy Analyst
Summer Shaw	Senior Policy Advisor
Lorna Johnson	Senior Associate Corporate Secretary
Sheila Quatrocci	Associate Corporate Secretary
Michele Stockwell	Project Coordinator – Executive Office
Rory Clune	Partner – McKinsey & Company
Ksenia Kaladiouk	Associate Partner – McKinsey & Company
Tai Humayun	McKinsey & Company
Randy Krues	President – Customer Care Network, Inc.

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 second special strategic meeting for the joint boards of the New York Power Authority and Canals system. 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 November 12, 2020 Proposed Meeting Agenda**

On motion made by Trustee Trainor and seconded by Trustee Balboni, 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 and matters regarding public safety and security.” On motion made by Trustee Balboni and seconded by Trustee Trainor, 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. Vision 2030 Strategy Development

Chairman Koelmel said that this special meeting is to continue the dialogue on the Authority's Strategic Plan and invited President Gil Quiniones to introduce the next phase of the discussions on the Authority's VISION2030 Strategy Development Plan to the Board.

President Quiniones said that this is the second of the Authority's VISION2030 Strategic Plan retreat with the NYPA/Canal Boards. He said today's discussion will cover four topics, two Strategic Initiatives and two Foundational Pillars (Exhibit "4a-A"). Of the two strategic initiatives, he will provide a summary on the Authority's plans regarding Decarbonizing its Gas Power Plants in New York City and Long Island, and Ms. Sarah Salati and her team will discuss the Authority's customers and the Authority plans to put its customers at the center of this energy transition in New York State. The two Foundational Pillars will be presented by Ms. Kristine Pizzo who will discuss Resource Alignment, which includes the Process Excellence, Knowledge Management, and Workforce Development initiatives, and Mr. Saul Rojas will discuss NYPA's Enterprise Resilience Program.

i. **Decarbonizing Gas Power Plants**

President Quiniones discussed the Authority's strategic initiative as it relates to its Natural Gas Power Plants in New York City and Long Island. He said that to be a trusted partner with its customers, NYPA needs to lean-in and be a leader in decarbonizing its own assets, using those assets as test-beds for the innovation that is needed to decarbonize its natural gas power plants.

On October 13, 2020, NYPA announced a unique agreement with Environmental Justice group, the PEAK Coalition, based in New York City, to work with the Authority and explore all options on how NYPA can transition its natural gas fired "Peaker" plants in New York City and Long Island to utilize clean energy technologies such as low to zero carbon emission resources and technologies. To that end, NYPA plans to work with the PEAK Coalition, supporting them and their consultants in that process, exploring alternative clean energy replacement options that may be developed for the transitioning of those assets.

NYPA values the partnership with the PEAK Coalition and thanks the Coalition and their members for their willingness to work with the Authority in this fact-based analysis to be at the leading edge, exploring alternative clean energy replacement options. NYPA is aware that this will not be an easy task as the Authority will need to ensure that the reliability and resiliency requirements of New York City and Long Island are not compromised as the NYPA goes through this transition.

ii. **Helping Customers and the State Meet their CLCPA Goals**

Ms. Sarah Salati, Executive Vice President and Chief Commercial Officer, provided highlights of NYPA's contributions to the achievement of the Climate Leadership and Community Protection Act ("CLCPA") goals. She said that, based on the trends seen in the energy sector, the ambitious CLCPA policy goals, the technology that has been introduced into the energy sector and the cost to clients, and the evolution of customer preferences, and taking the Authority's approach into its workplace relative to access to information, convenience, and simplicity are making renewable integration of the technologies more cost-effective. Based on this energy transformation, decisions are more complex for the Authority's customers. However, NYPA will continue to help its customers navigate the complexity of the energy transformation to achieve their sustainability objectives.

NYPA has been a trusted advisor to its customers for decades with a range of products and services available and will continue to put the customers at the forefront of its 2030 strategy. This includes municipalities, cooperatives, local governments, state agencies, as well as the small, medium-sized, and large commercial industrial customers that are located across the state and support driving the economy and the livelihoods of the people of New York state.

NYPA has a range of products and services for supporting its customers and supporting the Authority in meeting the targets of the CLCPA. NYPA has two predominantly focused areas, namely, its Electricity Supplier, its large hydroelectric power facilities, and Behind the Meter services. NYPA is working with its customers to navigate the energy transformation and support the state's objectives in its Clean Energy Policy agenda and meet the aspiration of the Authority's vision statement for a thriving and resilient New York.

Ms. Salati then invited Keith Hayes, Senior Vice President of Clean Energy Solutions, Evan Kolkos, Senior Manager of Customer Business Development and Rebecca Hughes, Senior Manager of e-Mobility Marketing & Customer Experience to provide highlights on some of the products and services NYPA has for its customers.

Decarbonization and Clean Energy Initiatives

Mr. Keith Hayes said that the CLCPA goals are tied to the state and NYPA's customers' evolution. NYPA's customers have greater expectations for improved service levels with the need to decarbonize, both of which are growing.

NYPA's customers have expressed high uncertainty relative to macroeconomic recovery from the pandemic which continues to challenge them. However, NYPA finds that leveraging its current programs, coupled with new business models, and becoming a trusted and integrated provider, ensures advancement of the customers' desire for a cleaner, more decentralized, distributed and transactive electric grid, all of which are aligned with the objectives of the CLCPA. These targets will be formalized with other state agencies as the Authority works to achieve the aggressive goals. As a leading organization, NYPA can make a significant difference through the deployment of its Clean Energy Solutions such as Distributed Energy and Resources (DER), flexibility, and technology.

NYPA recognizes that some customers are more advanced than others and will prioritize and rank those customers who are lagging and will assist them to make that forward leap to decarbonization. NYPA also recognizes that the organization and its customers were forced to move from "on-premises" to "off-premises" remote work. In response, NYPA adjusted and heightened its customer engagement efforts, increasing communications with the customers at a time when they needed assurance that the Authority will be supporting them throughout this crisis, and beyond.

The customers expressed thanks to the Trustees for their support and the bold steps that the Authority took to help them navigate in these trying times. NYPA anticipates an increasing dependency in the near term, also recognizing that, for the next ten years, the Authority will play a pivotal role in how it navigates the transformation of the energy marketplace consistent with the CLCPA.

Economic Development, Energy Efficiency, and Customer Solutions Projects

Economic Development

- NYPA's Economic Development programs remain strong with more than 411,000 jobs created or retained, and approximately \$23B in capital investment commitments.
- NYPA's Energy Efficiency pipeline remains strong with historical investments of more than \$3B; more than 2300 projects completed and over 450 projects that are currently active.
- NYPA's customers have benefitted from more than \$250M per year in savings. In addition, NYPA have removed nearly 1.2 million tons of GHG from the atmosphere, coupled with approximately 265 megawatts of demand being taken off the grid.

NYPA is moving forward in a more agile and analytically driven way, leveraging its assets, people, processes, and technology so that the Authority can provide meaningful and cost-effective solutions for its customers by identifying the customers' journey and mapping out those processes and capabilities, through co-development solutions with the customers to ensure that the Authority is meeting their needs.

- NYPA understands that advancing these solutions require an ecosystem and interdependences of internal teams, external partners, suppliers, and its customers. NYPA plans to maintain and build upon those strong interdependences to ensure its customers' success into the future.

Customer Solutions Projects That Enabled Decarbonization

- NYPA's customer solution projects that have enabled decarbonization include Energy Efficiency, Distributed Energy Resources, and EVolve New York.

Energy Efficiency

- The Five Cities Energy Plan is an effort to improve energy efficiency by 20% by 2020 for municipal facilities, and 20% by 2030, citywide. The concept was to mirror the Authority's efforts with NYS agencies, conceptually, under Executive Order 88. To that end, in 2016, working with the with the five largest cities in the state, Albany, Buffalo, Rochester, Syracuse, and Yonkers, NYPA funded comprehensive, detailed Energy Master Plans for each city that became the roadmap for project development. Working closely with these large cities, NYPA assigned Energy Managers to act as liaisons, provide technical expertise, and to be the lead for project prioritization and implementation which are linked directly to NYPA's business development team.
- Some of the accomplishments from these efforts include approximately \$7.6 million in grants awarded; \$1.4 million in annual energy savings; ~8,000 metric tons of Greenhouse Gas savings and technical support for more than three years, and project installations at more than 200 locations.

NYPA is currently undertaking massive LED streetlighting projects, as well as Distributed Energy Resources (DER), advisory services, and other efforts with these cities.

DER Advisory Project

Mr. Evan Kolkos provided highlights on the Clean Energy Advisory Services or Distributed Energy Resources Services that NYPA has implemented on behalf of its customer base throughout New York State. He said that this is a turnkey owner's representative, trusted energy advisory service for NYPA's customers. Incorporating such solutions like solar and battery storage is new for many of the Authority's customers. Through cross-functional teams, NYPA have worked to streamline processes, such as contracts, and other mechanisms so that all the Authority's customers can benefit from these services.

NYPA is also working closely with the private sector to make sure that it is developing good projects in its role as the owners' representative. A majority of the solar and battery storage projects in New York State are through long-term power purchase agreements that are financed by the private sector. DER trends for NYPA's customers have been growing tremendously; however, while they have high sustainability and chartered goals, NYPA and its customers also want to be fiscally responsible, optimizing sites and making sure they figure out where the most appropriate places are to incorporate these solutions. When NYPA established this service, only a few of its customers enrolled; NYPA is now working with many customers across the state such as state agencies and authorities, local municipalities, and both supply and traditional energy service customers.

NYPA is partnering with the Port Authority in New York and New Jersey for a large solar PV plus battery energy storage system at JFK International Airport; when completed, it will be the largest solar plus storage project currently in development in the state. The solar and storage will go to service the needs of the airport, which has significant load, and half of it will be constructed as a community solar project, Community Distributed Generation, whereby a portion will be offered to the local communities surrounding JFK, a significant portion of which will go to low- and moderate-income households. Through this process and agreement structure, the customers will receive guaranteed bill savings as per the policy of community solar in New York State. These projects are all part of the Authority's and its customers' contributions to the Climate Leadership and Community Protection Act.

Evolve New York

Ms. Rebecca Hughes discussed the work that EVOlve New York is undertaking with the NYS Department of State as part of its Downtown Revitalization Initiative. She said that Evolve New York is NYPA's consumer facing, fast charging EV business.

NYPA is currently installing a charger at a construction site in Schroon Lake, New York, to make the Adirondacks more accessible for EV drivers. Through the end of this year, NYPA will have about six sites with approximately 25 chargers in operation.

By the end of 2021, NYPA will have a comprehensive network of ~200 DC fast chargers at 50 locations open to the public. Among those will be some downtown locations, with one in each of the 10 Regional Economic Development Council zones, that NYPA has identified in partnership with NYS Department of State as part of its Downtown Revitalization Initiative (DRI). These locations will help to democratize electric vehicle ownership so that anyone in New York can start to envision themselves as an electric vehicle driver and can have access to charging in their home community.

EVolve NY also plays a vital role in tourism, attracting EV drivers to the downtown areas. Approximately one-third of EVolve New York's portfolio of sites are in Environmental Justice ("EJ") communities. This also plays an important role in market transformation.

NYPA's investment in EV fast charging is designed to help New York State get into mass market adoption of EVs. In addition, NYPA is also setting an example for private developers who might be on the fence about investing capital in EV fast charging or paving the way to greater infrastructure investments.

Several other regions throughout the state are in discussions regarding adding chargers in their municipality. These projects are a critical part of NYPA's portfolio, and the Authority looks forward to seeing them materialize over the next years.

Ms. Salati concluded saying that NYPA is on the cutting edge of bringing a number of projects and services to its customers and meeting their needs to accelerate and meet the CLCPA objectives. NYPA is a leader in this initiative and have a great team across the organization that is helping to bring this to fruition.

iii. **Resource Alignment**

Ms. Kristine Pizzo, Executive Vice President, Chief Human Resources (HR) and Administrative Officer, provided highlights on the three initiatives related to Resource Alignment (Workforce Planning; Knowledge Management; and Process Excellence) which supports NYPA's greatest asset, its people. She said that when NYPA began its Strategic Vision 2020, the changes in the energy industry landscape required these skills and capabilities. Workforce turnover was projected to increase due to retirements and increased staff mobility, and the speed in which the Authority needed to act was greatly accelerating. To that end, each of the initiatives were designed to address these challenges.

Workforce Planning

Workforce planning initiatives began by rebuilding some core HR programs from the ground up and HR seamlessly integrated specific skills and activities that were needed to advance the Authority's strategy. HR engaged the entire organization in the design and creation, not only to get feedback in order to develop programs that fit the Authority's needs, but to engage the employees in the process, give them ownership and include them on this journey.

- **Strategic Alignment**

In the beginning, HR leveraged technology to provide a single application platform so that managers and staff can manage all employment across the life cycle. As more programs were added to the menu in the tool, and many outside this tool, staff began to advance their skills in managing themselves, managing their teams, providing feedback, coaching, core competencies, design and understanding goal alignment, not only for their teams downward, but also aligning it up to the strategy.

As these capabilities continue to grow, HR deployed more sophisticated programs, such as Career Development, Succession Planning, Design Thinking, Innovation, and New Manager Development to cultivate a flexible and dynamic workforce.

- **Employee Engagement**

Over the course of this initiative, the HR team led thousands of talent development activities for management and staff. HR analyzed 20,000 points of employee feedback data and incorporated them into the program. Eighty percent of staff feels that NYPA is providing them development and growth opportunities. Ninety-two percent understand how their work contributes to the overall strategy.

The overall employee engagement scores have increased to four times within the same period and NYPA have received national recognition as the best employer for the first time in its history.

Knowledge Management

The Knowledge Management initiative is designed to reduce knowledge loss due to projected turnover and movement. It also provides greater access to information in order to quickly deliver the Authority's programs to staff. To preserve, disseminate and share this knowledge, HR deployed programs at both the enterprise and individual level.

At the enterprise level, HR used search tools to digitize documents and implemented document management tools in order to automate access to information and also expose a large volume of content that was not readily available.

At the individual level, information was captured from HR's technical experts, and staff moving in, out and around the organization to maintain continuity of knowledge. As a result, onboarding time was reduced by 50%; millions of documents are now readily discoverable using the enterprise search tools; more than 250K documents were digitized, and the lessons learned program captured and implemented hundreds of improvements.

Process Excellence

The Process Excellence program addresses the need to accelerate the delivery of HR's programs, and to make sure that they are accurate and efficient. Staff used various methods that were assigned to HR's improvement programs, qualitative and quantitative. Experts were trained on implementing improvements using Lean, Agile and Six Sigma methods. Process Excellence focused on large-scale complex improvement projects spanning multiple departments and business units. HR wanted to make sure that it was cultivating a culture of continuous improvement so that it will not be just an activity, but a mindset that can be executed daily.

Resource Alignment

HR's strategy for Vision 2030 is to continue its investment in the Authority's organizational capability.

Workforce Planning – Bringing talent and programs to the next maturity level.

- HR will continue to engage staff to embed their values deeper into NYPA's culture.
- New technologies such as virtual reality and artificial intelligence (AI) will be used to accelerate learning.
- HR is deploying advanced workforce analytics to help with decision-making. This is to improve the internal talent pipeline to an enterprise-wide career path and framework.
- HR will develop career path to enable transparency and clarity in professional development for employees and give HR a better sense of skill gaps and how to address them.

Knowledge Management – Enabling success through collaboration and sharing.

HR is integrating the capture and sharing of knowledge in its day-to-day work making sure that this a part of their daily lives, not just an activity that is done on an ad hoc basis.

HR is using technology such as AI and enterprise content management tools to continue automating the access to knowledge so that they can quickly get the right information at the right time to the right people.

Process Excellence – Instilling a culture of continuous improvement.

HR will continue to focus on the high impact areas for improvement. In this initiative, to date, HR saved over \$10 million in costs and capacity savings.

HR also wants to drive the adoption across the organization by training employees on these methods, specifically driving them to improve project management, use of allocation, and prioritization capabilities.

Overall, with these initiatives, HR intends to cultivate an organization that demonstrates not only NYPA's vision and values, but also shows that they are capable and engaged to deliver Strategy 2030 and beyond.

iv. **Resilience**

Mr. Saul Rojas, Vice President of Enterprise Resilience, provided highlights on the three initiatives related to Resilience and how they directly tie into NYPA's 2030 Vision. He said that the world and the utility industry are changing. Some of the changes occur out of space, such as climate change, and some occur acutely, as seen in the new normal post-COVID-19. NYPA needs to continue living up to its legacy of being a resilient company. As NYPA goes into that gate, its grade will transform where its current operating paradigm will be challenged. NYPA and Canals need to be even more resilient and ensure that resilience is part of its DNA.

Enterprise Resilience

The term resilience has a broad meaning. To some, resilience means cyber and physical security, to others, climate adaptation. Resilience can also mean personal endurance; its meaning is adaptable. NYPA and Canals need to set a "North Star" as they forge ahead on the resilience journey. This definition is based on Presidential Policy Directive 21 issued in 2013 to ensure the resilience of critical infrastructure. NYPA and its assets are critical infrastructure.

NYPA has made key steps in building resilience

NYPA has a legacy of being a resilient company, and this is the current framework that is its stronghold. However, it will need to evolve. As NYPA evolve, it needs to build upon its past successes from impactful events, such as Hurricanes Irene, Sandy, and Maria, or COVID-19, to the more routine events.

NYPA/Canals will continue evolving its mindset from the "what is now," to the "what is next." NYPA needs to be like a GPS and have the ability to recalculate quickly if there is a change in direction.

To tackle these emerging resilience themes, NYPA's vision is to embed resilience throughout the enterprise by building it into muscle memory.

To ensure that resilience is embedded into the NYPA/Canals DNA, the company needs to continue executing its core programmatic element, which includes business continuity planning, crisis management, compliance, and cyber and physical security, and to think beyond that.

The NYPA/Canals threat vectors are evolving. For example, as companies push for digitization by introducing IT and OT devices into the workplace, the threat landscape naturally grows.

Also, NYPA/Canals is a critical infrastructure. Adversaries may include advanced persistent threats. Another example is the supply chain, which can no longer be taken for granted. A disruption halfway around the world can impact NYPA's business and its supply chain can be used to infiltrate its business as well.

NYPA needs to tackle the wider range of resilience challenges, and this needs to be done from the top-down and bottom-up approach, and every employee has a role.

The strategy to embed resilience into NYPA's culture is based on three components:

First, NYPA needs to take its current resilience framework and develop and empower an enterprise-wide resilience function that sees threats and risks through a wide-angle lens and manages with a macro-lens position.

Second, NYPA needs to enhance its capability to identify strategic enterprise risks throughout the organization and enable employees to take action to ensure organizational viability.

Third, NYPA needs to establish, maintain and communicate a common operating picture understood by all employees at all levels to have situation awareness capability or effective decision-making, rapid actions, and appropriate mission execution.

Mr. Rojas ended by saying that he is looking forward to leading the Authority's resilience journey as part of NYPA's Vision 2030.

In closing, President Quiniones said that this is the end of NYPA's Strategic Vision2030 virtual retreat with the Boards. He said that, as mentioned at the beginning of the meeting, there will be a Finance Committee meeting on November 17th, where staff will discuss NYPA's budget for 2021 and four-year operating financial forecast that underpin Vision2030. On December 1st, staff will meet with the Governance Committee to present NYPA's final Diversity, Equity and Inclusion plan. This is a follow-up from the September Board meeting. Finally, at the Board meeting on December 9th, the members will have the opportunity to approve NYPA's Budget and Four-Year Financial Forecast, and Vision 2030 Strategic Plan.

President Quiniones thanked Yves Noel and the Strategy group, and the Executive Management team for putting together the most forward-looking strategy of any utility in the United States. NYPA continues with its legacy of leading from the front and always exploring "the art of the possible." He ended by saying that he wanted to thank the Board of Trustees for being engaged, providing valuable input and ideas to help sharpen the Strategic Plan, ultimately for the people of this State.

5. Next Meeting

The next regular joint meeting of the New York Power Authority's Board of Trustees and the Canal Corporation's Board of Directors will be held on December 9, 2020, unless otherwise designated by the Chairman with the concurrence of the members.

Closing

On motion made by Trustee Trainor and seconded by Trustee McKibben, the meeting was adjourned at approximately 12:09 p.m.

Karen Delince

Karen Delince
Corporate Secretary

POWER AUTHORITY OF THE STATE OF NEW YORK
AND
NEW YORK STATE CANAL CORPORATION

EXHIBITS

For

November 12, 2020

Joint Special

Meeting Minutes



**NY Power
Authority**

Exhibit 4a-A

VISION2030 Strategy Retreat Workshop

November 12th Board Presentation

A message from our President and CEO

NYPA has long been committed to building a thriving, resilient New York State powered by clean energy. As we begin the next decade, we have been challenged by a global pandemic that may be the most disruptive event in living memory. I am proud to say that NYPA has risen to the challenge, mounting a coordinated and effective response. And, we are taking what we have learned from this experience to ensure our 10 year strategy can weather any future disruptions that may face our state. We have more confidence now than ever in the resilience of NYPA, our customers, employees, and the residents of New York State.

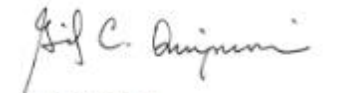
The transition to a clean energy economy is the foundation on which New York State will maintain energy resilience. VISION2030 places energy resilience at the center of our strategic plan.

Under the leadership of Gov. Andrew M. Cuomo, New York State has enacted nation-leading, clean energy legislation. The Climate Leadership and Community Protection Act (CLCPA) establishes the path to full decarbonization of the electricity grid by 2040 and a carbon-neutral state economy by 2050. We acknowledge NYPA's significant role in achieving this vision for New York State and will facilitate our customers' journeys to a thriving, carbon-free economy. We are up to the challenge; for more than 60 years, NYPA has deployed its clean hydropower assets, transmission network, and energy management expertise to stimulate job creation and capital investment across the state.

As NYPA continues to provide affordable, reliable, clean electricity, we will increasingly focus our efforts on transforming the way our customers use energy. Through carbon-free electricity and the electrification of vehicles and buildings, we will partner with our customers to ready them for the grid of the future. Strategic investments in energy efficiency, expanded transmission infrastructure, renewables generation, optimized electrification, and digitization will drive this transition.

This transformation can only be successful if it is done equitably with all communities – especially those underserved today – to achieve a cleaner, more prosperous future. NYPA will continue to support New York communities through our economic development and environmental justice programs, and will seize the opportunity to make economic and energy inclusion a top priority.

With NYPA's perspective and scale, diverse assets and innovative talent, we provide unique value to New York. We continue to lead by example, ambitiously pursuing decarbonization without compromising the state's thriving economy, and thus create a blueprint for others to follow.


Gil C. Guiniones
President and Chief Executive Officer



Agenda



1. Decarbonizing Gas Power Plants



2. Customer & New York State CLCPA Goals



3. Resource Alignment



4. Resilience

Agenda



1. Decarbonizing Gas Power Plants



2. Customer & New York State CLCPA Goals



3. Resource Alignment



4. Resilience

NYPA unveiled an agreement to assess how NYPA can transition its natural gas fired plants to utilize clean energy technologies

NYPA and Environmental Justice Groups Agree to Explore Options for Transitioning NYPA's Natural Gas 'Peaker' Plants to Cleaner Energy Technologies

For Immediate Release: 10/13/20
NYPA Contact: Susan Craig | Media.Inquiries@nypa.gov | (914) 287-3691
PEAK Coalition Contact: Eddie Bautista | eddie@nyc-eja.org | (347) 841-4410

Landmark Agreement to Explore Battery Storage and New Low to Zero Carbon Emission Resources and Technologies to Continue to Reliably Meet New York City's and Long Island's Peak Energy Demands, Ensure Resiliency of Grid

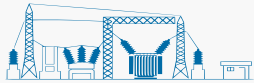
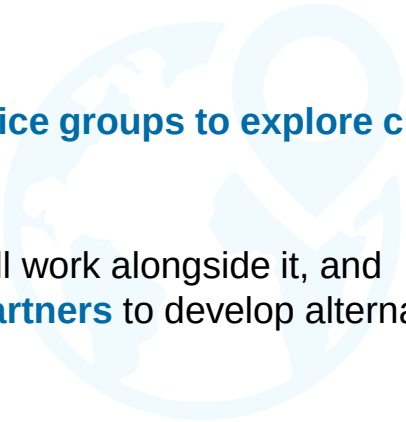
WHITE PLAINS—The New York Power Authority (NYPA) and the PEAK Coalition, a group of five leading environmental justice and clean energy interests, today unveiled an agreement to assess how NYPA can transition its natural gas fired 'peaker' plants, six located in New York City and one on Long Island with a total capacity of 461 megawatts, to utilize clean energy technologies, such as battery storage and low to zero carbon emission resources and technologies, while continuing to meet the unique electricity reliability and resiliency requirements of New York City. The agreement sets the path for the transition of NYPA's plants to low to zero carbon emission resources and technologies. Implementation of such technologies will help accelerate the clean energy goals outlined in Governor Andrew M. Cuomo's [Climate Leadership and Community Protection Act](#), nation-leading climate legislation passed last year, that calls for zero-carbon emission electricity in New York State by 2040.



