

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

**September 28, 1999**

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Minutes of the regular meeting of the Power Authority of the State of New York held at the Albany Office at 11:00 a.m.

Present: Clarence D. Rappleyea, Chairman  
Louis P. Ciminelli, Trustee  
Gerard D. DiMarco, Trustee  
Frank S. McCullough, Jr., Trustee  
Hyman M. Miller, Trustee

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|                       |   |
|-----------------------|---|
| Eugene W. Zeltmann    | President and Chief Operating Officer                             |
| David E. Blabey       | Executive Vice President, Secretary and General Counsel           |
| Robert A. Hiney       | Executive Vice President - Project Operations                     |
| Vincent C. Vesce      | Executive Vice President – Corporate Services and Human Resources |
| Louise M. Morman      | Senior Vice President – Marketing and Economic Development        |
| John F. English       | Senior Vice President – Corporate Planning                        |
| H. Kenneth Haase      | Senior Vice President - Transmission                              |
| Michael H. Urbach     | Senior Vice President and Chief Financial Officer                 |
| James Knubel          | Senior Vice President and Chief Nuclear Officer                   |
| Daniel Berical        | Vice President – Policy & Governmental Affairs                    |
| John M. Hoff          | Vice President – Procurement and Real Estate                      |
| Russell Krauss        | Vice President - Chief Information Officer                        |
| Michael Petralia      | Vice President – Public Affairs                                   |
| Carmine J. Clemente   | Deputy General Counsel  |
| Gary Paslow           | Executive Deputy Policy Development                               |
| James J. McCarthy     | Regional Manager – Central New York                               |
| Angelo Esposito       | Director – Energy Services Division                               |
| Jules G. Franko       | Director – Nuclear Procurement                                    |
| John B. Hamor         | Director – Intergovernmental Relations                            |
| William V. Slade      | Director – Environmental Programs                                 |
| James H. Yates        | Director – Business Marketing & Economic Development              |
| George W. Collins     | Treasurer   |
| Allison Shea          | Sr. Attorney  |
| Anne Wagner-Findeisen | Deputy Secretary  |
| Vernadine Quan-Soon   | Senior Assistant Secretary  |
| Laura Badamo          | Assistant Secretary   |

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Chairman Rappleyea presided over the meeting. Executive Vice President, Secretary and General Counsel Blabey kept the Minutes.

**1. Approval of the Minutes**

The minutes of the Regular Meeting held on August 24, 1999 were approved.

**2. Financial Report for the Eight Months Ended August 31, 1999**

*Following Mr. Urbach's presentation of the Financial Reports, Trustee Miller inquired as to how, for reporting purposes, an unrealized loss is treated as an expense. Mr. Urbach explained that when interest rates rise, the market value of all bonds generally decreases, so that the value of the NYPA bond portfolio will go down as well. However, as the bonds approach maturity, such "losses" turn into unrealized gains. He added that NYPA is holding only about \$1 millions in bonds purchased above par. In response to further questions from Trustee Miller concerning accounting methodology, Mr. Urbach explained that as a governmental entity, the Authority is subject to certain specific accounting requirements.*

**3. Report from the President and Chief Operating Officer**

*At President Zeltmann's request, Mr. Knubel briefed the Trustees on the progress of the ongoing IP3 refuel outage, then in its 17<sup>th</sup> day. Mr. Knubel stated that he anticipates meeting the 45-day outage schedule, and it even appears that the outage might be completed in less than 40 days, although some fuel handling issues and cleaning of the reactor vessel internals had caused a 14-hour schedule lag. Otherwise, Mr. Knubel reported, the outage is on target, and radiation exposure levels are some 10% less than forecasted. Mr. Knubel complimented the IBEW workers from other NYPA facilities who came in to assist with the outage and noted that they are adding value to the effort and contributing to its success.*

*President Zeltmann stated that he had attended the Continuing Legal Education seminar sponsored by the Authority's General Counsel and the Law Department, where a wide variety of topical legal issues were addressed by both internal and external experts. President Zeltmann indicated that he found the legal program both stimulating and informative.*

*President Zeltmann stated that he had also attended NYPA customer meetings convened by the Marketing & Economic Development department and had observed the number of positive comments made about the Authority. Also of import to report was Praxair's annual "Partners in Quality Leadership" awards ceremony which he and the Chairman had attended as recipients of a national award (resulting from Praxair's evaluation and annual ranking of all of the vendors from whom it purchases electricity). President Zeltmann explained that NYPA had tied with another vendor for a score of 56 points of a total possible 58 points and he complimented Ms. Morman and her staff on an outstanding job.*

*At President Zeltmann's request, Mr. Krauss then briefed the Trustees on the current status and developments in the ongoing Year 2000 Program effort. In particular, Mr. Krauss reported that, with respect to*

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*the "Readiness Scorecard," there are currently 27 "open" systems which are changing, and therefore, will undergo recertification; another 50 or so systems have been successfully recertified.*

*Mr. Krauss then reported on the nationwide NERC readiness drill, which had been conducted over September 8 and 9 and had involved some 20,000 participants. NYPA's command center had been the WPO, and both Chairman Rappleyea and President Zeltmann were trained in the use of the satellite telephones. Overall, the drill was a success and Mr. Krauss summarized the eight Key Results issued by NERC: notably, that there is an overall state of readiness on the part of North American bulk electric systems to operate into the year 2000. Trustee Miller inquired whether there remain any "unknown" systems within NYPA's Inventory. Mr. Krauss responded in the negative, explaining that all existing NYPA systems have been tested, and that the only "unknowns" which could still arise would be in connection with the acquisition of an entirely new computer system.*

**4. Annual Review of Job Commitments**

The President submitted the following report:

SUMMARY

“Each year Power Authority staff initiates a review of all business power allocations and the customers' performance against agreed upon job commitments. In 1998, the Power Authority had 288 contracts with business customers. This year's review covers a total of 277 contracts that require the customer to report job levels for 1998. The following Trustee item focuses specifically on 22 contracts (10 Expansion Power, 7 Replacement Power, and 5 Economic Development Power) with 18 customers. Thirteen of these customers had job commitments below the minimum threshold in 1997. One customer is being reviewed for productivity reasons.

“The contracts contain a customer commitment, to retain or add a specific number of jobs. If the actual job level falls below 90% of that commitment, (80% for ‘vintage’ customers), the Power Authority may reduce that customer's power allocation proportionately.

“It is recommended that the Trustees reduce the power allocation and job commitments for 3 companies, reduce the job commitments only for 2 companies with a shortfall because they are at the minimum power allocation already, grant termination authority for 2 companies, approve the continuation of current power allocations to 11 companies that were below their job commitment levels, and adjust the future job commitment levels for 1 company that has made productivity improvements.

BACKGROUND

“In 1998, the 277 contracts reviewed by staff represent overall power allocations of 1,006.217 MW and total employment commitments of 133,787 jobs. In the aggregate, these customers reported actual employment of 149,232 jobs. This represents 111.5% of the total job commitment for industrial customers reporting in 1998. Nevertheless, there are 17 customers whose actual job levels are below the minimum threshold.

DISCUSSION

“Of the companies reviewed in this Item, staff recommends that 7 companies have their power allocations and/or job commitments reduced for the reasons discussed in Section I and I-A. Staff recommends that 11 companies be allowed to continue their current power allocations and job commitments as discussed in Section II. Note, that one company has a contract with a recommendation to reduce their power allocation and job commitment, as well as, a contract with a recommendation to make no changes. Finally, Staff recommends that 1 company be allowed to maintain their power allocation at a lower job commitment level to reflect productivity improvements as discussed in Section III. A summary of all contracts discussed in this memorandum is provided as Exhibit ‘4-A’.

**Section I.**

**Allocations and Job Commitments to Be Reduced**

**Freezer Queen Foods, Inc.**, Buffalo, Erie County

**Allocation:** 580 kW of Replacement Power and 508 jobs  
1,400 kW of Expansion Power and 387 jobs

**Background:** Freezer Queen Foods Inc., manufactures and markets frozen dinners and frozen entrees. All of the company's manufacturing and administrative functions are performed at the Buffalo facility. In 1998 the company's average employment level fell to 318 jobs, 62% of its Replacement Power job commitment and 82% of its Expansion Power commitment. The company reports that it is beginning to lose market share and have implemented productivity improvements following industry trends to maintain and/or lower costs. Freezer Queen forecasts that employment levels will increase because of these productivity improvements.

**Recommendation:** Staff recommends that the Trustees reduce Freezer Queen's Replacement Power Allocation to 360 kW and their employee commitment from 508 to 318 jobs and take no action on their Expansion Power allocation.

**Habasit Belting, Inc.**, Buffalo, Erie County

**Allocation:** 250 kW Replacement Power and 215 jobs  
250 kW Replacement Power and 207 jobs

**Background:** Habasit Belting, which has two Replacement Power allocations, manufactures ferro alloys. In 1998 the company averaged 168 jobs, 81% and 78% respectively of its commitment levels. Habasit is currently at the 250 kW minimum allocation. The company has taken a variety of approaches to retain their business including capital improvements, employee training, employee education, job combinations and attrition. They expect to return to a competitive position with their ongoing improvements.

**Recommendation:** Staff recommends that the Trustees reduce Habasit Belting's employee commitment on both its Replacement Power allocations by 45 and 37 jobs respectively, adjusting the job commitment levels to 170 positions each.

**Occidental Chemical Corporation**, Niagara Falls, Niagara County

**Allocation:** 16,000 kW of Replacement Power and 1232 jobs

**Background:** Occidental Chemical is a world leader in producing the essentials for a vast number of products from agriculture to plastics. Occidental Chemical had a 1998 average employment level of 858 jobs, 70% of their job commitment. However, Occidental is making a commitment in New York State by investing \$200 million in its Specialty Chemicals division. Occidental has been reported before to the Trustees for lower job levels than their commitment.

**Recommendation:** Staff recommends that the Trustees reduce Occidental's job commitment from 1,232 positions to 830 positions (actual December 1998 employment level) and reduce the Replacement Power allocation by 2,400 kW to 13,600 kW.

**Trico Products Corporation**, Buffalo, Erie County

**Allocation:** 250 kW Expansion Power and 350 jobs

**Background:** Trico Products Corp., is a manufacturer of windshield wipers. In 1998, Trico's monthly employment average dropped to 252 jobs, 72% of its commitment. The power allocation to Trico is already at the minimum allocation amount for Expansion Power. Empire State Development Corporation ("ESDC") has offered Trico support to help the company stay in business and remain competitive. In June of 1998, the ESD awarded Trico a package of state incentives valued at \$750,000, including grants to be used towards facility

renovations and acquisitions and job retention and creation. One grant is supporting the creation of 30 new jobs by 2001.

**Recommendation:** Staff recommends that the Trustees reduce Trico's employee commitment by 100 jobs, adjusting the job commitment level to 250 positions.

**Westwood Squibb Pharmaceuticals, Inc.**, Buffalo, Erie County

**Allocation:** 500 kW of Replacement Power and 657 jobs

**Background:** Westwood Squibb is a pharmaceutical company engaged in R&D and production of dermatologicals. In 1998, the company's employment level was 564 jobs, 86% of its job commitment. The company was reported to the Trustees last year for a lower job level than their commitment. During the first half of 1999 the company's employment level fell to 300.

**Recommendation:** Staff recommends that the Trustees reduce the Replacement Power allocation to 250 kW and reduce the job commitment from 657 positions to 329 positions.

**Section I-A.**

**Allocations Requesting Special Trustee Authorization**

**Buffalo Specialty Products**, Niagara Falls, Niagara County

**Allocation:** 900 kW of Expansion Power and 90 Jobs

**Background:** Buffalo Specialty Products made custom guardrails, bridge and foot decking products. Their assets were recently bought by Trinity Industries. The guardrail production, which was the primary product of Buffalo Specialty Products, is no longer produced by Trinity Industries in the Buffalo facility. As a result the employment level has dropped off considerably from last year's average employment level of 76 jobs, 84% of their commitment. 1998's average employment level was 43 jobs, 48% of their commitment.

**Recommendation:** Staff recommends that the Trustees authorize the Authority the ability to terminate the contract if no contract is in place within 90 days. It is recommended that the Authority contact Trinity Industries to develop a contract to transfer the Expansion Power Allocation from Buffalo Specialty Products to Trinity Industries. If the transfer occurs then it is recommended that the job commitment and the allocation be reduced commensurate with the needs of the company.

**CMP Publishing Inc. ('CMP')**, Hicksville, Nassau County

**Allocation:** 600 kW of Economic Development Power and 860 jobs

**Background:** CMP is a high technology publishing and information company. The company had an average employment level of 736 jobs in 1998, 86% of their job commitment. However, CMP has repeatedly rebuffed NYPA's attempts to audit its employment records. This is in direct conflict with the company's contractual obligation. It was reported in May 1999 that the company had been sold to Miller Freeman, although CMP refuses to discuss the acquisition or its impact on employment.

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**Recommendation:** Staff recommends that the Trustees authorize the Authority to begin to take the necessary steps to terminate CMP's contract if the company refuses to allow NYPA auditors to review its employment records within the next 90 days.

**Section II.**  
**Allocations to Continue With No Change**

**Allied Signal Inc.**, Buffalo, Erie County

**Allocation:** 300 kW of Replacement Power and 168 jobs

**Background:** Allied Signal is the largest manufacturer of copper clad laminates in the world. Copper clad laminate is used in print circuit boards in the electronics industry. In 1998, the company offered a retirement package and their job level slipped to 146 jobs, 87% of their commitment. However, numerous new positions will be coming to the facility in 1999 from their New Jersey facility. Further, their recent announcement indicated that an Allied Facility in Illinois would be moved to Buffalo.

**Recommendation:** Staff recommends that the Trustees take no action.

**Buffalo Newspress Inc.**, Buffalo, Erie County

**Allocation:** 250 kW of Expansion Power and 200 Jobs

**Background:** Buffalo Newspress Inc., is a high-quality publication printer. In 1998 the company's employment rate averaged 178 jobs, 89% of their commitment. The company was at 100% of its commitment for the last quarter of 1998. The company only has to add one position to meet its employment commitment.

**Recommendation:** Staff recommends that the Trustees take no action.

**Carborundum Microelectronics**, Sanborn, Niagara County

**Allocation:** 900 kW of Replacement Power and 35 jobs

**Background:** Carborundum Corporation – Microelectronics Division, produces microelectronic components. This is the first time that the company has reported jobs below their commitment. The company division had an average employment level in 1998 of 22 jobs, 63% of their job commitment. It appears that they need more time to ramp up to the commitment level, as all the other divisions of Carborundum met their commitment.

**Recommendation:** Staff recommends that the Trustees take no action.

**Fairbank Farms**, Ashville, Chautauqua County

**Allocation:** 700 kW of Expansion Power and 100 jobs

**Background:** Fairbank Farms is a family owned and operated meat processing and distribution company. In 1998, the company's employment rate averaged 83 jobs or 83% of their job commitment. Staff has been in contact with Fairbank Farms and they have demonstrated that they're expanding their business and product lines. In the second quarter of 1999 the company has increase employment to 115 employees. This increase brings them over 100% of their job commitment.

**Recommendation:** Staff recommends that the Trustees take no action.

**LeRoy Industries Inc.**, LeRoy, Genesee County

**Allocation:** 900 kW of Economic Development Power and 212 jobs

**Background:** LeRoy Industries, Inc. is a manufacturer of automobile and light truck spindles and knuckles, which attach the wheel to the axle. In 1998 the company's employment rate averaged 174 jobs or 82% of their job commitment. Staff has been notified that the company is for sale. Staff will monitor this situation.

**Recommendation:** Staff recommends that the Trustees take no action at this time pending the sale of the company.

**Lipe-Rollway Corporation**, Liverpool, Onondaga County

**Allocation:** 1,000kW of Economic Development Power and 280 jobs

**Background:** Lipe-Rollway Corporation manufactures a broad range of bearing and bar feed attachment for machine tools. In 1998, the company averaged 243 jobs, 87% of their commitment. Staff has contacted the company and for April through June 1999 the company is up to 92% of their job commitment.

**Recommendation:** Staff recommends that the Trustees take no action.

**Ruco Polymer Corporation**, Hicksville, Nassau County

**Allocation:** 650 kW Economic Development Power and 108 jobs

**Background:** Ruco Polymer manufactures polyester compounds that are used to provide specific color and surface characteristics in coating molding and adhesives. The wide variety of finished products incorporating Ruco polymers includes reflective highway signs, spandex elastic, automotive and appliance finishes and shoes. The company had an average employment level in 1998 of 94 jobs, 87% of their job commitment or, in terms of jobs, only two positions off the requisite number of jobs.

