PUBLIC FORUM

SEPTEMBER 13, 2005 - 10:30 AM

PROPOSED REVISION IN ECONOMIC DEVELOPMENT
POWER PROGRAMS - SERVICE TARIFF AMENDMENTS

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PATRICK LEMAIRE - NORAMPAC
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HUDSON REPORTING & VIDEO, INC.
124 WEST 30TH STREET
NEW YORK, NEW YORK 10001

MS. GRAVES: Good morning. My name is Angela Graves. I'm the Deputy Secretary of the Power Authority. This Public Forum is being conducted by the Power Authority in accordance with the terms of the policy and procedure adopted by the Authority's trustees in November 1990.

Such policy and procedure provides for the holding of public forums on all significant Authority production and transmission rate increased proposal; that is increases of two percent or more. These forums are held in addition to the public notice and comment procedures required by the State Administrative Procedure Act and contracts with affected customers.

The purpose of this forum is to offer affected customers and the general public an opportunity to present data, views or arguments concerning the proposed action to amend the Authority's tariffs for High Load Factor, Economic Development Power, and Industrial Economic Development served by Municipal Distribution Agencies, collectively Power Programs. The proposed tariff amendments would increase rates for certain of the Power Program customers who received economic benefits to be provided in accordance with recently passed legislation, signed into law by Governor Pataki on July 26, 2005. The record of the forum will assist the Trustees of the Authority in evaluating the proposed tariff amendments.

Notice of the holding of a public forum on the proposed rate action was published in the Miscellaneous Notices Section of the New York State Register on August 10, 2005. Customers were informed by direct mail of this public forum regarding the proposed rate change on July 29, 2005.

If you plan to make an oral statement this morning and have not filled out a card at the sign-in desk, please do so now. We ask that you give copies of your written statement to the reporter and me either before or after you deliver your remarks.

Although your written statement can be whatever length you like, we would ask those presenting an oral statement limit his or her remarks to ten minutes. If your statement is summarizing a written statement both will appear in the record.

The record of this forum will remain open until September 26, 2005, for the submission of comments or statements. These should be addressed to the Deputy Secretary at 123 Main Street, 15-M, White Plains, New York 10601; and may be faxed to (914)681-6949; or emailed to angela.graves@nypa.gov. Please see Ms. Johnson, the Assistant Secretary, on your way out if you have additional questions.

Full stenographic minutes of this forum will be made and will be incorporated, along with the written submissions, into the record which will be reviewed by the Authority's trustees.

Copies of the stenographic transcript of this forum are available to the public. You can contact the reporter to make arrangements to purchase such a copy. A copy of today's transcript will also be available for your review at the following offices of the Authority: 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425 or 123 Main Street, 15M, White Plains, New York, 10601-3170.

At this point, I will turn the microphone over to Mr. Jordan Brandeis, the Director of Supply Planning, Pricing and Power Contracts of the Authority, who will describe the terms of the proposed contracts. We will then call upon speakers. Our order of speakers will be to call first any elected officials, and then proceed with the remaining speakers thereafter.

MR. BRANDEIS: Good morning. My name is Jordan Brandeis. I am the director of Supply Planning, Pricing and Power Contacts for the New York Power Authority. Today I'll present an overview of the proposed production rate increases to certain business customers.

I will cover three main areas today: background, legislative proceedings and the resulting pricing proposal.

First, a brief background on the business customers' rates. The affected customers can be generally grouped into three groups, the High Load Factor, Economic Development Power and Municipal Distribution Agencies, and will be collectively referred to as Power Program customers. They are served under four different Authority service tariffs, ST-1, ST-1S, ST-35 AND ST-50.

The last rate action approved by the trustees was in December 1992 when they authorized a five percent increase in production rates effective January 1993. This proposal is the first production rate increase in over 13 years.

In 1998, the Authority amended the tariffs to offer five long-term pricing options. A majority of the customers chose a pricing option. The proposed rate action affects 39 customers whose contracts end

October 31, 2005, and an additional 35 customers who did not select an option, and therefore lack any price protection. The remaining 30 customers selected pricing options that expire in 2007 and will not be affected by this action for the duration of their contracts.

More recently, in March 2004 and February 2005, the trustees approved amendments to ST-50 and ST-1, respectively, to authorize collection of ISO costs.

Finally, in June 2005, the legislature amended the Public Authorities Law and the Economic Development Law to, among other things, remove references to Fitzpatrick Power Plant and create the Energy Cost Savings Benefit Awards to be administered by the Economic Development Power Allocation Board, or EDPAB. These awards are designed to mitigate the rates that would otherwise reflect the cost of electricity purchased from the New York ISO administered markets. In connection with the new legislation, the Governor and the legislative leaders agreed that EDPAB and legislative Authority should administer the new Energy Cost Saving Benefit Awards to limit the rate increases to the Power Program customers through December 2006.