10/13/2020 NYPA Press Release: Transitioning NYC's SCPP ('Peaker') Plants



- 1 NYPA will work with the PEAK Coalition to assess how it can **transition its natural gas fired SCPP ('Peaker') plants** (461 MW) using battery storage and low to zero carbon emission resources and technologies, while continuing to meet the electricity requirements of New York City
- 2 NYPA will **collaborate with environmental justice groups to explore cleaner energy options** for its entire fleet of SCPPs
- 3 NYPA has agreed to support consultants who will work alongside it, and **independently support the PEAK Coalition partners** to develop alternative clean energy replacement options



NYPA is clearing the path to transition New York from fossil fuel generation, leading the industry by example as a first-mover and continuing to act as a critical player in stabilizing the grid as it transitions to cleaner sources of energy

Agenda



1. Decarbonizing Gas Power Plants



2. Customer & New York State CLCPA Goals



3. Resource Alignment



4. Resilience

Customer and State

our 2030 vision



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

NYPA’s has set customer centric goals to support the state’s decarbonization efforts

New York State: Decarbonization & Clean Energy Initiatives



CLCPA

New York State’s path to a net-zero carbon economy by 2050 (and 70% renewable energy by 2030)



New Efficiency New York

Comprehensive set of strategies for delivering energy efficiency gains across the state



Charge NY

Transport emissions reductions through build-out of EV market and infrastructure



NYC Climate Mobilization Act

Package of bills representing NYC’s path to achieve carbon neutrality by 2050



Executive Order 166

Calls on state agencies to “lead by example” and realize GHG emission reductions



NYPA targets supporting state decarbonization efforts

Renewable Contracted Supply	51% by 2025	70% by 2030	Supporting customer businesses - DER Advisory - Flexibility/Grid Edge Solutions
Distributed Solar Generation	325MW by 2025	500MW by 2030 ²	
Customer-site Storage	50MW by 2025 ²	150MW by 2030	
Grid-scale Storage ¹	150MW by 2025 ²	300MW by 2030	
Onsite Energy Savings	11TBTU by 2025		- Energy Efficiency - NYEM
GHG Emissions Reduction	4.7MMT by 2025	5.0MMT by 2030	Applies to all businesses

NYPA has an established energy efficiency solution and economic development supply business; other customer solutions are fast-growing new businesses

Mature business

New venture

Business Line	Maturity	Description
Electricity Supply		Incentivizes creating / preserving jobs and capital investments by offering discounted power allocations to qualifying business
		Provides “green” customer supply to our customers by pairing market power with hydro attributes and BG capacity
Behind the Meter		Enables the reduction of energy consumption by acting as a turnkey energy efficiency provider for customer sited projects
		Corresponding maintenance business to support the street lighting energy efficiency conversion
		Empowers customers to optimize energy consumption with a digital energy management service (available to all NYPA customers)
		Promotes renewable energy by providing an advisory service for customers to evaluate, size and facilitate installation of distributed energy resources
		Enables DER aggregation and control by creating a virtual power plant to optimally manage customer sited DER assets
EVoLve		Accelerates the adoption of electric vehicles (EVs) by providing public direct current fast charging stations for EVs
		Supports transit authorities across the state to electrify their fleets by providing charging infrastructure for electric busses

NYPA's customer solutions projects have enabled various entities' decarbonization efforts

EXAMPLE PROJECTS

■ Completed project ■ In progress project

	Energy Efficiency & NYEM: Five Cities Energy Plan	DER Advisory: JFK International Airport Solar PV + Storage	EVolve: DRI - EV Charging Stations
Goal	Cities work toward improving energy efficiency 20% by 2020 for municipal facilities and 20% by 2030 citywide (i.e. including private buildings)	Install a solar PV plus battery energy storage system consisting of 5MW of Community Distributed Generation to be offered to the JFK stakeholder community	Expand deployment of electric vehicle (EV) fast charging stations in eight Downtown Revitalization Initiative (DRI) communities across the state
Status / Cost	Start: 2016 → Complete Total cost: \$35 million	Start: 2019 → Target completion: 2022 Total cost: N/A	Start: 2021 → Target completion: 2022 Total cost: TBD (announced Oct 1 2020)
Details	Working with the five cities, NYPA: • Financed grants to facilitate implementation • Created an energy liaison position to serve as link between NYS agencies and the five cities, and provide technical expertise and streamlined support	Solar + Storage project details: – 12,315 kW solar carport system – 24,750 kWh of battery energy storage • Generate more than 4 million kWh of community solar credits to the JFK Community, providing bill savings to more than 4,000 LMI households • Nearly 8 million pounds of CO₂e will be offset from the NYC grid per year	• EVolve fast chargers capable of charging vehicles in 20 to 30 minutes • NYPA will pay all costs related to: – The purchase and installation of the EV hardware (and infrastructure upgrades) – All operating costs • Chargers will be owned and operated by NYPA (EVolve) - at no cost to the DRI communities
Collaborators	Cities of Albany, Buffalo, Rochester, Syracuse, and Yonkers	NYSERDA, NY Department of Public Service, ConEdison	NY Department of State; eight municipalities



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



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



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



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



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



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

Agenda



1. Decarbonize Gas Power Plants



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3. Resource Alignment



4. Resilience

Resource Alignment our 2030 vision



Workforce Planning
Knowledge Management
Process Excellence

To grow our organizational capability to ensure we can provide the clean, leading-edge energy environment the people of New York deserve

Building on the exceptional capabilities and experience of our employees to make our workforce as skilled and flexible as possible; improve access to the information and knowledge that enable effective delivery; and optimize NYPA's core business processes

Resource Alignment: The changing landscape of the energy industry makes it vital to continue investing in our workforce to develop talent, maintain continuity and improve efficiency.

<u>Resource Area</u>	<u>Aim</u>
Workforce Planning	Create innovative and curated experiences to attract, engage, and inspire a skilled, diverse, and resilient workforce
Knowledge Management	Capture and disseminate institutional knowledge and use innovative technologies to make it accessible to the right staff at the right time
Process Excellence	Optimize NYPA’s core business processes and instill a culture of continuous improvement across the enterprise

Workforce Planning: Create innovative and curated experiences to attract, engage, and inspire a skilled, diverse, and resilient workforce

Strategic Alignment

Integrated core competencies, organizational values and goals cascaded and aligned to the strategy.

Foundational Systems

HR operating model to embed programs and career management tools:

- Analytics
- Career development
- Compensation
- Goal planning
- Learning management
- Performance management
- Recruitment
- Succession planning

Succession Planning

Dynamic resource management for business continuity, development, transparency and address talent pipeline gaps.

Training and Development

Created and customized curated training, career development and signature programs.

- Competencies
- Design Thinking
- DRIVE Blue Management Development
- Innovation
- LEAD Blue Leadership Development
- MBA in Sustainability
- New Manager Development

Employee Engagement

HR led thousands of talent development activities, for management and staff. Employee engagement scores increased by 2 quartiles and achieved two Forbes Best Employer awards the first time in NYPA history.

✓ Employee Value Proposition	✓ Innovation Programs	✓ Social Collaboration
✓ Employee-driven Development	✓ Tailored Coaching	✓ Assessment Tools

Knowledge Management: Capture and disseminate institutional knowledge and use innovative technologies to make it accessible to the right staff at the right time

Targeted Knowledge Capture & Dissemination

- **Technical Experts** Portal to access expert-level knowledge
- **Lessons Learned** Standardization of lessons learned for sharing and implementing improvements
- **Knowledge Transfer** Capture and share information from transitioning employees and accelerate onboarding



Enterprise Tools

- **Digitization** Conversion and classification of documents from paper to digital
- **Enterprise Content Management** Framework to improve the retention and storage of information
- **Search Integration** A single structured search tool integrated across systems to find information

Key Accomplishments

- Knowledge Continuity program reduced onboarding time by 50%
- Enterprise search and taxonomy tools discover over 1.7M documents
- Digitized over 250K critical documents
- Database of over 600 documents of curated content from technical experts
- Lessons Learned program standardized the capture and share of 300 improvements

Process Excellence: Optimize NYPA's core business processes and instill a culture of continuous improvement across the enterprise

Methodologies

- Six Sigma to improve quality and accuracy, Lean to reduce waste and Agile to accelerate delivery

Enterprise-Wide Improvement Programs

- Process Excellence Black Belt staff led complex enterprise-wide improvements



Continuous Improvement Skills Training

- Lean, Agile and Six Sigma training includes problem solving, prioritization, project management and resource loading

Expert Skill Development

- On-the-job training where experts are certified to apply methods and statistical tools for implementation

Key Accomplishments

- 250 Staff trained on implementing Lean, Six Sigma and Agile methods
- 24 Large-scale and complex Black Belt process improvement projects
- 150 Staff received Lean Six Sigma, Agile, Green or Yellow Belt Certifications

Over \$10M cost and capacity savings through improvement projects

Our strategy to continue investing in our organizational capability

A



Workforce Planning: Bringing talent and programs to the next maturity level

- Activate NYPA's Values through action, education and communication
- Incorporate new technologies, such as virtual reality and artificial intelligence into talent acquisition and development
- Expand workforce analytics and performance metrics
- Develop career path framework for transparency in professional development

B



Knowledge Management: Enabling success through collaboration and sharing

- Enable peer-to-peer education to create a knowledge sharing culture
- Deploy enterprise content management tools to increase access and dissemination of content
- Apply artificial intelligence and machine learning to customize access to content

C



Process Excellence: Instilling a culture of continuous improvement

- Provide all staff with core process improvement and work management capabilities
- Focus on high-impact areas for improvement
- Drive enterprise-wide adoption of Lean and Agile methods

Agenda



1. Decarbonize Gas Power Plants



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4. **Resilience**

Resilience

OUR 2030 VISION



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

Defining Enterprise Resilience

NYPA is working to build, maintain, and implement its resilience capability. Resilience is the ability to prepare for and adapt to changing conditions and withstand and recover rapidly from disruptions. Resilience includes the ability to withstand and recover from deliberate attacks, accidents and naturally occurring threats and incidents.



NYPA has made key steps in building resilience

Physical Security and Crisis Management

- Hosted multiple multi-agency security briefings with partners in order to continue to support our security posture.
- Worked with IT & OT to Facilitate Incident Response Drills at all NYPA Projects
- Led 2nd Wave planning and action reporting and facilitated support effort to high-level NYS officials for COVID response

Reliability Standards and Compliance

- Supply chain security enhanced by effectuating compliance with NERC CIP013
- Robust and reliable power system: looking at asset criticality and planning for equipment outage scenarios to support reliable and resilient grid operations
- Work with regulators to showcase NYPA's internal controls and best practices

QA/ Code / EH&S Compliance Audit

- Use of remote/virtual technologies to support factory inspections of critical equipment
- Building Code Compliance program improvements

Energy Security and Resilience Programs

- Conducted assessment of NYPA Energy Security current state
- Identified areas to buttress existing NYPA Energy Security processes



To tackle these emerging resilience themes, our vision is to embed resilience throughout the enterprise by building it into muscle memory

Current Tactical Approach

- Focusing on **span of control with targeted partnerships**
- Leveraging existing resources to develop or implement **incremental programmatic improvements** within Business Continuity Planning, Insider Threat, and Supply Chain

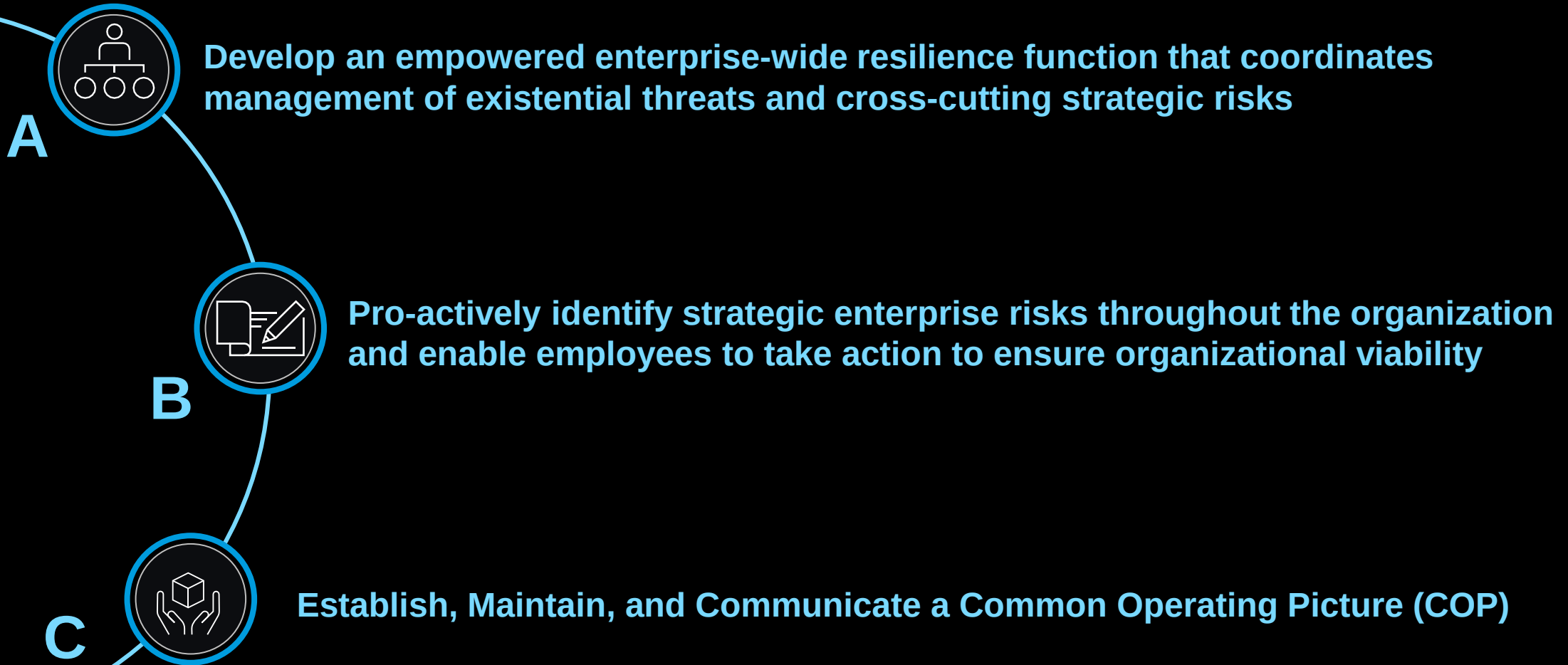
Integrated business

- Resilience **posture and concepts assimilated** by all business units and personnel and fused with established processes. Resilience becomes part of our DNA
- Program(s) are **funded and resourced** to achieve success
- **Resilience mindset** and importance is promulgated from the top-down and bottom-up

VISION2030

- Resilience is cemented as a priority pillar, **embedded across and throughout** the enterprise
- Internal or external shocks causes **quick recalibration** and redirects the organization to our North Star
- Resilience is both **strategic and operational**
- Workforce acceptance, resilience understanding and importance

To achieve this, our strategy to embed resilience into NYPA's culture is based on three components





**NY Power
Authority**

**Canal
Corporation**

**MINUTES OF THE JOINT REGULAR MEETING
OF THE
POWER AUTHORITY OF THE STATE OF NEW YORK AND
NEW YORK STATE CANAL CORPORATION**

December 9, 2020

Table of Contents

<u>Subject</u>	<u>Page No.</u>	<u>Exhibit</u>
Introduction	2	
1. Adoption of the September 23, 2020 Proposed Meeting Agenda	3	
2. Motion to Conduct an Executive Session	4	
3. Motion to Resume Meeting in Open Session	5	
4. DISCUSSION AGENDA:	6	
a. Strategic Initiatives	6	
i. President and Chief Executive Officer's Report	6	4a i-1-A
1. COVID-19 Update	7	
2. New York Power Authority's Vision2030 – Ten-Year Strategic Plan	9	4a 2-A
b. Chief Operations Officer's Report	15	4b-A
c. Chief Commercial Officer's Report	16	4c-A
d. Chief Financial Officer's Report	18	4d-A
e. Finance Committee Report	19	
i. Utility Operations	22	
1. Right-of-Way Vegetation Maintenance – Contract Award Resolution	22	
2. Niagara Power Project – Next Generation Niagara Program – Mechanical and Electrical Upgrades Project – Wicket Gate Procurement – Contract Award Resolution	24	

<u>Subject</u>	<u>Page No.</u>	<u>Exhibit</u>
ii. Commercial Operations	27	
1. Economic Development Customer Assistance Program – Temporary Power Assistance Initiative Resolution	27	
iii. Financial Operations	30	
1. New York Power Authority Filing of the 2021 Budget and 2021-2024 Financial Plan Pursuant to Regulations of the Office of the State Comptroller Resolution	30	
2. Adoption of the 2021 New York State Canal Corporation Budget Resolution	35	
3. Release of Funds in Support of the New York State Canal Corporation Resolution	37	
4. Release of Funds in Support of the Residential Consumer Discount Program Created in Connection with the Recharge New York Power Program Resolution	40	
f. Governance Committee Report	43	
i. Ten-Point Racial Justice and Equity Plan – Authorization Resolution	44	
ii. NYPA Guidelines for Procurement Contracts Resolution	48	
iii. Canal Corporation Guidelines for Procurement Contracts Resolution	50	
iv. Proposed 2021 Schedule of Meetings Resolution	52	
v. Committee Appointments Resolution	54	
g. Audit Committee Report	55	

<u>Subject</u>	<u>Page No.</u>	<u>Exhibit</u>
5. CONSENT AGENDA:	56	
a. Commercial Operations	57	
i. Recharge New York Power – New, Extended, and Modified Allocations	57	
ii. Transfer of Recharge New York Power and Replacement Power Allocations	65	
iii. Expansion Power Allocations	69	
iv. Contracts for the Sale of Preservation Power – Final Approval and Transmittal to the Governor	74	
v. Contracts for the Sale of Hydropower – Final Approval and Transmittal to the Governor	77	
vi. Extension of Peaking Power Hydropower Contracts with Upstate Investor-Owned Utilities – Transmittal to the Governor	80	
vii. Recommendations for Awards of Fund Benefits from the Western New York Economic Development Fund by the Western New York Power Proceeds Allocation Board	82	
viii. Green Jobs Evaluation Incentive Plan	86	
b. Financial Operations	89	
i. Release of Funds in Support of the Western New York Power Proceeds Allocation Act	89	
ii. Release of Funds in Support of the Northern New York Power Proceeds Allocation Act	92	
c. Public & Regulatory Affairs	96	
i. NYPA Fleet Vehicles – Transfer of Ownership to Regional Boards of Cooperative Education Centers	96	
d. Procurement (Services) Contracts	99	
i. Procurement (Services) and Other Contracts – Business Units and Facilities – Awards, Extensions, and/or Additional Funding	99	
ii. Seaway Private Equity Corporation – Grant Agreement Amendment	106	

<u>Subject</u>	<u>Page No.</u>	<u>Exhibit</u>
e. Real Estate	107	
i. AC Transmission Proceeding – Lease of Real Property	107	
f. Canal Corporation	111	
i. Procurement (Services) Contract – Refuse/Recycling Services –Contract Award	111	
g. Governance Matters	116	
i. Minutes of the Regular Joint Meeting of the New York Power Authority’s Trustees and Canal Corporation’s Board of Directors held on September 23, 2020	116	
Resolution		
6. Introduction of New Chief Information Security Officer	117	
7. Board Resolution – Kimberly Harriman	118	7-A
8. Next Meeting	119	
Closing	120	



Minutes of the Regular Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held via video conference at approximately 10:00 a.m.

Members of the Board present were:

John R. Koelmel, Chairman
Eugene L. Nicandri, Vice Chairman
Tracy McKibben
Michael A.L. Balboni
Dennis T. Trainor

Anthony J. Picente, Jr. – Excused

Gil Quiniones	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
Soubhagya Parija	Senior Vice President & Chief Risk Officer
Robert Piascik	Senior Vice President & Chief Information Officer
Angela Gonzalez	Senior Vice President – Internal Audit
Kimberly Harriman	Senior Vice President – Public & Regulatory Affairs
Keith Hayes	Senior Vice President – Clean Energy Solutions
Yves Noel	Senior Vice President – Strategy & Corporate Development
Scott Tetenman	Senior Vice President – Finance
Philip Toia	Senior Vice President – Power Supply
Karen Delince	Vice President and Corporate Secretary
Daniella Piper	Vice President – Digital Transformation Office and Chief of Staff
John Canale	Vice President – Strategic Supply Management
Ruth Colon	Vice President – Enterprise Shared Services
Patricia Lombardi	Vice President – Project Management
Eric Meyers	Vice President – Chief Information Security Officer
Anne Reasoner	Vice President – Budgets and Business Controls
Lisa Payne Wansley	Vice President – Environmental Justice & Sustainability
Nancy Harvey	Chief Diversity, Equity & Inclusion Officer
Thakur Sundeep	Controller
Christina Reynolds	Treasurer
Kandapa (Dolly) Jinvit	Senior Director – Internal Business Controls
Thomas Spencer	Senior Director – Enterprise Risk & Corporate Insurance
Debra Hopke	Principal Attorney II – Contracts, Licensing & Environmental
Mary Cahill	Manager – Executive Office
Christopher Vitale	Senior Finance Project Manager
Paul DeMichele	Media Relations 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 September 23, 2020 Proposed Meeting Agenda**

On motion made by Trustee Trainor and seconded by Trustee McKibben, the members adopted the meeting Agenda, as amended.

Conflicts of Interest

*Chairman Koelmel declared a conflict of interest regarding **River Road Research, Inc. (Item #5a vii)** and said he would not participate in the discussion or vote related to that matter.*

Members Nicandri, McKibben, Balboni and Trainor declared no conflicts of interest based on the list of entities previously provided for the members' review.

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 Balboni and seconded by Trustee Trainor, 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 Balboni 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. Strategic Initiatives

i. President and Chief Executive Officer's Report

President Quiniones provided an update on NYPA's response to the COVID-19 pandemic (Exhibit 4a i-A). He said that the state of the Authority is good, the health and safety of its employees during the COVID-19 pandemic being its number one priority.

Corporate Scorecard through October 2020

President Quiniones said that the Authority met or exceeded the targets set forth in the Corporate Scorecard through October 2020. He said that the Authority set the parameters of the scorecard which was presented to the Board at the December 2019 meeting. When the COVID-19 pandemic hit the U.S., NYPA first prioritized the health and safety of its employees. Second, NYPA kept the lights on. NYPA kept the operation of its generation and transmission plants with the required reliability and resiliency that New Yorkers deserve.

NYPA also operated well in the "fog" of the COVID-19 Pandemic. In April, NYPA issued long-term, green bonds, to ensure its capacity to be able to deal with the uncertainties it would face dealing with the COVID-19 pandemic. The Authority was able to allow its employees to work from home immediately, largely because of the digital transformation investments that it had been doing since 2014. The Authority also created a process to be able to restart projects that were completely stopped both at NYPA and Canals. President Quiniones said that he was proud of the team at NYPA and Canals for being able to execute this plan.

With guidance from the Board, some of the Authority's goals were adjusted because of the COVID-19 pandemic. The Board articulated that the goals the Authority set in December 2019 were no longer valid and allowed the Authority to make adjustments to those goals. The Board engaged with the Authority on a weekly basis during spring and summer, which was very critical for the Authority to be able to execute the Plan for the rest of the year. Based on some metrics that were adjusted for COVID-19, NYPA was able to execute its 2019 Plan.

President Quiniones ended by saying that, with the rise in infection rates, the Board continued to be engaged with Authority management; nonetheless, the teams at NYPA and Canals performed well during that time and he was pleased to report it through the Performance Scorecard.

1. **Covid-19 Update**

President Quiniones provided the following update:

COVID-19 Task Force Update

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

Similar to Governor Cuomo's approach for the entire state, the Authority follows a data-driven and analytics-based process in managing its business and protecting the health and safety of its employees. Trigger factors have been identified and, at the presence of those trigger factors, countermeasure strategies were applied both to where Authority employees work and where they live.

Communications – Maintaining engagement and empowering employees with information:

NYPA have also been communicating regularly with staff through text, e-mails, and videos, including those made regularly through Zoom and virtual meetings, to make sure that employees know exactly what NYPA's game plan is on a day-to-day/weekly basis.

Maintaining engagement with employees:

President Quiniones said that, as previously mentioned, the health and safety of NYPA's employees is always the number one priority. Care packages were sent to the NYPA/CANALS employees, which include masks, thermometers, hand sanitizers and a reference guideline amplifying the CDC and Department of Health guidelines. NYPA's goal is to explore ways to maintain the level of vigilance that is required to deal with the COVID-19 pandemic, especially since the Authority is a critical infrastructure, providing critical services to the people of this state.

Returning to the workplace safely with a phased approach:

In October, NYPA started bringing its "field operations" employees back to work, adding to those who had to work all the time, and had approximately 80 percent of the total workforce working. However, because of the increased infection rates in various regions of the state, and which hit the trigger points, NYPA had to modify the workforce returning to work, according to its protocol, to a pre-October-level employee working at the various sites of NYPA and Canals.

NYPA will continue to monitor the infection rate increase since the predictions are that from Thanksgiving to the Christmas holidays, there will be an increase the infection rate and that January could be a very difficult month for the state, and the nation at large.

NYPA / NYSCC – Case Status

An uptick in cases have been observed.

NYPA has a robust contact tracing group of approximately 25 employees, all of which have been certified to conduct contact tracing by Johns Hopkins and the Bloomberg Foundation.

A number of employees have self-quarantined. There has been a gradual increase in positivity, with approximately 25 positive cases identified. However, NYPA's rate of positivity is much less than the rate of positivity in the regions where it has its facilities. This means that NYPA's protocols are working well.

NYPA's goal is to protect its most critical functions – its Power Plant Control Room and Transmission Control Center operators.

NYPA offers voluntary testing at stage two level of its trigger factors; and requires mandatory testing when it hits level three at the project sites. If stage four/stage five, NYPA will once again sequester the operators in place in order to provide maximum protection, and to ensure the public that the Authority will keep the lights on from its facilities.

Capital Summary – Original Budget vs Current Forecast

President Quiniones said that, as mentioned previously, the Authority adjusted its Capital and large O&M programs because of the COVID-19 pandemic. NYPA had to pause and stop its construction and non-construction efforts, and based on that delay, the Authority assessed plans for projects it can restart for the rest of the year from when it started reopening in June to the end of this year. He reported that, to date, the Authority has been able to restart 100 percent of the projects that were targeted to be restarted and is on track to do the work needed to complete those projects before the end of this year. He thanked NYPA and Canals staffs for being able to execute the adjusted plan during the COVID-19 pandemic.

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

President Quiniones said that the Authority has been working on NYPA's Vision2030 Strategic Plan since 2019 (Exhibit 4a 2-A). He said that the Authority planned to bring the Plan before the Board for approval at the Annual meeting March; however, the Authority agreed with the Board's guidance that the COVID-19 pandemic changed a lot of the fundamental assumptions in the strategy work that staff were working on in 2019. It was therefore prudent for the Authority to relook at those fundamental assumptions and trends, going forward, and recalibrate the Strategic Plan. He continued that the Authority held Strategic Planning retreats with the Board on October 26th and November 12th, and have also provided the members with additional information, taking into account the feedback from the members, adding to the recalibration of the Vision2030 Strategy.

President Quiniones said that being presented at this meeting are five strategic initiatives to preserve the value of NYPA's hydro facilities for the benefit of New Yorkers; significantly build NYPA's transmission system to integrate renewable energy into the State's power system; transition its natural gas power plant fleet to low or no carbon resources by 2035, which is five years ahead of the Climate Leadership and Community Protection Act ("CLCPA") mandate; and implement NYPA's Customer Energy Solutions program to help the Authority's customers meet their own decarbonization goals in alignment with the CLCPA law.