**Recommendation:** Staff recommends that the Trustees take no action.

**SGL Carbon Corporation**, Niagara Falls, Niagara County

**Allocation:** 3200 kW of Expansion Power and 188 jobs

**Background:** SGL Carbon Corporation, the product of several mergers in 1992 and 1993 is a world leader in the production of carbon and graphite. Particularly, the company in North America focuses on specialty graphite. SGL Carbon Corporation has a 'vintage' contract for its Expansion Power. In 1998 their average employment level was 158 jobs with the last quarter showing a steady increase in jobs. This level figured alone is 84% of the company's job commitment, a full four percentage points above the requisite 80%. However, vintage contracts use the average employment levels of the last two years. In 1997 the company's average employment level was 137 jobs. The two figures taken together create an average of 147 jobs, 78% of the job commitment.

**Recommendation:** Staff recommends that the Trustees take no action.

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**Steuben Foods Corporation,** Alma, Erie County

**Allocation:** 5,000 kW of Expansion Power and 500 jobs

**Background:** Steuben Foods is a leading developer and processor of milk-based aseptic beverages and desserts in the United States. In 1998, Steuben maintained an average monthly employment rate of 385 jobs, 77% of its employment commitment. This is the third year in a row that Steuben Foods has been reported to the Trustees for lower job levels than their commitment. Steuben's contract manufacturing business has no control of the sales and marketing of a product which has a typical success rate of one in ten reaching the national marketplace and, as a result, recent customer turnover has affected employment levels. Steuben has an ambitious investment program of \$13.5 million in the next twelve months and expects to meet power usage and employment commitments sometime in 2000 based upon current projections of continuing and new business and capital investment projects. Steuben's monthly employment data for the first half of 1999 has ranged up to 445 jobs.

**Recommendation:** Staff recommends that the Trustees take no action and require Steuben to formally report their job commitment status every six months through December 31, 2000.

**World Class Film,** Yonkers, Westchester County

**Allocation:** 1,900 kW of Economic Development Power and 130 jobs

**Background:** World Class Film makes polyethylene film rolls, sheeting and bags. The company's 1998 job level dropped to 97 positions, 75% of its commitment level. World Class Films has recently invested \$15 million in new equipment. In 1999 they anticipate a capital investment of \$3 million. In the coming year they anticipate new employment to increase to the agreement's job commitment level.

**Recommendation:** Staff recommends that the Trustees take no action.

**Section III.**

**Allocations To Continue With Job Commitment Changes For Productivity Improvements**

**Dunlop Tire and Rubber Corporation,** Buffalo, Erie County

**Allocation:** 6000 kW of Expansion Power and 1,650 jobs  
250 kW of Replacement Power and 1,665 jobs  
4191 kW of Replacement Power and 800 jobs

**Background:** Dunlop Tire and Rubber Corporation manufactures tires for automobiles, motorcycles and trucks at its Buffalo facilities. The company's average employment level in 1998 was 1,416 jobs, 86%, 85% (both replacement power contracts are "Vintage 80%") and 177% respectively, of their job commitment. However, Dunlop has made productivity improvements making their employment needs lower than their contractual commitments.

**Recommendation:** Staff recommends that the Trustees reduce the company's job commitments for all three contracts by 211 positions each.

**RECOMMENDATION**

"The Manager – Business Power Allocations and Compliance and the Director – Business Marketing and Economic Development recommend that the Trustees approve reductions in the power allocations and job

commitments for the three companies as outlined in this item; that the Trustees reduce the job commitments only for two companies as outlined in this item; that the Trustees grant termination authority for two companies; that the Trustees defer action for the 11 other companies specifically addressed in this item; and that the Trustees approve a lowering of the job commitment for one company due to productivity improvements as outlined in this item. In addition, it is recommended that the Trustees authorize the Manager – Business Power Allocations and Compliance to provide written notice to those companies whose power allocations and/or job commitments are being reduced.

“The Senior Vice President – Marketing and Economic Development, the Executive Vice President, Secretary and General Counsel, the Executive Vice President – Power Operations, and I concur in the recommendation.”

The attached resolution, as recommended by the President, was unanimously adopted.

*Trustee McCullough inquired whether staff plans to exercise the Authority’s ability to terminate the allocations. Mr. Yates responded that staff would first ascertain the precise status at each of the recipient facilities. Trustee Ciminelli inquired as to the reason that so many allottees are located within Erie County. Mr. Yates explained that of the overall 277 existing contracts, some 180 contracts are for hydropower, which explains the proximity of so many companies to the Buffalo area.*

**RESOLVED, That the Authority hereby approves the reduction of power allocation and job commitments for three companies; the reduction of the job commitments only for two companies with a shortfall because they are at the minimum power allocation already, grant termination authority for two companies, approve the continuation of current power allocations to 11 companies that were below their job commitment levels, and adjust the future job commitment levels for one company that has made productivity improvements, and be it further**

**RESOLVED, That the Manager – Business Power Allocations and Compliance is hereby authorized to provide written notice to these companies whose allocations and job commitments are being reduced.**

**Exhibit '4-A'**  
**September 28, 1999**

**I. ALLOCATIONS AND JOB COMMITMENTS TO BE REDUCED**

| Company                         | Date of Trustee Approval | Type of Power | Allocation kW | Employment Commitment (# of jobs) | Average 1998 Jobs | Average Annual % | Revised Allocation KW | Revised Jobs |
|---------------------------------|--------------------------|---------------|---------------|-----------------------------------|-------------------|------------------|-----------------------|--------------|
| Freezer Queen Foods, Inc.       | Apr 1994                 | RP            | 580           | 508                               | 318               | 62%              | 360                   | 318          |
| Habasit Belting, Inc.           | Apr 1991                 | RP            | 250           | 215                               | 168               | 81%              | 250*                  | 170          |
| Habasit Belting, Inc.           | July 1986                | RP            | 250           | 207                               | 168               | 78%              | 250*                  | 170          |
| Occidental Chemical Corp.       | Apr 1988                 | RP            | 16,000        | 1,232                             | 858               | 70%              | 13,600                | 830          |
| Trico Products Corporation      | Aug 1991                 | EP            | 250           | 350                               | 252               | 72%              | 250*                  | 250          |
| Westwood Squibb Pharmaceuticals | Apr 1991                 | RP            | 500           | 657                               | 564               | 86%              | 250*                  | 329          |

\* Minimum Allocation

**I-A. ALLOCATIONS REQUESTING SPECIAL TRUSTEE AUTHORIZATION**

| Company                    | Date of Trustee Approval | Type of Power | Allocation kW | Employment Commitment (# of jobs) | Average 1998 Jobs | Average Annual % | Revised Allocation KW | Revised Jobs |
|----------------------------|--------------------------|---------------|---------------|-----------------------------------|-------------------|------------------|-----------------------|--------------|
| Buffalo Specialty Products | Aug 1989                 | EP            | 900           | 90                                | 43                | 48%              | t/b/d                 | t/b/d        |
| CMP Publishing, Inc.       | Feb 1995                 | EDP           | 600           | 860                               | 736               | 86%              | t/b/d                 | t/b/d        |

**II. ALLOCATIONS TO CONTINUE WITH NO CHANGE**

| Company                      | Date of Trustee Approval | Type of Power | Allocation kW | Employment Commitment (# of jobs) | Average 1998 Jobs | Average Annual % Achieved |
|------------------------------|--------------------------|---------------|---------------|-----------------------------------|-------------------|---------------------------|
| Allied Signal, Inc.          | Apr 1989                 | RP            | 300           | 168                               | 146               | 87%                       |
| Buffalo Newspress Inc.       | Jan 1994                 | EP            | 250           | 200                               | 178               | 89%                       |
| Carborundum Microelectronics | Jan 1983                 | RP            | 900           | 35                                | 22                | 63%                       |
| Fairbank Farms               | Apr 1990                 | EP            | 700           | 100                               | 83                | 83%                       |
| Freezer Queen Foods, Inc.    | Aug 1990                 | EP            | 1,400         | 387                               | 318               | 82%                       |
| LeRoy Industries, Inc.       | Jun 1992                 | EDP           | 900           | 212                               | 174               | 82%                       |
| Lipe-Rollway Corporation     | Aug 1993                 | EDP           | 1,000         | 280                               | 243               | 87%                       |
| Ruco Polymer                 | Jan 1992                 | EDP           | 650           | 108                               | 94                | 87%                       |
| SGL Carbon Corporation       | Dec 1988                 | EP            | 3,200         | 188                               | 147               | 78%                       |
| Steuben Foods Corporation    | Aug 1989                 | EP            | 5,000         | 500                               | 385               | 77%                       |
| World Class Film             | Apr 1994                 | EDP           | 1,900         | 130                               | 97                | 75%                       |

**III. ALLOCATIONS TO CONTINUE WITH JOB COMMITMENT CHANGES FOR PRODUCTIVITY IMPROVEMENTS**

| Company                   | Date of Trustee Approval | Type of Power | Allocation kW | Employment Commitment (# of jobs) | Average 1998 Jobs | Average Annual % Achieved | Revised Jobs |
|---------------------------|--------------------------|---------------|---------------|-----------------------------------|-------------------|---------------------------|--------------|
| Dunlop Tire & Rubber Corp | Aug 1989                 | EP            | 6,000         | 1,650                             | 1,416             | 86%                       | 1,439        |
| Dunlop Tire & Rubber Corp | Apr 1991                 | RP            | 250           | 1,665                             | 1,416             | 85%                       | 1,454        |
| Dunlop Tire & Rubber Corp | May 1961                 | RP            | 4,191         | 800                               | 1,416             | 177%                      | 589          |

**EP** = Expansion Power, **RP** = Replacement Power,

**EDP** = Economic Development Power

**5. Job Commitment Revisions and Allocation Modification – Power for Jobs**

The President submitted the following report:

SUMMARY

“The Trustees are requested to approve job commitment revisions to the 3 companies listed in Exhibit ‘5-A’ and a modification to the power allocation awarded to Coca-Cola Bottling Company of New York.

BACKGROUND

“The companies listed in Exhibit ‘5-A’ had been recommended for a Power for Jobs allocation by the Economic Development Power Allocation Board (‘Power Allocation Board’) and approved by the Trustees. Their allocation was based on their commitment to retain or create jobs as indicated in the application they submitted to the Power Allocation Board. Subsequent to Power Allocation Board and Trustee approval but before entering into contract with the Power Authority, the companies have requested that their job commitment be revised to more accurately reflect their existing employment levels. The revisions are mainly due to confusion in accounting for part time and seasonal employees. The job number changes are insignificant in total and do not require changes to the amount of the allocation.

“In addition, the Trustees are requested to approve a modification to the existing power allocation to Coca-Cola Bottling Company of New York (‘Coca-Cola Bottling’). At their meeting on April 28, 1998, the Trustees approved a 2,250 kW allocation to Coca-Cola Bottling for use at various sites in New York City and Westchester County. Subsequent to Trustee approval but before entering into contract with the Power Authority, Coca-Cola Bottling entered into contract with Con Edison, accepting their Industrial Employment Growth Credit for their sites in Elmsford, Westchester County and Maspeth, Queens. As a result, Coca-Cola Bottling is relinquishing 1,000 kW of their Power for Jobs allocation. The remaining 1,250 kW will be reallocated to the various sites in New York City and Westchester County. There is no change to the original commitment of 2,192 jobs.

“Also, at their meeting on September 20, 1999, the Power Allocation Board ratified the allocations to Curtis Screw Corporation and Oberdorfer Industries, which had been approved by the Trustees on June 29, 1999.

RECOMMENDATION

“The Director – Business Marketing & Economic Development and the Manager – Business Power Allocations and Compliance recommended that the Trustees approve the revisions to the job commitments as listed in Exhibit ‘5-A’ the modification to the power allocation awarded to Coca-Cola Bottling Company of New York.

“The Senior Vice President – Marketing and Economic Development, the Executive Vice President, Secretary and General Counsel, and I Concur in the recommendation.”

The attached resolution, as recommended by the President, was unanimously adopted.

**RESOLVED, That the Authority hereby approves the job commitment revisions to the 3 Power for Jobs customers listed in Exhibit “5-A” the modification to the power allocation awarded to Coca-Cola Bottling Company of New York; and be it further**

**September 28, 1999**

**RESOLVED, That the Director – Business Marketing and Economic Development or his designee, be and hereby is authorized to execute any and all documents necessary or able to effectuate the above revisions and modifications.**

**Exhibit '5-A'**  
**September 28, 1999**

| Company              | Allocation<br>(kW) | Jobs As<br>Reported | Jobs As<br>Revised | Change | Revised<br>Jobs/MW |
|----------------------|--------------------|---------------------|--------------------|--------|--------------------|
| Maloya Laser         | 75                 | 20                  | 19                 | -1     | 253                |
| St. Clare's Hospital | 650                | 861                 | 740                | -121   | 1,138              |
| H&E Machinery, Inc.  | 350                | 156                 | 116                | -40    | 331                |
| TOTALS:              |                    | 1,037               | 875                | -162   |                    |

**6. New York City Public Utility Service –  
Allocation of Industrial Power – New York Post**

The President submitted the following report:

SUMMARY

“The Trustees are requested to approve the allocation of 12,000 kW of industrial power to the New York City Public Utility Service (‘NYCPUS’) for resale to the New York Post Holdings, Inc. (‘the New York Post’ or the ‘Post’).

BACKGROUND

“The Authority has reserved a total of 73,160 kW of industrial power for sale to downstate municipal distribution agencies (‘MDA’s’), including NYCPUS, under Service Tariff 35. Of this amount, 50,000 kW is reserved for NYCPUS. This power is resold to industrial consumers designated by the MDA’s and approved by the Authority. NYCPUS has proposed the allocation of 12,000 kW to The New York Post from this block of power.

DISCUSSION

“The New York Post is America’s oldest continuously published newspaper and is one of four major daily newspapers published in New York City. To compete effectively with its competitors, the company is considering plans to begin construction on a new state-of-the-art color newspaper printing plant in the Bronx. The Post has committed to spend approximately \$100 million on real property improvements and \$77 million on machinery and equipment for the new facility which will include four new printing presses and associated equipment needed to manufacture, assemble, and package newspapers for distribution and sale. A reduction in energy costs would assist the Post in its efforts to expand in New York City. NYCPUS has agreed to make the allocation available to the Post for up to 50 years. The Authority will commit the allocation for 20 years, the term approved by the Trustees for recent MDA allocations. However, this is already beyond the term of the Authority’s contract with NYCPUS. The proposed allocation of 12,000 kW would save the company approximately \$1,840,000 annually over Con Edison’s standard rates. In consideration for the allocation, the Post would commit to retain 420 jobs and create an additional 55 jobs over the next three years.

“The proposed allocation has been reviewed in accordance with Part 460 of the Authority’s Rules and Regulations (Procedures for Allocation of Industrial Power and Enforcement of Contracts). The standard power service contract between a business and NYCPUS provides for reductions in the allocation in the event that employment or power usage levels are not maintained at specified levels. Reports regarding employment and affirmative action commitments will be submitted to the Authority by NYCPUS as provided by Part 460.4 of the Authority’s Rules and Regulations and pursuant to the contract between the Authority and NYCPUS.

RECOMMENDATION

“The Manager – Business Power Allocations and Compliance and the Director – Business Marketing and Economic Development recommends that the Trustees approve the allocation of industrial power to NYCPUS for resale to New York Post Holdings, Inc. in the quantity specified herein.

“The Senior Vice President - Marketing and Economic Development, the Executive Vice President, Secretary and General Counsel, and I concur in the recommendation.”

The attached resolution, as recommended by the President, was unanimously adopted.