The purpose of the proposed rate action is to modify the tariffs to allow the Authority to cover a portion of the costs of serving the affected customers, consistent with the legislation. The proposed tariff rates would reflect the costs of purchasing electricity from the market, as mitigated by the Energy Cost Savings Benefit Awards. The energy Cost Savings Benefit Awards will be derived, in part, from the sale of up to 90 megawatts of Niagara/St. Lawrence hydroelectric power into the marketplace. In the absence of the legislation and the resulting Energy Cost Savings Benefits Awards, the Power Program customers would be exposed to market based commodity prices that would produce substantial rate increases. The resulting rate proposal would have the affected customers pay the current tariff rates for the three months from November 1, 2005 to February 1, 2006. Effective February 1, 2006, production rates will increase by approximately five percent of the total bill. These rates would be effective for six months or until August 1, 2006, when an additional total bill increase of approximately six percent would be effective. These rates would be in effect through December 31, 2006. After that date, the tariffs as proposed would provide for market-based rates for all electricity commodity sold to the Power Program customers. Furthermore, the pricing plan is subject to the trustees' discretion to raise the rates above the prescribed fixed rates levels prior to 2007, if they determine that such action is necessary to protect the Authority's financial condition.

Finally, the proposal includes amendments to ST-1S and ST-35, affecting certain High Load Factor and Municipal Distribution Agency customers, to conform the language in these tariffs to the wording in other tariffs concerning recovery of New York ISO costs from these customers.

As Ms. Graves mentioned, comments will be accepted until September 26, 2005. After reviewing comments, the trustees will take final action at their October 19th meeting. I'll now return the control of the forum back to Ms. Graves.

MS. LUTHIN: I have a process question. Is NYPA entertaining any questions regarding the rationale or the why? I just want to know are you entertaining any comments.

MR. CARLINE: Not at this time.

MS. LUTHIN: But this is a public forum, right?

MR. CARLINE: That's correct.

MS. LUTHIN: When is there a chance to ask NYPA what is the rationale behind this, if it's not now?

MR. CARLINE: My name is Joe Carline, and I'm an assistant general counsel of the Power Authority. This forum is solely for the purpose of hearing what you have to say about the proposal. It's not setup as an interactive type of thing where you cross examine the staff. If you have questions, present them to us. Send us a letter, and we'll try to get back to you with answers. We're not going to not answer your questions. This isn't the place for it. If you are an affected customer, we noted in our letter. If you have questions, we'll give you the name of the individual to talk to.

MS. LUTHIN: I've attended public forums. And I know you're not regulated by the Public Service Commission, however, when there is a change of this magnitude, questions are actually entertained. And I would think that NYPA would want to consider that so that people would actually hear the rationale behind something in order to educate people as opposed to, all right, fine.

MR. CARLINE: If you have any questions, put it in writing, and we'll see if we can answer it.

MS. LUTHIN: That doesn't seem right.

MR. LEVENSON: I'm Gary Levenson, senior attorney at the Power Authority. To follow along with Joe's comments, there are speakers here. We would like the speakers to come in and make remarks. It will all be recorded as well as the written remarks. There might be flexibility to put some of your thoughts on the record in this forum. It's not interactive, but as Joe indicated, you could do that. I think we have a list of speakers. If there's time, we could maybe accommodate you.

MS. GRAVES: Thank you, Mr. Brandeis. At this time, I will call Mr. Patrick Lemaire of Norampac.

MR. LEMAIRE: Good morning. My name is Patrick Lemaire. I am the COO of Norampac. Norampac, just to brief you on what it is. Norampac is the seventh largest container board company in North America. Container board is paper that is produced to make boxes. And we're one of the largest in Canada of box making. For people that not aware of the container board market, the box market since 1998 has been shrinking. And because of the result of this, over five million tons of container board has been shutdown in North America.

And the ones that are being shutdown are the highest cost producers. And this happened as much in Canada than in the States. And lastly, some 800,000 tons of container board has been shutdown in North America, one facility in Michigan, another one in Florida, and two more in Canada. For the Niagara Falls facilities which was high cost producer, and in 1997 we were approved to get economy power. We went from the market that was around seven cents then and we went down to four cents. And this helped us and helped us to make success of the Niagara Falls facility. So we were able since then to maintain 130 jobs over there, that's direct jobs, not counting the indirect jobs, and invest over

authorities around the Niagara Falls area
and regional authorities and to look at

$18 million in the facility.