He continued that there are also five foundational pillars which are those activities and initiatives that cut across all of the strategies and business units at NYPA and Canals.

President Quiniones ended by saying that the Reimagine the Canals initiative was announced by the Governor and the Authority in December of 2019 and January 2020.

Mr. Yves Noel, Senior Vice President of Strategy and Corporate Development, presented highlights of the Authority's Vision2030 Ten-Year Strategic Plan to the Board. He said that the Authority's staff spent a lot of effort over the past two years thinking about NYPA and its future, recognizing that the Authority is making its way through an extraordinarily turbulent period as trends in the utility sector have been driving change. Not only is the Authority at a pivotal period, but the pandemic and recent social unrest accelerated the pace of change and highlighted the needs for fairness.

He continued that, in the previous Strategic Plan, NYPA2020, Senior management and the Board established an impressive track record of leaning in, planning and innovation. The Authority is now building on what was learned and reinventing NYPA to meet the needs and expectations of its customers. He then described NYPA's journey and commitment to building a thriving, resilient New York, powered by Clean Energy. He said that the fundamental question is "What is NYPA going to do for the people of New York?" And the answer is: "Lead New York's sustainable energy future for the people of New York." Vision 2030 places the Authority's customers' energy resilience, decarbonization and growth at the center of all that the Authority does.

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

Since its inception, NYPA has been committed to building a thriving, resilient New York and stewarding the State's resources. As NYPA is about to enter its tenth decade, it is now focused, more than ever, on serving the people of New York.

In 2019, New York responded to the climate challenge by adopting the most ambitious Clean Energy targets in the country.

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

- New York's commitment to decarbonization requires leadership to ensure NYPA reaches its goals.

- Significant transmission system investments are needed to ensure that renewables and energy projects can supply customer load centers.
- Emissions from electricity will have to fall by more than 50 percent from what it was in 2016 to achieve the statewide greenhouse gas goals.
- Emissions from buildings and transportation will have to fall by 33 percent.

NYPA'S Vision and Mission

NYPA's new vision and mission reflect a fundamental belief that NYPA has a pivotal role to play in the transition to a clean energy society. NYPA is committed to leading the way and helping its customers make this ambitious goal a reality.

NYPA'S VALUES

NYPA's values were highlighted through engagements at all levels of the organization. The articulation of NYPA's values provide clarity to its employees and the world. They also inform how Authority staff engage with each other and make strategic business decisions. The values are routed in multiple behaviors that are regularly exhibited and are committed to continue.

- NYPA works for the greater good and a stronger, sustainable New York.
- NYPA holds itself to the highest standards of integrity, safety, and excellence. The highest standard requires each of us to take personal responsibility for safety and excellence.
- Resilient organizations anticipate, plan, and manage for the future.
- NYPA draws strength from its diversity.
- NYPA work as one team, creating opportunities for others to learn, develop and reach their potential.

Vision2030 - Strategic Priorities

The Authority's places customers, energy, resilience, decarbonization, and growth at the center of the Plan.

The Plan responds to five challenges with strategic priorities supported by five Foundational Pillars, namely Digitization; Environmental, Social, and Governance; Diversity, Equity, and Inclusion; Enterprise Resilience; and Resource Alignment.

The Authority view these challenges as opportunities.

The Foundational Pillars of the Plan are investments in the Authority's employees to accomplish its aspiration.

To lead the state to the Authority's vision of the future requires a strategy with multiple direct actions and tactics.

Structure of the five strategic priorities and the Foundational Pillars:

Hydropower

NYPA needs to preserve the value of its hydropower to allow the more cost-effective renewable transition to reach its goal of 70 percent renewable electricity by 2030; this is for the benefit of all New Yorkers. Continuously operating since 1958, NYPA's hydropower assets have been a significant source of clean power for New York State for more than 60 years. As subsidized renewable resources continue to enter

the market, hydropower is at risk of being increasingly curtailed while serving the baseload. Vision2030 outlines a path to preserve and to fully realize the value of the Authority's hydroelectric assets for New York State's clean energy future. All of these actions combined should result in reversing the hydropower projected trends and maintaining the renewal base for New York State.

Transmission

NYPA's next priority is rapid transmission deployment. The expansion of the transmission grid is a critical need in New York to relieve congestion and integrate renewable energy on both land and offshore projects for New Yorkers. These projects bring power from remote areas to the grid to meet the load. NYPA is committed to becoming the leading transmission developer, owner and operator for New York State and its changing needs. With NYPA's unique statewide and technical expertise, it can concentrate its transmission portfolio on the right projects that will balance system planning, returns and wider state objectives.

NYPA expects the actions to result in at least tripling its transmission rate base, and at the same time, will achieve its top four O&M efficiencies.

Natural Gas

NYPA will pioneer the path to decarbonization by serving as a testbed for innovation while ensuring reliability, resilience, and affordability of New York State's energy grid. This is part of a two-part strategy to reach NYPA's goal of providing carbon-free electricity to its customers by 2035, five years ahead of its 2040 target.

NYPA owns and operates a portfolio of natural gas assets that provide critical reliability and resiliency to New York State's grid.

NYPA commits to eliminating all emissions from these plants by 2035 without sacrificing reliability or the electric system.

NYPA is partnering with environmental justice organizations to explore the feasibility of carbon-free technologies at several of its facilities.

NYPA will become a proving ground for innovation. NYPA will identify the critical characteristics of natural gas plants that must be replaced; and will thoroughly investigate the potential for low-to-zero carbon technologies at its facilities for potential pilots.

Customer and the State

As the energy system evolves, NYPA's customers' needs are changing. For many years, customers valued reliability, affordability, and convenience. With the passing of the Climate Leadership and Community Protection Act, New Yorkers have added clean energy to this list of energy needs.

As a second part of NYPA's two-part strategy of providing carbon-free electricity to its customers by 2035, NYPA will partner with its customers to provide renewable energy in a cost-effective manner. Each customer's path to energy resilience will be different. NYPA's goal is to enable the customers' aspirations and provide new, clean energy products and services along with innovative customer solutions.

NYPA will also serve as a trusted energy advisor for its customers and the state. NYPA is committed to enabling 325 megawatts of distributed solar at customer sites by 2025. NYPA will also enable 450 megawatts of energy storage by 2030. All of this while NYPA responds to the CLCPA goals to provide available and relevant resources to disadvantaged communities.

Reimagine the Canals

The New York State canal system is a marvel of engineering that spans more than 500 miles across upstate New York. It was the key economic driver for the State that opened-up direct trade routes to the Midwest.

While the canal has not been a major shipping channel in a half century, its many infrastructures remain beloved resources of canal communities, creating an opportunity to Reimagine it for the public's benefit. NYPA is actively repurposing the system for economic and recreational benefits of New Yorkers, while driving operational efficiencies.

Foundational Pillars to Execute NYPA's Mission

NYPA plans to accomplish these benefits for the people of New York by investing in its people and its capabilities. To deal effectively with these challenges, NYPA must continue its leadership in the five foundational areas. The Foundational Pillars will enable NYPA to attract, retain and develop the best workforce, equip these talented individuals with the right tools for the job to execute the work of providing value to the people of New York in the most efficient and effective manner.

NYPA VISION2030

NYPA has a leadership role for a thriving and resilient New York in the future. NYPA's response requires multiple measured actions due to the scale and complexity of the challenge. NYPA understands the massive scale and scope of the challenge and why it is reinventing the Authority for the future.

Aspiration for Strategic Priorities

The measures and goals for this initiative are lined against NYPA's five strategic priorities: Preserve Hydro; Grow Transmission; Decarbonize Gas; Decarbonize Customers and Reimagine the Canals. NYPA plan on using these measures to track its progress and report to the Board on a regular basis.

Aspiration for Foundational Pillars

The enabling measures: Digitization; Environmental, Social, and Governance; Diversity, Equity, and Inclusion; Resource Alignment; and Enterprise Resilience are directly tied to NYPA's foundational pillars.

Chairman Koelmel said that on behalf of the entire Board he wanted to thank President Quiniones and Yves Noel for the review of the Authority's VISION 2030 Strategic Plan. He said that the members spent considerable time as a group reviewing and discussing the proposed Plan. The members are proud of the position the Authority is in and fully embrace their responsibility. In addition, the members are excited with the path that President Quiniones and the team have chartered for the Authority on refreshing and refocusing its continuing efforts, ensuring that the Authority's line of sight is appropriately elevated on the goals; in particular, impacting what the Authority does for the benefit of the State.

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

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

The Trustees are presented with the Authority's proposed 2021 Strategic Plan, for adoption, as set forth in Exhibit '4a 2-A' attached hereto.

BACKGROUND

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

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

DISCUSSION

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

- In early 2019, Authority staff began meeting with external stakeholders representing customers, energy leaders, government officials, financial organizations, universities, and others to discuss customer requirements, key trends, and opportunities in the energy industry.
- In the summer of 2019, the strategy team and senior leadership from across the Authority went through a scenario planning process to evaluate core investment areas and ensure that the Authority's investments achieved New York State's goals and protected the Authority's financial position across various plausible future scenarios (combinations of economic, technological, social and competitive landscapes etc.).
- Throughout 2019, the strategy team conducted three rounds of 'roadshows' to present VISION2030 at various stages of development to internal stakeholders at the Authority's sites to solicit feedback and gain buy-in from employees throughout the Authority.
- In 2020, with the arrival of the pandemic in New York, NYPA elected to pause its strategic planning process and focus on helping our customers and assessing the emerging situation. Additionally, the widespread social unrest from the death of George Floyd caused NYPA to reexamine its role in the just energy transition.
- In quarter four of 2020, NYPA conducted two Trustee Strategy Workshop Retreats in which we discussed trends impacting the energy industry; five strategic challenges facing NYPA; and NYPA's

performance, i.e., track record of success. These strategy retreats afforded the Trustees with the opportunity to provide strategic guidance on the plan.

- Five strategic priorities were identified to reshape NYPA for the decade ahead and are supported by five foundational pillars.
- New mission and vision statements for the Authority were drafted by the strategy team and are as follows:
 - Vision Statement: A thriving, resilient New York State powered by clean energy.
 - Mission Statement: Lead the transition to a carbon-free, economically vibrant New York through customer partnerships, innovative energy solutions, and the responsible supply of affordable, clean, and reliable electricity.
- Throughout 2020, senior employees from across the Authority met to re-evaluate the strategic plan, mission, vision, and values in light of changes to both business and regulatory environments.
- As the Authority's current strategic initiatives come to a successful conclusion, VISION2030 builds on their success, continuing to focus on the customer and ensuring that the Authority leads the transformation to a clean energy economy for New York State as defined in law in the summer of 2019.

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

RECOMMENDATION

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

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

Mr. Yves Noel, Senior Vice President of Strategy, provided highlights of staff's recommendation to the Board.

On motion made by Trustee Trainor and seconded by Trustee McKibben, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That the Trustees hereby acknowledge that they have read, understand and adopt the Authority's 2021 Strategic Plan, VISION2030, attached hereto as Exhibit “4a i-A,” 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 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.

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"). He said that all of the key performance indicators ("KPIs") are meeting or exceeding the targets, year-to-date, and Utility Operations is currently forecasting that these results will remain the same through the end of the year. Utility Operations is especially proud of the results given consideration to the "starts" and "stops" COVID19 protocols to keep the staff safe.

Performance Measures – Year-to-Date

Generation Market Readiness

- Generation Market Readiness factor was at 99.92%. This is above the target of 99.40%.

Transmission System Reliability

- Transmission System Reliability factor was 94.34%. This is above the target of 90.89%.

Environmental Incidents

- Year-to-date, there were 25 incidents. The Target is not to exceed 42 incidents.

Safety

DART (Days Away, Restricted or Transferred) is the Authority's safety metrics.

- The year-to-date DART Rate is 0.46. The target is 0.78.

Utility Operations Key Initiatives:

1. Moses-Adirondack (MA) Smart Path Reliability Project

The Smart Path Reliability Project ("Smart Path"), a key transmission initiative, was approved by the Board in November of 2019. The Smart Path capital project updates 78 miles of NYPA's Moses-Adirondack transmission lines. The double pole wood structure that was built during World War 2 by the U.S. Army Corps of Engineers became one of NYPA's first assets in the 1950s. The monopole design increased spacing between conductors, which allows for higher operating voltage. This offers maximum flexibility for operating the lines.

2. COVID-19 Response – HVAC Modifications

The HVAC modifications initiative is in response to the COVID-19 pandemic to protect the Authority's essential personnel who operate from the sites, primarily, the Control Room Operators and Security Staff Command Post. Taking a three-prong approach, the HVAC modifications will increase circulation of outside air to better filter the air as it goes into these areas.

3. Asset Management ISO 55001

NYPA was recognized as the first electric utility in North America to be certified in the Asset Management Standard ISO 55001. In October 2020, after the ISO Surveillance Audit, NYPA received notification that the Authority passed the Surveillance Audit, indicating that NYPA maintained compliance throughout the COVID-19 crisis.

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"). She said that the COVID-19 pandemic was disruptive to the commercial business alliance. NYPA was at the frontline of interacting with the energy markets where it saw demand destruction and suppression in pricing, as well as on the frontline with the customers, many of which are essential services supporting the pandemic response.

She continued that she appreciates the Board's recognition of the importance of what the Authority have undertaken relative to supporting NYPA's target of future financial viability and sustainability of the organization of meeting its customers' needs and helping to meet the critical milestones towards the energy transformation in New York State as set forth by the Governor through his various legislative efforts.

ELECTRICITY SUPPLY

Merchant Gross Margin

It is anticipated that by the end of the year the Merchant Gross Margin will be between 12% - 14% off the target that was set in October. At the beginning of the year, the state had the third warmest winter on record which affected energy market prices. At the peak of the COVID-19 pandemic in the spring, there was a 10% reduction in demand across the State. Gas supply prices, which sets the marginal price in the energy markets, were below \$1.00 at certain times in the year.

There was a 40% reduction in energy prices. NYPA worked diligently to adapt to the circumstances and undertook a very aggressive Hedging Program in the early part of the year, which is having a benefit of about \$16 million relative to what would have otherwise been realized in its financials. Additionally, NYPA worked very closely with Risk Management and the Energy Resource Management teams developing a future hedging strategy that should reduce the volatility around NYPA's Gross Margin, going forward, with a more volume-metric approach.

Economic Development

Despite the COVID-19 pandemic and the impacts to support the economic development of the State, relative to continuing to provide record allocations to commercial industrial customers across New York in exchange for capital commitments as well as exchange for creation retention of jobs, NYPA is at about 70 percent allocated for economic development.

CUSTOMER OFFERINGS – Key Targets as of October 2020

In late spring-early summer, Commercial Operations adjusted its targets for the end of the year, assuming about a four-month delay in construction for both the traditional energy efficiency and distributed energy resources businesses, as well as the e-mobility projects.

Commercial Operations is interfacing with the customers and looking at meeting critical milestones to a decarbonized energy future through greenhouse gas reductions, the work done in Energy Efficiency and Distributed Energy Resources with the customers, the EVolve Program, and tackling the 40% contribution of the transport industry to greenhouse gas emissions in New York State.

Recognizing NYPA's goal of becoming the first end-to-end digital utility, Commercial Operations continue to pursue the amount of ingestion of data relative to the Authority's New York Energy Manager.

Due to the fact that it took longer to get the vendors and the contractors back online, as well as the fact that many of the Authority's customers such as hospitals and other government entities across the State, including local governments, and others have been focusing on responding to the pandemic, the Authority will not meet the revised targets that it assumed.

NYPA continues to work very closely with its customers and have a robust pipeline of about \$180 million in projects that are awaiting final customer contractual commitments.

Key Milestone in Commercial Offerings:

Voice of Customer

The health and safety of NYPA's employees, contractors, and communities in which it works have been of utmost importance to the Authority. To that end, NYPA is conservative in its approach to the construction timelines. NYPA continues to take great strides in supporting its customers, leveraging digital tools to hold virtual townhalls during the pandemic, and also get their insights for product development.

Transmission

The Transmission Development team that helps to drive the commercial development of opportunities for NYPA was successful in conjunction with other functional groups in petitioning the PSC under the new legislation to receive a priority project, the Northern New Project, to meet the State's objectives of integrating renewables into the Bulk Grid, as well as provide future revenue diversification and strong returns to NYPA's pipeline.

Smart Street Lighting NY

NYPA is supporting the Governor in his goal of 500,000 streetlights to be converted to LED by 2025. The Authority has 250,000 projects in the pipeline and have 30 cities committed to this project. Another milestone that has been met towards this goal is the completion of a major installation in the city of Syracuse, with more than 17K LED retrofits, coupled with digital sensors and intelligence features.

Monitoring as a Service

The Munis and Co-Ops are one of the Authority's customer groups that are consistently constrained with resources. NYPA provides them with low-cost hydro energy and act as an advisor to them both on technology as well as supporting them in the clean energy transformation. To that end, working closely with Utility Operations to identify lessons learned from the iSOC, the Authority is now providing monitoring services to the Massena Electric Department, both for transformers, as well as battery installations.

Ms. Salati ended by saying that it has been a challenging year for the Authority. The COVID-19 pandemic was very disruptive to the energy markets and to the work that the Authority does at its customers' sites. Staff worked very hard at recovering and working as quickly as possible to bring these projects and activity streams back online. Commercial Operations will look at the longer-term objectives and goals that are necessary to meet the Authority's customers' energy and sustainability goals, as well as advance the ambitious targets of the State and the energy transformation.

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 – October 2020)

The year-to-date actuals has narrowed from what was reported in August for the 8+4 ((Jan-Aug) + (Sep-Dec)) results, a loss of \$11 million; it is now a \$5.7 million loss through October.

The major drivers remain the same, the impact that the COVID-19 pandemic had on energy prices; expenses incurred related to COVID-19 and the non-recurring expenses related to RTEP and pension expenses.

Full-Year Forecast

Year-end Projection (January – December 2020)

The Authority is improving on its end-of-the-year forecast with \$26 million as a forecasted best estimate, with a \$30 million range on each side. Net Loss is estimated at about a negative \$17 million for the year, with a range of \$10 million on either side.

e. Finance Committee Report

Chairperson Tracy McKibben reported that the Finance Committee met on November 17, 2020. The committee adopted the minutes of the last meeting, received one staff report, and considered 6 items, which are now before the full Board of Trustees for adoption.

The first item was presented by Phil Toia, Senior Vice President of Power Supply, which is a non-personal services contract for Right-of-Way Vegetation Maintenance Services along the Authority's transmission lines, to Lewis Tree Service, Inc., of West Henrietta, New York for a total authorization amount of \$12 million for a four-year term through December 2025.

The next item was presented by Sarah Salati, Executive Vice President and Chief Commercial Officer and Keith Hayes, Senior Vice President of Clean Energy Solutions, regarding the implementation of the Temporary Power Assistance initiative for the Authority's Recharge New York Expansion Power, Replacement Power and Preservation Power Customers.

There are four additional items discussed that were presented by Adam Barsky, Executive Vice President and Chief Financial officer.

1. Recommendation of the New York Power Authority 2021 Budget and 2021-2024 Four Year Financial Plan.
2. Recommendation of the Canal Corporation 2021 Budget.
3. The first quarterly release of funding to support operations of the Canal Corporation in calendar year 2021.
4. The release of \$30.0 million during 2021 to support the Residential Consumer Discount Program.

Chair McKibben said that in addition to the aforementioned items, the committee voted on an item in September, the Niagara Power Project Next Generation, Niagara Program and Mechanical and Electrical Upgrades project, and is now recommending it for adoption by the full Board. This item was presented by Joseph Kessler, Executive Vice President and Chief Operating Officer.

Chair McKibben then asked Mr. Adam Barsky to provide an update on the 2021 Budget and 2021-2024 Financial Plan the before the Committee call for a vote on the above recommendations.

Mr. Adam Barsky provided the following report:

• **New York Power Authority Filing of the 2021 Budget and 2021-2024 Financial Plan**

Major Plan Takeaways

The Financial Plan was built around supporting and pivoting towards the Vision2030 Plan and making sure that the resources are being allocated in a way that will help the execution of the Plan go smoothly.

The Capital Plan is significant and is driven by large investments and transmission projects which will get larger over time and be very positive to NYPA not only from a financial standpoint, but from a policy perspective, achieving the Authority's goals of bringing renewables into the system.

Information Technology investments will continue to make the Authority's infrastructure more resilient, especially in a post-COVID environment.

PLAN ASSUMPTIONS

Major Plan Assumptions in Terms of the Economy

A K-shaped recovery means that different sectors of the economy recover at different rates, times, or slower.

Overall, the Authority should see a rebound in economic activity next year with about a five percent growth in GDP.

Energy prices will remain low and sustained for a significant period of time over the Plan period.

2021-2024 Net Income Forecast

- The Net Income forecast over the four years, 2021-2024, is at \$41 million.
- The Earnings Before Interest, Depreciation & Amortization ("EBITDA"), and coverage ratios remain very strong.
- Revenues will continue to increase at a greater pace than expenses.

Gross Margin Analysis

As the Hedging Program continues to be implemented, the range as well as the "out years" will narrow as the Authority goes forward as this will be done on a rolling basis.

NYPA O&M and Capital Expenditures

As it relates to the Four-Year Plan, year-to-year O&M expenses are down slightly which means that in some areas the Authority will be able to reduce fund deficiencies and help fund other initiatives. The Capital Plan is significant over this period with \$2.6 billion, increasing up to \$800 million in 2022, and decreasing thereafter.

2021-2024 Planned Capital Investment

The planned capital investment is maintaining a state of good repair with the Authority making investments in the growth and transformative areas. The largest addition is the \$1B Northern New York project of which NYPA will be responsible for approximately \$590 million, going forward, and which was a significant addition to the Capital Plan. NYPA continues with many of the aggressive capital projects that it has already started to put in place, including the Niagara Life Extension and Modernization program over the next 15 years.

2021 Capital Plan: Major Investments – Clean Energy Solutions

The Clean Energy Solutions projects for 2021 are estimated at \$290 million. It is slightly lower than estimated due to the fact that some of the projects have been delayed. These projects will not be financed by NYPA from its own sources of capital; they will ultimately be financed separately through the conduit financing vehicle that NYPA have set up which will help the Authority's customers achieve low interest rates, flexible terms, and allow them to execute on those projects that will provide energy efficiency.

Canals O&M and Capital Expenditures

Canal Corporation's O&M will be \$91 million for 2021. Canal Corporation's O&M will, however, decrease over the next few years as the Authority looks for efficiencies to continue to bend the cost curve. The capital costs are flat lined, and the Authority will continue in its efforts to increase efficiencies.

Requests for Approval

Based on the Finance Committee's recommendations, it is requested that the Board approve the 2021 NYPA O&M Budget; 2021 Capital Budget; 2021 Energy Services Budget; 2021 Budget and Four-Year Financial Plan which will be posted on the Authority's website, and distributed to the Office of the State Comptroller, as well as the for the Canal Corporation, the 2021O&M Budget and 2021 Capital Budget.

i. Utility Operations

1. Right-of-Way Vegetation Maintenance – Contract Award

The President and Chief Executive Officer submitted the following report:

“SUMMARY

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

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

BACKGROUND

Section 2879 of the Public Authorities Law and the Authority's Guidelines for Procurement Contracts require the Trustees' approval of procurement contracts involving services to be rendered for a period in excess of one year. Also, in accordance with the Authority's Expenditure Authorization Procedures, the award of construction services contracts in excess of \$6 million require the Trustees' approval.

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

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

DISCUSSION

Construction Contractor RFQ, RFP and Contract Awards

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

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

FISCAL INFORMATION

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

RECOMMENDATION

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

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

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

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

Q20-7034DK

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.

**2. Niagara Power Project – Next Generation Niagara Program
Mechanical and Electrical Upgrades Project –
Wicket Gate Procurement – Contract Award**

The President and Chief Executive Officer submitted the following report:

SUMMARY

Trustee approval is requested to award a 15-year design, manufacture, and delivery contract to GE Renewables US LLC ('GE') of Greenwood Village, CO in the amount of \$12.7 million, which includes \$2.4 million in escalation over the life of the contract, for the Next Generation Niagara – Mechanical and Electrical Upgrades – Wicket Gate Procurement Project. In addition, the Trustees are requested to waive the New York Buy America Act requirements regarding the purchase of steel components.

The Finance Committee, at its July 16, 2020 meeting, adopted a resolution recommending that the Trustees approve the aforementioned award and waiver.

BACKGROUND

Section 2879 of the Public Authorities Law and the Authority's Guidelines for Procurement Contracts require Trustee approval for procurement contracts involving services to be rendered for a period in excess of one year. In accordance with the Authority's Expenditure Authorization Procedures, the award of non-personal services contract in excess of \$6 million requires the Trustee approval.

The Next Generation Niagara Program ('NGN') is comprised of four main projects: (1) controls upgrade, (2) mechanical and electrical upgrades, (3) 630-ton gantry crane upgrade, and (4) penstock platform and inspections. This contract is for the design, manufacture, and delivery of the wicket gates required to support the Mechanical and Electrical Upgrades project. This project will have future separate contract(s) to procure material and perform the remaining work.

The scope-of-work under this contract includes design, manufacture, and delivery of eleven (11) sets of twenty-four (24) wicket gates and three (3) spare gates. The wicket gates will be received and installed by Authority craft in support of the NGN mechanical and electrical upgrades.

It is estimated that the next contract for the design, furnish, and delivery of the shafts will be brought to the Trustees for approval in January 2021. The Mechanical Upgrades contract for the unit overhauls starting in 2023 is tentatively scheduled to be presented to the Trustees for approval at the May 2021 meeting. The overall Program is estimated for completion by 2034.

DISCUSSION

A Request for Proposal ('RFP'), Inquiry No. Q19-6866HM, was issued through the Authority's Ariba system and was advertised in the NYS *Contract Reporter* on December 13, 2019. A total of fifteen (15) firms were invited into the Ariba Event with forty-seven (47) firms having viewed the RFP on the Strategic Supply Management website. Seven (7) proposals were received through Ariba and one (1) bid was received via email on February 18, 2020. The list of Bidders is below:

Company	Location
GE Renewables USA LLC	Greenwood Village, CO
Andritz Hydro Corp	Charlotte, NC
Industrial Machine & Mfg. Inc	Saskatoon, SK, CA
Gracon LLC	Lafayette, CO
American Hydro	Buffalo, NY

Voith Hydro, Inc.	York, PA
Hydro Tech USA Inc.	Sault Ste Marie, ON, CA
Toshiba America Energy Systems	Charlotte, NC

Three post-bid addenda were issued requesting additional, detailed information and addressing bidders' questions. Two of the bidders, Industrial Machine & Mfg. Inc., and Toshiba America Energy Systems, were unresponsive to the post-bid addenda. After the evaluation of the post-bid addendum responses, there were no changes in bid-costs.