**September 28, 1999**

**RESOLVED, That the Authority hereby approves the allocation of 12,000 kW of industrial power to the New York City Public Utility Service for resale to New York Post Holdings, Inc., as is described in the foregoing report of the President and substantially in accordance with the terms described in such memorandum; and be it further**

**RESOLVED, That the contract for the resale of industrial power between the New York City Public Utility Service and New York Post Holdings, Inc. is subject to approval by the Director - Business Marketing and Economic Development; and be it further**

**RESOLVED, That the Director - Business Marketing and Economic Development or his designee be, and hereby is, authorized to execute any and all documents necessary or desirable to effectuate the above allocations, subject to approval of the form thereof by the Executive Vice President, Secretary and General Counsel.**

## 7. Power for Jobs - Competitive Procurement

### SUMMARY

“The Trustees are requested to authorize execution of Enabling Agreements with Central Hudson Gas & Electric Corporation, Central Hudson Enterprises Corporation and Niagara Mohawk Energy Marketing Inc. for the purchase of up to 225 MW of firm capacity and energy pursuant to the requirements of the Power for Jobs program.

### BACKGROUND

“On July 29, 1997, Governor George E. Pataki signed into law Section 189 of the Economic Development Law and related legislation, which established the Power for Jobs program. The legislation was subsequently amended on July 15, 1998. The legislation provides lower cost electricity to businesses and not-for-profit corporations throughout the State to stimulate new jobs and create economic opportunities for New Yorkers.

“The Power for Jobs program makes available up to 450 MW of power, to be phased in over a three-year period. The legislation provides for 225 MW of the power to be made available from the Authority's FitzPatrick Plant, and for 225 MW to be purchased from other suppliers pursuant to a competitive procurement process administered by the Authority. For this, the third year of the program, up to 225 MW must be procured from other suppliers.

“This is the fifth Request for Proposals (‘RFP’) for competitively procured power under the Program. It was issued pursuant to the terms of the Power for Job legislation which sets forth the requirements listed below:

- That the competitive procurement process be conducted pursuant to guidelines established by the Economic Development Power Allocation Board (‘EDPAB’) in consultation with the New York State Department of Public Service;
- That the process provide the least cost power consistent with the goal of providing safe and reliable service; and
- That power available through the competitive procurement process be acquired and transmitted at a price not in excess of the price of FitzPatrick power transmitted to the local utilities.

### DISCUSSION

#### **The Bidding Process:**

“The competitive procurement process was carried out in accordance with the Guidelines for Competitive Procurement adopted by the EDPAB at its September 18, 1997 meeting.

“On July 30, 1999, a RFP was issued to over 25 potential bidders identified through a notice announcing the procurement process and a public information campaign. The RFP requested bidders to provide fixed price bids by August 20, 1999 in cents/kWh for the delivery of up to 225 MW of firm capacity and energy to interconnections with the six investor-owned utilities in New York State and LIPA.

“Due to the likely introduction of the New York Independent System Operator (‘NYISO’) as the entity responsible for the operation of the State's transmission system, the Authority requested bids both under the

current New York Power Pool ('NYPP') regime (bids to each of the 7 utility service territories) and the proposed New York Independent System Operator regime (bids to each of the 22 transmission subzones in New York).

"Price bids were requested for the Winter Capability period from November 1 through April 30, 2000. Bidders were given the option of providing bid prices differentiated by time-of-day, by load factor, or by fixed block of power. Bidders were required to meet a number of requirements, including demonstrating their capability of delivering the power and energy to the investor-owned utilities, meeting the NYPP Installed Generation Reserve Requirement; providing financial assurances for meeting their obligations, and providing a statement as to their Y2K readiness.

"On August 11, 1999, a pre-bid conference was held to answer questions from potential bidders. On August 20, 1999, four bidders submitted 15 bids in response to the RFP.

### **Bid Evaluation**

"Bids were submitted by Central Hudson Gas & Electric Corporation, Central Hudson Enterprises Corporation, Niagara Mohawk Energy Marketing, Inc., and Waste Management, Incorporated (Bio-Energy Partners). The bids were evaluated on the basis of the following criteria:

- Whether the bid met the minimum requirements contained in the RFP;
- The price of the capacity and energy as delivered to each investor-owned utility and the impact of the bid on the overall cost of the Power for Jobs power;
- The financial capability of the bidder to carry out the terms of the Enabling Agreement; and
- The environmental impact of the bidder's power supply (bidders with sources of power supply meeting certain air quality emissions standards were awarded a one mill advantage in the price evaluation).

"The evaluation included requests for additional information and clarification from the bidders. A discussion of each of the proposals is below.

### **Bio - Energy Partners**

"Bio-Energy Partners, an independent power producer from Atlanta, Georgia, proposed to sell 2 MW of power from a landfill-gas fueled reciprocating engine located near Rochester. The interconnection point in the Niagara Mohawk service territory would be at the Edic substation under the NYPP regime and at Zone A West under the NYISO regime. This bidder did not qualify for the environmental credit. Bio-Energy owns and operates 33 small power production facilities throughout the U.S., all of which are fueled by landfill gas. The facilities have a combined capacity of 150 MW. Bio-Energy is a partnership between Waste Management Holdings, Inc. and Caterpillar Financial Service Corporation. Niagara Mohawk Energy Marketing Inc. has committed to provide backup power to Bio-Energy Partners' bid. Bio-Energy is capable of meeting the financial requirements associated with its bid.

### **Central Hudson Enterprises Corporation**

"Central Hudson Enterprises Corporation is a wholly owned subsidiary of the Central Hudson Gas and Electric Corporation. Central Hudson Enterprises Corporation is an unregulated power marketer and energy services company. Under the NYPP regime, its proposed to supply 50 MW in the Niagara Mohawk service territory connecting at the Edic substation and 30MW in the Con Edison service territory connecting at the East

Fishkill substation. Under the NYPP regime, Central Hudson Enterprises Corporation proposed to supply 25 MW each in Zones A and B in the Niagara Mohawk service territory. The power would be provided from an 80 MW combined cycle plant, which is ineligible for the environmental credit. Central Hudson Enterprises is capable of meeting the financial requirements outlined in the RFP.

### **Central Hudson Gas & Electric Corporation**

“Central Hudson Gas & Electric Corporation is an investor owned utility with offices in Poughkeepsie. It proposes to provide between 5 and 80 MW in the Central Hudson, Con Edison, NYSEG, Niagara Mohawk and Orange & Rockland service territories. Bids were submitted under both the NYPP and NYISO regimes. The power would be provided from Central Hudson's natural gas powered units at Danskammer and does not meet the requirements for the environmental credit. Central Hudson is capable of meeting the financial requirements outlined in the RFP and has a longstanding business relationship with the Authority.

### **Niagara Mohawk Energy Marketing Inc.**

“Niagara Mohawk Energy Marketing Inc., formerly Plum Street Energy Marketing, is a wholly-owned, unregulated power marketing subsidiary of the Niagara Mohawk Corporation. It proposes to sell between 10 and 100 MW at locations in the Central Hudson, Con Edison, NIMO, NYSEG, and RG&E service territories. Bids were submitted under both the NYPP and NYISO regimes, and the bid prices are differentiated by load factor. Niagara Mohawk Energy Marketing Inc. is not eligible for the environmental credit. Niagara Mohawk Energy Marketing is capable of meeting satisfying the financial requirements associated with bid.

### **The Recommended Bidders**

“Based on the evaluation of the bids and the proposed pricing, it is recommended that Enabling Agreements be executed with Central Hudson Enterprises Corporation, Central Hudson Gas & Electric Corporation and Niagara Mohawk Energy Marketing Inc. The recommended bidders, the amounts of power and the prices are shown in Table 1 for both the NYPP and NYISO regimes.

“Each of the selected bidders meets the requirements of the RFP, is capable of meeting the financial requirements of the Enabling Agreement and offers the lowest priced bids within the service territories.

### **The Enabling Agreement**

“Enabling Agreements have been negotiated with the recommended bidders. The Enabling Agreements are umbrella option agreements that permit the Authority to draw down power from a winning bidder (Qualified Provider) for delivery to one of the investor-owned utility service territories as allocations are recommended by EDPAB and approved by the Authority. This is done by entering into a ‘Transaction’ which specifies the amount of power and energy, the price, the term, and the delivery point, among other things. In effect, the Enabling Agreements are no-cost options to purchase power that are only exercised as power is needed and a Transaction is initiated. The Authority has no obligation to purchase any power and there are no minimum payments.

“The Enabling Agreement provides that the price bids contained in the Qualified Providers' proposals will be held through April 30, 2000, at which time new bids will be sought. Should a Qualified Provider fail to deliver the power as scheduled by the Authority, the Authority would secure the energy and the Qualified Provider would be liable for any increased cost to the Authority. The Authority can also cancel the Enabling Agreement and bar the Qualified Provider from future Power for Jobs competitive procurement opportunities in the event of non-delivery. Individual Enabling Agreements will remain in effect until April 30, 2000 or until the last Transaction is completed, whichever is later.

FISCAL INFORMATION

“Purchase of capacity and energy from Qualified Providers for the Power for Jobs program will have no net impact on the Authority's finances. The cost of this power will be offset by payments from the investor-owned utilities pursuant to the Purchase and Resale Agreements entered into between the Authority and the investor-owned utilities.

RECOMMENDATION

“The Director of Marketing Planning, the Director of Power Contracts, and the Senior Vice President-Marketing and Economic Development recommend that the Trustees authorize execution of Enabling Agreements with Central Hudson Enterprises Corporation, Central Hudson Gas & Electric Corporation, and Niagara Mohawk Energy Marketing Inc. substantially in the form attached hereto as Exhibit ‘7-A’, and authorize the Senior Vice President - Marketing and Economic Development or her designees to enter into such transactions as contemplated by the Enabling Agreements for the purpose of providing up to 225 MW of capacity and energy for the Power for Jobs program.

“The Executive Vice President, Secretary, and General Counsel, the Executive Vice President – Project Operations, and I concur with the recommendation.”

The attached resolution, as recommended by the President, was unanimously adopted.

**WHEREAS, the Governor of the State of New York signed the Power for Jobs legislation to boost New York State's economy; and**

**WHEREAS, the legislation directs the Authority to purchase power and energy from other suppliers to provide power for the program, and**

**WHEREAS, the Authority has carried out a competitive procurement process for such power and energy in accordance with the legislation and the Guidelines for Competitive Procurement adopted by the New York State Economic Development Power Allocation Board; and**

**NOW THEREFORE BE IT, RESOLVED, That the Chairman, the President, the Senior Vice President-Marketing and Economic Development or her designees are, and each of them hereby is, authorized to execute Enabling Agreements with Central Hudson Enterprises Corporation, Central Hudson Gas & Electric Corporation and Niagara Mohawk Energy Marketing Inc. in substantially the form attached hereto as Exhibit “7-A”, and to enter into transactions for the purchase of up to 225 MW of capacity and energy as contemplated by the Enabling Agreement, and to take such other and further actions as may be necessary or desirable to effectuate the foregoing.**

TABLE 1

## POWER FOR JOBS – COMPETITIVE PROCUREMENT – RFP NO. 5

## RECOMMENDED BIDDERS

## Under the New York Power Pool Regime

| Bidder   | Service Territory | MW       | Bid Price<br>Thru 4/30/00<br>Cents/kWh |
|--|-------------------|----------|--|
| <b>Central Hudson Gas<br/>&amp; Electric<br/>Corporation</b> | Central Hudson    | 5        | 3.4                                    |
|  | Con Edison        | 80       | 3.8                                    |
|  | Orange & Rockland | 5        | 3.8                                    |
| <b>Niagara Mohawk<br/>Energy Marketing,<br/>Inc.</b>         | Con Edison        | 10 – 100 | 3.4*                                   |
|  | NIMO - West       | 10 – 100 | 3.16*                                  |
|  | NYSEG - West      | 10 – 100 | 3.16*                                  |
|  | RG&E              | 10 - 100 | 3.16*                                  |

\* Niagara Mohawk Energy Marketing's prices vary with load factor. Prices shown are for a 50% -70% load factor.

Note: Only 225 MW of bid power are required during the second year of the Power for Jobs program. The amounts bid by the suppliers in each service territory should be considered "up to" limits. As allocations are made, power will be purchased in such a way as to minimize the cost of the bid power, with the total amount from all suppliers not exceeding 225 MW. This is possible because the Enabling Agreements are essentially options to purchase power with no minimum requirement.

TABLE 1 Continued

## RECOMMENDED BIDDERS

## Under the New York Independent System Operator

| Bidder   | Service Territory    | Zone | MW       | Bid Price<br>Thru 4/30/00<br>Cents/kWh |
|--|----------------------|------|----------|--|
| <b>Central Hudson Gas<br/>&amp; Electric<br/>Corporation</b> | Con Edison           | G    | 1        | 3.9                                    |
|  |                      | H    | 4        | 4.0                                    |
|  |                      | I    | 10       | 4.7                                    |
|  |                      | J    | 10       | 4.7                                    |
|  | Central Hudson       | G    | 1        | 3.6                                    |
|  | Niagara Mohawk       | C    | 25       | 4.0                                    |
|  |                      | F    | 25       | 4.0                                    |
|  | NYSEG                | C    | 20       | 4.5                                    |
|  | Orange &<br>Rockland | E    | 10       | 4.5                                    |
|  |                      | G    | 1        | 3.8                                    |
| <b>Central Hudson<br/>Enterprises, Inc.</b>                  | Con Edison           | J    | 30       | 4.8                                    |
|  | Niagara Mohawk       | A    | 25       | 3.6                                    |
|  |                      | B    | 25       | 3.6                                    |
| <b>Niagara Mohawk<br/>Energy Marketing,<br/>Inc.</b>         | Con Edison           | I    | 10 – 100 | 5.01*                                  |
|  | Niagara Mohawk       | A    | 10-100   | 4.3*                                   |
|  |                      | C    | 10-100   | 4.3*                                   |

\* Prices vary with load factor. Prices shown are for a 50% -70% load factor.

Note: Only 225 MW of bid power are required during the second year of the Power for Jobs program. The amounts bid by the suppliers in each service territory should be considered “up to” limits. As allocations are made, power will be purchased in such a way as to minimize the cost of the bid power, with the total amount from all suppliers not exceeding 225 MW. This is possible because the Enabling Agreements are essentially options to purchase power with no minimum requirement.

**ENABLING AGREEMENT BETWEEN  
SELLER  
AND NEW YORK POWER AUTHORITY**

This Enabling Agreement ("Enabling Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 1999, by and between the SELLER ("the SELLER") having a principal business address at \_\_\_\_\_, and the New York Power Authority ("the Authority") having a principal business address at 1633 Broadway, New York, NY 10019. This Enabling Agreement encompasses the terms and conditions under which power and energy will be purchased by the Authority from the SELLER for resale and ultimate allocation to approved Power for Jobs™ ("PFJ") Customers. It shall terminate on the last day of the \_\_\_\_\_ Capability Period as defined herein. The Authority and the SELLER are from time to time referred to in this Enabling Agreement individually as the "Party" or collectively as the "Parties".

**WITNESSETH:**

**WHEREAS**, the Authority has been authorized by Chapter 316 of the New York Laws of 1997, as amended by Chapter 386 of the New York Laws of 1998, to purchase power and energy under a competitive procurement process (the Bid Process) established by the Economic Development Power Allocation Board (EDPAB) in consultation with the New York Public Service Commission ("NYPSC") for resale to Host Utilities as defined herein, for ultimate delivery to PFJ customers designated by the EDPAB; and

**WHEREAS**, the Authority, acting on behalf of the EDPAB, has been directed to implement the Bid Process including, among other things, the execution of agreements for the purchase of power and energy from the Qualified Provider(s) as defined herein; and

**WHEREAS**, the SELLER, having met the requirements of the Bid Process, has been selected by the Authority as a Qualified Provider as defined herein, and is qualified to provide upon request by the Authority, specified amounts of firm power and energy to specified locations within New York State for specified period(s), at fixed prices as set forth in the Specifications as defined herein; and

**WHEREAS**, the SELLER desires to sell firm power and energy to the Authority pursuant to New York Power Pool (NYPP) and/or New York Independent System Operator (NYISO) rules, as applicable, at a fixed price for certain Capability Period(s); and

**WHEREAS**, the Authority desires from time to time to purchase firm power and energy from the SELLER and may enter into one or more Transactions as defined herein, incorporating the amounts and specific terms and conditions contained in the SELLER's fixed price bid; and

**WHEREAS**, the Authority and the SELLER desire to set forth in this Agreement the terms and conditions which shall govern all Transactions.

**NOW THEREFORE**, the Parties agree as follows:

### **ARTICLE 1 - DEFINITIONS**

**1.1** Bid - An offer by the SELLER to provide Services as defined herein, at specified prices for specific periods of time.

**1.2** Capability Period - Six month periods defined as follows:

Summer: May 1 to October 31

Winter: November 1 to April 30.