So with a competitive power deal, this was the result of this. What's going to happen in 2007? I'm not saying it's going to jeopardize the Norampac facility in Niagara Falls, but for sure we are well aware there's power deals similar to Niagara Falls in other states and the United States are available and that will keep on going after 2007. And for us in being mainly in Canada, actually -- paper mills are in difficulty, because they're having power over there and they're in the range of seven cents, and you have other provinces in Canada that do get power at four cents and even 3.5 cents.

So lately we've been talking with authorities around the Niagara Falls area and regional authorities and to look at investment that we could do in Niagara Falls. And so the facility in Niagara Falls is targeted and there's other places in Quebec that is targeted because of a power package that we're getting. As I said, there is four cent power in Quebec available and there is four cent power available in New York State. And I won't complain about the increase that is happening in 2006. And it's normal to get some increase in that field. But like I was saying, we're targeting the Niagara Falls facility to do a major investment.

Our goal is to shutdown high cost producing machines that we have in the group, and one of them Ontario. To transfer this where the total package is more -- I wouldn't say cheaper, but it is more economically viable on the long-term. So the long-term is kind of looking at the short-term. It's turning to be a short-term. If nothing is done over 2007 -- and the investment I'm talking about is over $100,000,000 in the Niagara Falls area.

So I'm not saying this will happen, but the Niagara Falls facility probably has the best of package actually with the actual condition of the Norampac

Corporation for an investment of that magnitude. I don't want you to say okay, we're talking about a shrinking market and we're looking at investing over there. But like I said, we will shutdown some facilities and move them where the package of energy is better.

So this finalizes my statement. Looking at this, I'm telling you all this because we want to maintain the 130 jobs in Niagara Falls and more.

If we do an investment of that magnitude, we would probably increase the head count by 20 people, but if this doesn't happen, like I said earlier, I don't want it threatened, but it's only the facts of a competitive market. Niagara Falls is going to look more at being shutdown, because we have two machines over there and one of the machines is not really competitive, and the other one -- most of the investment of the $18 million was done on one of the paper machines. The other one needs to be changed completely.

So from that the 100 million would do the investment to change that paper machine, but they need to be packaged. We don't want to be part of the 5 million tons that went down over the years. Thank you.

MS. GRAVES: Thank you, Mr. Lemaire. I now call on Mr. Edward Gibbs.

MR. GIBBS: I'm Edward Gibbs. I'm executive director of the Westchester County Public Utility Service Agency, a long time customer of New York Power Authority. I noticed the mission up on the wall here as I came in, and I would like to see that in the minutes of this particular forum. It says -- and I'll paraphrase, "The mission is provide economical power energy for the benefit of our customers and all New Yorkers." I think it's important. When you hear the rest of my statement, you'll know why I wanted that mission statement in the minutes.

CPUSA, which is the acronym for our organization, appreciates the opportunity to present our views concerning the NYPA tariff amendments that are proposed to be effective November 1, 2005.

We are currently serving customers who provide 2,000 jobs for the 13.4 megawatts providing to us cheap power for those customers, which is roughly 150 jobs for Megawatt. We think that's a fair comparison compared to what is going on upstate.

NYPA proposes to increase rates in two steps. The first increase would be the period to February 1st to July 31, 2006 and the second for the period August 1st to December 31, 2006.

As applied to industrial customers being supplied by Westchester's Public Service Agency, the first increase would be 10.2 percent for the demand charge and 10.7 percent for the energy charge. While these increases are substantial, recognizing that the rates have remained constant for many years, the Agency accepts them as necessary.

The majority problem with the rates

is that after 2006, NYPA intends to charge industrial customers, except for those few under Option 5, rates based on the market costs of energy, capacity ICAP/UCAP including capacity costs and any transmission charges not otherwise recovered hereunder. And that's a quote from the NYPA documents.

I would like to illustrate the effect that this could have on the industrial customers being served by our agency. For a customer with a 60 percent load factor, average load to peak load, the current NYPA charge for capacity and energy totals 4.16 cents per kilowatt hour. The proposed rates for the period August 1st to December 31, 2006 for the same customer would increase rates to 5.14 cents per kilowatt hour indicates that the increase would be a little more than 11 percent.

For comparison, Con Edison is our utility and also serves New York City. Con Edison's cost capacity and energy supplied to its customers in Westchester County during the month of August 2005 was 14.98 per kilowatt hour at the market price. Thus, the cost capacity and energy is almost 300 percent more than NYPA proposed to charge industrial customers in the county for the period ending December 31, 2006. If in 2007 NYPA charges only the market rate, obviously such a huge increase would jeopardize the industries being served by the Agency and, in some cases could cause them to consider relocating to areas where they can buy electric service for lower prices.