The Evaluation Committee, comprised of representatives from Strategic Supply Management, Mechanical Engineering, Project Delivery, Control Room Operations, Mechanical Maintenance, Quality Assurance, Environmental, Health and Safety, Project Management, and Program Controls, reviewed the proposals. The proposals were reviewed and evaluated based on the evaluation criteria established in the RFP including best value, proposal completeness, technical capabilities, ability to meet the schedule, experience in performing this type of work, and safety records.

The RFP event was also reviewed for compliance with the Executive Order ('EO') 13920 'Securing the United States Bulk Power System.' After reviewing, it is not applicable to this Contract. These proposals were also reviewed for compliance with the New York Buy American Act. After review, it is recommended that this requirement be waived based on the cost savings that would be realized to the Authority and superior quality of the products offered by the preferred vendor. Requirements for Minority and Women Business Enterprise and Service-Disabled Veteran-Owned Business are waived on this contract.

GE was determined to be the 'best value' bidder based on its strength of experience, ongoing support throughout the life of the project, a well, thought-out project execution plan, high quality manufacturing processes, ability to address the Authority's requirements and expectations, and best value proposal.

The proposed spending for this contract is in alignment with the original program estimates for this work, which was approved by the Trustees at their July 2019 meeting and has been included in the approved Four-Year Capital Plan.

FISCAL INFORMATION

Payment associated with this Project will be made from the Authority's Capital Fund. Funding in the amount of \$224 million has been authorized, to date, for the Next Generation Niagara Program, which is estimated at \$1.1 billion, to complete preliminary engineering, conduct engineering and design, material procurement, implement limited construction, and Authority direct/indirect costs. The balance, to be authorized at future Trustee meetings, is estimated at \$876 million for the remaining work associated with this program.

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Senior Vice President – Power Supply, the Vice President – Project Management, the Vice President – Strategic Supply Management, the Regional Manager and the Project Manager recommend that the Trustees approve the award of a 15-year contract in the amount of \$12.7 million, which includes \$2.4 million in escalation over the life of the contract, to GE Renewables US LLC of Greenwood Village, CO for design, manufacture, and delivery of the Wicket Gates in support of the Next Generation Niagara Program. In addition, it is recommended that Trustees waive the requirements of the New York Buy America Act for this award.

The Finance Committee, at its July 16, 2020 meeting, adopted a resolution recommending that the Trustees approve the aforementioned award and waiver.

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

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 \$12,700,000 for the design, manufacture, and delivery of the Wicket Gates in support of the Next Generation Niagara Program - Mechanical and Electrical Upgrades Project, as recommended in the foregoing 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 – Wicket Gate Procurement

<u>Contractor</u>	<u>Contract Approval</u>
GE Renewables US LLC Greenwood Village, CO	<u>\$12.7 million</u>
RFP # Q19-6866HM	

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. Commercial Operations

1. **Economic Development Customer Assistance Program – Temporary Power Assistance Initiative**

The President and Chief Executive Officer submitted the following report:

"SUMMARY

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

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

DISCUSSION

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

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

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

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

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

Staff envisions implementing the TPA initiative as follows:

- The Authority will notify customers in the EDP Programs of the TPA offering, and establish an initial application period and simple application process for interested

customers to apply for a supplemental increase to their power allocation within parameters developed by staff for each power program.

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

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

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

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

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

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

FISCAL INFORMATION

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

RECOMMENDATION

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

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

For the reasons stated, I recommend the approval of the above-requested 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 as an enhancement to the Authority’s Economic Development Customer Assistance Program, the Trustees authorize the Authority to make available for sale to customers receiving power under the Recharge New York (“RNY”), Expansion Power (“EP”), Replacement Power (“RP”), and Preservation Power (“PP”) programs (collectively, the ‘Economic Development Power’ or “EDP” Programs) supplemental power increases as part of a Temporary Power Assistance (“TPA”) initiative as described in the foregoing Report of the President and Chief Executive Officer; and be it further

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

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

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

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

iii. Financial Operations

1. **New York Power Authority Filing of the 2021 Budget and 2021-2024 Financial Plan Pursuant to Regulations of the Office of the State Comptroller**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

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

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

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

<u>2021 Power Authority Budgets</u>	<u>(\$ million)</u>
O&M	\$ 516.4
Capital	\$ 764.8
Energy Services	\$ 291.4
<u>2021 Canal Corporation Budgets</u>	<u>(\$ million)</u>
O&M (Inc. CDF)	\$ 91.6
Capital	\$ 40.3

Collectively, the 2021 Budget and 2021-2024 Financial Plan, 2021 New York Power Authority Budget and 2021 Canal Corporation Budget comprises Exhibit '4e iii-1-A.'

BACKGROUND

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

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

The 2021 Power Authority Budgets are intended to provide the Authority's operating facilities with, and support organizations by providing, the resources needed to meet the Authority's overall

mission and the Authority's strategic objectives, and to fund the expenses of the Canal Corporation. Any transfers of funds from the Authority to the Canal Corporation would be subject to compliance with the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented (the 'Revenue Bond Resolution'). Canal Development Fund expenses are expected to be reimbursed to the Authority by the State Comptroller with monies held in the New York State Canal System Development Fund as discussed in the attached Canal Corporation Budget report.

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

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

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

DISCUSSION

2021 NEW YORK POWER AUTHORITY BUDGET

Operations & Maintenance

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

Capital

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

Energy Services

The 2021 Energy Services Budget totals \$291.4 million, an increase of \$34.2 million from the 2020 Energy Services Budget. These expenditures will be subsequently recovered over time from the benefiting customers. The 2021 Energy Services budget includes funding for energy efficiency projects

for Authority customers and other eligible entities as the Authority strives to support the State's improved energy efficiency and clean, renewable energy goals.

2021 CANAL CORPORATION BUDGET

Operations & Maintenance

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

Canal Development Fund

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

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

Capital

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

2021-2024 Four-Year Budget and Financial Plan

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

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

Other key elements that must be incorporated in each Budget and Four-Year Financial Plan are a description of the budget process and the principal assumptions, as well as a self-assessment of risks to

the budget and financial plan. Additionally, each Budget and Four-Year Financial Plan must include a certification by the Chief Operating Officer.

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

FISCAL INFORMATION

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

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

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

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

RECOMMENDATION

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

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

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

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

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

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

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

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

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

2. Adoption of the 2021 New York State Canal Corporation Budget

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

The Canal Corporation Board of Directors ('Canal Board') is requested to approve the 2021 Budget for the Canal Corporation, specifically including expenditures for the (i) 2021 Operations and Maintenance ('O&M') Budget, (ii) 2021 Capital Budget, (iii) 2021 Canal Development Fund Budget (collectively, these items make Exhibit '4e iii-2-A' and the '2021 Canal Corporation Budgets').

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

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

BACKGROUND

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

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

DISCUSSION

2021 Canal Corporation O&M Budget

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

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

2021 Canal Development Fund Budget

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

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

2021 Capital Budget

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

FISCAL INFORMATION

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

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

RECOMMENDATION

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

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

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

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

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

**3. Release of Funds in Support of the
New York State Canal Corporation**

The President and Chief Executive Officer submitted the following report:

SUMMARY

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

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

BACKGROUND

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

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

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

DISCUSSION

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

Staff has reviewed the effect of releasing up to an additional \$22.9 million in funding at this time on the Authority's expected financial position and reserve requirements. In accordance with the Board's Policy Statement adopted May 24, 2011, staff calculated the impact of this release, together with the last 12 months releases including (i) the release of \$30 million in Recharge New York Discounts for 2020, (ii) the release of up to \$91.0 million in Canal-related operating expenses for 2020, (iii) the release of up to \$2 million in Western NY Power Proceeds net earnings, and (iv) the release of up to \$1 million in

Northern NY Power proceeds net earnings, on the Authority's debt service coverage and determined it would not fall below the 2.0 reference level. Based on the Authority's Four-Year Budget and Financial Plan, the 2.0 reference point level is forecasted to be met at each year-end of the forecast period 2021-2024. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to release such amounts from the trust estate created by the Bond Resolution consistent with the terms thereof.

FISCAL INFORMATION

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

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

RECOMMENDATION

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

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

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

RESOLVED, That as a condition to making the payments specified in the foregoing report, on the day of such payments, the Treasurer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's

General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

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

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

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

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

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

BACKGROUND

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

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

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

DISCUSSION

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

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

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

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

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

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

FISCAL INFORMATION

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

RECOMMENDATION

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

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

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

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

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

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

f. Governance Committee Report

Chair Dennis Trainor reported that on December 1, 2020, the Governance Committee approved staff's recommendation for \$25 million NYPA and Canal Corporation Diversity Equity and Inclusion Plan, which aims to move the Authority toward a more diverse, equitable and inclusive workforce, increase the commitment to environmental justice in underserved communities and increase the participation of businesses owned by women and people of color in the supply chain.

This robust plan will ensure that NYPA's culture, behaviors and actions demonstrate that diversity, equity, and inclusion are a priority, expand the participation of minority and women-owned businesses in the supply chain, and channel and invest in Customer Energy Solutions projects in disadvantaged communities.

The Committee also approved staff's recommendation for amendments to NYPA and Canal Corporation's Procurement Guidelines as well as the 2021 Meeting Schedule and the Committee Appointments.

Chair Dennis Trainor then requested that the Board adopt resolutions the Ten-Point Racial Justice and Equity Plan; NYPA and Canals Procurement Guidelines; Proposed 2021 Schedule of Meetings, and the Committee Appointments as recommended by the Governance Committee.

i. Ten-Point Racial Justice and Equity Plan – Authorization

The President and Chief Executive Officer submitted the following report:

“SUMMARY

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

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

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

BACKGROUND

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

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

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

- Governor Andrew M. Cuomo signed landmark legislation in June to create greater police accountability.
- New York City disbanded its local anti-crime units amid activist complaints that the plainclothes police were undermining trust in the community following a ‘disproportionate percentage of complaints against them and shootings,’ according to the city’s Police Commissioner.
- Governor Cuomo declared June 19, 2020 ‘Juneteenth’ a State Holiday — The holiday is meant to commemorate the emancipation of 4 million slaves, but particularly the small handful who were not aware that emancipation had come months earlier.

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

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

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

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

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

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

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

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

DISCUSSION

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

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

Internal Commitments

1. *Reaffirm NYPA’s commitment to building and maintaining a diverse, equitable and inclusive culture.* The Plan will establish DEI as one of NYPA’s top priorities and values and will embed it into NYPA’s VISION2030 Strategy; create a DEI communications strategy and an organized working group to inform and direct the Authority’s overall DEI strategy.

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

External Commitments

8. *Leverage NYPA's experience, resources and purchasing power to build capacity and access to MWBE firms.* The Plan will strengthen NYPA's brand as a diverse organization that welcomes and encourages a diverse supply chain with greater opportunities for MWBEs through a new Mentor-Protégé Program. In addition, the Plan will boost the ability of diverse firms to qualify for secure bonding/capital access and work as Prime Contractors on NYPA/Canals projects. The Authority will be able to monitor increased spending with diverse firms by establishing goals and KPIs for business units to meet. The Supplier Diversity Program advance opportunities for MWBEs by developing a strategic program roadmap, launching an enterprise-wide training program, and hosting regional supplier diversity events.
9. *Broaden NYPA's community-based STEM, student internship and mentorship programs to increase the pipeline of utility and clean energy workers of tomorrow – including the creation of a targeted college scholarship program.* The Plan will build a pipeline and develop BIPOC

students as employees for tomorrow by establishing NYPA's P-Tech Program for students in Environmental Justice host communities. Building industry and educational partnerships to award regional scholarships to students in Environmental Justice host communities will also boost the pipeline of future NYPA and energy industry employees. Ultimately, the Plan through Environmental Justice will establish 100 paid internships sourced from 10 P-Tech Partner schools as well as 20 annual scholarships with industry and community partners.

10. *Create an enterprise-wide employee service program dedicated to understanding racial justice through our clean energy business, such as community solar for example, and energy sustainability work in environmental justice communities.* The Plan will provide NYPA employees with experience in, and exposure to diverse communities providing firsthand knowledge on how to facilitate, lead and partner with different communities by enhancing the existing Paid Volunteer Policy to include an expanded comprehensive monthly calendar of volunteer opportunities.

FISCAL INFORMATION

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

RECOMMENDATION

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

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

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

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

ii. **NYPA Guidelines for Procurement Contracts**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to approve the changes to NYPA's Guidelines for Procurement Contracts ('Guidelines') dated December 9, 2020 (Exhibit '4f ii-A'). The Governance Committee at their December 1, 2020 meeting adopted a resolution recommending that the Trustees adopt the Guidelines. An Executive Summary is set forth in Exhibit '4f ii-A-1.'

BACKGROUND

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

DISCUSSION

The Guidelines, effective December 9, 2020, are amended in accordance with certain provisions of State Finance Law §§ 139-j and 139-k, New York Public Officers Law § 73(8), and as further set forth in Exhibit '4f ii-A.'

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

FISCAL INFORMATION

There will be no financial impact on the Authority.

RECOMMENDATION

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

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

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 NYPA's Procurement Guidelines, the guidelines for the use, awarding, monitoring and reporting of procurement contracts as amended and attached hereto as Exhibit '4f ii-A,' are hereby approved; and be it further

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

iii. **Canal Corporation Guidelines for Procurement Contracts**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Board of Directors ('Board') are requested to approve the changes to the Canal Corporation's ('Canal') Guidelines for Procurement Contracts ('Guidelines') dated December 9, 2020 (Exhibit '4f iii-A'). The Governance Committee at their December 1, 2020 meeting adopted a resolution recommending that the Board adopt the Guidelines. An Executive Summary is set forth in Exhibit '4f iii-A-1.'

BACKGROUND

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

DISCUSSION

The Guidelines, effective December 9, 2020, are amended in accordance with certain provisions of State Finance Law §§ 139-j and 139-k, New York Public Officers Law § 73(8), and as further set forth in Exhibit '4f iii-A.'

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

FISCAL INFORMATION

There will be no financial impact on the organization.

RECOMMENDATION

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

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

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 Canal Corporation's Procurement Guidelines, the guidelines for the use, awarding, monitoring and reporting of procurement contracts as amended and attached hereto as Exhibit "4f iii-A," are hereby approved; and be it further

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

iv. **Proposed 2021 Schedule of Meetings**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The following schedule of meetings for the year 2021 is recommended:

Date	Boards/Committees	Venue
January 19 (Tuesday)	Finance Committee	Video
January 26 (Tuesday)	Cyber Committee	Video
	NYPA/Canal Board	Video
March 18 (Thursday)	Audit Committee	Video
	Finance Committee	Video
March 30 (Tuesday)	Governance Committee	Video
	NYPA/Canal Board	Video
May 12 (Wednesday)	Finance Committee	Video
May 25 (Tuesday)	NYPA/Canal Board	Video
July 15 (Thursday)	Audit Committee	Video
	Finance Committee	Video
July 27 (Tuesday)	Cyber Committee	WPO
	NYPA/Canal Board	WPO
September 21 (Tuesday)	Finance Committee	Video
September 30 (Thursday)	Governance Committee	WPO
	NYPA/Canal Board	WPO
November 16 (Tuesday)	Finance Committee	Video
December 7 (Tuesday)	Board Training	WPO
December 8 (Wednesday)	Audit Committee	WPO
	NYPA/Canal Board	WPO

RECOMMENDATION

The Vice President and Corporate Secretary recommends that the Board of Trustees and Board of Directors approve the proposed 2021 meeting schedule as set forth in the foregoing report.

I recommend the approval of the proposed schedule by adoption of the resolution below.”

December 9, 2020

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 2021 meeting schedule, as set forth in the foregoing report of the Vice President and Corporate Secretary, be, and hereby is, approved.

v. Committee Appointments

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Authority’s Board of Trustees and the Canal Corporation’s Board of Directors are requested to adopt the committee appointments as indicated below. These appointments were reviewed by the Governance Committee at its December 1, 2020 meeting.

BACKGROUND and DISCUSSION

The recommended membership of the joint Authority and Canal Committees follows:

Audit Committee

John R. Koelmel, Eugene L. Nicandri (Chair), Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor

Finance Committee

John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben (Chair), Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor

Governance Committee

John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor (Chair)

Cyber and Physical Security Committee

John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni (Chair), Dennis G. Trainor

RECOMMENDATION

The Chair of the Governance recommends approval of the above-requested action as set forth in the foregoing report.

I recommend the approval of the proposed action by adoption of the resolution below.”

RESOLVED, That the members of the Audit Committee shall be: John R. Koelmel, Eugene L. Nicandri (Chair), Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor

RESOLVED, That the members of the Finance Committee shall be: John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben (Chair), Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor; and be it further

RESOLVED, That the members of the Governance Committee shall be: John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor (Chair); and be it further

RESOLVED, That the members of the Cyber and Physical Security Committee shall be: John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni (Chair), Dennis G. Trainor.

g. Audit Committee Report

Chair Eugene Nicandri reported that the Audit Committee met and received a report from Ms. Angela Gonzales, Senior Vice President of Internal Audit, on the 2020 Internal Audit; the 2021 Internal Audit Plan; and the 2021 Internal Audit Budget. Both the 2021 Internal Audit Plan and Budget were adopted by the Committee.

In addition, KPMG presented its Audit Plan and Strategy for the 2020 financial audit to the Committee for consideration.

Chair Nicandri ended by saying that there are no resolutions for adoption. The report is presented for the benefit of the Board as a whole.

5. CONSENT AGENDA

On motion made by Trustee Balboni and seconded by Trustee Trainor, the members approved the Consent Agenda.

a. Commercial Operations

i. Recharge New York Power – New, Extended, and Modified Allocations

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to:

- (a) authorize the extension of the 6 allocations of Recharge New York (‘RNY’) Power awarded to the businesses listed in Exhibit ‘5a i-A’ as described below for a term of 7 years, to commence on the expiration of each such allocation, or in the Authority’s discretion, on a date to be agreed upon by the Authority and the customer for a term not to exceed 7 years (collectively, the ‘Extended Term’), subject to the following conditions: A customer whose allocation would be extended would have to agree to provide supplemental commitments for, among other things, jobs and capital investments, as it has in its current RNY Power agreement(s) with the Authority (collectively, ‘Current RNY Power Agreement’) for the length of any Extended Term, through the incorporation of such supplemental commitments in the proposed final contract that is executed by the parties. With respect to capital investments, the vast majority of RNY Power customers (i.e., those who do not have project/expansion capital investment commitments) would be expected to meet a minimum capital investment commitment;
- (b) award new allocations of RNY Power available for ‘retention’ purposes to the businesses listed in Exhibit ‘5a i-B’ in the amounts indicated therein;
- (c) award new allocations of RNY Power available for ‘expansion’ purposes to the businesses listed in Exhibit ‘5a i-C’ in the amounts indicated therein;
- (d) award new allocations of RNY Power available for eligible small businesses and/or not-for-profit corporations to the entities listed in Exhibit ‘5a i-D’ in the amounts indicated therein; and
- (e) approve modifications related to the expansion project investment of an existing RNY Power allocation for the customer listed in Exhibit ‘5a i-E’.

The sale of any extended or new allocation as proposed herein would be governed by the form of the RNY Power contract that was approved by the Trustees on March 26, 2019, and existing Authority Service Tariff RNY-1.

All the above actions have been recommended by the Economic Development Power Allocation Board (‘EDPAB’) at its December 7, 2020 meeting.

BACKGROUND

On April 14, 2011, Governor Andrew M. Cuomo signed into law the RNY Power Program as part of Chapter 60 (Part CC) of the Laws of 2011. The RNY Power Program is codified primarily in Economic Development Law (‘EDL’) §188-a and Public Authorities Law §1005(13-a) (the ‘RNY Statutes’). The program makes available 910 megawatts (‘MW’) of ‘RNY Power,’ 50% of which will be provided by certain Authority hydropower resources and 50% of which will be procured by the Authority from other sources. RNY Power contracts can be for a term of up to 7 years in exchange for job and capital investment commitments. RNY Power is available to businesses and not-for-profit corporations for job retention and business expansion and attraction.

As part of Governor Cuomo’s initiative to foster business activity and streamline economic development, applications for all statewide economic development programs, including the RNY Power Program, have been incorporated into a single on-line Consolidated Funding Application (‘CFA’) marking

a fundamental shift in how State economic development resources are marketed and allocated. Beginning in September 2011, the CFA was available to applicants. The CFA continues to serve as an efficient and effective tool to streamline and expedite the State's efforts to generate sustainable economic growth and employment opportunities. All applications that are considered for an RNY Power allocation are submitted through the CFA process.

RNY Power is available to businesses and not-for-profit corporations for job retention and business expansion and attraction purposes. Specifically, Chapter 60 provides that at least 350 MW of RNY Power shall be dedicated to facilities in the service territories served by the New York State Electric and Gas, National Grid, and Rochester Gas and Electric utility companies; at least 200 MW of RNY Power shall be dedicated to the purpose of attracting new businesses and encouraging expansion of existing businesses statewide; and up to 100 MW shall be dedicated for eligible not-for-profit corporations and eligible small businesses statewide.

'Eligible applicant' is defined by statute to mean an eligible business, eligible small business, or eligible not-for-profit corporation; however, an eligible applicant shall not include retail businesses as defined by EDPAB, including, without limitation, sports venues, gaming or entertainment-related establishments or places of overnight accommodations.

RNY Power allocation awards are comprised of 50% hydropower and 50% Authority-procured market power. Prior to entering into a contract with an eligible applicant for the sale of RNY power, and prior to the provision of electric service relating to the RNY power allocation, the Authority shall offer each eligible applicant the option to decline to purchase the RNY market power component of such allocation. If an eligible applicant declines to purchase the RNY market power component, the Authority has no responsibility for supplying such market power to the eligible applicant.

Under applicable law, applications for RNY Power are first considered by EDPAB. EDPAB is authorized to recommend applicants to the Authority's Trustees that it believes should receive an award of RNY Power based on applicable statutory criteria and other pertinent considerations. The criteria provided for in the RNY Statutes are summarized in Exhibit '5a i-H' to this report. An allocation recommended by EDPAB qualifies the subject applicant to enter a contract with the Authority for the purchase of the RNY Power if the Authority makes an allocation award.

In arriving at recommendations for EDPAB's consideration, Staff, among other things, attempted to maximize the economic benefits of low-cost NYPA hydropower, the critical state asset at the core of the RNY Power Program, while attempting to ensure that each recipient receives a meaningful RNY Power allocation.

Unless otherwise noted in Exhibits '5a i-B', '5a i-C', and '5a i-D' (recommendations for new RNY Power allocations), new business applicants with relatively high scores were recommended for allocations of retention RNY Power of 50% of the requested amount or average historic demand, whichever was lower. These allocations were capped at 10 MW for any recommended allocation. Although not applicable to the recommendations presented herein, not-for-profit corporation applicants that score relatively high are typically recommended for allocations of 33% of the requested amount or average historic demand, whichever is lower. These allocations are capped at 5 MW. While not applicable to the recommendations presented herein, applicants currently receiving hydropower allocations under other Authority power programs are typically recommended for allocations of RNY Power of 25% of the requested amount, subject to the caps as stated above.

RNY Power allocation extensions have been awarded by the Trustees on nine prior occasions spanning from October 2018 through September 2020. These recommendations pertain to existing RNY Power customers receiving an Extended Term of 7 years.

RNY Power allocations pertaining to new applicants have been awarded by the Trustees on twenty-nine prior occasions spanning from April 2012 through September 2020. Of the 200 MW block of RNY Power made available pursuant to Chapter 60 for business 'expansion' purposes, 91.1 MW remain

unallocated. Of the 100 MW block of RNY Power that is set aside for not-for-profit corporations and small businesses pursuant to Chapter 60, 1.8 MW remain unallocated. Of the remaining RNY Power made available pursuant to Chapter 60, 134.2 MW remain unallocated. These figures reflect Trustee actions on RNY Power applications taken prior to any actions the Trustees take today.

EDPAB, at its meeting held on December 7, 2020, recommended that:

- (a) the Trustees approve extensions for the 6 RNY Power allocations that are listed in Exhibit '5a i-A' for a term of 7 years;
- (b) each of the applicants identified in Exhibits '5a i-B', '5a i-C', and '5a i-D' be awarded an RNY Power allocation in the amount indicated for a term of 7 years; and
- (c) the Trustees approve the modifications related to the RNY Power allocation listed in Exhibit '5a i-E' for the reasons discussed in Exhibit '5a i-E'.²

Consistent with the RNY Statutes, EDPAB recommended that the contracts for the sale of extended and new allocations contain:

- (1) provisions for effective periodic audits of the recipient of an allocation for the purpose of determining contract and program compliance, and for the partial or complete withdrawal of an allocation if the recipient fails to maintain commitments, relating to such things as employment levels, power utilization, capital investments, and/or energy efficiency measures;
- (2) requirements for an agreement by the recipient of an allocation undertake at its own expense an energy audit of its facilities at which the allocation is consumed modified by the Authority on a showing of good cause by the recipient, and that the recipient provide the Authority with a copy of any such audit or a report describing the results of such audit;
- (3) a requirement for an agreement by the recipient of an allocation to make its facilities available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform; and
- (4) a recommendation shall require that if the actual metered load at the facility where the allocation is utilized is less than the allocation, such allocation will be reduced accordingly.

The sale of RNY Power allocations that are awarded by the Trustees today would be governed by the form of RNY Power contract that was approved by the Trustees on March 26, 2019, and Authority Service Tariff RNY-1. The terms and conditions in the RNY Power contract form are consistent with the terms and conditions recommended by EDPAB as described above.

DISCUSSION

1. Extension of Existing RNY Power Allocations

For the current round of recommendations, Authority Staff has reviewed applications from 6 RNY Power customers listed on Exhibit '5a i-A' who are seeking extensions, and a copy of each application has been made available to the Board. Staff's review has consisted of a review on a customer-specific basis of such issues as the amount of each allocation that would be extended, the supplemental commitments that these customers have made under their Current RNY Power Agreement and are prepared to make as consideration for an extension, and the customer's compliance status under its

² EDPAB did not recommend an RNY Power allocation for the applicant listed in Exhibit '5a i-F' for the reasons discussed in Exhibit '5a i-F.' EDPAB also recommended termination of the application review process for the applicant listed in Exhibit '5a i-G' for the reasons discussed in Exhibit '5a i-G.' No action is required by the Trustees on these matters.