**1.3** Delivery Point - Point at which the SELLER transfers Services as defined herein, to the Authority. Prior to the initiation of the NYISO, unless otherwise agreed to by the Parties, the Delivery Point shall be at identified point(s) of interconnection between a Host Utility as defined herein and one or more Transmission Providers as defined herein. After NYISO initiation, the Point of Withdrawal as defined herein, shall become the Delivery Point.

**1.4** Enabling Agreement - This "option to purchase" agreement which provides for and governs any sale of the Services as defined herein, by the SELLER to the Authority.

**1.5** FERC - Federal Energy Regulatory Commission.

**1.6** Host Utility - Each of the seven investor-owned electric utilities in New York State, or their successors or assigns, providing transmission delivery service to the Authority on behalf of PFJ Customers.

- 1.7** PFJ Customer - A retail customer of a Host Utility that has received a power allocation pursuant to the Power for Jobs™ program.
- 1.8** Qualified Provider - Any entity, including but not limited to electric corporations, independent power producers and power marketers, that has met the requirements of the currently effective RFP as determined by the Authority in its sole discretion and has executed an Enabling Agreement with the Authority.
- 1.9** Request for Proposals (“RFP”) - Open bidding process under which the Authority solicits Bids for firm power and energy for upcoming Capability Periods.
- 1.10** Services - Firm power and energy delivered by SELLER to Delivery Point(s) or Point(s) of Withdrawal, as applicable, identified in hourly amounts and scheduled by the Authority.
- 1.11** Specifications – The information requested in Section 4, captioned Bid Specifications, of the document entitled “Power for Jobs™ , Competitive Procurement Process, Request for Proposals No. 5, July 30, 1999.
- 1.12** Transaction – An individual purchase agreement for the purchase of Services as defined herein, governed by this Enabling Agreement detailing among other items, amounts and specific terms and conditions incorporated in the fixed price Bids. Each Transaction shall be for a period of one month.
- 1.13** Transmission Provider - A public utility or agency that owns, operates or controls facilities which are used to transmit electric energy in interstate commerce and provides transmission service under an Open Access Transmission Tariff on file with the FERC.
- 1.14** New York Independent System Operator (NYISO) – The successor organization to the New York Power Pool (NYPP) operating pursuant to New York State’s Independent System Operator Tariff filed with the FERC.
- 1.15** Point of Injection (POI) – Out-of-state point of delivery or in-state generation source location. This term applies only after the initiation of the NYISO.

**1.16** Point of Withdrawal (POW) – After the initiation of the NYISO, the Point at which the SELLER transfers Services as defined herein to the Authority. This point shall be at the interface of the Host Utility’s transmission and distribution systems.

## **ARTICLE 2 - SERVICES PROVIDED BY THE SELLER**

- 2.1 When, from time to time, the Authority desires to enter into a Transaction, the Authority shall provide the SELLER with a document pursuant to the RFP(s) under which the SELLER became a Qualified Provider detailing the terms of that Transaction. The terms shall include, but shall not be limited to the amount of power and or energy to be purchased, the price of the purchase, the duration of the Services to be provided, the Delivery Point(s), the load-following requirements and the scheduling provisions relating to the first month of the Transaction. Following the initiation of the NYISO, the designation of relevant Delivery Point(s) shall be replaced by the designation of the relevant Point(s) of Withdrawal.
- 2.2 Accompanying the Transaction shall be a schedule defining the daily and hourly power and energy deliveries for the first month of the Transaction. Updated scheduling provisions will be required prior to the beginning of each month for each of the ensuing months.
- 2.3 The Transactions pursuant to this Enabling Agreement shall relate to the deliveries of firm power and energy to \_\_\_\_\_.
- 2.4 Following the initiation of the NYISO and the associated Locational Based Marginal Pricing system, the SELLER shall deliver its Services to the designated Points of Withdrawal and shall be responsible for, among other costs, any transmission service, ancillary service, marginal losses, congestion and NTAC costs between the Points of Injection and the Points of Withdrawal. The SELLER may need to secure either transmission rights or TCCs from the Points of Injection to the Points of Withdrawal.
- 2.5 The minimum maximum-demand for a Transaction shall be 1 MW.
- 2.6 The Transaction Form is set forth in Exhibit A attached hereto and may be amended from time to time by the Authority so as to be in compliance with any regulatory or NYISO requirements.

- 2.7 Monthly load schedules which accompany a Transaction may fluctuate based upon the following factors:
- Seasonal variations in load
  - Routine load growth
  - Addition of new PFJ Customers or loss of PFJ Customers
  - The number of bidders awarded Transactions
  - Other factors as may occur from time to time
- 2.8 For every Transaction entered into by the SELLER and the Authority, the SELLER shall provide the requisite Northeast Reliability Council approved tagging requirements to the Authority's Energy Control Center ("ECC"). Tagging requirements shall be provided in a timely manner to the Authority contact listed in Article 5.5.2.
- 2.9 The SELLER is responsible for acquiring all required transmission services from any and all Transmission Providers necessary for the SELLER to deliver the Services defined herein to the specified Delivery Point(s) and/or Point(s) of Withdrawal. Such transmission services shall include any ancillary services that the Transmission Provider(s) and/or NYISO may require the SELLER to secure. The SELLER is also responsible for providing New York Power Pool (NYPP) or NYISO required installed reserves associated with Transactions on behalf of the PFJ Customers and to demonstrate to the Authority and/or the NYPP/NYISO how such installed reserves are being provided. The Seller shall also, at the discretion of the Authority, be required to demonstrate in advance how such installed reserves will be provided.
- 2.10 Nothing contained in this Enabling Agreement shall be construed as requiring the Authority to enter into a Transaction hereunder.

### **ARTICLE 3 - TERM**

Unless otherwise agreed to by the Parties, this Agreement shall terminate at the end of the Capability Period(s) for which this Agreement was executed as indicated in the opening paragraph of this Agreement. The applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billing, billing adjustments and payments pursuant to the terms of applicable Transaction(s) under this Agreement.

## **ARTICLE 4 - TRANSMISSION / TRANSFORMATION LOSSES**

The SELLER shall be responsible for all transmission and transformation related losses associated with providing Services up to the Delivery Point/Points of Withdrawal.

## **ARTICLE 5 – NOTICES, BILLING AND PAYMENT**

- 5.1 For Services rendered, the Authority shall pay the SELLER the price(s) set forth in the Transaction for the amounts supplied by the SELLER to the Delivery Point(s) or Point(s) of Withdrawal, as applicable, but in no event more than those amounts scheduled by the Authority pursuant to the applicable Transaction(s).
- 5.2 Bills shall be rendered by the SELLER via a facsimile to the Authority as soon as practicable after the end of the calendar month to the billing address indicated in Section 5.5 below. Payments will be made by the Authority on the later of (i) the first banking day common to the Parties following ten (10) days after the date on which the Authority received the bill, or (ii) on the first banking day common to the Parties following the nineteenth (19<sup>th</sup>) day of the month in which the bill was rendered subject to late payment charges in accordance with Section 5.4 below.
- 5.3 Two years from the date of each invoice and statement, the information contained therein shall be deemed final, unless subject to a dispute resolution proceeding instituted prior to such date.
- 5.4 Payments received by the SELLER after the due date described in Section 5.2 shall be subject to a late payment charge equal to the effective rate as established by Section 2880 of the Public Authorities Law, or any successor thereto.
- 5.5 Notices:

5.5.1 Billing Notice

For Authority

New York Power Authority

For SELLER

SELLER

|                              |                       |
|------------------------------|-----------------------|
| P. O. Box 437                | Address               |
| White Plains, NY 10602-0437  | City, State, Zip Code |
| Attn: Ms. Manna Yu           | Attn:                 |
| Manager-Accounts Payable     |                       |
| Phone Number: (914) 681-3370 | Phone Number:         |
| Fax Number: (914) 287-3392   | Fax Number:           |

5.5.2 Contractual Notice:

For Authority

New York Power Authority  
1633 Broadway  
New York, NY 10019  
Attn: Ms. Maria Zazzera  
Manager – Power Contracts  
Phone Number: (212) 468-6853  
Fax Number: (212) 468-6810

5.5.3 Tagging Notice:

For Authority

New York Power Authority  
Energy Control Center  
6520 Glass Factory Road  
Marcy, New York 13403  
Attn: Ms. Sallie Martin  
Transmission Engineer  
Phone Number: (315) 792-8363  
Fax Number: (315) 792-8320

**ARTICLE 6 - ACCESS TO RECORDS**

Each Party hereto shall keep complete and accurate records and memoranda of its operations hereunder, and shall maintain such information for a period of two (2) years.

## **ARTICLE 7 - LIABILITY**

7.1 In the event the SELLER fails to accept a Transaction pursuant to Article 2 or fails to perform in any Transaction where an event constituting “Uncontrollable Forces” has not excused performance, the Authority’s remedy shall be limited to the right to a) recover as liquidated damages and not as penalty, the incremental costs incurred by the Authority to replace the Services that the SELLER failed to provide, where such incremental costs shall be defined as the actual marginal cost to the Authority including, without limitation, all energy, capacity and transmission costs, of replacing electricity to compensate for under-delivery of electricity by SELLER and/or b) in the Authority’s sole discretion, immediately terminate this Agreement and any outstanding Transactions with the SELLER, and/or disqualify the SELLER and its affiliates from participating in the next two (2) RFPs. The Authority shall be liable to the SELLER only for those Services provided to the Authority in any Transaction until the time of termination. The Authority shall have no liability for any Services that the SELLER fails to perform under any Transaction.

“Uncontrollable Forces” shall be defined as set forth in Section 454.3 (c) of the Authority’s Rules and Regulations for Power Service, a copy of which is attached hereto. Either party rendered unable to fulfill any of its obligations under this Agreement, other than the obligation to make payments then due or becoming due under any Transaction, by reason of “Uncontrollable Forces” shall give prompt written notice of such inability to perform to the other Party.

7.2 Notwithstanding any other provision of this Agreement, the SELLER shall indemnify, save harmless and defend the Authority, including the Authority’s successors, assigns, board members, officers, employees, representatives and/or agents, from and against any and all claims, demands, liabilities, damages, judgments, costs and expenses (including, without limitation, reasonable attorney’s fees, expert fees and disbursements) incurred by the Authority in any action or proceeding between the SELLER and the Authority or between the Authority and any Third Party (as defined herein), or otherwise, arising out of, related to or resulting from any loss, damage (including, without limitation, any consequential, indirect, incidental, punitive or special damages) or death suffered by a Third Party (as defined herein) as a result of acts or omissions of the SELLER or the SELLER’S Transmission Provider(s). For purposes

of this Section 7.2, the term “Third Party” means any one or more of the following: a Host Utility, a PFJ Customer, a Transmission Provider, or any other person or entity (other than one of the Parties).

- 7.3 The SELLER shall provide financial security to the Authority to guarantee performance in an amount and form acceptable to the Authority.
- 7.4 In the event that PFJ Customer(s), for which the Authority has secured Services from the SELLER cease to require such Services, the Authority shall have no obligation to the SELLER after the date that PFJ Customer(s) terminate(s) Power For Jobs service. The Authority will provide the SELLER the same notice that PFJ Customer(s) provide(s) the Authority in conjunction with termination of service.

## **ARTICLE 8 - MISCELLANEOUS**

- 8.1 The SELLER understands and agrees that, except to the extent inconsistent herewith, the furnishing of Services hereunder is subject in all respects to the provisions of the RFP under which the SELLER has become a Qualified Provider.
- 8.2 Neither Party shall assign this Enabling Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Upon any assignment made in compliance with this paragraph, this Enabling Agreement shall inure to and be binding upon the successors and assigns of the assigning Party. Notwithstanding the foregoing, the SELLER may, without the need for consent from the Authority (and without relieving itself from liability hereunder), (a) transfer, pledge, or assign this Enabling Agreement as security for any financing; (b) transfer or assign this Enabling Agreement to an affiliate of the SELLER, or (c) transfer or assign this Enabling Agreement to any person or entity succeeding to all or substantially all of the assets of the SELLER, provided, however, that any such assignee shall agree in writing to be bound by the terms and conditions hereof. 8.3 A holding by any court or governmental agency having jurisdiction that any provision of this Enabling Agreement is invalid shall not result in invalidation of the entire Enabling Agreement and all remaining terms shall remain in full force and effect.

- 8.4 No statement or agreement, oral or written, that was made prior to entering into this Enabling Agreement shall vary or modify the written terms of this Enabling Agreement and neither Party shall claim any amendment to or modification of or release from any provision by mutual agreement unless that agreement is in writing signed by both Parties and specifically states that it is an amendment to, modification of, or release from this Enabling Agreement.
- 8.5 The section headings are for convenience only and shall not be interpreted in any way to limit or change the subject matter of this Enabling Agreement.
- 8.6 This Enabling Agreement may be executed in any number of counterparts, and each counterpart shall have the same force and effect as the original instrument.
- 8.7 Each Party warrants and represents to the other on the date of this Enabling Agreement and on the date on which a Transaction is entered into that (a) it has the power to enter into and perform its obligations under this Enabling Agreement, (b) entering into and performing this Enabling Agreement does not violate or conflict with its charter or bylaws or comparable constituent documents, any law applicable to it, any order or judgment of any court or other agency of government applicable to it, any agreement to which it is a party and (c) this Enabling Agreement has been executed by its duly authorized representative and, upon having been so executed constitutes its legal, valid and binding obligation enforceable in accordance with its terms. No waiver by either Party of any default of the other Party under this Enabling Agreement shall operate as a waiver of a future default whether of a like or different character.
- 8.8 The SELLER and the Authority recognize that the New York Power Pool is undergoing a restructuring process to establish an Independent System Operator (NYISO) in New York State. Certain provisions contained herein may need to be amended, or additional provisions added to conform Services hereunder to the rules and regulations of the NYISO, particularly with respect to scheduling, delivery and reliability. The Parties agree to negotiate in good faith any such revisions or additions to this Enabling Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers as of the day and year first above written.

**NEW YORK POWER AUTHORITY**

**SELLER**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## **EXCERPT FROM RULES AND REGULATIONS OF NEW YORK POWER AUTHORITY**

### 454.3 Liability, limitations and conditions of service

#### ( c ) “Uncontrollable Forces”

Neither Customer nor Authority shall be considered to be in default in respect to any obligation under any accepted application for electric service, service tariff, or other contract document, if prevented from fulfilling such obligation by reason of uncontrollable forces, the term being deemed to mean any cause beyond the control of the party affected, including but not limited to failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, strike and sabotage or restraint by court or public authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid. The party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

**8. Approval of a Revised Certified Resolution for Membership in the New England Power Pool**

The President submitted the following report:

SUMMARY

“The Trustees are requested to adopt a resolution in the form prescribed by the New England Power Pool (‘NEPOOL’) finalizing the Authority’s application to become a Participant in the NEPOOL. The Executive Vice President, Secretary and General Counsel would then certify that the Trustees have adopted a resolution for such an action at this meeting.

BACKGROUND

“At their meeting of April 27, 1999, the Trustees had approved membership by the Authority in the NEPOOL. The pertinent portion of the minutes of that meeting setting forth the rationale for the Authority’s becoming a NEPOOL member is attached Exhibit ‘8-A’.

DISCUSSION

“In July, a package including the certified resolution of the Trustees was filed with NEPOOL for membership. During its processing, NEPOOL changed the amount of the application fee from \$500 to \$5000. The Authority was required to comply with that change by paying the new fee, which delayed the effective date to September 1. In late August, NEPOOL requested that the Authority adopt a resolution authorizing the application in a form prescribed by NEPOOL. The Authority’s membership in NEPOOL would become effective on October 1, 1999.

FISCAL INFORMATION

“Other than the change in the application fee from \$500 to \$5000, there are no additional changes in the Authority’s financial obligations to NEPOOL.

RECOMMENDATION

“The Senior Vice President – Marketing and Development and the Executive Vice President, Secretary, and General Counsel recommend that the Trustees approve the attached resolution. The Executive Vice President, Secretary and General Counsel would then certify that the Trustees have adopted a resolution for such an action at this meeting in accordance with Article IV, Section 6.F of the By-Laws of the Power Authority of the State of New York.

“The Senior Vice President and Chief Financial Officer, the Executive Vice President, Secretary and General Counsel, the Executive Vice President – Project Operations, and I concur in the recommendation.”