In addition to the proposed huge increase to its existing customers, the agency is presently not able to serve any new industrial customers in the area. We have one potential new customer that proposed to expand their plant in Buchanan, New York, the world war plant La Barge is the name of the company to the tune of $75 million. And it is very possible in the event they'll get some cheap electricity they may not continue with their negotiation.

And I'll repeat what I just said. In addition to the huge increase to the existing customers, the agency is presently not able to serve any new industrial customers to the area.

Indeed, it appears that NYPA is abandoning its role to enhance industrial employment except for the Niagara frontier in Massena.

Westchester believes that NYPA has resources it could and should use to reestablish that role.

NYPA is presently providing 478 megawatts of high load factor to Alcoa at Massena. This is more than half of St. Lawrence Project's total output. We understand that NYPA is presently negotiating with Alcoa for a longer term agreement. We also understand that Alcoa has announced it expects to renovate its plants at Massena to increase their aluminum production while decreasing their number of personnel from the current approximate 1300 employees to 600-700 employees.

Continuing to provide 478 megawatts to Alcoa after their renovation would result in an allocation of one megawatt for less than two jobs. Bill comparison, NYPA's own criteria for allocating power to industries requires a minimum of 25 jobs per production of aluminum which request such a small cadre of personnel, would be to squander one of the State's most valuable economic assets. Obviously that's hydropower.

Subsidizing 1300 jobs in an amount exceeding $100,000 per job is certainly not the best use of this important State asset, hydropower. Even worse, Alcoa's projected job reduction means that one megawatt's value of $387,000 would subsidize less than two jobs.

Niagara is also supplying 553 megawatts of firm power and 360 megawatts of peaking power to three upstate utilities. The utilities use this low cost power and energy to reduce an average residential customer's bill for electricity by about one dollar each month. Economically, from the perspective of New York State's economic health, a much better use of this would be to stimulate jobs throughout the State.

Recent State legislation provided that hydropower not currently assigned to specific industries on the Niagara frontier be made available to MDA and EDP customers for the balance of 2006. When that provision expires at the end of 2006, we believe it would be advantageous for the State as a whole to have any hydropower relinquished by industries on the Niagara frontier available to industry throughout the State on the basis of the number of jobs per megawatt. I thank you for the opportunity of the presenting our testimony.

MS. GRAVES: Thank you, Mr. Gibbs. I call Ms. Catherine Luthin from Luthin Associates, Inc.

MS. LUTHIN: I want to stress that I agree with majority of the comments that Ed just made. The focus that NYPA should have in every employee's heart is the economic investment focus. I think it's a terribly important role for the agency. And what you need to do is to remain competitive. I'm just as concerned as Ed. And I understand why you're in the box that you're in too. So I'll get to that.

But you need to have economic development power that's economic. If everything is going to be a market-based rate, who are you actually really competing with? It's not clear to me that Niagara is going to be a better job than, say, Con Edison in procuring power.

I understand that NYPA's long-term assets have disappeared, and that's why you are where you are. I also understand that you had the New York ISO cost that are being passed on to you. But I urge strongly that you take a look at procurement mechanisms that will secure long-term contacts. I believe in hedging for the long-term. Hedging for a lengthy period of time does lower the overall cost supply. And I don't really know why NYPA is where it's at right now.

Just to go to the market does not seem to me that you have a long-term plan for economic development. I'm also very concerned that the pricing plan is subject to the trustee's discretion to raise rates above the prescribed level required in 2007. If they determine that such action is necessary to protect the Authority's financial condition -- I'm questioning what would motivate such action, a one percent price increase in supply, 20 percent. Is it possible to quantify what that would be?

If you're lucky enough to get an economic development deal from the Power Authority, as a customer of NYPA's, you really want to be able to know how much that power is going cost, how long it's going to be in place, and how much you're going to pay for it. You need to be able to count on it. With this type of open-endedness, you're not counting on much at all.

So this plan in my opinion doesn't offer anything to industrial or commercial customers in terms a of a long-term guarantee of economic development power. And I request that the Power Authority look harder at procuring long-term supply to offer an attractive economic development package to the deserving individuals who attain economic development for the Power Authority.

MS. GRAVES: If there's no one else that has comments or ready to speak, I will close this forum at this time. Thank you all for coming.

C E R T I F I C A T E

I, MARYAM MUWWAKKIL, a Notary Public within and for the State of New York, do hereby certify that the foregoing record of proceedings is a full and correct transcript of the stenographic notes taken by me therein.