Current RNY Power Agreement, including its compliance with supplemental commitments for jobs and capital investments.

In summary, the businesses listed on Exhibit '5a i-A' which are located throughout the State bring valuable benefits to the State. In total, the allocations listed in Exhibit '5a i-A' are supporting the retention of nearly 700 jobs and more than \$10.8 million in capital investments throughout New York State, and the Authority will require customers to commit to the same or substantially similar supplemental commitments for jobs and capital investments that are summarized in Exhibit '5a i-A' for the Extended Term.

Based on the foregoing discussion and EDPAB's recommendations, Staff recommends that the Trustees extend the allocations listed on Exhibit '5a i-A' as described above and in Exhibit '5a i-A' subject to the following conditions:

- (a) The sale of any allocation extended as proposed herein will be governed by the RNY Power contract form that was approved by the Trustees on March 26, 2019, and Authority Service Tariff RNY-1.
- (b) In order to receive an extension of its allocation, the customer must agree, for the Extended Term, to provide the supplemental commitments for jobs and capital investments that are the same or substantially similar to those that are summarized generally in Exhibit '5a i-A' (subject to adjustments described above), through the incorporation of such supplemental commitments in the final contract that is executed by the parties. With respect to capital investments, RNY Power customers who do not have current project/expansion capital investment commitments would be expected to meet a minimum capital investment commitment which may be satisfied through capital expenditures made over a five-year period.
- (c) Unless otherwise noted in Exhibit '5a i-A,' the customer is in compliance with its contractual obligations to the Authority under its Current RNY Power Agreement.

Staff believes that an extension of each allocation listed on Exhibit '5a i-A' is appropriate and is consistent with the applicable statutory criteria listed in Exhibit '5a i-H.' In addition, the terms and conditions in the RNY Power contract form approved by the Trustees on March 26, 2019 are consistent with the terms and conditions recommended by EDPAB.

2. Retention-Based RNY Power Allocations

The Trustees are asked to address applications submitted via the CFA process for RNY Power retention-based allocations. Unless otherwise indicated in Exhibit '5a i-B,' these applications seek an RNY Power allocation for job retention purposes only.

Consistent with the evaluation process as described above, EDPAB recommended, at its December 7, 2020 meeting, that RNY Power retention allocations be awarded to the 5 businesses listed in Exhibit '5a i-B.' Each business has committed to retain jobs in New York State and to make capital investments at their facilities in exchange for the recommended RNY Power allocations.

Staff recommends that the Trustees accept EDPAB's recommendations and award RNY Power allocations to each of the businesses listed on Exhibit '5a i-B' in the amounts and terms indicated therein.

3. Expansion-Based RNY Power Allocations

The Trustees are also asked to address applications requesting RNY Power allocations for expansion purposes. Allocations for this purpose would be sourced from the 200 MW block of RNY Power dedicated by statute for 'for-profit' businesses that propose to expand existing businesses or create new business in the State. Unless otherwise indicated in Exhibit '5a i-C,' these applications seek an RNY Power allocation to support expansion of an existing business or a new business/facility. EDPAB

recommended, at its December 7, 2020 meeting, that RNY Power expansion-based allocations be made to the businesses listed in Exhibit '5a i-C.' Each such allocation would be for a term of 7 years unless otherwise indicated.

As with the evaluation process used for the retention recommendations described above, applications for the expansion-based RNY Power were scored based on the statutory criteria, albeit with a focus on information regarding each applicants' specific project to expand or create their new facility or business (e.g., the expansion project's cost, associated job creation, and new electric load due to the expansion).

The proposed amounts of the expansion-based allocations listed in Exhibit '5a i-C' are largely intended to provide approximately 70% of the individual expansion projects' estimated new electric load. Because these projects have estimated new electric load amounts, and to ensure that an applicant's overestimation of the amount needed would not cause that applicant to receive a higher proportion of RNY Power to new load, the allocations in Exhibit '5a i-C' are recommended based on an 'up to' amount basis. Each of these applicants would be required to, among other commitments, add the new electric load as stated in its application, and would be allowed to use up to the amount of their RNY Power allocation in the same proportion of the RNY Power allocation to requested load as stated in Exhibit '5a i-C.'

Staff recommends that the Trustees accept EDPAB's recommendations and award RNY Power allocations to each of the businesses listed on Exhibit '5a i-C' in the amounts indicated therein.

4. Small Business and/or Not-for-Profit-Based RNY Power Allocations

The Trustees are also asked to address applications for RNY Power for eligible small businesses and/or not-for-profit corporations. Chapter 60 specifies that no more than 100 MW of RNY Power may be made available for eligible small businesses and eligible not-for-profit corporations.

Consistent with the evaluation process described above, EDPAB recommended, at its December 7, 2020 meeting, that RNY Power allocations be awarded to the small businesses and/or not-for-profit applicants listed in Exhibit '5a i-D.' These applicants have committed to retain or create jobs in New York State and make capital investments to the extent indicated in Exhibit '5a i-D' in exchange for the recommended RNY Power allocations as described in Exhibit '5a i-D.' The RNY Power allocations identified in Exhibit '5a i-D' are recommended for a term of 7 years unless otherwise indicated.

Staff recommends that the Trustees accept EDPAB's recommendations and award RNY Power allocations to each of the not-for-profit entities and/or small businesses listed on Exhibit '5a i-D' in the amounts indicated therein.

If the recommended allocations are made, the 100 MW block of power will be close to fully allocated. Accordingly, Staff is prepared to establish a waiting list for small businesses and not-for-profit corporations who wish to apply for RNY Power.

5. Modifications to Existing Allocations and/or and Related Supplemental Commitments

At its meeting held on December 7, 2020, EDPAB recommended that the Trustees approve modifications relating to the RNY Power allocation listed on Exhibit '5a i-E' for Akoustis, Inc. ('Akoustis').

Akoustis was previously approved for an expansion-based RNY Power allocation totaling 366 kilowatts ('kW') with an associated expansion project cost of \$50 million. After the approval, the customer determined it had failed to properly account for the project timeframe and miscalculated its proposed expansion-related capital investment.

As a result, the company has requested to modify its expansion project cost to \$26 million. Staff reviewed this request and is recommending that the company's contract be modified to accommodate the expansion-related adjustment to a \$26 million capital investment commitment.

Staff has no objection to the requested modification, and therefore recommends that the Trustees approve the modification listed in Exhibit '5a i-E.'

6. Applicants Not Recommended for RNY Power

At its meeting on December 7, 2020, EDPAB determined not to recommend the applicant listed on Exhibit '5a i-F' for an RNY Power allocation for the reasons listed on Exhibit '5a i-F.' No action by the Trustees is required on this matter.

7. Termination of Application/Review Process

At its meeting on December 7, 2020, EDPAB terminated the application review process for the applicant listed on Exhibit '5a i-G' for the reasons listed on 5a i- 'G.' No action by the Trustees is required on this matter. In the past, some applicants in these circumstances refiled if able to advance a more complete RNY Power application.

FISCAL INFORMATION

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

RECOMMENDATION

The Senior Vice President, Clean Energy Solutions recommends that the Trustees accept the recommendations of EDPAB and:

- (1) authorize the extension of each of the existing 6 allocations of RNY Power in the manner described above for the customers listed on Exhibit '5a i-A' for a term of 7 years to commence on the expiration of the allocation, or commencing on a date to be agreed upon by the parties for a term not to exceed 7 years, subject to the conditions described above;
- (2) award the new allocations of RNY Power for retention purposes to the 5 businesses listed in Exhibit '5a i-B' as indicated therein;
- (3) award the new allocations of RNY Power for expansion purposes to the businesses listed in Exhibit '5a i-C' as indicated therein;
- (4) award the new allocations of RNY Power to the small business and/or not-for-profit applicants identified in Exhibit '5a i-D' for retention and/or expansion purposes as indicated therein; and
- (5) approve the modifications related to the allocations and/or supplemental commitments described in Exhibit '5a i-E' for the reasons discussed above and in Exhibit '5a i-E.'

For the reasons stated, I recommend the approval of the above-requested actions 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 6 Recharge New York ("RNY") Power allocations previously

awarded to the customers listed in Exhibit “5a i-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 “5a i-A” (subject to adjustments described above) for the Extended Term, through the incorporation of such supplemental commitments in the final contract that is executed by the parties, and RNY Power customers who do not have an ongoing project/expansion capital investment commitment shall meet a minimum capital investment commitment which may be satisfied through capital expenditures made over a five-year period.

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the new RNY Power allocations for retention purposes to the applicants listed in Exhibit “5a i-B” in the amounts indicated therein for the reasons indicated in the Report and Exhibit “5a i-B”; and

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the new RNY Power allocations for expansion purposes to the applicants listed in Exhibit “5a i-C” in the amounts indicated therein for the reasons indicated in the Report and Exhibit “5a i-C”;

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the new RNY Power allocations for retention and/or expansion purposes to the small businesses and/or not-for-profit applicants listed in Exhibit “5a i-D” in the amounts indicated therein for the reasons indicated in the Report and Exhibit “5a i-D”;

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the modifications/ adjustments to the supplemental commitments described in Exhibit “5a i-E” for the reasons indicated in the Report and Exhibit “5a i-E”; and

RESOLVED, That the Chief Commercial Officer – Commercial Operations, or such official’s designee, hereby is authorized on behalf of the Authority to provide for final terms and conditions that will be applicable to the foregoing allocations and/or projects, including without limitation progress milestones and

provisions for the expiration of any allocation in the event that such milestones are not met; and be it further

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

ii. Transfer of Recharge New York Power and Replacement Power Allocations

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve the transfer of the following power allocations awarded by the New York Power Authority ('Authority'):

1. Transfer of a 150 kilowatt ('kW') Recharge New York ('RNY') Power allocation awarded to Air Stream Corp. ('Air Stream') for its use at its facility at 3400 Lawson Boulevard, Oceanside, New York, to an affiliated company, Food Authority, Inc. ('Food Authority'), for its use at its facility at 430 Wireless Boulevard, Hauppauge, New York, to address organizational changes.
2. Transfer of a 640 kW RNY Power allocation awarded to International Fiber Corporation ('International Fiber'), for use at its 50 Bridge Street, North Tonawanda, New York facilities, to J. Rettenmaier USA LP ('Rettenmaier'), to address organizational changes.
3. Transfer of a 2,850 kW portion of a 3,000 kW RNY Power allocation awarded to mindSHIFT Technologies, Inc. ('MST') for use at its 500 Commack Road, Commack, New York facilities, to 365 Data Centers NY One LLC ('365 Data'), to address organizational changes.
4. Transfer of a 10,000 kW RNY Power allocation awarded to SABIC Innovative Plastics US LLC ('SABIC'), for use at its 1 Noryl Avenue, Selkirk, New York facilities, to SHPP US LLC ('SHPP'), to address organizational changes.
5. Transfer of 200 kW, 250 kW, and 250 kW Replacement Power ('RP') allocations and a pending 200 kW RP allocation awarded to Time Release Sciences, Inc. ('TRS') for use at its facility located at 205 Dingens Street, Buffalo, New York to a facility located at 6 Dona Street, Lackawanna, New York.

The Economic Development Power Allocation Board ('EDPAB'), at its December 7, 2020 meeting, approved the transfer of the RNY Power allocations. Transfers of RNY Power are subject to EDPAB review and approval.

The Trustees have previously approved transfers of Authority power allocations in similar circumstances.

DISCUSSION

The following discussion describes the facts relating to the recommended transfers.

1) Air Stream Corp.

Air Stream has a 150 kW RNY Power allocation for use at its facility in Oceanside, NY, where it manufactures and/or distributes fresh and frozen produce, juices, groceries, and dairy products. Air Stream's affiliate, Food Authority, operates the same type of business as Air Stream, but with a different customer base, in Hauppauge, NY. In 2018, Air Stream transferred a then-pending (i.e., not yet in service) 106 kW RNY Power allocation that was awarded to support construction of a new facility and operations at the Oceanside location, to Food Authority in Hauppauge, where the new facility was constructed.

Air Stream recently closed its facility at the Oceanside location and is in the process of consolidating its business alongside Food Authority at the Hauppauge location. Both Air Stream and Food Authority request the transfer of Air Stream's 150 kW RNY Power allocation to Food Authority.

Food Authority would take the transfer of the RNY Power allocation subject to the terms and conditions that are applicable to the original award to Air Stream.

2) International Fiber Corporation

International Fiber was awarded a 640 kW RNY Power allocation for use at its facilities at 50 Broad Street, North Tonawanda. This facility produces cellulose and other insoluble fiber products for functional food and industrial applications.

In 2017, International Fiber changed its name to Solvaira Specialties Inc. Solvaira Specialty LP, a subsidiary of Rettenmaier, purchased Solvaira Specialties Inc. and then merged into Rettenmaier.

Considering the merger, the companies have asked that the 640 kW RNY Power allocation be transferred to Rettenmaier. The merger has not resulted in changes to operations at the North Tonawanda facility, and Rettenmaier has indicated that it will honor all terms and commitments made by International Fiber under its RNY Power sale agreement with the Authority if the transfer is approved.

3) mindSHIFT Technologies, Inc.

MST built an IT and cloud services business including a state-of-the-art data center located at 500 Commack Road, Commack, New York. The company has a 3,000 kW RNY Power allocation. MST sold its data center to 365 Data. Due to the sale of the data center, MST's remaining IT and cloud services business now only requires 150 kW of the 3,000 kW allocation.

Both MST and 365 Data requests that 2,850 kW of the original 3,000 kW RNY Power allocation be transferred to 365 Data for use at the 500 Commack Road data center. The Authority has determined the commitments that would be applicable to 365 Data and to MST based on the proposed apportionment of the 3,000 kW allocation between the companies, and 365 Data has agreed to honor all commitments associated with the transferred portion of the RNY Power allocation including employment, power utilization, capital investment and energy efficiency commitments. MST will continue to honor all the commitments the Authority associated with the remaining 150 kW portion of allocation.

4) SABIC Innovative Plastics US LLC

SABIC was awarded a 10,000 kW RNY Power allocation for use at its facilities at 1 Noryl Avenue, Selkirk, New York where it manufactures, sells and distributes engineering thermoplastic resins used in water, electrical and automotive products. SABIC refers to this as its 'Specialties' business. In addition to engineering thermoplastic resins, it manufactures petrochemicals, industrial polymers, and fertilizers.

SABIC separated its Specialties business from the rest of its business and effectuated this separation by creating an affiliated corporation for the Specialties business called SHPP US LLC. SHPP US LLC will operate at the Selkirk facilities where SABIC's Specialties business has been located.

Both companies have asked that the 10,000 kW RNY Power allocation be transferred to SHPP. The creation of SHPP will not result in changes to operations at the Selkirk facility, and SHPP has indicated it will honor all terms and commitments made by SABIC under its RNY Power sale agreement with the Authority.

5) Time Release Sciences, Inc.

TRS was awarded a total of 900 kW of RP, consisting of three in service allocations (200 kW, 250 kW and 250 kW) and a pending 200 kW allocation, for use at its facilities at 205 Dingens Street, Buffalo. TRS uses this facility to manufacture Mr. Clean Magic Erasers for Proctor & Gamble. TRS needs more space to handle growing business.

TRS intends to relocate this business to another facility at 6 Dona Street, Lackawanna.

TRS requests that the four RP allocations be transferred to the 6 Dona Street facility. The company will honor all commitments including employment, power utilization, and capital investment commitments associated with the four RP allocations.

RECOMMENDATION

The Senior Vice President, Clean Energy Solutions recommends that the Board approve the transfers discussed above, subject to the following conditions: (1) there be no material reductions in the base employment level or capital investment commitment associated with the allocations that would be transferred; and (2) the transfers are addressed in contract documents containing such terms and conditions determined by the Authority to be appropriate to effectuate the transfers.

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

On motion made and seconded, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That the transfer of the 150 kilowatt (“kW”) Recharge New York Power (“RNY”) allocation awarded to Air Stream Corp., for use at its facilities at 3400 Lawson Boulevard, Oceanside, New York, to Food Authority, Inc., for use at its facilities at 430 Wireless Boulevard, Hauppauge, New York, as described in the foregoing report of the President and Chief Executive Officer (“Report”) be, and hereby is, approved subject to (i) such terms and conditions as are set forth in the foregoing Report, and (ii) such terms and conditions as are required by the Authority in contract documents prepared by the Authority in order to effectuate the transfer; and be it further

RESOLVED, That the transfer of a 640 kW RNY Power allocation awarded to International Fiber Corporation, for use at its facilities located at 50 Bridge Street, North Tonawanda, New York to J. Rettenmaier USA LP, for use at the same facilities, as described in the foregoing Report be, and hereby is, approved subject to (i) such terms and conditions as are set forth in the foregoing Report, and (ii) such terms and conditions as are required by the Authority in contract documents prepared by the Authority in order to effectuate the transfer; and be it further

RESOLVED, That the transfer of a 2,850 kW portion of the 3,000 kW RNY Power allocation awarded to mindSHIFT Technologies, Inc. for its use at its facility at 500 Commack Road, Commack, New York, to 365 Data Centers NY One LLC, for use at the same facility, as described in the foregoing Report be, and hereby is, approved subject to (i) such terms and conditions as are set forth in the foregoing Report, and (ii) such terms and conditions as are contained in contract documents prepared by the Authority to effectuate the transfer and appropriate apportionment of the allocation between the companies as described in the Report; and be it further

RESOLVED, That the transfer of the 10,000 kW RNY Power allocation awarded to SABIC Innovative Plastics US LLC for use at its facility at 1 Noryl Avenue, Selkirk, New York, to SHPP US LLC for use at the same facility, as described in the foregoing Report be,

and hereby is, approved subject to (i) such terms and conditions as are set forth in the foregoing Report, and (ii) such terms and conditions as are contained in contract documents prepared by the Authority to effectuate the transfer; and be it further

RESOLVED, That the transfer of the 200 kW, 250 kW and 250 kW Replacement Power ("RP") allocation and pending 200 kW RP allocation awarded to Time Release Sciences, Inc. for use at its facility at 305 Dingens Street, Buffalo, New York, for use at a facility located at 6 Dona Street, Lackawanna, New York, as described in the foregoing Report be, and hereby is, approved subject to (i) such terms and conditions as are set forth in the foregoing Report, 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.

iii. Expansion Power Allocations

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

The Trustees are requested to:

1. Approve: (a) an allocation of 180 kilowatts ('kW') of Expansion Power ('EP') to Mono-Systems, Inc. ('Mono-Systems') to support the company's proposed expansion at its facility located at 180 Hopkins Street, Buffalo (Erie County); and (b) an allocation of 700 kW of EP to Niagara Specialty Metals, Inc. ('NSM') to support the company's proposed expansion at its facility located at 12600 Clarence Center Road, Akron (Erie County). These projects are discussed in more detail below and in Exhibits '5a iii-A' and '5a iii-B.'
2. Authorize a public hearing, in accordance with Public Authorities Law ('PAL') §1009, on a proposed form of contracts ('Proposed Contract') with Mono-Systems and NSM that would, along with Authority Service Tariff No. WNY-2 ('ST WNY-2'), apply to the sale of EP to Mono-Systems and NSM. Copies of the Proposed Contract and ST WNY-2 are attached as Exhibits '5a iii-A-1' and '5a iii-B-1.'

BACKGROUND

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

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

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

At this time, 63,595 kW of unallocated EP and 90,836 kW of unallocated RP is available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).

DISCUSSION

Mono-Systems, Inc.

Mono-Systems is a manufacturer of wire and cable solutions primarily used by electrical engineers and contractors. The company has operated for nearly 50 years and produces various products including cable trays, power poles, and surface raceways.

Mono Systems is proposing to expand the manufacturing capabilities at its Buffalo facility. The project would allow the company to produce extruded polyvinyl chloride ('PVC') which it currently purchases from China.

Mono-Systems' expansion project would involve a capital investment expenditure of at least \$420,000. This includes the purchase of PVC extrusion machinery (a capital investment expenditure of at least \$250,000) and the installation of a new roof to accommodate the new PVC equipment (a capital investment expenditure of at least \$170,000).

Mono-Systems is planning to complete the PVC extrusion line installation by the end of this year. The company would commit to the creation of 15 new, permanent, full-time jobs that would be located at the Buffalo facility. The average compensation/benefits are estimated to be \$64,700 per job.

The company applied for 288 kW of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 180 kW for a term of ten years.

The job creation ratio for the proposed allocation of 180 kW is 83 new jobs per MW. This ratio is above the historic average of 66 new jobs per MW based on allocations previously awarded. The total investment of at least \$420,000 would result in a capital investment ratio of \$2.3 million per MW. This ratio is below the historic average of \$17.4 million per MW.

The Economic Development Entities have expressed support for the recommended allocation to Mono-Systems.

Niagara Specialty Metals, Inc.

Founded in 1982, NSM is manufacturer of steel and metal products. The company initially converted steel into sheets and plates. Over the years, NSM has evolved into processing aerospace, cutlery, medical, and nuclear alloys.

NSM is proposing to expand the manufacturing capabilities at its Akron facility. The project would allow the company to initially process rolled alloys utilizing current mills, while installing a new rolling mill for the production of alloys.

NSM's expansion project would involve a capital investment expenditure of at least \$12.85 million. This includes the purchase of processing equipment such as electric annealing furnaces, milling machines, flatterers, and bandsaws. In addition, this includes the purchase and installation of a new rolling mill to produce alloys. The new processing equipment would represent a capital investment expenditure of at least \$6.85 million. The purchase and installation of the new rolling mill would represent a capital investment expenditure of at least \$6 million.

NSM is planning to begin the first phase of the expansion project in 2021 with a second phase expected to commence in 2023. The company would commit to the creation of 5 new, permanent, full-time jobs that would be located at the Akron facility. The average compensation/benefits are estimated to be \$180,350 per job.

The company applied for 1,500 kW of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 700 kW for a term of ten years.

The job creation ratio for the proposed allocation of 700 kW is 7 new jobs per MW. This ratio is below the historic average of 66 new jobs per MW based on allocations previously awarded. The total investment of at least \$12.85 million would result in a capital investment ratio of \$18.4 million per MW. This ratio is above the historic average of \$17.4 million per MW.

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

CONTRACT INFORMATION

The following is a summary of some of the matters that would be addressed in ST WNY-2 and the Proposed Contracts with Mono-Systems and NSM:

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

Staff intends to discuss the form of the Proposed Contracts with Mono-Systems and NSM and anticipates reaching agreement on a contract substantially similar to the form attached as Exhibits '5a iii-A-1' and '5a iii-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 '5a iii-A-1' and '5a iii-B-1.' The form of the Proposed Contracts is consistent with recently approved contracts for the sale of EP and RP.

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

later time and make any additional recommendations regarding the Proposed Contract as are appropriate.

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

FISCAL INFORMATION

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

RECOMMENDATION

The Senior Vice President, Clean Energy Solutions, recommends that the Trustees:

1. Approve an allocation of 180 kW of EP to Mono-Systems as described herein and in Exhibit '5a iii-A' for a term of ten years; and approve an allocation of 700 kW of EP to NSM as described herein and in Exhibit '5a iii-B' for a term of ten years; and
2. Authorize a public hearing, in accordance with PAL § 1009, on the Proposed Contracts with Mono-Systems and NSM attached as Exhibits '5a iii-A-1' and '5a iii-B-1'.

For the reasons stated, I recommend the approval of the above-requested actions 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 an allocation of 180 kilowatts of Expansion Power ("EP") be awarded to Mono-Systems, Inc. for a term of 10 years as detailed in the foregoing report of the President and Chief Executive Officer ("Report") and Exhibit "5a iii-A," be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That an allocation of 700 kilowatts of EP be awarded to Niagara Specialty Metals, Inc. for a term of 10 years as detailed in the foregoing Report and Exhibit "5a iii-B," be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing pursuant to Public Authorities Law ("PAL") §1009 on the terms of the proposed form of the direct sale contract with Mono-Systems, Inc. and Niagara Specialty Metals, Inc. for the sale of the EP allocations (the "Contract"), the current form of which is attached as Exhibits "5a iii-A-1" and "5a iii-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.

**iv. Contracts for the Sale of Preservation Power –
Final Approval and Transmittal to the Governor**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to:

1. Approve final contracts ('Contracts') for the sale of 670 kilowatts ('kW') of Preservation Power ('PP') to EZ STAK, LLC ('EZ STAK') and 1,850 kW of PP to Upstate Niagara Cooperative, Inc. ('Upstate Niagara'). Copies of these Contracts, along with the applicable service tariff, Service Tariff No 20 ('ST 20'), are attached as Exhibits '5a iv-A' and '5a iv-B,' respectively.
2. Authorize transmittal of the Contracts to the Governor for his review and requested authorization for the New York Power Authority (the 'Authority') to execute the Contracts pursuant to Public Authorities Law ('PAL') §1009.

BACKGROUND

Under PAL §1005(13), the Authority may allocate and sell directly or by sale for resale, 490 megawatts ('MW') of PP to businesses located in Jefferson, Franklin, and St. Lawrence Counties.

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

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

DISCUSSION

At their meeting on March 31, 2020, the Trustees made a 670 kW allocation of PP to EZ STAK for a term of ten years to support an expansion project, located in Watertown, New York, that will grow manufacturing capabilities for its business of making interior vehicle storage systems, mainly used by municipalities and large corporations in the utility, telecommunications and construction industries. EZ STAK has committed to make a capital investment of at least \$6,200,000 and employ at least 15 full-time, permanent employees at the facilities for the term of the allocation ('Supplemental Commitments').

At their meeting on July 28, 2020, the Trustees extended a 1,850 kW PP allocation for a term through June 30, 2030 to Upstate Niagara to support production of cultured dairy products including Greek-style yogurt at its North Lawrence location sold mostly to retailers and food institutions in New York and the Northeast. Upstate Niagara's Supplemental Commitments include an agreement to make a capital investment at its facilities of \$2,000,000 per year and employ at least 80 full-time, permanent employees for the term of the allocation.

The following is a summary of some of the pertinent provisions of the Contracts and ST 20 related to these allocations:

- The term of the PP allocation for EZ STAK is for ten years and the term of the allocation extension for Upstate Niagara is through June 30, 2030, subject to termination/cancellation as provided for in the Contracts.