The attached resolution, as recommended by the President, was unanimously adopted.

*In response to questions from Trustee Miller, Messrs. Hiney and Carline explained that the membership application fee had recently been raised by NEPOOL to \$5,000, but that there are otherwise no other substantive change in the terms and conditions of the membership application.*

**RESOLVED, That the New York Power Authority shall apply to become a Participant in the New England Power Pool under the New England Power Pool Agreement dated as of September 1, 1971, as amended, (the "Agreement") and the Chief Executive Officer, and President and Chief Operating Officer, are severally authorized to execute a counterpart of the Agreement on behalf of the New York Power Authority and to cause the New York Power Authority to perform its obligations under the Agreement upon the effectiveness of its membership.**

**April 27, 1999**

**12. Proposed Membership in the New England Power Pool**

The President submitted the following report:

SUMMARY

"The Trustees are requested to authorize membership by the Authority as a Participant in the New England Power Pool ('NEPOOL').

BACKGROUND

"NEPOOL is among the largest control areas with respect to peak load in North America. Although currently a nonmember, the Authority has been selling excess energy to NEPOOL by means of bilateral transactions with individual members. Membership in NEPOOL will provide the Authority with additional opportunities. As a NEPOOL member, the Authority will be able to share in the benefits of power pooling, such as having access to NEPOOL market information as well as the right reserved to Members of bidding into the NEPOOL spot market. This will increase the Authority's opportunities to sell excess energy and buy economical or replacement energy in the NEPOOL region. The Authority became a member of the PJM Interconnection, L.L.C. ('PJM') earlier this year for the same reasons as mentioned above.

DISCUSSION

"Staff has reviewed the NEPOOL Membership Application, Operating Agreement (or 'Agreement') and Open Access Transmission Tariff. The laws of the State of Connecticut and the Federal Power Act govern the Agreement.

"The Agreement contains a common liability and indemnity provision wherein each Participant must indemnify and hold harmless the other Participants, their officers and directors with respect to all actions, claims, demands, costs, damages and liabilities asserted by third parties arising out of bodily injury, death or damage to property caused by or sustained in facilities owned by the Participant or caused by a failure to act in accordance with the Agreement. This provision does not apply to the extent that the loss is caused by the negligence or willful misconduct of the Participant, and each Participant shall be responsible for all claims of its own employees, agents and servants growing out of any workmen's compensation law.

"Any dispute as to a matter governed by the Agreement would be subject to mediation. The arbitrator's decision is binding and conclusive in a subsequent regulatory or legal proceeding as to the facts determined by the arbitrator but could not be conclusive as to the law, or constitute precedent on issues of law in any subsequent regulatory or legal proceeding.

"As a NEPOOL member, the Authority would be under no obligation to provide generation or firm capacity in the absence of a specific transaction. Since the Authority is not in the NEPOOL control area, there are no mandatory requirements that would affect our generation. Member bids are held confidential and membership in NEPOOL does not require disclosure of members' actual costs.

"Authority Membership in NEPOOL on the above terms is in the Authority's commercial interest and, ultimately, in the interests of the Authority's New York customers whose requirements can be served more economically through such membership.

“In addition, subject to further review by the Law Department, ERM’s transactions with the NEPOOL market will be limited to sale of surplus electricity from Authority generation resources and purchase of power and energy to meet the Authority’s contractual requirements.

FISCAL INFORMATION

“To become a NEPOOL member and be eligible to conduct wholesale activities through the NEPOOL market, the Authority must pay an application fee of \$500, an annual membership fee of \$500, and a monthly variable charge based upon the amount of business activity the Authority has within NEPOOL. The monthly variable charge is determined by a formula which weights load responsibility, ownership of bulk power supply facilities, market activity and other matters. Payment will be made from the Operating Fund.

RECOMMENDATION

“The Director – Energy Resource Management and the Senior Vice President – Marketing and Economic Development recommend that the Trustees approve membership by the Authority in NEPOOL, on the terms outlined above.

“The Senior Vice President – Chief Financial Officer, the Executive Vice President, Secretary, and General Counsel, the Executive Vice President – Project Operations, and I concur in the recommendation.”

The attached resolution, as recommended by the President, was unanimously adopted.

**RESOLVED, That the Trustees approve membership by the Authority in the New England Power Pool (“NEPOOL”) on the terms outlined in the foregoing report from the President; and be it further**

**RESOLVED, That the Trustees authorize the Senior Vice-President Marketing and Economic Development to execute such documents and take such other actions as she may deem necessary to effectuate the forgoing, subject to approval of the form thereof by the Executive Vice-President, Secretary and General Counsel.**

**9. Niagara Power Project – Approval To Enter Into An Agreement For Use Of Authority Lands By The New York State Office Of Parks, Recreation & Historic Preservation**

The President submitted the following report:

SUMMARY

“Authority staff recommends that the Trustees approve agreements with the Office of Parks, Recreation and Historic Preservation (‘Parks’) for its uses of: 1) approximately 146 acres of land owned by the Authority or under the Authority’s jurisdiction located in the Town of Lewiston known as Earl W. Brydges Artpark; and 2) approximately 59 acres of land owned by the Authority located in the City of Niagara Falls between the Rainbow Bridge and the City of Niagara Falls/Town of Lewiston municipal boundary. Each of these agreements will be for a 25-year term subject to the Authority obtaining a new license for the Niagara Power Project and for the consideration of \$1.00.

BACKGROUND

“The Authority owns or has under its jurisdiction an approximately 193-acre parcel located in the Town and Village of Lewiston. This area was used to support construction of the Niagara Power Project. At their meeting of April 21, 1965, the Trustees approved an agreement between the Authority and the Niagara Frontier Park Commission under which the Park Commission would use ‘for New York State Park purposes’ approximately 140 acres of land in the Town and Village of Lewiston owned by or under the jurisdiction of the Authority. The additional 53 acres adjacent to the 140 acres was not deemed necessary by the Parks Commission for its use at that time. However, in 1974 as the Parks Commission was preparing to construct the performing arts facility now known as the Earl W. Brydges Artpark, the Commission requested that the additional 53 acres be included in an Authority-Parks Commission agreement relating to the proposed park. At their meeting of May 21, 1974, the Trustees approved a new Authority-Parks Commission permit for a term of 25 years under which the Commission would use the entire 193-acre parcel ‘for New York State Park purposes comprising the lands and waters known as Lewiston State Park.’ The term of this Artpark permit expires on September 30, 1999.

“The Authority also owns approximately 125 acres of property on the rim of the gorge and in the gorge along the Niagara River between the Rainbow Bridge and the City of Niagara Falls-Town of Lewiston boundary. This property was purchased for the construction of the Robert Moses State Parkway and to relieve the Niagara Mohawk Power Corporation of ownership of property in the vicinity of its Schoellkopf Power Station that was replaced by the Niagara Power Project.

“In the 1970s, Parks constructed on this site the Schoellkopf Geological Museum. This site is also the site of the former right-of-way of the Great Gorge Railroad, some sections of which Parks has developed into hiking trails. In addition, Parks has developed a plan for a park known as Gorge View Park. The proposed park would affect the above-described Authority property.

DISCUSSION

“Authority and Parks staffs have discussed both renewing the 193-acre Artpark permit and formalizing the agreement with regard to a portion of the 125-acre parcel on which the Schoellkopf Museum is located.

“With regard to the Artpark parcel, the new agreement with Parks would cover approximately 146 acres; Parks agrees that it no longer needs most of the 53-acre plateau area to support its activities at Artpark. In addition, the Village of Lewiston has made a written request to the Authority asking the Authority to convey most of these premises to the Village. There have been discussions between the Authority and the Village of Lewiston concerning the leasing of this property to the Village for the construction, operation, and maintenance

of a soccer field and wildlife habitat complex. This use, Parks has said, is acceptable to it as well. Staff will seek Trustee approval for this conveyance to the Village upon completion by the Village of its statutory SEQRA review.

“In addition, Parks would like to conclude an agreement with the Authority for the operation and maintenance of its facilities on Authority property in the area between Rainbow Bridge and the City of Niagara Falls – Town of Lewiston boundary. Parks will continue to operate and maintain the Schoellkopf Museum. It will maintain and possibly upgrade the trails developed along the Great Gorge Railroad and develop and maintain the Gorge View Park. This Park would consist of an overflow parking lot for the Niagara Reservation, information/comfort station and picnic facilities. Parks will need approximately 59 acres of Authority property for the operation and maintenance of these facilities.

“Since the Federal Energy Regulatory Commission (‘FERC’) issued the license for the Niagara Power Project on January 30, 1958, the Authority has been a significant developer of recreational facilities in the Niagara Falls area. The development of recreational facilities at Niagara stems from the incorporation of the Federal Water Power Act into Part I of the Federal Power Act of 1932, amending Section 10(a) to include recreation as a beneficial public use. Artpark serves cultural enrichment, recreational and economic development purposes. The provision of this land as the site of the Earl W. Brydges Artpark by the Authority is a major contribution to the Niagara Falls area community.

“Provision of the approximately 59 acres of property needed by Parks for its Gorge View Park, Schoellkopf Geologic Museum and Gorge Trails will demonstrate the Authority’s commitment to open its waterfront property to public access and recreation. Many of the elements of Parks’ plan for this area also are included in the Local Waterfront Revitalization Plan recently submitted to the New York Department of State by the City of Niagara Falls. These park projects not only will indicate to the FERC the Authority’s support of recreation in the area, but also because of proximity to the Niagara Reservation and the many tourists it draws, the creation of a greater Niagara Park will serve as an economic development tool in a community that is attempting to reform at least a portion of its economy around the magnetism of its beautiful natural resources.

FISCAL INFORMATION:

“The agreements for Parks to use these properties will have no fiscal impact on the Authority

RECOMMENDATION:

“The Director – Environmental Programs, the Regional Manager – Western New York, the Vice President – Procurement and Real Estate, and the Vice President – Policy and Governmental Affairs, recommend that the Trustees approve the use by Parks of the lands known as the Earl W. Brydges Artpark as shown and described on Exhibit ‘9-A’ and those upon which the Schoellkopf Geological Museum is located, along with the Gorge Trail and other improvements as shown and described on Exhibit ‘9-B’.

“The Vice President – Public Affairs, the Senior Vice President and Chief Financial Officer, the Executive Vice President – Corporate Services and Human Resources, the Executive Vice President, Secretary and General Counsel, the Executive President – Project Operations, and I concur in the recommendation.”

The attached resolution, as recommended by the President, was unanimously adopted.

*Trustee McCullough inquired whether the proposed agreement with OPRH includes a provision granting the Authority the right to terminate in the event NYPA does not obtain the relicense for the Niagara Project. Mr. Hoff responded in the affirmative. In response to questions from Trustee Miller, Mr. Blabey explained that staff*

*feels it prudent to proceed with the proposed agreement without waiting the resolution of relicensing issues, and that the Authority is amply protected under the agreement in the event that it does not win the relicensing rights.*

**RESOLVED, That the Authority hereby approves for the consideration of \$1.00 the use of approximately 146 acres of Authority land by the State Office of Parks, Recreation and Historic Preservation known as Earl W. Brydges Artpark as shown and described on a map entitled the Niagara Project, Artpark and Artpark Trail annexed as Exhibit "9-A"; and be it further**

**RESOLVED, That the Authority hereby approves for the consideration of \$1.00 the use of approximately 59 acres of Authority land by the State Office of Parks, Recreation and Historic Preservation as shown and described on a map entitled Niagara Project Schoellkopf Museum and the Whirlpool and Ongiara Trails annexed as Exhibit "9-B"; and be it further**

**RESOLVED, That the Authority hereby determines that the two above-described agreements are on terms beneficial to the State of New York and the Authority; and be it further**

**RESOLVED, That the Chairman and Chief Executive Officer or the President and Chief Operating Officer be authorized to execute and deliver to the State Office of Parks, Recreation and Historic Preservation on behalf of the Authority, in such form as approved by the Executive Vice President, Secretary and General Counsel of the Authority, the above described agreements and maps; and be it further**

**RESOLVED, That the Vice President – Procurement and Real Estate or the Director – Real Estate of the Authority be, and is authorized to execute, on behalf of the Authority, any and all other agreements, papers, or instruments which may be deemed necessary or desirable to carry out the foregoing, subject to approval of the form thereof by the Executive Vice President, Secretary and General Counsel.**

**10. Procurement (Services) Contracts - James A. FitzPatrick and Indian Point 3 Nuclear Power Plants; the Non-nuclear Facilities; and Headquarters Office - Awards**

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The President submitted the following report:

SUMMARY

“The Trustees are requested to approve the award and funding of the multi-year procurement contracts listed in Exhibit ‘10-A’ for the James A. FitzPatrick (‘JAF’) and Indian Point 3 (‘IP3’) Nuclear Power Plants, as well as for the non-nuclear facilities and Headquarters Office. A detailed explanation of the nature of such services, the basis for the new awards, and the intended duration of such contracts are set forth in the discussion below.

BACKGROUND

“Section 2879 of the Public Authorities Law and the Authority's Guidelines for Procurement Contracts require 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 or equipment purchase contracts in excess of \$3,000,000, as well as personal services contracts in excess of \$1,000,000 if low bidder, or \$500,000 if sole source or non-low bidder, require Trustees' approval.

DISCUSSION

“While the Authority's policy is to use its own staff to perform necessary engineering and craft labor work, there are cases where it is necessary to utilize external contractors or consultants to supplement Authority staff during peak working periods in support of refueling and other outages, or if special expertise is required that is not available within the Authority. With respect to Headquarters, it is often necessary to retain consultants to perform specialized work outside the expertise of Authority staff.

“The terms of these contracts will be more than one year, therefore the Trustees' approval is required. All of these contracts contain provisions allowing the Authority to terminate the services at will, without liability other than paying for acceptable services rendered to the effective date of termination. Approval is also requested for funding all contracts, ranging in estimated value from \$45,000 to \$4,877,851. These contract awards do not obligate the Authority to a specific level of personnel resources or expenditures.

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

**Contracts in Support of the Non-nuclear Facilities and Headquarters Office Business Units:**

“The four contracts with **Dana L. Drake, L.S., P.L.L.C., GEOD Corporation, Sear-Brown Group, and TVGA Engineering, Land Surveying, P.C. (Q-02-2334; PO#'s TBA)** would commence on October 1, 1999, subject to the Trustees' approval. The purpose of these contracts is to provide for regional surveying and mapping services in support of all Authority facilities and ancillary transmission lines, and headquarters offices, as may be required. In addition to real property surveys, these services are required to support engineering,

construction, licensing, transmission, environmental, and occasionally, legal and marketing initiatives. These four were the most technically qualified firms providing such services at reasonable prices. Twenty-five bids were received, in addition to 12 declining/non-responding bidders, including responses to a notice in the Contract Reporter. In addition to each firm's experience, technical proposal, methodology, organization, etc., evaluation criteria also included geographic proximity to the work. The proposals were evaluated separately for each region. Each firm selected will provide services for Authority facilities in a specific region of the state (St. Lawrence, Headquarters/Poletti, Blenheim-Gilboa, and Niagara/Clark Energy Center regions and/or related counties, respectively). The intended term of these contracts is three years, subject to the Trustees' approval, which is hereby requested, with an option to extend for an additional year in accordance with the Authority's Expenditure Authorization Procedures. Approval is also requested for the total combined amount expected to be expended for the term of the contracts, \$1,100,000.

"The contract with **EarthData International of Maryland, P.C. (Q-02-2335; PO# TBA)** would commence on October 1, 1999, subject to the Trustees' approval. The purpose of this contract is to provide for statewide photogrammetric services (aerial photography, mapping support and associated analysis) in support of all Authority facilities and ancillary transmission lines. Such services are needed to support real estate, environmental, operations and relicensing activities, on an 'as required' basis, and, especially, to identify any problems along the Authority's 1,000 miles of transmission line right-of-way. EarthData was the low bidder of five bids received (in addition to four declining/non-responding bidders, including notice in the Contract Reporter). This firm is clearly qualified to perform all requisite services, has consistently demonstrated the ability to provide quality service to the Authority in the past, and submitted significantly lower rates than any other respondent. The intended term of this contract is three years, subject to the Trustees' approval, which is hereby requested, with an option to extend for one additional year in accordance with the Authority's Expenditure Authorization Procedures. Approval is also requested for the total amount expected to be expended for the term of the contract, \$900,000.