MARYAM MUWWAKKIL

PUBLIC FORUM

SEPTEMBER 13, 2005 – 10:30 AM

Statements Received

1. Patrick Lemaire
   Chief Operating Officer
   Norampac

2. Edward Gibbs
   Executive Director
   Westchester County Public Utility Service Agency

3. Patrick G. Duggan
   Deputy County Executive
   Nassau County Department of Economic Development

4. Geoff Booth
   General Manager
   New York Post

5. Barbara S. Brenner, Esq.
   Partner
   Couch White, LLP

6. Ronald Bennett
   Ultra Flex Packaging Corporation

7. Michael J. Delaney
   Vice President – Regulatory Affairs
   New York City Economic Development Corporation

Norampac
Niagara Falls Division

Norampac is an acronym for North American Packaging; we produce Linerboard, Medium and host of corrugated products that includes graphics and display items. Our primary customers are other manufactures that use boxes to protect their goods from their business to the customer. If you have every purchased a pizza in Western NY the chances are pretty good that the pizza box was manufactured by Norampac.

Norampac was formed in 1997 when two Canadian companies Domtar and Cascades decided to become a Joint Venture. Since 1997 Norampac has seen tremendous success in Canada and currently has 30% of the market share. We have used the revenue from Canada and used it to invest in operations in the United States.

For example in 1997, we had only one operation in the US which was the Niagara Falls mill that produced medium...this is the fluted or wavy part of the corrugated box. Prior to 1997 the mill was in operation under Cascades for about 10 years and lost money 90% of the time due to technological disadvantages and not having a consistent customer base.

With the formation of Norampac, Niagara Falls gained new customers in Canada and the mill was able to achieve profits to retool the facility. The total investment in the Niagara Falls facility is approximately 40 million dollars. The Niagara Falls example shows the commitment that Cascades has towards making a successful operation even after 9 years of failure. However the time has come that the Niagara Falls mill must support itself and start showing a consistent profit.

The Niagara Falls mill produces six hundred and fifty (650) tons of recycled medium daily. The mill consumes in excess of seven hundred (700) tons per day of Old Corrugated Containers or OCC to manufacture our paper. We purchase one hundred thousand (100,000) pounds of steam per hour from a local Waste to Energy supplier. We purchase eleven point three (11.3) megawatts per hour of electricity to operate this facility. Ninety seven hundred kilowatts of this power is supplied by NYPA from the Economic Development Power Program.

This plant is a twenty four hour; seven days per week operation that employs one hundred and thirty (130) permanent employees and impacts the employment of at least another one hundred (100) people utilized by the mill for various services such as mechanical/electrical contractors and service agreements, chemical and raw material suppliers, and many other local suppliers and services. The average yearly wages for our production and maintenance employees is fifty thousand dollars ($50,000) per year plus benefits. We have had a significant presence over the last sixteen (16) years in Niagara Falls and Western NY with this employment and the value added economic impact on local suppliers, contractors, and community.

Historically, corrugated container manufacturing has been closely correlated with the changing momentum of economic activity. This is because almost all consumer and manufactured goods are transported in boxes. As the demand for boxes rises, the demand for corrugated medium also rises. We have entered into a very competitive global market which has a decreasing market share, leaving only the low cost producers in the game. This situation has been prevailing for sometime, and there appears to be no improvements of our market in the short or medium term.

Presently our corporation is in an over supply of the product we produce, therefore our ability to remain one of the lower cost producers within our group will justify our existence and we will not be required to shutdown one of our two machines or possibly both.

The proposed Economic Development Power Program service tariff amendments will impact our profitability and add an additional electrical cost of five hundred thousand dollars ($500,000) to the end of 2006. However, beginning 2007, with the need to purchase power at market rate, we anticipate additional electrical power costs of two million four hundred thousand dollars ($2.4 million) per year.

We cannot control the market however we can control our costs. With NYPA assistance we can stabilize our electrical cost and help secure the Niagara Falls facility's future presence in this economically depressed area.

In today's global economy, the success of a business is a coordinated activity which requires the support of company investor's, employees and the community as a whole. If manufacturers like us in Western New York are to continue to stay competitive, we need to create a partnership with businesses and government committed to the future existence and support of the local economy. We need to remain as a low cost producer of medium or possibly become another paper mill closure statistic.

Addendum to statement—September 22, 2005

In addition to our concerns to the proposed increase of the Economic Development Power contract power rates, we wish to emphasis our concerns about the expiration of the contract at the end of 2006, and our ability as a company to remain competitive in our market, and also be selected by our Corporation for further expansion.
With the expiration of this contract, we will be forced to purchase market rate power, and as mentioned above, represent a possible increase of $2.5 million or more each year for power. It is imperative that this contract be extended with favorable rates for our organization to remain competitive.

Clyde Smith Plant Manager
Norampac Inc. Niagara Falls, NY

Patrick Lemaire Vice President
Norampac Inc. Montreal Quebec Canada

Westchester gov.com

Andrew J. Spano
County Executive

Public Utility Service Agency

Thomas M. Geiger
Chairman

Edward M. Gibbs
Executive Director

September 13, 2005

STATEMENT by Edward M. Gibbs, Executive Director

Re: New York Power Authority Proposed Rate Amendment

I am Ed Gibbs of Westchester County's Public Utility Service Agency. We appreciate the opportunity to provide our views regarding the NYPA tariff amendments that are proposed to become effective November 1, 2005.