- The PP allocations would be sold to the customers under a direct sale arrangement.
- The PP allocations would be sold at rates provided for in the Contracts and ST 20.
- The Contracts subject the customers to monthly charges which are intended to support compliance programs that the Authority is implementing for the purpose of complying with state energy and environmental policies.
- The Contracts have the customers agree to supplemental commitments which include a capital investment commitment, an employment commitment at the facility receiving the PP allocation, and an obligation to perform an energy audit at the facility at least twice during the term of the allocation.
- The Contracts contain provisions for the procurement of substitute energy in the event of hydro curtailments.

The Authority is continuing to provide electric service to Upstate Niagara on an interim basis based on its current contract and Service Tariff No. ST-10 pending a decision on the customer's extension application and completion of the PAL §1009 process.

PUBLIC HEARING

In accordance with PAL §1009, a public hearing was held on the Contracts at the St. Lawrence County IDA, Ernest J. LaBaff Industrial Building, 19 Commerce Lane, Suite 1, Canton, New York on October 19, 2020. A copy of the official transcript of the public hearing is attached as Exhibit '5a iv-C.'

FISCAL INFORMATION

EZ STAK's PP allocation is new and Upstate Niagara's PP allocation is an extension of its previous allocation. The sale of both allocations will produce revenues for the Authority.

RECOMMENDATION

The Senior Vice President – Clean Energy Solutions recommends that the Trustees approve the Contracts and authorize the transmittal of the Contracts to the Governor for his review and to seek his authorization for the Authority to execute the Contracts pursuant to PAL §1009.

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

On motion made and seconded, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That the contracts for the sale of 670 kilowatts ("kW") of Preservation Power ("PP") to EZ STAK, LLC and 1,850 kW of PP to Upstate Niagara Cooperative, Inc. (collectively, the "Contracts"), are in the public interest and hereby approved, and in accordance with Public Authorities Law §1009, the Contracts should be submitted to the Governor for his review and to seek his authorization for the Authority to execute the Contracts, and that a copy of such Contracts, along with the record of the public hearing thereon, be forwarded to the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the

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

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

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

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

**v. Contracts for the Sale of Hydropower –
Final Approval and Transmittal to the Governor**

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to:

1. Approve final contracts ('Contracts') for the sale of 500 kilowatts ('kW') of Expansion Power ('EP') to Petri Baking Products, Inc. ('Petri'), and 100 kW of EP to Premium PPE, LLC ('Premium'). Copies of these Contracts, along with the applicable service tariff, Service Tariff No. WNY-2 ('ST WNY-2'), are attached as Exhibits '5a v-A' and '5a v-B', respectively.
2. Authorize transmittal of the Contracts to the Governor for his review and requested authorization for the New York Power Authority (the 'Authority') to execute the Contracts pursuant to Public Authorities Law ('PAL') §1009.

BACKGROUND

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

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

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

DISCUSSION

At their meeting on May 19, 2020, the Trustees awarded a 500 kW EP allocation for a term of ten years to Petri to support the manufacturing of cookies and other snack food at Petri's facilities at 18 Main Street, Silver Creek, NY. Petri has committed to make a capital investment of at least \$12,950,000 at its facilities, and employ at least 85 full-time, permanent employees at the facilities for the term of the allocation ('Supplemental Commitments').

At their meeting on September 23, 2020, the Trustees awarded a 100 kW RP allocation to Premium for a term of ten years to support manufacturing, which includes making surgical and face masks, at Premium's facilities at 120 Earhart Drive, Amherst, NY. Premium's Supplemental Commitments include an agreement to make a capital investment at its facilities of at least \$4,500,000 and employ at least 25 full-time, permanent employees for the term of the allocation.

The following is a summary of some of the pertinent provisions of the Contracts and ST WNY-2 related to these allocations:

- The term of the EP allocation is ten (10) years from commencement of electric service subject to termination/cancellation as provided for in the Contracts.

- Transmission and delivery service would be provided by the customer's local utility in accordance with the utility's Public Service Commission-approved delivery service tariff.
- The Contracts would provide for the direct billing of all production charges (*i.e.* demand and energy) as well as all New York Independent System Operator, Inc. charges, plus taxes or any other required assessments, as set forth in ST WNY-2, previously approved by the Trustees.
- The Contracts provide for the sale of additional allocations of WNY Hydropower to the customer in appropriate circumstances by incorporating new allocations into Schedule A of the Contracts. The Trustees approved this convention in the 2010 long-term extension contract for hydropower, which simplifies contract administration.
- The customer must perform an energy audit at the facility receiving the allocation. The customer would have the option to satisfy the audit requirement through either a traditional physical audit, or a virtual audit using the Authority's New York Energy Manager which is expected to provide considerable savings for customers who select it.
- The Contracts provide for collection of a Zero Emission Credit Charge and a Renewable Energy Credit Charge to allow the Authority to recover costs it incurs relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the load of the customer.
- The Authority would have the right to reduce or terminate the allocation if Supplemental Commitments are not met.

PUBLIC HEARING

In accordance with PAL §1009, a public hearing on the Contracts was held on November 30, 2020 at 535 Washington Street, Buffalo, NY 14203. A copy of the official transcript of the public hearing including any written submittals are attached as Exhibit '5a v-C'.

FISCAL INFORMATION

The sale of these allocations will result in revenues for the Authority. Both allocations are new allocations.

RECOMMENDATION

The Senior Vice President - Clean Energy Solutions recommends that the Trustees approve the Contracts, and authorize the transmittal of the Contracts to the Governor for his review and to seek his authorization for the Authority to execute the Contracts pursuant to PAL §1009.

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

On motion made and seconded, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That the contracts for the sale of 500 kilowatts ("kW") of Expansion Power ("EP") to Petri Baking Products, Inc. and 100 kW of EP to Premium PPE, LLC, (collectively, the "Contracts"), are in the public interest and hereby approved, and in accordance with Public Authorities Law §1009 the Contracts should be submitted to the Governor for his review and to seek his

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

RESOLVED, That the Chairman and the Corporate Secretary be authorized and directed to execute such Contracts in the name of and on behalf of the Authority upon the Governor's approval of the Contracts; and be it further

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

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

vi. Extension of Peaking Power Hydropower Contracts with Upstate Investor-Owned Utilities – Transmittal to the Governor

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to:

1. Approve contract extensions ('Contract Extensions') for the sale to New York State Electric and Gas Corporation ('NYSEG') and Rochester Gas and Electric Corporation ('RGE') (collectively, the 'Utilities') of firm peaking hydropower in the amounts of 150 megawatts ('MW') and 35 MW, respectively. The forms of the Contract Extensions with NYSEG and RGE are attached as Exhibit '5a vi-A' and Exhibit '5a vi-B.'
2. In accordance with Public Authorities Law ('PAL') §1009, authorize transmittal of the Contract Extensions to the Governor for his review and to request his approval of the Contract Extensions.

BACKGROUND

In accordance with hydropower contracts signed with the Utilities in 1990 ('1990 Hydro Contracts') and subsequent contract extensions, the Utilities have purchased both firm power and firm peaking power from the St. Lawrence/FDR and Niagara Power Projects.

The Utilities have purchased such power at the Authority's cost-based hydropower rate, the benefits of which have been passed on to the Utilities' residential and small farm customers (also referred to as their rural and domestic consumers) without markup, through the electric service provided by the Utilities under their retail tariffs.

Chapter 60 (Part CC) of the Laws of 2011 created the Recharge New York Power Program ('RNY Program'). This law authorized the Authority to use the firm hydropower previously allocated to the Utilities for the RNY Program. See PAL §1005(13-a).

Effective August 1, 2011, the Authority withdrew the firm power allocations from the Utilities in accordance with the withdrawal provisions of the 2010 contract extensions and the new law, and terminated the firm power allocations of 189 MW for Niagara Mohawk Power Corporation d/b/a National Grid ('National Grid'), 167 MW for NYSEG and 99 MW for RGE, but continued to sell the firm peaking power to the Utilities in the following amounts: National Grid, 175 MW; NYSEG, 150 MW; and RGE, 35 MW.

Beginning with the 2014 extension of the 1990 Hydro Contracts, the Authority's Trustees approved a three-year contract extension for the peaking hydropower allocations and associated contracts.

DISCUSSION

The Contract Extensions set forth the terms and conditions for the sale of peaking power to NYSEG (150 MW) and RGE (35 MW) through December 31, 2023. National Grid has decided not to continue to extend its contract to purchase peaking power (175 MW).

The Contract Extensions specify the terms and conditions that would apply to the sale of the peaking power, including provisions providing for the cancellation of the Extension Contract/ allocations, with NYPA having the right to terminate each Contract Extension upon thirty days' written notice to the Utilities and the Utilities having the right to terminate their Contract Extension after one year, upon thirty days' written notice to the Authority.

At their meeting of September 23, 2020, the Trustees authorized a public hearing on the Contract Extensions. To avoid an interruption in the delivery of the peaking power, the Trustees also authorized staff to execute the Contract Extensions on an interim basis pending the completion of the PAL §1009 process. Accordingly, the Contract Extensions provide for their cancellation were the Governor not to approve the contracts.

In accordance with PAL §1009, a public hearing was held on the Contract Extensions on November 30, 2020, at 535 Washington Street, Buffalo, New York, from 2:00-6:00 p.m.

Following the public hearing, the Authority determined that no substantive modifications to the Contract Extensions are required. The transcript of the public hearing is attached as Exhibit '5a vi-C.'

FISCAL INFORMATION

Under the Contract Extensions, the Utilities would continue to pay for firm peaking hydropower at the rates charged under the preceding contract extension, *i.e.*, the cost-based rates that are currently charged to the Authority's preference customers and determined in accordance with the Authority's rate-setting methodologies and principles. Accordingly, the Contract Extensions will have no fiscal impact on the Authority.

RECOMMENDATION

The Senior Vice President – Clean Energy Solutions recommends that the Trustees approve: (1) the Contract Extensions with the Utilities; and (2) authorize transmittal of the Contract Extensions to the Governor for his consideration in accordance with PAL §1009.

For the reasons stated, I recommend the approval of the above-requested action by adoption of 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 contract extensions ("Contract Extensions") attached to the accompanying Report of the President and Chief Executive Officer as Exhibit "5a vi-A," and Exhibit '5a vi-B' are approved; and be it further

RESOLVED, That the Contract Extensions be submitted to the Governor for review with a request that the Contract Extensions be approved, and that copies of the Contract Extensions be forwarded to the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee, in accordance with Public Authorities Law §1009; and be it further

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

vii. 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 submitted the following report:

“SUMMARY

The Trustees are requested to: (1) accept the recommendations of the Western New York Power Proceeds Allocation Board (the ‘Allocation Board’ or ‘WNYPPAB’) and make an award of Fund Benefits from the Western New York Economic Development Fund to the eligible applicant listed in Exhibits ‘5a vii-A’ and “5a vii-A-1’ in the amount indicated on the Exhibits for the reasons discussed below and in the Exhibits; and (2) authorize the other actions described herein with respect to such applicants and recommended awards.

BACKGROUND

1. Western New York Power Proceeds Allocation Act

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

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

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

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

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

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

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

2. Western New York Power Proceeds Allocation Board

Under the Act, the Allocation Board is charged with soliciting applications for Fund Benefits, reviewing applications, making eligibility determinations, and evaluating the merits of applications for Fund Benefits. The Allocation Board uses the criteria applicable to EP, RP, and PP, and for revitalization of industry as provided in Public Authorities Law §1005. Additionally, the Allocation Board is authorized to consider the extent to which an award of Fund Benefits is consistent with the strategies and priorities of the Regional Economic Development Council having responsibility for the region in which an eligible project is proposed. A copy of these criteria (collectively, 'Program Criteria'), adapted from the Allocation Board's 'Procedures for the Review of Applications for Fund Benefits,' is attached as Exhibit "5a vii-B.'

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

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

3. Application Process

In an effort to provide for the efficient review of applications and disbursement of Fund Benefits, the Allocation Board established a schedule of dates through the end of 2020 on which the Allocation Board would meet to consider applications. At this time, applications are being accepted on a rolling basis. In addition, the application process was promoted through a media release and with assistance from state and local entities, including the Western New York and Finger Lakes Regional Economic Development Councils, the Empire State Development Corporation and other local and regional economic development organizations within the State. A webpage was created that is hosted on WWW.NYPA.GOV/WNYPPAB with application instructions, a link to the approved application form and other program details including a contact phone number and email address staffed by NYPA.

DISCUSSION

At its October 7, 2020 meeting, the Allocation Board considered an application River Road Research, Inc. ('River Road'), seeking \$220,000 in Fund Benefits to facilitate a demonstration/commercialization project. As detailed in Exhibit "5a vii-A-1", River Road seeks Fund Benefits to support construction of a processing system including an egg production room, growth room, vacuum dryer and screw press to demonstrate and commercialize the conversion of food waste into insect larvae, which is then processed into protein used in aquaculture and poultry feeds. River Road would spend approximately \$1.1M on its project.

Allocation Board's staff analyzed this application and made a recommendation to the Allocation Board based on eligibility requirements and Program Criteria. Copies of the recommendation

memoranda provided to the Allocation Board for this project are attached as Exhibit "5a vii-A-1". The application has also been made available to the Trustees for review.

The Allocation Board has recommended that this applicant receive a Fund Benefit award in the amount indicated on Exhibits "5a vii-A" and "5a vii-A-1." Given the nascent stage of the proposed projects, it was not possible to recommend the terms and conditions that would be applicable to this award and memorialized in an Award Contract between the Authority and a successful applicant.

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

RECOMMENDATION

The Senior Vice President, Clean Energy Solutions recommends that:

- (1) the Trustees accept the recommendations of the Allocation Board and make an award of Fund Benefits to the applicant in the amount identified in Exhibits "5a vii-A" and "5a vii-A-1", conditioned upon an agreement to be negotiated with the applicant on the final terms and conditions that would be applicable to the award to be contained in an Award Contract approved by the President and Chief Executive Officer, or his designee, and approved by the Executive Vice President and General Counsel, or his designee, as to form;
- (2) the Executive Vice President and Chief Commercial Officer, or such official's designee, be authorized to negotiate with the applicant concerning such final terms and conditions that will be applicable to the awards; and
- (3) the Executive Vice President and Chief Commercial Officer, or such official's designee, be authorized to execute on behalf of the Authority an Award Contract for the award listed on Exhibit "5a vii-A" subject to the forgoing conditions.

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

On motion made and seconded, 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 applicant listed in Exhibit "5a vii-A" in the amount indicated;

NOW THEREFORE BE IT RESOLVED, That the Authority hereby accepts the recommendation of the Allocation Board and authorizes an award of Fund Benefits to the applicant listed in Exhibits "5a vii-A" and "5a vii-A-1" in the amount 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 the applicant on the final terms and

conditions that would be applicable to the award and set forth in a written award contract ("Award Contract") between the Authority and the applicant, approved by the President and Chief Executive Officer, or his designee, and approved by the Executive Vice President and General Counsel or his designee, as to form; and be it further

RESOLVED, That the 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 "5a vii-A" subject to the forgoing conditions; and be it further

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

viii. Green Jobs Evaluation Incentive Plan

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to authorize the Authority to:

1. Consider ‘green job’ impacts when evaluating applications and making recommendations to the Trustees for allocations of power under the Recharge New York (‘RNY’), the Expansion Power (‘EP’), Replacement Power (‘RP’) and Preservation Power (‘PP’) programs (collectively, ‘Economic Development Power’ or ‘EDP’ Programs), as more particularly described below.
2. Provide for enhanced scoring as part of the application evaluation process for the EDP Programs that recognizes and incentivizes applicant commitments to create and retain green jobs in New York.
3. Modify applications used for the EDP Programs to enable the Authority to collect relevant information from applicants related to green job creation and retention.

Staff recommends that the Authority be authorized to apply the aforementioned green jobs incentive plan prospectively to applications under the EDP Programs for: (1) allocations to support new load (e.g., new projects and expansion projects); and (2) retention-based allocations for load that is not already served by the Authority.

DISCUSSION

The authorizing statutes for each of the EDP Programs require application of criteria intended to assess job impacts that would result from an allocation of program power, such as the type and number of jobs that would be created and retained as a result of an allocation (collectively, ‘Job Impact Criteria’). See Public Authorities Law (‘PAL’) §1005(13)(a); Economic Development Law (‘EDL’) §188-a(c).

New York State energy and economic development policies have evolved since the enactment of these statutes and seek to encourage development of green businesses and green jobs in New York. For example, in enacting the New York State Climate Leadership and Community Protection Act (‘CLCPA’) in 2019, the Legislature found and declared among other things that (emphasis added):

3. Action undertaken by New York to reduce greenhouse emissions will have an impact on global greenhouse gas emissions and the rate of climate change. In addition, such action will encourage other jurisdictions to implement complementary greenhouse gas reduction strategies and provide an example of how such strategies can be implemented. *It will also advance the development of green technologies and sustainable practices within the private sector, which can have far-reaching impacts such as a reduction in the cost of renewable energy components, and the creation of jobs and tax revenues in New York.*

8. *Creating good jobs and a thriving economy is a core concern of New York state. Shaping the ongoing transition in our energy sector to ensure that it creates good jobs and protects workers and communities that may lose employment in the current transition must be key concerns of our climate policy. Setting clear standards for job quality and training standards encourages not only high-quality work but positive economic impacts.*

9. [M]uch of the infrastructure work preparing our state for additional climate change events must happen quickly and efficiently. *It is in the interest of the state to ensure labor harmony and promote efficient performance of work on climate change related work sites by requiring workers to be well-trained and adequately compensated.*

The CLCPA further provides for the creation of the New York State Climate Action Council ('Council') which in turn is obligated to convene a Just Transition Working Group ('Working Group'). The Working Group's responsibilities include:

- advising the Council on issues and opportunities for workforce development and training related to energy efficiency measures, renewable energy and other clean energy technologies;
- identifying energy-intensive industries and related trades and identify sector specific impacts of the state's current workforce and avenues to maximize the skills and expertise of New York state workers in the new energy economy; and
- studying and reporting on the number of jobs created to counter climate change, which shall include but not be limited to the energy sector, building sector, transportation sector, and working lands sector; and the projection of the inventory of jobs needed and the skills and training required to meet the demand of jobs to counter climate change.

The Authority, in the 2030 Strategic Plan, encourages the promotion of clean and equitable economic development through the measure of jobs in the clean energy sector.

In response to these policies, staff is recommending that the jobs criteria for each of the EDP Programs be supplemented to enable the Authority to recognize and incentivize green jobs development in the State. Accordingly, the Trustees are requested to authorize staff to undertake the following measures for these purposes:

1. Consider an applicant's commitment to create and retain green jobs when evaluating applications and making recommendations to the Trustees for allocations of power under the EDP Programs, in the case of applications for (1) allocations that would support new load (e.g., new projects and expansion projects), and (2) retention-based allocations for load not already served by the Authority.
2. Provide enhanced scoring credit to recognize and incentivize green job creation and retention by applicants for the types of allocations described above.
3. Make appropriate modifications to the applications and related process documents used for the EDP Programs to enable the Authority to collect relevant information from applicants related to green job creation and retention.

Exhibit '5a viii-A' provides a functional definition of green jobs that staff proposes to use as a guide to develop the green jobs incentive plan.

At its meeting on December 7, 2020, the Economic Development Power Allocation Board ('EDPAB') approved the evaluation of green job impacts under RNY Power program jobs-related criteria, and authorized staff to make changes to the RNY Power application to enable the collection of green jobs-related information to facilitate consideration of green jobs impacts.

If the Trustees authorize these changes, Staff will prepare the appropriate updates to the application review processes and evaluation processes within each EDP Program for implementation effective prospectively starting with the January 2021 allocation recommendations.

Staff believes that the recommendations contained herein are appropriate and supportive of State and Authority policies aimed at supporting and encouraging the creation of green jobs in New York.

FISCAL INFORMATION

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

RECOMMENDATION

The Senior Vice President, Clean Energy Solutions recommends that the Trustees authorize staff to undertake the following measures to implement the green jobs incentive plan described above:

1. Consider an applicant's commitment to create and retain green jobs when evaluating applications and making recommendations to the Trustees for allocations of power under the EDP Programs, in the case of applications for (1) allocations that would support new load (e.g., new projects and expansion projects), and (2) retention-based allocations for load not already served by the Authority.
2. Provide enhanced scoring credit to applicants to recognize and incentivize green job creation for the types of allocations described above.
3. Make appropriate changes to the applications and related process documents used for the EDP Programs to enable the Authority to collect relevant information from applicants related to green job creation and retention.

For the reasons stated, I recommend the approval of the above-requested actions 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 authorize Authority staff to: (1) consider an applicant's commitment to create and retain green jobs when evaluating applications and making recommendations to the Trustees for allocations of power under the Recharge New York, Expansion Power, Replacement Power and Preservation Power programs (collectively, "Economic Development Power" or "EDP" Programs); (2) provide enhanced scoring credit to applicants to recognize and incentivize green job creation; and (3) make appropriate changes to the applications and related process documents used for the EDP Programs to enable the Authority to collect relevant information from applicants needed to evaluate green job creation and retention; and be it further

RESOLVED, That the foregoing green jobs incentive plan may be implemented for applications under the EDP Programs for (1) allocations that would support new customer load (e.g., new projects and expansion projects), and (2) retention-based allocations for load not already served by the Authority; and be it further

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

b. Financial Operations

i. Release of Funds in Support of the Western New York Power Proceeds Allocation Act

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

The Trustees are requested to authorize the release of up to \$2 million in funds into the Western New York Economic Development Fund ('WNYEDF') representing 'net earnings' from unallocated Expansion Power and Replacement Power sold into the wholesale energy market for the period January 1, 2021 through December 31, 2021 as set forth in Chapter 58 of the Laws of 2012. The request for authorization is based on current projections for 2021, however, the release of funds will be based on the actual 'net earnings'.

BACKGROUND

On March 30, 2012, Governor Cuomo signed into law the Western New York Power Proceeds Allocation Act (the 'Act') which authorizes the Authority, as deemed feasible and advisable by the Trustees, to deposit into the WNYEDF net earnings from the sale of unallocated Expansion Power and Replacement Power from the Authority's Niagara power project. The Act repealed Chapter 436 of the Laws of 2010, which had amended the Public Authorities Law and the Economic Development Law, to create a somewhat similar program authorizing unallocated Expansion Power and Replacement Power to be utilized for WNYEDF benefits.

The effective date for calculating the net earnings is August 30, 2010, the original effective date of Chapter 436 of the Laws of 2010. Net earnings are defined as 'the aggregate excess of revenues received by the power authority of the state of New York from the sale of expansion and replacement power and energy produced at the Niagara project that was sold in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis to an eligible expansion power or replacement power customer under the applicable tariff or contract.'

The net earnings deposited into the WNYEDF will be utilized to fund economic development projects ('eligible projects') by private businesses, including not-for-profits, which are physically located within New York State and within a thirty-mile radius of the Niagara power project. Eligible projects are to support the growth of business in the state and thereby lead to increased tax revenues and job creation or retention. Eligible projects may include capital investment in buildings, equipment and associated infrastructure; research and development that benefits New York State; support for tourism and marketing and advertising for Western New York State tourism and business; and energy related projects as authorized under §1005(17) of Public Authorities Law.

The Act also established the Western New York Power Proceeds Allocation Board ('Allocation Board') which consists of five members appointed by the Governor. The Allocation Board's responsibilities include establishing written procedures for reviewing applications and making recommendations to the Authority for the allocation of fund benefits to eligible projects. In reviewing applications for benefits, the Allocation Board shall employ the same criteria used for determining eligibility for Expansion, Replacement and Preservation Power allocations as provided in §1005 of Public Authorities Law including, but not limited to, the number of jobs and type of jobs created as measured by wage and benefit levels; business' long-term commitment to the region; amount of capital investment; and impact on competitiveness in the region. Upon recommendation of the Allocation Board, the Authority shall award fund benefits to an applicant, provided however, that upon a showing of good cause, the Authority shall have the discretion as to whether to adopt the Allocation Board's recommendation, or to award benefits in a different amount or on different terms and conditions.

DISCUSSION

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

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

The Trustees have already authorized the release of up to \$66 million in net earnings from the Operating Fund to the WNYEDF representing the then-estimated net earnings from inception through December 31, 2020. Actual net earnings deposited into the WNYEDF through this period totaled \$41.7 million.

Staff is seeking authorization to deposit into the WNYEDF net earnings for the period January 1, 2021 through December 31, 2021 of up to a total of \$2 million. While it is estimated that approximately \$0.58 million in net earnings will be generated based upon current levels of unallocated Expansion Power and Replacement Power from the Authority's Niagara power project and presently projected wholesale energy prices, the recommendation for up to \$2 million reflects the potential volatility in market prices. If authorized by the Trustees, such net earnings would be deposited into the WNYEDF on, at least, a quarterly basis. Such deposits may be made up to a fiscal quarter after the period in which the net earnings are generated.

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

FISCAL INFORMATION

Staff has determined that sufficient funds are available to provide up to \$2 million for deposit into the WNYEDF for net earnings calculated for the period January 1, 2021 through December 31, 2021, and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution. Provisions for the Authority's fiscal year 2021 deposits for this program were also included in the 2021 Operating Forecast subject to approval by the Trustees in December 2020. Authorization for the deposit of net earnings calculated for periods beyond December 31, 2021 into the WNYEDF will be requested of the Trustees at a later date.

RECOMMENDATION

The Executive Vice President & Chief Financial Officer recommends that the Trustees (a) affirm the deposit of up to \$2 million into the WNYEDF, to the extent such amount of net earnings is generated during the period January 1, 2021 through December 31, 2021, is feasible and advisable and (b) authorize such amount to be released from the Operating Fund to the WNYEDF.

For the reasons stated, I recommend the approval of the above-requested action by adoption of 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 authorize the release of up to \$2 million from the Operating Fund to the Western New York Economic Development Fund (“WNYEDF”), to the extent such amount of net earnings is generated for the period from January 1, 2021 through December 31, 2021, as authorized by Chapter 58 of the Laws of 2012 and as discussed in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the amount of up to \$2 million to be released to the WNYEDF for the purposes authorized by Chapter 58 described in the foregoing resolution is (a) affirmed by the Trustees to be feasible and advisable and (b) not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

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

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

ii. **Release of Funds in Support of the Northern New York Power Proceeds Allocation Act**

The President and Chief Executive Officer submitted the following report:

"SUMMARY"

The Trustees are requested to authorize the release of up to \$1 million in funds into the Northern New York Economic Development Fund ('NNYEDF') representing 'net earnings' from the sale of unallocated St. Lawrence County Economic Development Power into the wholesale energy market for the period January 1, 2021 through December 31, 2021, as authorized by Chapter 545 of the Laws of 2014. The request for authorization is based on current projections for 2021, however, the release of funds will be based on the actual 'net earnings'.