"The contract with **New York State Office For Technology ("OFT"; PO# TBA)** would provide for computer center services to support the Authority's Information Technology needs. These include providing computer capacity on the OFT mainframe for Authority production and test platforms, as well as operations support for batch and online processing seven days a week, twenty-four hours a day. This award is made on a sole source basis, since it is basically a renegotiation of the current agreement due to a change in the Authority's needs, as well as a change in the State agency providing such services. The Office of General Services ('OGS') – Information Technology Group is the current provider of such services in support of the Authority's PARIS financial tracking, SENY and Wholesale billing systems under the current agreement. SAP, the Authority's new enterprise-wide business management system that replaced PARIS, is supported by a local client/server network. The retirement of PARIS in 1999 reduced the Authority's computer capacity and related services requirements for the Year 2000. This led to a renegotiation of the rate structure, resulting in an annual rate reduction of approximately \$440,000. OFT will continue to support the Authority's billing systems under the new agreement and to provide other requisite support, as may be required. Software maintenance costs will continue to be paid under a separate contract. The intended term of this contract is three years, with an option for up to two additional years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the five-year term of the contract, \$1,750,000.

**Equipment Contract in Support of the Richard M. Flynn Plant:**

"The contract with **Siemens-Westinghouse Power Corp. (Q-02-2319; PO# TBA)** was awarded on August 30, 1999, subject to the Trustees' ratification and approval as soon as practicable. Due to scheduling requirements, the President's interim approval was obtained for the initial award, in the amount of \$2,934,900, for the fabrication/procurement of major replacement parts for the combustion turbine generator at the Richard M. Flynn Plant. This includes new design inner casing with upgraded K-ring and coated hub, two seal rings and two mixing elbows for the Flynn gas turbine, in the initial award amount of \$2,279,700 (which includes a 10% discount based on lump sum pricing) plus an additional \$655,200 for 63 row 3 rotor blades. It should be noted

that the price quoted for the blades is lower than that offered through the parts program and may be subject to an additional 10% discount, pending the evaluation and negotiation of the related outage services contract. Placing the initial order at this time will enable the contractor to fabricate/provide the subject parts and equipment in sufficient time for the scheduled Fall 2000 outage. The subject contract was awarded on a sole source basis, since Siemens-Westinghouse (formerly Westinghouse) was the original equipment manufacturer. Although two additional firms requested a bid package in response to a notice in the Contract Reporter, Siemens Westinghouse was the only firm to submit a proposal. The intended term of the contract is approximately two and one-half years. In accordance with the Authority's Expenditure Authorization Procedures, the Trustees' approval is required for equipment contracts in excess of \$3,000,000. Approval is hereby requested for the Trustees to ratify the initial award amount previously authorized by the President, and to approve additional funding for the remaining parts/equipment to be ordered for 2000 and 2001, as well as for related services (e.g., non-destructive testing, inspection, repair, refurbishment, stripping and recoating, and the services of a field service representative, as may be required). This would raise the estimated total firm lump sum amount expected to be expended for the term of the contract to \$4,877,851. As mentioned earlier, the total order for the contract period (excluding rotor blades) will be discounted by 10%.

**Contracts in Support of IP3:**

“The two contracts with **Hudson Valley Hospital Center (formerly Peekskill Community Hospital) and Phelps Memorial Hospital Center (10009312/9313; PO#s TBA)** would commence on January 1, 2000, subject to the Trustees' approval. The purpose of these contracts is to provide radiological medical emergency assistance for IP3 personnel, on an “as required” basis. These contracts would be used as the primary and backup medical facilities, respectively, for emergency planning to provide offsite hospital support for individuals who may be considered to have sustained radiation injuries and/or who may have been exposed to radioactive material. An annual fee is paid to each hospital to provide a medical staff trained in radiological medical emergencies. These contracts are awarded on a sole source basis primarily since these hospital centers are equipped with radiological monitoring equipment and contamination control supplies, have staff trained to handle potentially contaminated injured individuals, are located within close proximity of the plant, and are part of the IP3 Emergency Plan. The intended term of these contracts is three years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the duration of the contracts, \$45,000 per contract.

“The contract with **Lumal Cleaners dba AMCO Uniform Rental, a certified Minority Business Enterprise (Q-02-2400, PO# TBA)** would become effective on November 15, 1999, subject to the Trustees' approval. The purpose of this contract is to provide dry cleaning and laundering services of uniforms for approximately 80 Security and 25 Operations department personnel at IP3. Services include cleaning and laundering, minor repairs, hemming, sewing patches, and minor alterations, as necessary, as well as pickup and delivery service and providing laundry bags with identification for each individual. Lumal was the low bidder of four bids received (in addition to four declining/non-responding bidders and notice in the Contract Reporter). The intended term of this contract is three years, subject to the Trustees' approval, which is hereby requested. Rates will remain firm for the duration of the contract. Approval is also requested for the total amount expected to be expended for the term of the contract, \$90,000.

“The contract with **Reading Crane & Engineering Company (Q-02-2348; PO# TBA)** would become effective on October 1, 1999, subject to the Trustees' approval. The purpose of this contract is to provide for on-site preventive and corrective maintenance services (scheduled and emergency repairs) for 47 Cat M and Non Cat I cranes and other plant lifting devices, or parts thereof, at IP3. Services may also include major crane work, such as polar crane preventive maintenance and upgrade, including support of related design changes (e.g., for the collision avoidance system). Reading Crane was the low bidder of four bids received (in addition to three declining/non-responding bidders and notice in the Contract Reporter). The intended term of this contract is three years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the total amount expected to be expended for the term of the contract, \$213,000.

**September 28, 1999**

FISCAL INFORMATION

“Funds required to support contract services for JAF, IP3, the non-nuclear facilities, as well as the Headquarters Office have been included in the 1999 Approved O&M Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years. Payment will be made from the Operating Fund.

“Funds required to support contract services for capital projects have been included as part of the approved capital expenditures for those projects. Payment for nuclear projects will be made from the appropriate Nuclear Improvement Fund.

RECOMMENDATION

“The Site Executive Officer - James A. FitzPatrick Nuclear Power Plant, the Site Executive Officer – Indian Point 3 Nuclear Power Plant, the Regional Manager – Southeast New York, the Vice President - Nuclear Engineering, the Vice President – Nuclear Operations, Vice President – Information Technology and Chief Information Officer, and the Vice President – Procurement and Real Estate recommend the Trustees' approval of the award of multi-year procurement contracts to the companies listed in Exhibit '10-A' and as discussed above.

“The Senior Vice President and Chief Financial Officer, the Senior Vice President – Chief Nuclear Officer, the Executive Vice President – Corporate Services and Human Resources, the Executive Vice President, Secretary and General Counsel, the Executive Vice President - Project Operations, and I concur in the recommendation.”

The attached resolution, as recommended by the President, was unanimously adopted.

**RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award and funding of the multi-year procurement contracts set forth in Exhibit "10-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.**

**IP3 and JAF Procurement (Services) Contracts – Awards**  
 (For Description of Contracts See "Discussion")

| <u>Plant Site</u>  | <u>Company Contract #</u>   | <u>Start of Contract</u> | <u>Description of Contract</u>  | <u>Closing Date</u>  | <u>Award Basis<sup>1</sup> Contract Type<sup>2</sup></u> | <u>Compensation Limit</u>  | <u>Amount Expended To Date</u> | <u>Expected Expenditure For Life Of Contract</u> |
|--|---|--------------------------|---|--|--|--|--------------------------------|--|
| <b>Contracts in support of the the Non-nuclear facilities and Headquarters Business Units:</b> |   |                          |   |  |  |  |                                |  |
| HQ & ALLQ-02-2334; 4 awards:<br>FACILITIES   | (PO #s TBA)<br>1. DANA L. DRAKE<br>2. GEOD CORP.<br>3. SEAR-BROWN GROUP<br>4. TVGA ENGINEERING,<br>LAND SURVEYING, P.C. | 10/01/99                 | Provide regional surveying<br>and mapping services for:<br>St. Lawrence<br>HQ & Poletti<br>B-G<br>CEC & Niagara | 09/30/02<br>(+ option<br>to extend<br>for 1 add'l<br>year) | B/P  |  |                                | <b>\$1,100,000*</b>                              |
|  |   |                          |   |  |  | *Note: combined total expected to be expended for all 4 contracts              |                                |  |
| ALL FACILI-<br>TIES  | EARTHDATA INTER-<br>NATIONAL OF MARYLAND<br>Q-02-2335; PO # TBA   | 10/01/99                 | Provide statewide photo-<br>grammetric services for all<br>sites  | 09/30/02<br>(+ option<br>to extend<br>for 1 add'l<br>year) | B/P  |  |                                | <b>\$900,000</b>                                 |
| IT   | NYS OFFICE FOR<br>TECHNOLOGY<br>PO # TBA  | 01/01/00                 | Provide computer center<br>services   | 12/31/02<br>(+ option for<br>2 add'l years)                | S/S  |  |                                | <b>\$1,750,000*</b>                              |
|  |   |                          |   |  |  | *Note: \$29,166.67 per month; includes funding for 2 option years              |                                |  |
| FLYNN  | SIEMENS-WESTING-<br>HOUSE POWER CORP.<br>Q-02-2319; PO # TBA  | 08/30/99                 | Provide replacement parts<br>for Combustion Turbine<br>Generator at Flynn Plant                                 | 12/31/01   | S/E  | \$2,934,900  |                                | <b>\$4,877,851*</b>                              |
|  |   |                          |   |  |  | *Note: includes \$2,934,900 previously authorized by the President<br>per EAPs |                                |  |

1 Award Basis: B= Competitive Bid; S= Sole Source; C= Competitive Search  
 2 Contract Type: P= Personal Service; S= Service

**IP3 and JAF Procurement (Services) Contracts – Awards**  
 (For Description of Contracts See "Discussion")

| <u>Plant Site</u>   | <u>Company Contract #</u>                                  | <u>Start of Contract</u> | <u>Description of Contract</u>  | <u>Closing Date</u> | <u>Award Basis<sup>1</sup> Contract Type<sup>2</sup></u> | <u>Compensation Limit</u> | <u>Amount Expended To Date</u> | <u>Expected Expenditure For Life Of Contract</u> |
|---|--|--------------------------|---|---------------------|--|---------------------------|--------------------------------|--|
| <b><u>Contracts in support of the nuclear plants:</u></b> |  |                          |   |                     |  |                           |                                |  |
| IP3   | HUDSON VALLEY HOSPITAL CENTER I0009313; PO # TBA           | 01/01/00                 | Provide a medical staff trained in responding to radiological emergencies | 12/31/02            | S/P  |                           |                                | \$45,000   |
| IP3   | LUMAL CLEANERS dba AMCO UNIFORM RENTAL Q-02-2400; PO # TBA | 11/15/99                 | Provide dry cleaning/laundry services of security guard uniforms          | 11/14/02            | B/S  |                           | \$90,000                       |  |
| IP3   | PHELPS MEMORIAL HOSPITAL CENTER I0009313; PO # TBA         | 01/01/00                 | Provide a medical staff trained in responding to radiological emergencies | 12/31/02            | S/P  |                           |                                | \$45,000   |
| IP3   | READING CRANE & ENGINEERING CO. Q-02-2348; PO # TBA        | 10/01/99                 | Perform preventive & corrective maintenance on Cat M & Non Cat I cranes   | 09/30/02            | B/S  |                           |                                | \$213,000  |

1 Award Basis: B= Competitive Bid; S= Sole Source; C= Competitive Search  
 2 Contract Type: P= Personal Service; S= Service

**11. Procurement (Services) Contracts – James A. FitzPatrick and Indian Point 3 Nuclear Power Plants; the Non-Nuclear Facilities; and Headquarters Offices – Extensions, Approval of Additional Funding, and Increase in Compensation Ceiling**

The President submitted the following report:

SUMMARY

“The Trustees are requested to approve the continuation and funding of the procurement contracts listed in Exhibit ‘11-A for the James A. FitzPatrick (‘JAF’) and Indian Point 3 (‘IP3’) Nuclear Power Plants, as well as for the non-nuclear facilities and Headquarters Offices. In addition, the Trustees are requested to approve an increase in the compensation ceiling to \$38,000,000 from the previously authorized ceiling of \$33,240,000, of the procurement contracts with six firms (Burns & Roe Enterprises, Inc., Cataract, Inc., Proto-Power Corp., Raytheon Engineers & Constructors, Sargent & Lundy LLC, and Stone & Webster Engineering Corp.), for General Services Agreements providing engineering services to support both nuclear plants. A detailed explanation of the nature of such services, the reasons for extension, and the projected expiration dates are listed below.

BACKGROUND

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

“The Authority's Expenditure Authorization Procedures require Trustees' approval when a personal services contract exceeds a cumulative change order value of \$500,000, or when a non-personal services or equipment purchase contract exceeds a cumulative change order limit of \$3,000,000.

DISCUSSION

“While the Authority's policy is to use its own staff to perform necessary engineering and craft labor work, there are cases where it is necessary to utilize external contractors or consultants to supplement Authority staff during peak working periods in support of refueling and other outages, or if special expertise is required which is not available within the Authority.

“Although the firms identified in Exhibit ‘11-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. Trustees' approval is required because the terms of these contracts exceed one year and/or because the cumulative change order limits will exceed the levels authorized by the Expenditure Authorization Procedures in forthcoming change orders. All of the subject contracts contain provisions allowing the Authority to terminate the services at will, 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. As the Authority performs more work in-house over the next several years, funding allocated for services performed pursuant to these contract extensions will be correspondingly reduced.

“Extension of each of the contracts identified in Exhibit ‘11-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 Authority or external regulatory agency

schedule change, which has delayed, re-prioritized, 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 a proprietary technology or specialized equipment at reasonable negotiated rates, which the Authority needs to continue until a permanent system is put in place.

#### **Contracts in Support of the Nuclear Plants:**

“The contract with **IEPSON Consulting Enterprises (4500000207)** provides for environmental qualification (‘EQ’) engineering support services at JAF. Tasks include, but are not limited to, preparation of various engineering reports, calculations, operability assessments, and numerous kinds of reviews (e.g., of plant design changes, space and replacement parts for EQ equipment, procedures, etc.). EQ is a highly specialized engineering activity; any engineering or maintenance activities related to safety-related electrical equipment must include review by an EQ engineer. Failure to perform EQ activities in a timely and technically knowledgeable manner could jeopardize project and outage schedules, and possibly cause the plant to violate the Current Licensing Basis/Design Basis. Currently there is a significant backlog of EQ-related work activities primarily attributed to understaffing in previous years. Due to the high demand for EQ engineers in the industry, it has been difficult to attract and maintain qualified permanent staff in this specialized area. The vacant plant position was recently filled with a new permanent hire with no previous EQ experience; training and mentoring by an experienced EQ engineer are therefore required. The original award became effective on November 16, 1998 for an initial term of less than one year. Although this contract was awarded on a sole source basis, it should be noted that this was only after an extensive search for candidates under existing Authority general services agreements (‘GSAs’) had been performed; an evaluation of the GSA resumes determined that they did not have sufficient job-related experience and did not meet other Authority criteria. A fifteen-month extension is now requested in order to reduce the extensive backlog of EQ-related ACTS items and other deferred work activities, to support ongoing operation of the plant, to provide for required mentoring of the new permanent hire, and to support the scheduled outage in 2000. The current contract amount is \$125,000; it is anticipated that an additional \$244,200 will be required for the extended term. Rates will remain firm for the duration of the contract. The Trustees’ approval is requested to extend the subject contract through December 31, 2000 and to approve the additional funding.

“The contract with **Radiation Management Consultants C98-I6047** provides for emergency planning medical services in support of the Authority’s IP3 and Consolidated Edison’s IP2 nuclear power plants. This consists of local emergency preparedness, backup support services, accident response and maintenance of support hospitals, including training and drills and IP3 and IP2. The original award, which was competitively bid, became effective August 1, 1998 for an initial term of one year, with an option to extend for up to three additional years. A three-year extension is now requested in order to exercise this option to continue services. In the interim, a three-month interim extension was authorized, in accordance with the Authority’s Guidelines for Procurement Contracts and the Expenditure Authorization Procedures, in order to continue services for one quarterly billing cycle. The current contract amount is \$90,000; it is anticipated that an additional \$180,000 may be required for the extended term. Rates for the fixed contract price portion of the scope will increase by a modest \$1,000 and then will remain firm for the duration of the contract. The Trustees’ approval is requested to ratify the interim extension through October 31, 1999, to extend the subject contract through July 31, 2002 and to approve the additional funding requested. It should be noted that 50% of the total costs will be backcharged to Con Edison.