NYPA proposes to increase rates in two steps. The first increase would be for the period February 1st to July 31st, 2006 and the second for the period August 1st to December 31st, 2006.

As applied to industrial customers being supplied by Westchester's Public Utility Service Agency, the first increase would be 10.2% for the demand charge and 10.7% for the energy charge. The second increase would raise the demand charge to 11.2% and to 12.2% for the energy charge. While these increases are substantial, recognizing that the rates have remained constant for many years, the Agency accepts them as necessary.

The major problem with the rates is that after 2006, NYPA intends to charge industrial customers (except for those few under Option 5) "rates based on the market costs of energy, capacity (ICAP/UCAP) including locational

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White Plains, New York 10601 Telephone: (914) 995-2906 Fax: (914) 995-3791 Website: emg2@westchestergov.com

capacity costs and any transmission charges not otherwise recovered hereunder...".

I would like to illustrate the effect this could have on the industrial customers being served by our Agency. For a customer with a 60% load factor (the ration of average load to peak load), the current NYPA charge for capacity and energy totals 4.16 cents per KWh. The proposed rates for the period August 1st to December 31, 2006 for the same customer would increase rates to 5.14 cents per KWh which indicates that the increase would be more than 11%.

For comparison, Con Edison's costs of capacity and energy supplied to its customers in Westchester County during the month of August 2005 was 14.98 per KWh, the market price. Thus, the cost of capacity and energy is almost 300% more than NYPA proposed to charge industrial customers in the County for the period ending December 31, 2006. If, in 2007, NYPA charges only the market rate, such a huge increase would jeopardize the industries being served by the Agency and, in some cases could cause them to consider relocating to areas where they can buy electric service for lower prices.

In addition to the proposed huge increase to its existing customers, the Agency is presently not able to serve any new industrial customers to the area. Indeed, it appears that NYPA is abandoning its role to enhance industrial employment except for the Niagara frontier and Massena.

Westchester believes NYPA has resources it could and should use to reestablish that role.

NYPA is presently providing 478 MW of high load factor to Alcoa at Massena. This is more than half of St. Lawrence Project's total output. We understand that NYPA is presently negotiating with Alcoa to extend that contract for a long time. We also understand that Alcoa has announced it expects to renovate its plants at Massena to increase their aluminum production while decreasing their number of personnel from the current approximate 1300 employees to 600-700 employees.

Continuing to provide 478 MW to Alcoa after their renovation would result in an allocation of one MW for less than two jobs. By comparison, NYPA's own criteria for allocating power to industries requires a minimum of 25 jobs per production of aluminum which requests such a small cadre of personnel, would be to squander one of the State's most valuable economic assets.

Subsidizing 1300 jobs in an amount exceeding $100,000 per job is certainly not the best use of this important State asset, hydropower. Even worse, Alcoa's projected job reduction means that 1 MW's value of $387,000 would subsidize less than 2 jobs.

NYPA is also supplying 553 MW of firm power and 360 MW of peaking power to three upstate utilities. The utilities use this low cost power and energy to reduce an average residential customer's bill for electricity by about one dollar each month. Economically, from the perspective of New York State's economic health, a much better use of this would be to stimulate jobs throughout the State.

Recent State legislation provided that hydropower not currently assigned to specific industries on the Niagara frontier be made available to MDA and EDP customers for the balance of 2006. When that provision expires at the end of 2006, we believe it would be advantageous for the State as a whole to have any hydropower relinquished by industries on the Niagara frontier available to industry throughout the State on the basis of the number of jobs per MW.

Our Mission is...

to provide clean, economical and reliable energy consistent with our commitment to safety, while promoting energy efficiency and innovation for the benefit of our customers and all New Yorkers.

New York Power Authority

Thomas R. Suozzi
County Executive

Patrick G. Duggan
Deputy County Executive

Nassau County
Department of Economic Development
400 County Seat Drive
Mineola, New York 11501
516.571.0390

September 22, 2005

Power Authority of the State of New York
Angela D. Graves, Deputy Secretary
123 Main Street
White Plains, New York 10601

Subject: Economic Development Power Programs-NYS Public Authorities Law, Section 1005

Dear Ms. Graves:

The purpose of this letter is to provide written comments on the proposed service tariff amendments for business customers served under the Economic Development Power Programs.

Nassau County businesses have been served under these programs for more than twenty years. During this time, the lower cost of electricity allowed these businesses, that were expanding or at risk of leaving the State, to remain in our County and create jobs.