BACKGROUND

1. Program Structure

On December 29, 2014, Governor Cuomo signed into law the Northern New York Power Proceeds Allocation Act (the 'Act') which created a program intended to support economic development by providing financial support for eligible economic development projects located, or proposed to be located, in St. Lawrence County by eligible applicants.

In summary, the program is to be administered by the Authority, with assistance from the five-member Northern New York Power Proceeds Allocation Board ('NNYPPAB') which the Act creates. The NNYPPAB, whose members are appointed by the Governor, is authorized to solicit applications from 'eligible applicants' for financial assistance known as 'fund benefits' to support 'eligible projects;' evaluate applications based on eligibility requirements and applicable criteria; and make recommendations to the Trustees for awards of fund benefits. The Trustees are authorized to consider whether to make awards of fund benefits to support eligible projects that are recommended by the NNYPPAB.

The Act defines 'eligible applicant' as a private business, including a not-for-profit corporation. 'Eligible projects' are defined as economic development projects that are or would be physically located within St. Lawrence County that will support the growth of business in St. Lawrence County and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments. Eligible projects may include capital investments in buildings, equipment, and associated infrastructure (collectively, 'infrastructure') owned by an eligible applicant for fund benefits; transportation projects under state or federally approved plans; the acquisition of land needed for infrastructure; research and development where the results of such research and development will directly benefit New York State; support for tourism and marketing and advertising efforts for St. Lawrence County tourism and business; and energy-related projects. Eligible projects do not include, and fund benefits may not be used for, public interest advertising or advocacy; lobbying; the support or opposition of any candidate for public office; the support or opposition to any public issue; legal fees related to litigation of any kind; expenses related to administrative proceedings before state or local agencies; or retail businesses as defined by NNYPPAB, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

Applications will be evaluated using the following criteria specified in the Act:

1. whether the eligible project would occur in the absence of an award of fund benefits;
2. the extent to which an award of fund benefits will result in new capital investment in the State by the eligible applicant and the extent of such investment;
3. other assistance the eligible applicant may receive to support the eligible project;

4. the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed if the eligible applicant were to receive an award of fund benefits;
5. the eligible applicant's payroll, salaries, benefits and number of jobs at the eligible project for which an award of fund benefits is requested;
6. the number of jobs that will be created or retained within St. Lawrence County and any other parts of the State in relation to the requested award of fund benefits, and the extent to which the eligible applicant will agree to commit to creating or retaining such jobs as a condition to receiving an award of fund benefits;
7. whether the eligible applicant is at risk of closing or curtailing facilities or operations in St. Lawrence County and other parts of the State, relocating facilities or operations out of St. Lawrence County and other parts of the State, or losing a significant number of jobs in St. Lawrence County and other parts of the State, in the absence of an award of fund benefits;
8. the significance of the eligible project that would receive an award of fund benefits to the economy of the area in which such eligible project is located; and
9. for new, expanded and/or rehabilitated facilities, the extent to which the eligible applicant will commit to implement or otherwise make tangible investments in energy efficiency measures as a condition to receiving an award of fund benefits.

The Act provides that the NNYPPAB shall also consider the extent to which an award of fund benefits would be consistent with the strategies and priorities of any Regional Economic Development Council having responsibility for the region in which the eligible project would be located, and authorizes the NNYPPAB to solicit the views of organizations that have an interest in economic development in St. Lawrence County regarding such matters as proposed funding strategies and priorities, and applications for fund benefits.

2. Program Funding

The program is funded by 'net earnings' from the sale of unallocated St. Lawrence County Economic Development Power ('SLCEDP'). SLCEDP consists of up to 20 MW of hydropower from the Authority's St. Lawrence/FDR Power Project which the Authority has made available for sale to the Town of Massena Electric Department ('MED') for MED to sub-allocate for economic development purposes in accordance with a contract between the parties entered into in 2012 entitled 'Agreement Governing the Sale of St. Lawrence-FDR Project Power and Energy to the Town of Massena Electric Department for Economic Development Purposes' (the 'Authority-TMED Contract'). The Act defines 'net earnings' as the aggregate excess of revenues received by the Authority from the sale of energy associated with SLCEDP by the Authority in the wholesale energy market over what revenues would have been received had such energy been sold to MED on a firm basis under the terms of the Authority-MED contract. For the first five years after enactment, the amount of SLCEDP that may be used by the Authority to generate net earnings may not exceed the lesser of 20 MW or the amount of SLCEDP that has not been allocated by the Authority under the Authority-MED contract for sub-allocations. Thereafter, the amount of SLCEDP that may be used by the Authority to generate net earnings may not exceed the lesser of 10 MW or the amount of SLCEDP that has not been allocated under the Authority-MED contract for sub-allocations.

The Act also authorized the Authority to create and maintain a fund known as the Northern New York Economic Development Fund (the 'NNYEDF'), and deposit net earnings into the NNYEDF as determined to be feasible and advisable by the Trustees. The NNYEDF is a separate fund residing within the Authority's Operating Fund.

DISCUSSION

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

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

The Trustees have already authorized the release of up to \$15 million in net earnings from the Operating Fund to the NNYEDF representing the then-estimated net earnings from inception through December 31, 2020. Actual net earnings deposited into the NNYEDF through this period totaled \$5.1 million.

Staff is seeking authorization to deposit into the NNYEDF net earnings for the period January 1, 2021 through December 31, 2021 of up to a total of \$1 million. While it is estimated that approximately \$0.46 million in net earnings will be generated based upon current levels of unused St. Lawrence County Economic Development Power and presently projected wholesale energy prices, the recommendation for up to \$1 million reflects the potential volatility in market prices. If authorized by the Trustees, such net earnings would be deposited into the NNYEDF on, at least, a quarterly basis. Such deposits may be made up to a fiscal quarter after the period in which the net earnings are generated.

Staff has reviewed the effect of releasing the requested up to \$1.0 million in funding at this time on the Authority's expected financial position and reserve requirements. In accordance with the Board's Policy Statement adopted May 24, 2011, staff also calculated the impact of this release, together with (i) the release of \$30 million in Recharge New York Discounts for 2020, (ii) the release of up to \$91.0 million in Canal-related operating expenses for 2020; (iii) and the release of up to \$2 million in Western NY Power Proceeds net earnings, and (iv) the release of up to \$1 million in Northern NY Power Proceeds net earnings, on the Authority's debt service coverage ratio and determined it would not fall below the 2.0 reference level. Based on the Authority's Budget and Four-Year Financial Plan, the 2.0 reference point level is forecasted to be met at each year-end of the forecast period 2021-2024. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to release such amounts from the trust estate created by the Bond Resolution consistent with the terms thereof.

FISCAL INFORMATION

Staff has determined that sufficient funds are available to provide up to \$1 million for deposit into the NNYEDF for net earnings generated for the period January 1, 2021 through December 31, 2021, and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution. Provisions for the Authority's fiscal year 2021 deposits for this program were also included in the 2021 Operating Forecast subject to approval by the Trustees in December 2020. Authorization for the deposit of net earnings calculated for periods beyond December 31, 2021 into the NNYEDF will be requested of the Trustees at a later date.

RECOMMENDATION

The Executive Vice President and Chief Financial Officer recommends that the Trustees (a) affirm the deposit of up to \$1 million into the New York Economic Development Fund ('NNYEDF'), to the extent such amount of net earnings is generated during the period January 1, 2021 through December 31, 2021, is feasible and advisable and (b) authorize such amount to be released from the Operating Fund to the NNYEDF.

For the reasons stated, I recommend the approval of the above-requested action by adoption of 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 authorize the release of up to \$1 million from the Operating Fund to the Northern New York Economic Development Fund ("NNYEDF"), to the extent such amount of net earnings is generated for the period from January 1, 2021 through December 31, 2021, as authorized by Chapter 545 of the Laws of 2014 ("Chapter 545") and as discussed in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the amount of up to \$1 million to be released to the NNYEDF for the purposes authorized by Chapter 545 described in the foregoing resolution is (a) affirmed by the Trustees to be feasible and advisable and (b) not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

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

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

c. Public & Regulatory Affairs

i. NYPA Fleet Vehicles – Transfer of Ownership to Regional Boards of Cooperative Education Centers

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve the transfer of ownership of three Authority fleet vehicles to three regional Boards of Cooperative Education Centers (‘BOCES’) for use by those institutions in an educational capacity in furtherance of NYPA’s strategic goal of increased electric vehicle technology training and acceptance of electric vehicles in the state of New York. The three BOCES institutions identified herein are:

- Capital Region BOCES
- Orleans-Niagara BOCES
- St. Lawrence BOCES

BOCES located in disadvantaged, or Environmental Justice Communities were prioritized.

BACKGROUND

In 2019, a ‘Eureka’ project suggestion was submitted which suggested a reconsideration of the process in which NYPA disposes of its electric vehicle fleet. The suggestion was refined and reviewed by internal NYPA stakeholders, including NYPA Fleet Operations, Ethics and Compliance, Legal, Environmental Justice, and Strategic Supply Management. The implementation of donating retired NYPA electric vehicles to regional educational institutions for use in a training environment as part of the institutions’ automotive maintenance and repair curriculum was accepted and agreed upon by all parties. This donation would serve as a pilot for a potential wider distribution of NYPA electric vehicles for educational purposes.

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

DISCUSSION

The NYPA Fleet Vehicles’ useful life is defined as 5 years of age or 75,000 miles. As of June 2020, there are three NYPA vehicles which are either fully electric or hybrid and are nearing the end of their useful life. These vehicles have been confirmed by Fleet Operations as being available for use in this program. The details of the three vehicles are included in table 1 below. Normal practice for retired NYPA vehicles is that they are sold at auctions.

With the increasing popularity and availability of electric vehicles in the domestic market, the demand for technicians who can service these vehicles will be increasing as well. As these vehicles are newer and their mechanical components vary greatly from fossil fuel powered vehicles, opportunities to become a technician in this area are sparse. By donating the Authority’s retired electric vehicles to educational institutions with the express purpose that they be used only as a training instrument for future EV technicians, NYPA is contributing to New York State’s Green Energy future in a very tangible way, and improving career prospects for those individuals living within the communities in which the educational institutions exist. The addition of EVs and Hybrid vehicles to the institution’s curriculum will also allow those institutions to provide additional specialized certifications to students.

Consequently, the Authority feels that it is prudent to donate these vehicles which have a combined appraised fair market value of \$10,575 (Exhibit '5c i-A'). The educational institutions have expressed interest in obtaining ownership of the vehicles as an addition to their educational fleet (Statement of Need - Capital Region BOCES, Statement of Need - Orleans-Niagara BOCES, Statement of Need - St. Lawrence BOCES) (Exhibit '5c i-B').

Table 1: Electric Vehicles Nearing Retirement

FUEL_TYPE	EQUIP_NO	YEAR	MANUF	MODEL	SERIAL_NO	DESCRIPTION	METER READING	Fair Market Value
Electric/Gas Hybrid	12H20	2012	FORD	FUSI	3FADP0L3XCR340804	CAR-SEDAN-HYBRID	108,047	\$3,075
Electric	12E1	2012	NISS	LEAF	JN1AZ0CP2CT020551	CAR-COM-SEDAN-ELECTRIC-ZERO EMISSION	5,108	\$3,175
Electric/Gas Hybrid	13H27	2013	FORD	FUSI	3FA6P0LU8DR349102	CAR-SEDAN-HYBRID	122,176	\$4,325

The above vehicles were confirmed by Fleet Management to be available for use for these purposes.

The transfer is to be further conditioned upon the execution of an agreement between the educational institutions and the Authority. The terms of such an agreement are to include transferring the vehicles in their 'as is' condition and such additional provisions that reasonably safeguard the Authority from future responsibility and liability, such as the requirement that the vehicles only be used for educational purposes and are not to be driven.

FISCAL INFORMATION

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

RECOMMENDATION

The Vice President – Environmental Justice and Sustainability recommends that the Trustees approve the transfer of ownership of three Authority fleet vehicles to regional Boards of Cooperative Education Centers.

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

On motion made and seconded, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That pursuant to Title 5-A of Article 9 of the Public Authorities Law, the Guidelines for the Disposal of Personal Property and the Power Authority Act, the Trustees hereby approve the transfer of ownership of the three fleet vehicles listed in Exhibit "5c i-A" to the accompanying report to three Boards of Cooperative Education Centers ("BOCES"): Capital Region BOCES, Orleans-Niagara BOCES, and St. Lawrence BOCES, in accordance with the Authority's vehicle use policies; and be it further

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

December 9, 2020

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

d. Procurement (Services) Contracts

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

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to approve the award and funding of the multiyear procurement (services) contracts listed in Exhibit '5d i-A,' in support of projects and programs for the Authority's Business Units/Departments and Facilities. Detailed explanations of the recommended awards and extensions, including the nature of such services, the basis for the new awards if other than to the lowest-priced, lowest total cost of ownership or 'best valued' bidders and the intended duration of such contracts, or the reasons for the extension and the projected expiration dates, are set forth in the discussion below.

BACKGROUND

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

The Authority's Expenditure Authorization Procedures ('EAPs') require the Trustees' approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts in excess of \$6 million, as well as personal services contracts in excess of \$2 million if low bidder or best value, or \$1 million if sole-source, single-source or other non-competitive awards.

The Authority's EAPs also require the Trustees' approval when the cumulative change order value of a personal services contract exceeds \$500,000, or when the cumulative change order value of a non-personal services, construction, equipment purchase, or non-procurement contract exceeds the greater of \$6 million or 25% of the originally approved contract amount not to exceed \$6 million.

DISCUSSION

Awards

The Trustees are requested to approve the award and funding of the multiyear procurement (services) contracts listed in Exhibit '5d i-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 '5d i-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 '5d i-B' is requested for one or more of the following reasons: (1) additional time is required to complete the current contractual work scope or additional services related to the original work scope; (2) to accommodate an Authority or external regulatory agency schedule change that has delayed, reprioritized or otherwise suspended required services; (3) the original consultant is uniquely qualified to perform services and/or continue its presence and rebidding would not be practical or (4) the contractor provides proprietary technology or specialized equipment, at reasonable negotiated rates, that the Authority needs to continue until a permanent system is put in place.

The following is a detailed summary of each recommended contract award and extension.

Contract Awards in Support of Business Units/Departments and Facilities:

Business Services – Treasury

The proposed personal services contract with **Glass, Lewis & Company LLC ('GLC') (Q20-6993RM)** would provide Proxy Manager services for the Authority's Other Post-Employment Benefits Trust ('OPEB'). The Proxy Manager to provide proxy voting advisory and execution services on behalf of the Authority OPEB Fund. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Three proposals were received and evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to GLC which is technically and commercially qualified and meets the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$350,000. It should be noted that GLC is a Small Business Enterprises.

Commercial Operations – Engineering & Construction Management

The proposed non-personal services contracts with **Future Tech Consultants of New York, Inc. ('FTC'), JOADEM Corporation ('JOADEM'), MP Engineers and Architects PC ('MPE'), Tectonic Engineering & Surveying Consultants PC ('Tectonic') and Twin Peaks Incorporated ('TPI') (Q20-6980CC)** would provide Special Inspections services for Engineering and Construction Management department projects at customer facilities in New York City. The services include performing special inspections and tests on construction projects to meet all requirements per permitting through the New York City Department of Buildings ('NYC DOB'). Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Fifteen firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Eight proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to FTC, JOADEM, MPE, Tectonic, and TPI which are technically and commercially qualified and meet the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. These contracts are for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contract, \$6 million. It should be noted that JOADEM and MPE are NYS certified

Minority-owned Business Enterprises. It should also be noted that FTC, JOADEM, MPE and TPI are Small Business Enterprises.

Commercial Operations – Engineering & Construction Management

The proposed construction contracts for Trade On-Call Services would provide labor and materials to perform on-call services for installations, replacements, repairs, troubleshooting, etc. under various trade disciplines at the Authority and customer facilities throughout all regions of New York State. **CD Perry LLC ('CD Perry'), Dynamic US, Inc. ('Dynamic'), Global Iron Works, Inc. ('GIW'), Hohl Industrial Services, Inc. ('Hohl'), John W. Danforth Company ('JWD'), Klima New York LLC ('Klima'), Pinto Construction Services, Inc. ('PCS') and Whitestone Construction Corporation ('WCC')** would provide general facilities including but not limited to carpentry, painting, glazer, plumbing, mechanical/HVAC and etc. **In addition, Candela Systems Corporation ('CSC'), EIA Electric, Inc. ('EIA'), Northline Utilities LLC ('Northline'), Ohm's Electrical Corporation ('OEC'), RDS Industries, Inc. ('RDS') and Threetech Electric, Inc. ('Threetech') (Q20-6982AP)** would provide electrical and lighting trades. Based on customer feedback and future business development needs, the Trade On-Call Services team was formally tasked with developing an implementation model for customers that require more rapid turnaround time than the conventional approach under more urgent circumstances. The Trade On-Call Services model is intended to provide such expedited services at a competitive cost and will offer a wide-range of trade disciplines throughout all regions of New York State. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Forty-six firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Sixteen proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to CD Perry, Dynamic, GIW, Hohl, JWD, Klima, PCS, WCC, CSC, EIA, Northline, OEC, RDS and Threetech which are technically and commercially qualified and meet the bid requirements on the basis of 'best value', which optimizes quality, cost and efficiency among responsive and responsible offerors. These contracts are for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contract, \$7.5 million. It should be noted that CSC, GIW, RDS Industries and Threetech are NYS certified Minority-owned Business Enterprises. It should be noted that OEC is NYS certified Women-owned Business Enterprise. It should also be noted that Dynamic, EIA, GIW, JWD, Klima, PCS and Threetech are Small Business Enterprises.

Human Resources & Administration – Aviation

The proposed non-personal services contract with **Turboprop East, Inc. ('Turboprop') (Q20-6995JM)** would provide maintenance services to be performed on the Authority's Beechcraft King Air 350 aircraft. NYPA operates a 2007 King Air 350 aircraft based at Westchester Airport in Harrison, NY, which is equipped with 9 passenger seats, all weather avionics, cruising speed of 300 knots and a present value of approximately \$3.5M. Periodic service and inspections are required for the aircraft to comply with Federal Aviation Regulations, and to ensure it is always maintained in a safe and reliable operating condition. Scheduled and unscheduled maintenance must be routinely completed in accordance with the manufacture's recommendations as predicated by hours of usage and/or calendar date as applicable. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Six firms/entities downloaded the ad on *NYPA.gov*. One proposal was received electronically via Ariba and was evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to Turboprop which is technically and commercially qualified and meets the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of five years, beginning on or about April 1, 2021, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$1.7 million. It should also be noted that Turboprop is a Small Business Enterprises.

Information Technology – IT & Cyber Security

The proposed personal services contract with **Cognizant Technology Solutions U.S. Corporation ('CTS') (Q20-6920JH)** would provide implementation of a Flexera ITAM software solution. Information Technology ('IT') is implementing an IT Asset Management ('ITAM') system to manage the software and hardware assets through their lifecycle. This system will provide improved visibility of IT assets and facilitate the necessary information to provide governance to ensure the Authority is compliant with software licensing agreements and maintenance contracts. The benefits of an ITAM system include reducing financial risk, reducing operating cost for new software and hardware purchases, and providing greater visibility for software licensing tracking and compliance. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Twenty firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Twelve proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to CTS which is technically and commercially qualified and meets the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of three years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$3,192,826.

Utility Operations – Facility & Infrastructure PM

The proposed non-personal services contract with **Michael Bellantoni, Inc. ('Bellantoni') (Q20-7026JM)** would provide Snow Removal and Landscaping Maintenance services for the Clarence D. Rappleyea (Centroplex) building. Year-round services including snow and ice management and landscaping maintenance are required to keep the property safe and presentable. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Three firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Two proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to Bellantoni which is technically and commercially qualified and meets the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of five years, beginning on or about January 1, 2021, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$1 million. It should also be noted that Bellantoni is a Small Business Enterprise, and they self-certified in Dun & Bradstreet as a US Veteran Owned Business.

Utility Operations – System Planning & Analysis

The proposed personal services contracts with **ABB Enterprise Software, Inc. ('ABB'), Burns & McDonnell Consulting, Inc. dba Burns & McDonnell Consulting PC ('BMC'), Leidos Engineering of New York PC ('Leidos'), Mott MacDonald NY, Inc. ('McDonald'), Power Engineers Incorporated ('PEI'), Siemens Industry, Inc. ('Siemens'), SNC, Ltd. ('SNC'), The Brattle Group, Inc. ('Brattle'), Willdan Energy Solutions dba Energy and Environmental Economics, Inc. ('EEE') and WSP USA, Inc. ('WSP') (Q20-6984CC)** would provide, individually or as a group, Transmission Planning, Engineering and Design, Production Cost Modelling Project Development r to implement the Authority's new strategic plan - Vision2030, and the goals of the Climate Leadership and Community Protection Act ('CLCPA'). Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Forty-four firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Twenty proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to ABB, BMC, Leidos, McDonald, PEI, Siemens, SNC, Brattle, EEE and WSP which are technically and commercially qualified and meet the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors.

These contracts are for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contract, \$8 million. It should be noted that Siemens is a Small Business Enterprises.

Utility Operations – Transmission

The proposed non-personal services contract with **Allen Chase Enterprises, Inc. ('ACE') (Q20-7035DK)** would provide Bare Ground Weed Control Management of vegetation inside substations, pole yards, microwave towers and various other Authority sites. The vegetation will be controlled by both pre-emergent and post-emergent chemical methods employing the use of soil sterilant and selective use herbicides. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Five firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Two proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to ACE which is technically and commercially qualified and meets the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of four years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$250,000. It should be noted that ACE is a Small Business Enterprises.

Extensions and/or Additional Funding Requests:

Commercial Operations – Clean Energy Solutions

As part of NY States Executive Order 88, Governor Cuomo has identified reduced energy use, sustainability, and efficient operation of public facilities as top priorities for the state. The Authority supports its customers statewide in meeting these goals and initiatives with the Energy Efficiency Program. At the December 18, 2012 meeting, the Trustees' approved a total of nineteen suppliers for the Governmental Customers Energy Efficiency Program in the amount of \$750 million to conduct the audit, design, and installation of energy efficiency measures at customer facilities within Southeastern New York State. The original contracts were for a five-year term with a completion date of December 31, 2017. In July 2017, the Trustees approved three-year contract extensions through December 31, 2020, and increased the value to \$1.05 billion. Due to on-going work under these contracts, and delays resulting from the COVID-19 pandemic, further extensions are required to continue to support the Energy Efficiency Program. Staff requests Trustee approval for the extensions of the **CDM Constructors, Inc. ('CDM') (4600002635)**, **EcoSystems / LiRo Energy Group ('LiRo') (4600002646)** and **Guth DeConzo Consulting Engineers ('GDC') (4600002632)** contracts for an additional three-year term from January 1, 2021 through December 31, 2023 to proceed with on-going projects at various customer locations under the Governmental Customers Energy Efficiency Program. No new work will be assigned under these contracts. No additional funding is required.

Commercial Operations – Clean Energy Solutions

As part of NY States Executive Order 88, Governor Cuomo has identified reduced energy use, sustainability, and efficient operation of public facilities as top priorities for the state. The Authority supports its customers statewide in meeting these goals and initiatives with the Energy Efficiency Program. At the October 15, 2014, the Trustees approved a total of twelve suppliers for the Statewide Energy Efficiency Program in the amount of \$300 million to conduct the audit, design, and installation of energy efficiency measures at customer facilities across the state. The original contracts were for a five-year term with a completion date of October 14, 2019. In October 2019, the contracts were extended for an additional one-year grace period. Due to on-going work under these contracts, and delays resulting from the COVID-19 pandemic, further extensions are required to continue to support the Energy Efficiency Program. Staff requests Trustee approval for the extensions of the **Guth DeConzo**

Consulting Engineers ('GDC') (4600002882), Pres Services LLC ('Pres') (4600002859) and Wendel Energy Services LLC ('WES') (4600002934) contracts for an additional three-year term from October 15, 2020 through October 14, 2023 to proceed with on-going projects at various customer locations under the Statewide Energy Efficiency Program. No new work will be assigned under these contracts. No additional funding is required.

Commercial Operations – Customer Business Development

On September 25, 2019, the Trustees authorized the execution of Power Purchase Agreements ('PPA') to **Siemens Industry, Inc. ('Siemens') (Q18-6513SR)**, and the New York Convention Center Operating Corporation doing business as a Jacob K. Javits Convention Center ('Javits Center'), to commence the design development process of a Solar Photovoltaic ('PV') and Energy Storage Project at the Javits Center. The Trustees approved the annual cost of the PPA with Siemens for \$455,00 per year for a twenty-year term (total amount \$9.1M). Siemens, who was the selected developer is responsible to own, operate and maintain the system for the term of the PPA. The Authority purchases the energy produced from the solar array and Storage system, and in turn sells it to Javits through a companion Power Sales Contract ('PSC'). These two agreements form the 'back to back' PPA where the Authority purchases power under the primary PPA and then sells the power to the customer under the PSC. During the design and development phase of the project, it was deemed to be economically more advantageous for the project to have a term of 25 years verse 20 years. Staff requests Trustee approval for an additional five-year term and additional funding of \$2.275M (total value \$11.375M) with the execution of PPA with Siemens and in parallel a PSC with the Javits Center. Upon execution of the PPA, Siemens will commence construction of the Project, with the first estimated delivery of the Products under the PPA is expected to be October 30, 2021.

Utility Operations – Enterprise Resilience

The Authority solicited proposals for Enterprise Resilience Program Consulting Services under RFP Inquiry No. **Q19-6795RM** Enterprise Resiliency Consulting Services. The stated purpose was management consulting services to assist the Authority and New York State Canal Corporation ('Canals') in the development and implementation of an Enterprise Resilience Program. The development of the Enterprise Resilience Program encompasses all business units within the Authority and Canals and will extend to relevant external stakeholders. The Trustees approved personal services contracts with an initial term of three years and the option to extend for two additional years to **Accenture LLP ('Accenture') (4600003855), ICF Incorporated LLC** (formerly known as ICF Resources LLC) (**'ICF') (4600003854)**, and **Toffler Associates, Inc. ('Toffler') (4600003856)** in the aggregate amount of \$3,350,000 on December 12, 2019. Staff requests Trustee approval for additional funding, to date \$2.04 million has been released, in the amount of \$8 million which will increase the total aggregate amount to \$11,350,000. Staff envisions that the multitude of benefits that the Authority continues to see from these contracts warrants an additional increase in the aggregate funding amount to support new and ongoing initiatives needed to support the Authority's development and implementation of an Enterprise Resilience Program. It should be noted that Toffler is a Small Business Enterprises.