“The contract with **WD Associates, Inc. (S98-04137)** provides for temporary training personnel to support the Shift Technical Advisor (‘STA’) program at JAF. In June of 1998, the Institute of Nuclear Power Operations (‘INPO’) identified weaknesses of the JAF STA training program and degraded its accreditation status to probationary. An aggressive corrective action plan was put into effect, predicated on the use of highly experienced contract support personnel who will implement the program changes and material development necessary to meet INPO accreditation standards. Although the Authority has existing staff augmentation ‘general services agreements’ in place, it was and continues to be extremely difficult to find instructors with all

of the requisite skills in the current marketplace. The original award, which became effective July 20, 1998 for an initial term of less than one year, was therefore awarded on a sole source basis. A two-month extension was authorized in accordance with the Authority's Guidelines for Procurement Contracts and the Expenditure Authorization Procedures. An additional three-month extension is now requested to allow for the orderly completion of the current training program, as well as for additional classroom time and trainer-supervised walkdowns in order to prevent recurrence of performance problems. The current contract amount is \$319,000; it is anticipated that an additional \$50,000 will be required for the extended term. The Trustees' approval is requested to ratify the interim extension through September 30, 1999, to extend the subject contract through December 31, 1999 and to approve the additional funding requested.

**Increase in Compensation Ceiling:**

“At their meeting of November 26, 1996, the Trustees approved the award of six three-year General Services Agreements ('GSAs') to provide engineering personnel to perform design changes and modifications, on an 'as required' basis, in support of both nuclear plants. The contracts with **Burns & Roe Enterprises, Inc., Cataract, Inc., Proto-Power Corp., Raytheon Engineers & Constructors, Sargent & Lundy LLC, and Stone & Webster Engineering Corp. (C96-Z0050 – C96-Z0056)**, which became effective on October 15, 1997, were awarded as a result of competitive bidding. These contracts were approved by the Trustees through October 14, 1999, in the initial combined total amount of \$13,000,000. The areas of specialized tasks involve all classifications of engineering activities, such as civil/structural, electrical, mechanical, instrumentation & control, maintenance, outage and non-outage modifications, as well as contingency maintenance support. Use of such outside consultants is necessary when certain engineering tasks cannot be performed by Authority engineering staff due to the volume of tasks, schedule constraints, NRC regulatory issues, and/or the nature of specialized services.

“At their meetings of June 24, 1997 and December 16, 1997, the Trustees authorized the large tasks scheduled for 1997 and 1998 in support of IP3 and JAF and approved an additional \$7,000,000 and \$13,000,000, respectively, thereby increasing the compensation limit to \$33,000,000. Subsequently, an additional \$240,000 was authorized in accordance with the Authority's Expenditure Authorization Procedures ("EAPs"). An extension of fifteen months is now requested in order to support RO10 at IP3 and to complete any tasks that may be in progress at year's end. These include, but are not limited to, completion of backup spent fuel pool engineering, support of the Contractor Water Treatment System ('CWTS') installation, and additional secondary side pipe replacement at IP3, as well as engineering and design services for various design changes and modifications in support of RO14 scheduled for next year at JAF (e.g., valves, Reactor Water Clean-Up "RWCU" system piping replacement, etc.). It is anticipated that no new tasks will be assigned under these contracts after December 31, 1999. Contracts will be closed out as work is completed in Year 2000 and all such work is currently anticipated to be completed no later than December 31, 2000. These services are currently being rebid, with the intent of issuing new awards to be effective January 1, 2000; new tasks will be assigned under the new contracts. The total cumulative value of these contracts and the Authority's liability thereunder through September 30, 1999 is \$33,240,000. It is currently anticipated that an additional \$4,760,000 will be required for the extended term of the contracts. The Trustees' approval is therefore requested to approve the extension of the subject contracts through December 31, 2000, to ratify the additional funding authorized per the EAPs, and to approve the additional funding now requested, thereby increasing the compensation limit to \$38,000,000.

**Contracts in Support of the Non-nuclear Facilities and Headquarters Office Business Units:**

“The contract with **Clarkson University (S98-05019)** provides for expert services to perform modifications to a computer simulation model of the ice transport processes in the Upper Niagara River and to prepare documentation for the model. This work was undertaken as the result of recommendations included in the Authority's Final Report, 'Hydropower and Ice on the Upper Niagara River', that was filed with the Federal Energy Regulatory Commission ('FERC') to satisfy the requirements set forth in Article 305 of the Niagara

Power Project license. The contract was awarded on a sole source basis, since Dr. H.T. Shen is the recognized expert who developed the original models and studies on which this work is based. The contract became effective September 14, 1998 for a term of one year. While the contract contains an option to extend for up to two additional years, a nine and one-half month extension is now requested to allow sufficient time for Dr. Shen to complete the calibration for ice runs and ice jamming events by December 31, 1999, as well as an additional six months to address any questions that might arise from the forthcoming submittal to FERC. The current contract amount is \$52,000; it is anticipated that no additional funding will be required for the extended term. The Trustees' approval is requested to extend the subject contract through June 30, 2000, with no additional funding requested.

"The contract with **New York State Technology Enterprise Corp., 'NYSTEC' (S98-06003)** provides for assistance to Authority staff in implementing the new Energy Management System ('EMS') by providing network analysis support, project management support, programming services, and application testing. Presently, NYSTEC is assisting with the integration of software updates required to support the Authority's participation with the New York Independent System Operator. The contract became effective on September 28, 1998 for an initial term of less than one year. It references the pricing and terms and conditions in a contract awarded to NYSTEC by the State of New York Office of General Services as a result of competitive bidding. A fifteen-month extension is now requested in order to assist in the development of specifications for programs to support Energy Scheduling and Accounting ('ESA'), and may also assist in their implementation and testing; perform a security assessment for the computer network supporting the EMS; participate in a review of the ESA database implementation, documentation, and procedures; and provide recommendations and general support for the EMS system. NYSTEC is the provider of choice for these services because it is willing to adjust staffing levels according to Authority needs. NYSTEC provides staff who can work independently, perform task analysis, research and testing without the need for additional coding instructions. The current contract amount is \$150,000; it is estimated that an additional \$200,000 may be required for the extended term. It should be noted that at least part of the additional funding requested was previously approved by the Trustees at their meeting of September 28, 1998, as part of the additional Capital Expenditure Authorization Request in support of the new EMS. The Trustees' approval is requested to extend the subject contract through December 31, 2000 and to approve the additional funding requested.

"The contract with **Robinson, Silverman, Pearce, Aronsohn & Berman, LLP (S98-03825)** provides for certain legal services relating to the arbitration of a lawsuit instituted on behalf of the Authority as a result of certain damages sustained by a generator at the Authority's Charles A. Poletti Power Plant in June, 1992. The original retention of counsel agreement became effective June 24, 1998 for an initial term of up to one year. The subject lawsuit has been commenced in the Supreme Court, New York County involving Industrial Risk Insurers. The Authority is seeking to have this lawsuit settled by arbitration. A two-year extension is now requested in order allow sufficient time to bring this case to a successful conclusion. A three-month interim extension was authorized, in accordance with the Authority's Guidelines for Procurement Contracts and the Expenditure Authorization Procedures, in order to continue services through September 30, 1999. The current contract amount is \$25,000; it is anticipated that no additional funding will be required for the extended term. It should be noted that the fee is on a contingency basis; the firm would receive one-third of any monies that may be recovered by the Authority, whether recovered by litigation, award or settlement (after deducting reasonable and necessary expenses and disbursements). The Trustees' approval is requested to ratify the interim extension through September 30, 1999 and to extend the subject contract through September 30, 2001, with no additional funding requested.

"The contract with **Roy F. Weston of New York, Inc. (S98-01726)** provided for asbestos abatement planning/consulting and monitoring services in support of the Authority's coal boiler conversion, Electrotechnologies and Non-Electric End use Programs and projects. Services included asbestos surveying and testing, abatement design, independent monitoring and air sampling, and were provided on an 'as required' basis, using unit prices for testing and hourly rates for staff. The original contract, which was competitively bid, became effective on May 5, 1998 in the initial amount of \$225,000. The scope of work increased significantly

as a result of the need to provide services for an additional 27 projects including climate control services associated with the coal boiler conversions, as well as services associated with two or three Electrotechnologies and Non-Electric End Use projects. These programs were new to the Authority and the services proved much more complicated and are extensive than originally anticipated. As a result, the costs associated with these services higher than originally estimated. The President authorized additional funding to cover the increased scope and related costs. Although the services provided under this contract have been completed and re-bid, the final change order increased the contract amount to \$810,000. In accordance with the Authority's Expenditure Authorization Procedures, the Trustees' approval is requested to ratify the additional funding that had been authorized, since the cumulative change order value of the subject personal services contract exceeded \$500,000. It should be noted that the Authority will recover all costs associated with this effort.

"The contract with **Salesco Systems USA (S98-04373/460000068)** provides for the recycling/disposal of light ballasts and lamps in support of the Authority's lighting program. The original contract, which was competitively bid, became effective August 3, 1998 for an initial term of one year, with an option to extend for up to three additional years, subject to the Trustees' approval. A three-year extension is now requested in order to exercise this option. A two-month interim extension was authorized, in accordance with the Authority's Guidelines for Procurement Contracts and the Expenditure Authorization Procedures ('EAPs'), in order to continue services through September 30, 1999. The current contract amount is \$600,000; any additional funding that may be required for the extended term will be authorized in accordance with the EAPs. It should be noted that unit pricing will decrease for each option year. The Trustees' approval is requested to ratify the interim extension through September 30, 1999 and to extend the subject contract through August 2, 2002, with no additional funding requested.

#### FISCAL INFORMATION

"Funds required to support contract services for various non-nuclear Headquarters Office Departments/Business Units and non-nuclear facilities, as well as for JAF and IP3 have been included in the 1999 Approved O&M Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years. Payment will be made from the Operating Fund.

"Funds required to support contract services for capital projects have been included as part of the approved capital expenditures for those projects. Payment will be made from the appropriate Nuclear Improvement Fund.

#### RECOMMENDATION

"The Site Executive Officer – James A. FitzPatrick Nuclear Power Plant, the Site Executive Officer - Indian Point 3 Nuclear Power Plant, the Vice President – Nuclear Operations, the Vice President - Nuclear Engineering, the Regional Manager – Western New York, the Vice President – Power System Operations, the Deputy Secretary and Deputy General Counsel, and the Vice President - Procurement and Real Estate, recommend the Trustees' approval of the extension and additional funding of the procurement contracts listed in Exhibit '11-A', and of an increase in the compensation ceiling of the six contracts with Burns & Roe Enterprises, Inc., Cataract, Inc., Proto-Power Corp., Raytheon Engineers & Constructors, Sargent & Lundy LLC, and Stone & Webster Engineering Corp., as set forth above.

"The Senior Vice President – Chief Nuclear Officer, the Senior Vice President – Energy Services & Technology, the Senior Vice President – Transmission, the Senior Vice President and Chief Financial Officer, the Executive Vice President – Corporate Services and Human Resources, the Executive Vice President, Secretary and General Counsel, the Executive Vice President – Project Operations, and I concur in the recommendation."

The attached resolution, as recommended by the President, was unanimously adopted.

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, each of the contracts listed in Exhibit "11-A" is hereby approved and extended for the period of time indicated, in the amounts and for the purposes listed below, as recommended in the foregoing report of the President; and be it further

RESOLVED, That pursuant to the Authority's Expenditure Authorization Procedures, an increase in the compensation ceiling of the six contracts with Burns & Roe Enterprises, Inc., Cataract, Inc., Proto-Power Corp., Raytheon Engineers & Constructors, Sargent & Lundy LLC, and Stone & Webster Engineering Corp., be, and hereby are, approved as recommended in the foregoing report of the President, in the amount and for the purpose listed below:

| <u>O &amp; M</u>  | <u>Contract Approval<br/>Compensation Ceiling</u>                | <u>Projected<br/>Closing<br/>Date</u> |
|---|--|---------------------------------------|
| <b>General Services Agreements<br/>to provide for engineering<br/>services for IP3 and JAF:</b> |  |                                       |
| <b>Burns &amp; Roe Enterprises, Inc.<br/>C96-Z0054</b>  | <b>\$4,760,000<br/>(additional funding<br/>through 12/31/00)</b> | <b>12/31/00</b>                       |
| <b>Cataract, Inc.<br/>C96-Z0055</b>   |  |                                       |
| <b>Proto-Power Corp.<br/>C96-Z0050</b>  |  |                                       |
| <b>Raytheon Engineers &amp; Constructors<br/>C96-Z0051</b>                                      |  |                                       |
| <b>Sargent &amp; Lundy LLC<br/>C96-Z0056</b>  |  |                                       |
| <b>Stone &amp; Webster Eng. Corp.<br/>C96-Z0052</b>   |  |                                       |
| <b>Previously Approved<br/>Compensation Ceiling</b>   | <b>\$33,000,000</b>  |                                       |
| <b>Additional Funding<br/>Authorized per EAPs</b>   | <b><u>\$ 240,000</u></b>   |                                       |
| <b>TOTAL REVISED<br/>COPMPENSATION CEILING</b>  | <b><u>\$38,000,000</u></b>                                       |                                       |

**IP3 and JAF Procurement (Services) Contracts - Extensions**  
 (For Description of Contracts See "Discussion")

| <u>Plant Site</u>                                   | <u>Company Contract #</u>   | <u>Start of Contract</u> | <u>Description of Contract</u>  | <u>Closing Date</u> | <u>Award Basis<sup>1</sup> Contract Type<sup>2</sup></u> | <u>Compensation Limit</u>  | <u>Amount Expended To Date</u> | <u>Expected Expenditure For Life Of Contract</u> |
|---|---|--------------------------|---|---------------------|--|--|--------------------------------|--|
| <b>Contracts in support of the nuclear plants :</b> |   |                          |   |                     |  |  |                                |  |
| JAF   | IEPSON CONSULTING ENTERPRISES<br>4500000207   | 11/16/98                 | Provide Environmental Qualification engineering support services                    | 12/31/00            | S/S  | \$125,000  | \$99,825                       | <b>\$369,200*</b>                                |
|   |   |                          |   |                     |  | *Note: includes an increase of \$244,200   |                                |  |
| IP3 & IP2   | RADIATION MANAGEMENT CONSULTANTS<br>C98-I6147   | 08/01/98                 | Provide emergency planning medical services   | 07/31/02            | B/P  | \$90,000   | \$57,208                       | <b>\$270,000*</b>                                |
|   |   |                          |   |                     |  | *Note: includes an increase of \$180,000   |                                |  |
| JAF   | WD ASSOCIATES, INC.<br>S98-04137  | 07/20/98                 | Provide temporary training personnel to support the Shift Technical Advisor Program | 12/31/99            | S/S  | \$319,000  | \$241,641                      | <b>\$369,000*</b>                                |
|   |   |                          |   |                     |  | *Note: includes an increase of \$50,000  |                                |  |
| <b>Increase in Compensation Ceiling:</b>            |   |                          |   |                     |  |  |                                |  |
| IP3/JAF   | 6 contracts:<br>1. BURNS & ROE ENTERPRISES<br>C96-Z0054<br>2. CATARACT, INC.<br>C96-Z0055<br>3. PROTO-POWER CORP.<br>C96-Z0050<br>4. RAYTHEON ENGINEERS & CONSTRUCTORS<br>C96-Z0051<br>5. SARGENT & LUNDY LLC<br>C96-Z0056<br>6. STONE & WEBSTER ENGINEERING CORP.<br>C96-Z0052 | 10/15/96                 | Provide engineering services under "General Services Agreements"                    | 12/31/00            | B/P  | \$33,240,000   | \$29,651,199                   | <b>\$38,000,000*</b>                             |
|   |   |                          |   |                     |  | *Note: includes combined total of \$33,000,000 previously approved by the Trustees, an additional \$240,000 authorized per EAPs + an increase of \$4,760,000 |                                |  |

1 Award Basis: B= Competitive Bid; S= Sole Source; C= Competitive Search  
 2 Contract Type: P= Personal Service; S= Service