We hope that through the cooperative efforts of Nassau County, the NYS Legislature, and the Governor, we can continue to provide programs that assist businesses to lower their energy costs, enabling them to prosper in New York State, strengthen our economy, and create or retain jobs for thousands of New Yorkers.

Sincerely yours,

Patrick G. Duggan

Cc: Nassau County Public Utility Agency
Hon. Tom Suozzi

NEW YORK POST

1211 Avenue of the Americas, New York, NY 10036-8790 T 212 930.8007 F 212 930.8005 gbooth@nypost.com

GEOFF BOOTH
General Manager

September 23, 2005

Mr. Michael J. Huvane
Manager
Business Marketing and Economic Development
New York Power Authority
123 Main Street
White Plains, New York 10601

Re: Tariff Changes Pursuant to 2005 Energy Legislation

Dear Mr. Huvane:

Pursuant to your letter of July 29, 2005, the New York Post respectfully submits these comments concerning the proposed tariff changes the New York Power Authority (NYPA) has announced that it will implement as a result of the enactment of Senate Bill 55866 and Assembly Bill A8960, signed into law by Governor Pataki on July 26, 2005.

The Post is one of the largest daily newspapers in the United States and a substantial provider of jobs for the citizens of New York City. The Post is a participant in the Industrial Economic Development Power Program administered by NYPA through the New York City Public Utility Service (NYCPUS), having committed to a substantial investment in plant, equipment and employment in New York City as its part of an agreement with NYCPUS. These comments respond to your announcement that the Post and other participants in NYPA's Economic Development Power programs face radical, near-term price increases for the power they receive from NYPA.

In effect, your letter announces unilaterally "the deal is off," but only after the Post fulfilled its side of the deal. It should come as no surprise that the Post feels frustrated, disappointed and misled.

As a preliminary matter, the Post is deeply troubled by the process here. NYPA made no meaningful effort to solicit input or comments from its economic development customers before pushing through a painfully expensive power deal. The opportunity for comment seems little more than a formality, occurring so late in the process that there appear to be no real choices on the table. The Post was equally disturbed by the Public Forum NYPA held on September 13, which the Post attended only to find that there was no opportunity for questions or comments, just an announcement of seemingly irrevocable decisions already made. The general lack of concern for valued employers in New York City like the New York Post and the dramatic impact on participating businesses is quite astonishing, particularly in light of NYPA's frequent touting of its vital role in facilitating and preserving economic development in New York through the provision of low-cost power.

The bare facts illustrate clearly the basis for the Post's profound frustration at NYPA's course of action. In March 2001, the Post entered into an agreement with NYCPUS, under which the City, in consideration for the Post's creation and maintenance of 475 jobs in the City and its combined investment of $177 million in plant and equipment in the City, agreed to provide the Post with electric power priced substantially below prevailing market rates. On its face, this agreement has a term of *50 years*. *See* New York Public Utility Service Power Service Agreement (PSA or Agreement), dated March 15, 2001. NYCPUS was able to enter into this contract because NYPA promised to supply low-cost power.

The Post has kept its end of the deal. Today, there are 486 employees of the Post working in well-paying, mostly high-skill jobs at its modern printing plant in the Bronx, a plant in which the Post has invested more than $260 million. However, NYPA and NYCPUS are walking away from their commitments. NYPA advises the Post that, commencing almost immediately, rates will rise in two steps totaling 11%, and that, after December 31, 2006, the Post will receive power that is priced not at the promised incentivized rates, but at "full market rates." This represents a potential increased cost to the Post of more than $1.5 million for 2007 alone. Over the life of the 50-year contract, the increased costs will likely total tens of millions of dollars.

While the Post's Agreement with NYCPUS reflected the possibility that rates might increase over the course of the contract, the Post had no reason to anticipate that, within a few short years after it was signed, the contract would shift to a market-priced contract. By its very nature, the Agreement was designed to assure that the Post would receive significant economic benefits. Indeed, the Agreement specifies that the Post could be required to refund those benefits if it failed to maintain the employment levels it promised. *See* PSA, Articles 2.4 and 9.0(e).

Now it appears that any benefit to the Post beyond 2006 is largely illusory. Under NYPA's proposal, the Post will pay for power at "full market rates." Nevertheless, the City and the State will continue to reap the benefits of the Post's very substantial investment in plant, equipment and employees, regardless of their failure to deliver the benefits to the Post that the power supply contract seemed to promise. The Post is left to wonder what the point is of NYPA's Economic

Development Programs if the participants will, in effect, be forced to compete for power with others who made no job retention or investment commitments.