Utility Operations – Project Management

On February 21, 2020, the Authority issued one-year construction contract to **Development Authority of the North Country ('DANC') (4500318593)** in the amount of \$20,600 to provide construction required to insert the New York State ('NYS') Thruway Regeneration site at Exit 31 to existing dark fiber. The Authority is waiting for the New York State Thruway Authority ('NYSTA') User Agreement to be approved by the Comptroller. Due to COVID-19 pandemic the construction activity on this project was postponed. This contract extension is requested for completing the construction, splicing, and testing required to connect DANC Dark Fiber to the NYSTA Dark Fiber at the NYS Thruway Regeneration site on the NYS Thruway at Exit 31. Staff requests Trustee approval for the extension of the DANC contract for one-year from February 21, 2021 through February 20, 2022 for the DANC NYS Thruway Authority Regeneration project. No additional funding is being requested at this time.

FISCAL INFORMATION

Funds required to support contract services for various Business Units/Departments and Facilities have been included in the 2020 Approved Operating or Capital Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years. Payment will be made from the Operating or Capital Fund, as applicable.

Funds required to support contract services for capital projects have been included as part of the approved capital expenditures for those projects and will be disbursed from the Capital Fund in accordance with the project's Capital Expenditure Authorization Request, as applicable.

RECOMMENDATION

The Senior Vice President – Operations Support Services and Chief Engineer; the Senior Vice President – Power Supply; the Senior Vice President – Clean Energy Solutions; the Senior Vice President – Chief Information Officer; the Senior Vice President – System Planning & Analysis; the Vice President – Strategic Supply Management; the Vice President – Project Management; the Vice President – Engineering & Construction Management; the Vice President – Enterprise Shared Services; the Vice President – Enterprise Resilience; and the Regional Manager of Transmission; Treasurer; recommend that the Trustees approve the award of multiyear procurement (services) and other contracts to the companies listed in Exhibit '5d i-A,' and the extension and/or funding of the procurement (services) contracts listed in Exhibit '5d i-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."

On motion made and seconded, 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 multiyear procurement services contracts set forth in Exhibit '5d 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, the contracts listed in Exhibit '5d 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 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. **Seaway Private Equity Corporation – Grant Agreement Amendment**

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees are requested to approve an amendment to the Amended and Restated Grant Agreement with the Seaway Private Equity Corporation ('SPEC') to extend its term through December 31, 2021 and to increase the amount set aside for legal and administrative expenses by the sum of \$25,000 authorizing SPEC to use the interest earned on the unexpended principal for such expenses.

BACKGROUND

By resolution approved September 20, 2005, as part of the St. Lawrence Relicensing Settlement Agreements, the Trustees authorized the Authority to negotiate the terms and conditions of a grant agreement ('Grant Agreement') with a St. Lawrence County not-for-profit corporation, subsequently incorporated as SPEC. Pursuant to that grant agreement, the Authority would provide a grant of \$10 million to be invested by SPEC under a capital commitment agreement ('Capital Commitment Agreement') with Golden Technology Management, LLC ('Golden'). Golden, in turn, would raise an additional \$20 million in private equity funds for the purpose of establishing a pool for investments in technology businesses to promote economic development and increase employment and the tax base in St. Lawrence County.

The original Grant Agreement was amended, effective as of March 1, 2006 ('Amended and Restated Grant Agreement'), to: (i) clarify the definitions of business development firms in which SPEC may invest, (ii) allow SPEC to invest in firms other than Golden, (iii) allow SPEC to invest in firms that are not 'new technology' firms (requiring a two-thirds vote of the SPEC Board), and (iv) require that the Authority approve any alternate business development firms prior to SPEC's investment.

On July 28, 2009, the Trustees approved two amendments to the Amended and Restated Grant Agreement with SPEC to: (i) authorize SPEC to waive provisions of the standard-form Amended and Restated Capital Commitment Agreement upon a vote of two-thirds of its Board of Directors and (ii) increase the amount set aside for legal and administrative expenses, from \$250,000 to \$500,000 by authorizing SPEC to use the interest earned on the principal for such expenses.

On January 23, 2013, the Trustees approved a further amendment to the Amended and Restated Grant Agreement with SPEC to increase the amount set aside for legal and administrative expenses, from \$500,000 to \$750,000 by authorizing SPEC to use the interest earned on the principal for such expenses.

On March 20, 2018, the Trustees approved a further amendment to the Amended and Restated Grant Agreement with SPEC to extend its term to December 31, 2019 and to further increase the amount set aside for legal and administrative expenses, from \$750,000 to \$800,000 by authorizing SPEC to use the interest earned on the principal for such expenses.

On May 21, 2019, the Trustees approved a further amendment to the Amended and Restated Grant Agreement with SPEC to increase the amount set aside for legal and administrative expenses, from \$800,000 to \$850,000 by authorizing SPEC to use the interest earned on the principal for such expenses.

On December 11, 2019, the Trustees approved a further amendment to the Amended and Restated Grant Agreement with SPEC to extend its term to December 31, 2020 and to further increase the amount set aside for legal and administrative expenses, from \$850,000 to \$925,000 by authorizing SPEC to use the interest earned on the principal for such expenses.

Since its inception, SPEC has invested approximately \$9,482,079 of the original \$10,000,000 in firms located in St. Lawrence County. The fund has a balance of \$1,154,013 (including earned interest less expenses).

SPEC has now requested that the term of the Amended and Restated Grant Agreement be extended to December 31, 2021 and to further increase the cap on administrative expenses by \$25,000 from \$925,000 to \$950,000. Currently, approximately \$895,419 has been expended by SPEC for administrative expenses. To date, the principal grant amount has earned \$1,293,367 in interest.

It is recommended that the term of the Amended and Restated Grant Agreement be extended to December 31, 2021 and that the cap on administrative expenses be increased to \$925,000, with such increase to be paid out of the interest earned. Trustee approval of this recommendation will result in maintaining the availability of these grant funds during the COVID-19 pandemic and help promote the economic development and increased employment in St. Lawrence County.

RECOMMENDATION

The Executive Vice President and Chief Financial Officer recommends that the Trustees approve an amendment to the Amended and Restated Grant Agreement with the Seaway Private Equity Corporation to extend its term through December 31, 2021 and increase the amount set aside for legal and administrative expenses from \$925,000 to \$950,000 using the interest earned on the principal for such expenses.

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

On motion made and seconded, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That an amendment to the Amended and Restated Grant Agreement with the Seaway Private Equity Corporation ("SPEC") to o extend its term through December 31, 2021 and increase the amount set aside for legal and administrative expenses from \$925,000 to \$950,000 using the interest earned on the principal for such expenses, be, and hereby is, approved on the terms set forth in the foregoing report of the President and Chief Executive Officer; and be it further

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

e. Real Estate

i. AC Transmission Proceeding – Lease of Real Property

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Trustees are requested to authorize entry into a 99-year lease, with National Grid as grantor and LS Power Grid New York Corporation 1 ('LSP') as co-tenant, for approximately 2,124 acres of transmission line right-of-way ('ROW') and appurtenant property extending for approximately 83 linear miles in Oneida, Herkimer, Montgomery, Schenectady and Albany counties. This lease is in support of the AC Transmission Public Policy Transmission Needs Project (Project).

BACKGROUND

On February 29, 2016, in accordance with the New York Public Service Commission ('PSC') order identifying transmission needs associated with the Central East and UPNY/SENY transmission interfaces, the NYISO issued the AC Transmission Public Policy Transmission Needs Project Solicitation ('Solicitation'), commencing a 60-day period for developers to submit proposals.

On March 16, 2016, the Authority executed a Report of Understanding ('MOU') with LSP to develop and submit proposals in response to the Solicitation. LSP assumed the lead role and developed thorough proposals including transmission planning, engineering design, preparation of competitive cost estimates and construction schedules followed by formal submission and remittance of all NYISO required deposits and fees. The Authority provided technical assistance, comments, advice, and participation in all meetings with the NYISO, PSC, and regulatory agencies throughout the process. At its December 15, 2016 meeting, the Board of Trustees authorized funding of the Authority's share of expenses pursuant to the MOU.

On June 7, 2018, the Authority and LS entered into a Participation Agreement ('PA'), as contemplated in, and in replacement of, the MOU. The PA granted the Authority an option to elect an ownership interest of up to 37.5% of the total Project.

On July 28, 2020, The Board of Trustees granted approval to formally acquire the maximum ownership stake of 37.5% in the Project.

DISCUSSION

The proposed term is ninety-nine (99) years, to commence upon the receipt of approval by the Federal Energy Regulatory Commission and the PSC.

An appraisal was undertaken to determine the fair market value of the leasehold interest. The lease calls for a one-time rental payment of \$31,050,564, of which it is expected that the Authority will be obligated for 37.5%, or \$11,643,961, which ownership stake was previously approved by the Trustees at their meeting of July 20, 2020. The rental value is in line with the appraisal.

The parties initially agreed that the leasehold would extend for 95 linear miles, from the EDIC Substation in Marcy, NY to New Scotland, Albany County. Subsequently, National Grid exercised a Right of First Refusal to retain rights to portions of the first 12 miles of ROW. This change is factored into the rent and leasehold acreage calculations.

The lease provides that the respective interests of LSP and the Authority may be separated into two independent leases on the same terms as the initial lease. It is anticipated that this will result in a physical separation of the leasehold, with the line of demarcation at a location to be determined in Montgomery County. The Authority's leasehold will consist exclusively of transmission line ROW. LSP

will have responsibility for both transmission line ROW and substations. The Authority will have ongoing operation and maintenance obligations over its portion of the leasehold.

LSP and the Authority were mutually represented in the lease negotiations by the law firm of Barclay Damon. Project Development, Real Estate, and Legal staff have reviewed the terms and believe them to be reasonable.

The Authority's Real Property Expenditure Authorization Procedures require the Trustees' approval of any lease of real property where the annual rental value exceeds \$100,000 or the term is longer than ten (10) years.

FISCAL INFORMATION

In anticipation of the acquisition of property rights from National Grid, a cumulative spend of \$275.1M for this Project was approved by the Board of Trustees on May 21, 2019 and December 11, 2019, as part of the 2020-2023 Approved Budget and Financial Plan.

No additional funding authorization is required beyond the previously approved requests. Rate recovery of Project costs, including the lease, was authorized by FERC In November 2019.

RECOMMENDATION

The Vice President – Project and Business Development recommends that the Trustees approve the entry into a 99-year lease, with National Grid as grantor and LS Power Grid New York Corporation 1 ('LSP').

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

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 authorize the President and Chief Executive Officer and the Executive Vice President and Chief Commercial Officer – Commercial Operations to enter into a lease with National Grid as grantor and LS Power Grid New York Corporation 1 ("LSP") as co-tenant, for approximately 2,124 acres of transmission line right-of-way and appurtenant property located in Oneida, Herkimer, Montgomery, Schenectady and Albany counties on substantially the terms set forth herein, subject to approval of lease documents by the Executive Vice President and General Counsel or his designee; and be it further

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

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are,

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

f. Canal Corporation

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

The President and Chief Executive Officer submitted the following report:

SUMMARY

The Board of Directors' are requested to approve the award and funding of the multiyear procurement (services) contracts listed in Exhibit '5g i-A,' in support of projects and programs for the Canal Corporation's Business Units/Departments and Facilities. Detailed explanations of the recommended awards and extensions, including the nature of such services, the basis for the new awards if other than to the lowest-priced, lowest total cost of ownership or 'best value' bidders and the intended duration of such contracts, or the reasons for the extension and the projected expiration dates, are set forth in the discussion below.

BACKGROUND

Section 2879 of the Public Authorities Law and the Canal Corporation's Guidelines for Procurement Contracts require Board of Directors' ('Board') approval for procurement contracts involving services to be rendered for a period in excess of one year.

The Canal Corporation's Expenditure Authorization Procedures ('EAPs') require Board approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts in excess of \$6 million, as well as personal services contracts in excess of \$2 million if low bidder or best value, or \$1 million if sole-source, single-source or other non-competitive awards.

The Canal Corporation's EAPs also require Board approval when the cumulative change order value of a personal services contract exceeds \$500,000, or when the cumulative change order value of a non-personal services, construction, equipment purchase, or non-procurement contract exceeds the greater of \$6 million or 25% of the originally approved contract amount not to exceed \$6 million.

DISCUSSION

Awards

The Board is requested to approve the award and funding of the multiyear procurement (services) contracts listed in Exhibit '5g i-A,' where the EAPs require approval based upon contract value or the terms of the contracts will be more than one year. Except as noted, the Exhibit '5g i-A' contracts contain provisions allowing the Canal Corporation to terminate the services for the Canal Corporation's convenience, without liability other than paying for acceptable services rendered to the effective date of termination. Approval is also requested for funding all contracts. Except as noted, these contract awards do not obligate the Canal Corporation to a specific level of personnel resources or expenditures.

The issuance of multiyear contracts is recommended from both cost and efficiency standpoints. In many cases, reduced prices are negotiated for these long-term contracts. Since these services are typically required on a continuous basis, it is more efficient to award long-term contracts than to rebid these services annually.

Extensions

Although the firms identified in Exhibit '5g i-B' have provided effective services, the issues or projects requiring these services have not been resolved or completed and the need exists for continuing

these contracts. Board approval is required because the terms of these contracts will exceed one year including the extension, the term of extension of these contracts will exceed one year and/or because the cumulative change-order limits will exceed the levels authorized by the EAPs in forthcoming change orders. The subject contracts contain provisions allowing the Canal Corporation to terminate the services at the Canal Corporation's convenience, without liability other than paying for acceptable services rendered to the effective date of termination. These contract extensions do not obligate the Canal Corporation to a specific level of personnel resources or expenditures.

Extension of the contracts identified in Exhibit '5g i-B' is requested for one or more of the following reasons: (1) additional time is required to complete the current contractual work scope or additional services related to the original work scope; (2) to accommodate an Canal Corporation external regulatory agency schedule change that has delayed, reprioritized or otherwise suspended required services; (3) the original consultant is uniquely qualified to perform services and/or continue its presence and rebidding would not be practical or (4) the contractor provides proprietary technology or specialized equipment, at reasonable negotiated rates, that the Canal Corporation needs to continue until a permanent system is put in place.

The following is a summary of each recommended contract award and extension.

Contract Awards in Support of Business Units/Departments and Facilities:

Strategic Planning – Empire Line

The proposed single source, personal services contract with **Clarkson University ('Clarkson')** would provide design services for the Ice Jam Warning and Monitoring System project. The Ice Jam Warning and Monitoring System project will ultimately develop an 'Operational Model' to predict the location of ice jams in the canal system so that emergency managers can effectively issue ice jam warnings. The first step in the project is to install monitoring equipment and to develop a 'Scenario Model' from existing and newly gathered data on prior ice jam formations. The Scenario Model will then be used to develop the Operational Model as a tool that can predict future ice jams. The contract is for an intended term of twenty-four months with an option of twelve additional months, subject to Boards' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$491,493.

Utility Operations – Power Supply

Due to the need to meet and maintain Canal Corporation's ('Canals') project schedule, the proposed non-procurement contract with the **City of Rochester ('COR')** for the replacement of the Canal Corporation's portion of the West River Wall Improvements – Phase I project in accordance with the '*Funding Agreement Between the New York State Canal Corporation and the City of Rochester*' effective September 1, 2020, subject to the Board's approval, in accordance with the Canal's Guidelines for Procurement Contracts and EAP's. The West River Wall is located along the west side of the Genesee River, the site extends from Corn Hill Landing south to the Ford Street Bridge in the City of Rochester. Canal's currently owns the wall and the immediate river frontage. Heavy vegetation and trees are present along the back side of the wall creating a physical and visual barrier between the adjacent Corn Hill Neighborhood and the Genesee River view shed. This project has been identified as part of the 'ROC the Riverway' initiative, a plan to revitalize the severely underutilized Genesee Riverfront. The City of Rochester competitively bid the project 'West River Wall Improvements – Phase I', C05980 in accordance with their procurement guidelines. The City of Rochester awarded the construction contract to Ramsey Constructors, Inc. of Lakeville, NY. The Award Letter is on file and available upon request. Staff recommends issuing a non-procurement contract to COR pursuant to the cost-sharing funding agreement effective September 1, 2020. The contract is for an intended term of eighteen months, subject to Boards' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$4.2 million.

Utility Operations – Power Supply

Due to the need to meet and maintain Canal Corporation's project schedule, the proposed single source personal services contract with **Synthesis Architects LLP ('Synthesis') (4400005376)** would provide design and construction support services related to Phase 1 of the rehabilitation of Historic Guy Park Manor in the City of Amsterdam, Montgomery County, New York, effective November 10, 2020, with an initial interim award amount of \$200,000, subject to the Board's approval, in accordance with the Canal's Guidelines for Procurement Contracts and EAP's. Guy Park Manor is located on Canal land adjacent to Lock E-11 and is listed on the National Register of Historic Places. The building was severely damaged by flooding in 2011 and was later stabilized. The Canal Corporation will make site and utility improvements, construct flood hazard mitigation measures, and rehabilitate the building in a Phase 1 construction contract that will be partially reimbursable by FEMA. Future site and interior building work are planned for a Phase 2 redevelopment project under the 'Reimagine the Canals' initiative, a new initiative announced by Governor Cuomo in 2020. A Waiver of Competition memo has been signed. It contains a detailed justification and indicates that Synthesis is experienced in the restoration of historic buildings and has been the designing architect on the project since September 2014. Synthesis was selected at that time by the NYS Office of General Services and assisted the Corporation when it was a subsidiary of the NYS Thruway Authority. The contract is for an intended term of three years, subject to Boards' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$589,000. It should be noted that Synthesis is a Small Business Enterprises.

Utility Operations – Waterway Infrastructure

Due to the need to meet and maintain Canal Corporation's project schedule, the proposed personal services contract with **Ove Arup & Partners PC ('OAP') (4500324438)** would provide engineering design services for the Pedestrian Bridge at Brockport Guard. The contract will be effective December 7, 2020, with an initial interim award amount of \$200,000, subject to the Board's approval, which is hereby requested. The Pedestrian Bridge at Brockport Guard Gate is one of the economic development projects under the 'Reimagine the Canals' initiative, a new initiative announced by Governor Cuomo in 2020. The Erie Canal runs through the Village of Brockport, New York, separating the SUNY Brockport campus on the south side of the canal from the Empire State Trail on the north side. The new bridge and associated improvements will connect the SUNY campus to the trail, and provide the missing link in a trail loop, enabling sites within the Village of Brockport and the SUNY Brockport campus to be connected. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Twenty-six firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Twelve proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Approval is also requested for the amount expected to be expended for the five-year term of the contract, \$1.6 million.

Extensions and/or Additional Funding Requests:

Utility Operations – Construction, Engineering and Maintenance

On November 20, 2019, Canal Corporation issued seven-month construction services contract to **O'Connell Electric Company, Inc. ('OEC') (4400004588)** in the amount of \$2,442,599.15 for the rewiring, drainage improvements and miscellaneous work at Locks CS-2 and CS-3. Due to COVID-19 pandemic this project was previously extended until September 25, 2020. The project is substantially complete at this time, but the remaining items of work consist of landscaping that may be required to be done next spring and miscellaneous punch-list items at the locks. Staff requests Board approval for an additional extension including interim approval for the period September 25, 2020 thru December 9, 2020, with an updated end date of June 30, 2021. No additional funding is being requested at this time.

Utility Operations – Technical Services

On October 7, 2019, the Canal Corporation issued one-year non-personal services contract to **Ardem, Inc. ('Ardem') (4400004452)** in the amount of \$69,080 to provide scanning and indexing services to Canal Corporation to digitize the Barge Canal Final Estimate book folios. This service ensures that critical design and construction information can be used in the field and offices by Canal personnel and consultants in a timely and convenient manner, reducing costs to projects and operations. Due to COVID-19 pandemic the project was put on hold for three months which put the project behind schedule. Staff requests Board approval for the extension of the scanning services for an additional three-month extension, including interim approval for the period October 6, 2020 thru December 9, 2020, with an updated end date of December 31, 2020. No additional funding is being requested at this time. Ardem is both a NYS certified Minority-owned Business Enterprises and a Small Business Enterprises.

FISCAL INFORMATION

Funds required to support contract services for various Business Units/Departments and Facilities have been included in the 2020 Approved Operating or Capital Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years. Payment will be made from the Operating or Capital Fund, as applicable.

Funds required to support contract services for capital projects have been included as part of the approved capital expenditures for those projects and will be disbursed from the Capital Fund in accordance with the project's Capital Expenditure Authorization Request, as applicable.

RECOMMENDATION

The Senior Vice President – Operations Support Services and Chief Engineer; the Senior Vice President – Power Supply; the Senior Vice President – Strategy and Corporate Development; the Vice President – Strategic Supply Management; the Vice President – Project Management; the Vice President – Planning Empire Line; the Deputy Director of Construction, Engineering and Maintenance; the Director of Design and Director of Canal Technical Services; recommend that the Boards approve the award of multiyear procurement (services) and other contracts to the companies listed in Exhibit '5g i-A,' and the extension and/or funding of the procurement (services) contracts listed in Exhibit '5g i-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."

On motion made and seconded, 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 Canal Corporation, the award and funding of the multiyear procurement services contracts set forth in Exhibit '5g 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 Canal Corporation, the contracts listed in Exhibit '5g 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 Canal Corporation are, and each of them hereby is, authorized on behalf of the Canal Corporation to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

g. Governance Matters

i. Approval of the Minutes:

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

On motion made and seconded, the Minutes of the Regular Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held on September 23, 2020 was unanimously adopted.

6. Introduction of New Chief Information Security Officer

President Quiniones asked Robert Piascik, Senior Vice President & Chief Information Officer to introduce the Authority's new Cyber Security Officer. Mr. Piascik introduced, Mr. Eric Meyers, the Authority's new Vice President and Chief Information Security Officer to the Board. He said that Mr. Meyers is a New York native and has profound cyber experience, process control and risk management from DuPont and Corning. At NYPA, he will focus on strategic thinking, helping the Authority to continue to advance and foster its relationships with the federal and state governments and the Authority's industry partners. Thirdly, Eric will continue to build the capabilities that NYPA has in cyber operations.

In response, Mr. Meyers said that he is excited to join NYPA. He said NYPA is an organization that he has tremendous passion for and started following NYPA long before he even applied for the job. As it relates to the EVolve New York program, he said he is excited to be a part of helping with this transformation how the Authority deliver green energy to New York State.

He continued that as Mr. Piascik mentioned, he had lengthy careers with both Dupont and Corning, the manufacturing sector, in a variety of different roles. The nature of those businesses brought about a very clear perspective that he can bring to this role, because our greatest security challenge is often coincided with financial downturns, and that really gives us the opportunity to be innovative and creative, and very energizing in how we solve some of those tough problems.

He ended by saying that he is very happy to be at NYPA and looking forward to getting to know everyone better.

Chairman Koelmel welcomed Eric saying that he looked forward to working with him and thanked Rob Piascik for the great work he did in filling an incredibly important role with another top addition to the team.

7. Board Resolution – Kimberly Harriman

Chairman Koelmel said that it is always with mixed emotions when our best and brightest moves on as they pursue their professional path. He said that Kimberly Harriman is leaving the Authority. He said that the Board is very appreciative of the great work Kim has done with and for the Authority over a relatively short period of time. He said Kim joined the Authority in 2016 and was tapped to lead the charge to help navigate the assimilation-integration combination and/or acquisition transaction associated with the Authority acquisition of the Canal Corporation. In that regard, the Board is proud of NYPA as an organization, and much of that is attributed to Kim's leadership on that project, as well as the many other initiatives she quarterbacked for NYPA over the last four years. He then asked President Quiniones to share a few thoughts as well.

President Quiniones said he always call Kim as our "Swiss Army knife." She is our utility player, as in baseball, she can be in any base when we need a position player. Ms. Harriman started managing the canal transition and integration when the State decided to transfer the New York State Canals to NYPA. She then managed the Authority's government relations, regulatory activities, environmental justice, and sustainability program. She also subbed for a stint at the governor's office to be Acting Deputy Secretary for energy and the Environment. In addition, she managed the grid modernization initiative of the state at the Public Service Commission. She was in charge of multiple rolls and she delivered was always willing to tackle those challenges. He ended by saying that he thanked her for her service and recommended that the Board approve the attached resolution (Exhibit 6-A).

In response Ms. Harriman thanked the Chairman Koelmel and President Quiniones for their remarks. She said that it has been a real pleasure working at the Authority for the last four years. She has learned a tremendous amount every time she got to work on a different project, with a different team. She said that she wanted to thank President Quiniones for bringing me to NYPA, Justin Driscoll for all his support and, especially the Public and Regulatory Affairs team, especially Lisa Wanesly, Joseph Leary, Steve Ramsey, Andy Antanori, and Jay Goodman who just hits it out of the park each and every time. Most importantly, she wanted to thank everyone at NYPA who met her and became a friend. She ended by saying that she looks forward to watching everything that NYPA has coming its way, especially with Vision 2030. She also looks to bring all the things that she learned at NYPA to her new position at Avon Grid.

Chairman Koelmel said that he wished Kim and her family nothing but the best, not only in the near-term, but as her professional career continues to evolve. Chairman Koelmel then ask for a motion in support of the resolution and acknowledgment and gratitude for Kim's many contributions to NYPA. He said that she is definitely leaving us in a better place than she found when she joined four and-a-half years ago.

On motion made by Trustee McKibben and seconded by Vice Chair Nicandri, the attached Resolution was unanimously adopted.

8. Next Meeting

The regular joint meeting of the New York Power Authority's Trustees and the Canal Corporation's Board of Directors will be held on January 26, 2021, unless otherwise designated by the Chairman with the concurrence of the Trustees.

Closing

On motion made by member Dennis Trainor and seconded by member Tracy McKibben, the meeting was adjourned at approximately 12:08 p.m.

Karen Delince

Karen Delince
Corporate Secretary

January 26, 2021

6. Next Meeting

The Annual joint meeting of the New York Power Authority's Board of Trustees and the Canal Corporation's Board of Directors will be held on March 30, 2021, unless otherwise designated by the Chairman with the concurrence of the members.