**IP3 and JAF Procurement (Services) Contracts - Extensions**  
**(For Description of Contracts See "Discussion")**

| <u>Plant Site</u>   | <u>Company Contract #</u>  | <u>Start of Contract</u> | <u>Description of Contract</u>   | <u>Closing Date</u> | <u>Award Basis<sup>1</sup> Contract Type<sup>2</sup></u> | <u>Compensation Limit</u>   | <u>Amount Expended To Date</u> | <u>Expected Expenditure For Life Of Contract</u> |
|---|--|--------------------------|--|---------------------|--|---|--------------------------------|--|
| <b>Contracts in support of Headquarters Office Business Units and the Non-nuclear facilities:</b> |  |                          |  |                     |  |   |                                |  |
| NIA PROJ/<br>PWR GEN  | CLARKSON UNIVERSITY<br>S98-05019   | 09/14/98                 | Perform modifications to computer simulation model of ice dynamics in Upper Niagara River                                | 06/30/00            | S/P  | \$52,000  | \$40,000                       | <b>\$52,000*</b>                                 |
|   |  |                          |  |                     |  | *Note: no additional funding requested  |                                |  |
| ECC/<br>TRANSMISSION  | NEW YORK STATE<br>TECHNOLOGY ENTER-<br>PRISE CORP. (NYSTEC)<br>S98-06003 | 09/28/98                 | Provide support services for the new Energy Management System and the New York Independent System Operator               | 12/31/00            | B/S  | \$150,000   | \$123,208                      | <b>\$350,000*</b>                                |
|   |  |                          |  |                     |  | *Note: includes an increase of \$200,000  |                                |  |
| LAW   | ROBINSON, SILVERMAN,<br>PEARCE, ARONSOHN &<br>BERMAN, LLP<br>S98-03825   | 06/24/98                 | Provide legal services relating to the arbitration of a lawsuit re damages sustained by a generator at the Poletti plant | 09/30/01            | C/P  | \$25,000  | \$0                            | <b>\$25,000*</b>                                 |
|   |  |                          |  |                     |  | *Note: no additional funding requested; services performed on a contingency basis (percentage of recovery)  |                                |  |
| ENERGY<br>SERVICES<br>& TECHNOL.  | ROY F. WESTON<br>OF NEW YORK, INC.<br>S98-01726                          | 05/05/98                 | Provide for asbestos abatement planning/ consulting services for energy efficiency & coal conversion projects            | 05/02/99            | B/P  | \$810,000   | \$802,739                      | <b>\$810,000*</b>                                |
|   |  |                          |  |                     |  | *Note: services were completed; no additional funding requested; seek Trustees' ratification of final change order due to cumulative change order value |                                |  |
| ENERGY<br>SERVICES<br>& TECHNOL.  | SALESCO SYSTEMS<br>USA<br>S98-04373/<br>4600000068                       | 08/03/98                 | Provide for recycling/ disposal services of light ballasts and lamps for the Authority's lighting program                | 08/02/02            | B/S  | \$600,000   | \$137,817                      | <b>\$600,000*</b>                                |
|   |  |                          |  |                     |  | *Note: no additional funding requested  |                                |  |

1 Award Basis: B= Competitive Bid; S= Sole Source; C= Competitive Search  
2 Contract Type: P= Personal Service; S= Service

**12. Motion to Conduct Executive Session**

“Mr. Chairman, I move that the Authority conduct an executive session in connection with discussions concerning the medical, financial, credit or employment history of a particular person or corporation and the proposed acquisition, sale or lease of real property.”

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

“Mr. Chairman, I move that the Authority resume the meeting in open session.” Upon motion made and seconded, the meeting resumed in open session.

Authorization of Chairman to Sublease Certain Office Space

RESOLUTION

**RESOLVED**, That subject to the final approval of the Chairman, the President and Chief Operating Officer, the Executive Vice President - Corporate Services and Human Resources or the Vice President - Procurement and Real Estate be, and hereby is, authorized to enter into a sublease for office space in the Paramount Building (redacted pending conclusion of negotiations), on substantially the terms set forth in the attached memorandum of the President, and subject to approval of the sublease by the Executive Vice President, Secretary and General Counsel or his designee; and be it further

**RESOLVED**, That subject to the final approval of the Chairman, the Executive Vice President - Corporate Services and Human Resources, the Vice President - Procurement and Real Estate, or the Director - Real Estate be, and hereby is, authorized on behalf of the Authority to execute any and all other agreements, papers, or instruments which may be deemed necessary or desirable to carry out the foregoing, subject to approval by the Executive Vice President, Secretary and General Counsel or his designee.

**INFORMATIONAL ITEM**

**14. Firm Hydropower Sales – Curtailment/Support Arrangements**

SUMMARY

This is to inform the Trustees of the procedures that will be followed in the event that it becomes necessary to interrupt or reduce firm hydropower sales.

BACKGROUND

The Authority sells firm power from the Niagara and St. Lawrence Power Projects to Municipal Electric Systems, Rural Electric Cooperatives, Neighboring State Bargaining Agents, Upstate IOUs (for resale to rural and domestic, Replacement Power and Expansion Power customers), North Country Industries and Transportation Agencies.

DISCUSSION

Because of the exceptionally high reliability demonstrated by the Niagara and St. Lawrence Power Projects, and except for some very short term situations involving unusual ice and/or wind conditions, the prospects of being required to curtail (and possibly support) firm hydropower sales has not been a concern for at least the past 30 years. However, with the sharp reduction in flows that the Authority has been experiencing this year, and expects to experience for at least next year, the Authority's ability to fully meet its firm hydropower contractual obligations may be in jeopardy.

Exhibit '14-A' to this memorandum is a paper prepared by staff concerning curtailment and support procedures. As indicated in that paper, staff has determined that the Authority should endeavor to effect interruptions/reductions of firm power service due to low flow conditions on a pro rata basis.

Because of the reduced water flows that the Authority has been experiencing, it will be necessary to interrupt or reduce firm hydropower service as early as October 1999. Thus, staff is in the process of contacting affected customers and advising them of their options.

It should be noted that the Authority's ability to meet the hydro customers' schedules at times of peak demand will not be jeopardized by the low flow conditions. However, because of the reduced production the Authority will not be able to fully supply the customers' hydro energy requirements in all hours.

While this matter is relatively straightforward with respect to most customers, it becomes quite complicated when applied to Expansion Power and Replacement Power industries who are retail customers of Niagara Mohawk and NYSEG, not the Authority. As the Authority does not have a customer relationship with these industries, staff will work closely with both the utilities and the individual industries to mitigate the impact of any hydropower interruptions.

The Trustees will be kept apprised of this matter on an ongoing basis.

Eugene W. Zeltmann  
President and Chief Operating Officer

Att.  
HYDRO.SEP

**September 28, 1999**

*Mr. Hiney presented a historical perspective on current flows of the Niagara and St. Lawrence Rivers and the forecast of future flows, utilizing graphs.*

September 28, 1999

NYPA Firm Hydropower Sales-  
Proposed Curtailment/Support Arrangements

**Background**

NYPA hydropower sales to Municipal Electric Systems, Rural Electric Cooperatives, Neighboring States, Upstate IOUs (for resale to R&D, Replacement and Expansion Power Customers), North Country Industries and Transportation Agencies are designated by contract as firm power. While firm power is generally furnished on a continuous basis, in the case of firm Niagara and St. Lawrence hydropower, deliveries are subject to interruption or reduction in the event that insufficient water is available to meet the firm schedules. This would only happen after all interruptible power and energy sales have ceased.

Unlike certain other categories of Authority firm power, sales from Niagara and St. Lawrence are not required to be supported by the Authority from other resources. The contract documents provide for a demand charge abatement and allow for the Authority to provide support, provided the cost is assumed by the customer. Because of the exceptionally high reliability demonstrated by these projects, and except for short term problems associated with, for example ice conditions, support has not been a concern for at least the past 30 years. However, with the sharp reduction in flows that the Authority has been experiencing and expects to continue to experience during 1999, the Authority's ability to supply fully its firm hydropower contracts may be jeopardized.

**Provision and Compensation for Support Power and Energy**

If curtailments become necessary, the customers will require economical replacement power and energy. The Authority will provide support from its other resources or the market if the customers opt for such service and compensate the Authority. The framework under which the Authority can provide and be compensated for such support differs among the various customers and categories of customers as described below.

**Customer Categories Served at Preference Rates**

A number of customer categories are served at cost-based hydropower rates. These are known as "preference rate" customers and include Municipals, Cooperatives, Neighboring States, R&D sales to IOUs and Transportation Agencies (Metropolitan Transportation Authority and Niagara Frontier Transportation Authority). The power contracts under which hydropower is sold to these categories are all subject to the Authority's Rules and Regulations for Power Service (the Rules) which state that the Authority shall not be required to use other resources (Authority owned or purchased generation) unless the customer agrees to pay the cost differential.

**Expansion Power (EP)**

Expansion Power is provided to industrial consumers through sale-for-resale arrangements with Niagara Mohawk and NYSEG<sup>1</sup>. EP is sold to Niagara Mohawk and NYSEG under sale-for-resale agreements that include formula based rates and that specify the costs that Niagara Mohawk and NYSEG may pass on to ultimate EP customers. The sale-for-resale agreements include a provision entitled “Availability of Expansion Power” that sets forth procedures that would apply if the Authority does not deliver EP to the utilities for resale to ultimate consumers. Briefly, those procedures state that the utility will attempt to notify the EP consumer if EP is unavailable. Prior to notification, the power supplied by the utility in place of the EP shall be deemed “Emergency Supply” and shall be priced at the EP rates. Once notified that EP is unavailable, the EP consumer may elect to take service under the utility tariff or discontinue service.

The Availability of Expansion Power provision exposes the EP consumers to higher costs for periods well beyond the curtailment period. Even if service under the utility retail tariff is required for a period as short as one day, the ultimate EP consumer could incur substantial costs because of demand ratchet provisions in the utility tariffs.

The sale-for-resale agreements also incorporate the Rules which would allow the Authority to replace the curtailed energy but this would require the “customer”, i.e., Niagara Mohawk and NYSEG, to agree to pay the cost differentials. This approach would also require the EP consumers’ agreement to shoulder such costs.

### **Replacement Power (RP)**

Replacement Power is sold to Niagara Mohawk under sale-for-resale arrangements generally similar to those applicable to Expansion Power with the following major exceptions:

1. RP is sold as a fixed 445 megawatt block at 95 percent load factor, notwithstanding that ultimate RP consumers use substantially less energy. The residual RP energy is sold by Niagara Mohawk to its R&D customers at the RP rates.
2. The EP “Emergency Supply” procedures are not applicable.
3. The Authority’s current Rules do not apply to RP sales and no provision for dealing with cost differentials associated with support power applies.

The R&D customers receiving RP residual energy (i.e., the energy associated with the difference between 95 percent load factor and the aggregate load factor of RP industrial consumers) received 563,485 mWh in 1997 (about 15 percent of the total RP energy). There is an issue as to whether the R&D use of RP should be considered a lower priority by Niagara Mohawk in allocating any curtailments between the RP industrial consumers and the R&D classes.

Unlike EP, there is nothing in the RP sale-for-resale agreement describing how the ultimate industrial consumer may be served if the Authority curtails energy deliveries and such curtailments result in similar cuts by Niagara Mohawk. Presumably, service would be under Niagara Mohawk’s retail tariff with its demand ratchets. As with EP, if RP industries are to be supported during curtailments, it will be necessary for the Staff to perfect compensation arrangements with Niagara Mohawk and the affected industries.

### **North Country Industries**

The Rules applicable to this customer category include the same “support” provision applicable to preference rate customers, i.e., the Authority shall not be required to use other resources available to it unless the customer agrees to pay the cost differential.

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<sup>1</sup> Three megawatts of EP is also supplied through sale-for resale arrangements with the City of Jamestown.

## **Recommendation**

The Staff recommends that the Authority endeavor to implement any curtailments on a pro rata basis among all firm customers of the Niagara and St. Lawrence Projects. By pro rata we mean that all firm customers' hydro energy entitlements would be reduced proportionally. For example, if the Authority has 10% less hydro energy than necessary to meet the customers' schedules, each customer will have its schedule reduced by 10% during the period affected.

**15. Reversal of Interest Rate Swap Option**

The President submitted the following report:

SUMMARY

“The Trustees are requested to (1) approve the termination of the floating-to-fixed rate swap agreement entered into with Salomon Brothers Holding Company, Inc., (‘Salomon Smith Barney’) with a notional amount of \$300 million and (2) the payment of a termination cost not to exceed \$6.6 million.

BACKGROUND

“The Trustees authorized the Authority to sell an interest rate swap option with a notional amount of \$300 million to Salomon Smith Barney at the January, 1999, Trustee meeting. The Authority received \$10.1 million for the sale of this interest rate swap in February 1999. The money at that time was used to pay down the balance of the taxable commercial paper that was financing the Authority’s FitzPatrick nuclear facility. Pursuant to the swap option agreement, a floating-to-fixed rate swap agreement was entered into with Salomon Smith Barney with a notional amount of \$300 million.

DISCUSSION

“The Authority can now terminate this swap agreement for a cost of approximately \$6.6 million. This would mean that the Authority would record a gain of approximately \$3.5 million and would be in the same position with respect to variable rate debt exposure as it was before the sale of the interest rate swap option.

“The low water flows, which were expected to have a negative impact on cash flows, have been offset by the continued improved performance of the nuclear facilities. This in turn has resulted in operating reserves rising to over \$220 million, well above the amount of \$150 million set as the level at which, after consideration of the other requirements of the Authority’s Bond Resolution, monies in the Operating Fund may be used for lawful corporate purposes. In this case, the \$6.6 million would come from the reserve amount in excess of the \$150 million level established by the Trustees in 1998.

FISCAL INFORMATION

“The cost of terminating the interest rate swap would be approximately \$6.6 million resulting in a gain to the Authority of \$3.5 million. The cost would be paid from the Operating Fund.

RECOMMENDATION

“The Treasurer recommends that the Trustees approve the termination of the interest rate swap agreement with Salomon Smith Barney and the payment of up to \$6.6 million to terminate the agreement.

“The Senior Vice President and Chief Financial Officer, the Executive Vice President, Secretary and General Counsel, the Executive Vice President – Project Operations, and I concur in the recommendation.”

The attached resolution, as recommended by the President, was unanimously adopted.

*In response to questions from Trustee Ciminelli concerning the term of the Authority's outstanding debt, Mr.*

*Collins explained that since it is variable, the Trustees could determine at any time to pay it off.*

**RESOLVED, That the Trustees authorize the termination of the Interest Rate Swap Agreement, (the "Agreement") between the Authority and Salomon Smith Barney, and be it further**

**RESOLVED, That the Senior Vice President and Chief Financial Officer and the Treasurer are, and each hereby is, authorized to execute an agreement terminating the Agreement with such agreement having such terms and conditions as such authorized executing officer deems necessary or appropriate in his discretion to effectuate such termination at a cost not to exceed \$6.6 million the subject to approval of the form of such agreement by the Executive Vice President, Secretary and General Counsel, and be it further**

**RESOLVED, that the Treasurer be, and hereby is, hereby authorized to up to \$6.6 million of monies in the Operating Fund for the purpose of terminating the agreement, provided, however, that as a condition to such withdrawal, the Treasurer shall certify that the monies to be withdrawn are not then needed for any of the purposes specific in Section 503(1)(a),(b), or (c) of the General Resolution Authorizing Revenue Obligations; and be it further**

**RESOLVED, That the Chairman, the President and Chief Operating Officer, the Executive Vice President, Secretary and General Counsel, the Senior Vice President and Chief Financial Officer, the Treasurer, and the Deputy Treasurer, are, and each hereby is, authorized to do and perform or cause to be done and performed in the name and on behalf of the Authority, all other acts, to execute and deliver or cause to be executed and delivered all other notices, requests, directions, consents, approvals, orders, applications, agreements, certificates, and further documents or other communications of any kind under the corporate seal of the Authority or otherwise as he, she or they may deem necessary, advisable or appropriate to effect the intent of the foregoing resolutions.**

**16. Next Meeting**

“The regular meeting of the Trustees will be held on Tuesday, **October 26, 1999, at the New York Office at 11:00 a.m.**, unless otherwise designated by the Chairman with the concurrence of the Trustees.”

NXMTGSEP

**Closing**

Upon motion made and seconded, the meeting was closed at 12:55 p.m.

David E. Blabey  
Executive Vice President,  
Secretary and General Counsel