Indeed, NYPA's behavior directly contradicts its public assertions about its own priorities:

> Economic development is a top priority for the New York Power Authority. . . . Our economical electricity, already linked to more than 400,000 jobs statewide, can make the difference between jobs *growing* here or *going* elsewhere.

NYPA Web Site, www.nypa.gov/economic.htm (emphasis in original). NYPA's behavior here seems to be a vote for, in its own words, "jobs going elsewhere."

When Senate Bill 55866 and Assembly Bill A8960 were enacted this summer, the Governor, Senate Majority Leader and Speaker of the Assembly issued a joint statement hailing the passage of "comprehensive" energy legislation that would "ensure the availability of low-cost power for businesses that will foster job creation and economic growth in every part of the State." Just the opposite is occurring under NYPA's proposed course of action.

NYPA has pointed to the sale of the FitzPatrick Nuclear Plant, historically a source of low-cost power, as the reason for subjecting the Post and its other Industrial Economic Development customers to full market rates. But NYPA had already sold FitzPatrick at the time it made its commitment to the Post in 2001, so that cannot be the explanation or justification. Nor can NYPA claim that it no longer has access to below-market power. It has substantial hydropower resources in its portfolio that represent some of the lowest cost power in the Nation. Except for a short transition period, however, it appears that none of that power will be employed in meeting the Industrial Economic Development contract commitments NYPA has made.

The Post understands that the new state legislation sharply limits the use of NYPA's hydropower resources to serve NYPA's economic development programs and that some of the hydropower must go to so-called preference power customers. A8960, Section 1. However, the Niagara Redevelopment Act, 16 U.S.C. § 836, the federal law that has provided the historic basis for restricting much of the benefit of NYPA's Niagara Project hydropower resources to the area surrounding the Project, expires shortly. This is thus an opportune time for NYPA to seek the authority it requires to ensure that it can make the most effective use of its power resources to carry out its economic development mission. A strong legislative effort by NYPA to ensure this result would at least reflect a good faith effort to keep the commitments it made when it promised low-cost power in return for economic development commitments.

Indeed, if NYPA's power is supposed to be used to preserve jobs in the State, then those who meet the commitment to retain jobs, as the Post has done, should be first in line to receive the power regardless of where in the state they are located. Freeing its hydropower resources from regional restrictions, which by all reports have not proved successful in retaining industrial jobs in those regions, is one obvious way to enable NYPA to fulfill its economic development mission and deliver the benefits of low-cost power that the contract between NYCPUS and the Post appeared to promise.

Plainly, given the significant impact of NYPA's announced course of action, and its severe impact on the Post's power costs, the Post must now examine all of its options, including how its power supply needs can be met affordably for the future. For its part, NYPA should promptly undertake immediate concrete actions to enable it to deliver on its promise to deliver low-cost power to those whose have made—and made good on—an economic commitment to the City. Specifically, NYPA should pursue smart, aggressive procurement strategies, after timely and meaningful consultation with its customers. It should concurrently re-examine its policies and pursue the necessary legislative changes that will enable it to provide low cost power to those who bring goods jobs to the citizens of New York. Any lesser course of action calls into question why NYPA deserves continuing support of the public, including the businesses that are so critical to the economic health of the entire State.

In short, the Post wishes to communicate in no uncertain terms its profound disappointment with NYPA's announced course of action and its outrage for having been led to believe that it would be the beneficiary of incentivized power rates (well below prevailing market rates) for the long term, only to see itself subjected to sharp rate increases, and full market prices, a mere four years after making and fulfilling its commitment to jobs and investment in New York City. As proposed, the new tariff provisions will cause the Post to suffer millions and millions of dollars in additional power costs. Such a result does not inure to the benefit of the Post as a valued employer in New York City nor serve the policies that are central to NYPA's mission.

Respectfully submitted,

Geoff Booth

GB/mc

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September 26, 2005

VIA EMAIL AND TELECOPIER

Ms. Angela D. Graves
Deputy Secretary
Power Authority of the
State of New York
123 Main Street
White Plains, New York 10601

Re: Rates for the Sale of Power and Energy
I.D. No. PAS-32-05-00013-P

Dear Ms. Graves:

In accordance with the Notice of Proposed Rulemaking, which was published in the August 10, 2005 *New York State Register*, Multiple Intervenors, an unincorporated association of approximately 55 large commercial and industrial energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its Comments on I.D. No. PAS-32-05-00013-P.

Very truly yours,

COUCH WHITE, LLP

Barbara S. Brenner

BSB/sem
Attachment
cc: Joseph Carline, Esq. (via email)
Michael Huvane, Esq. (via email)
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PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 55 large commercial and industrial energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its Comments on I.D. No. PAS-32-05-00013-P. Members of Multiple Intervenors purchase New York Power Authority ("NYPA" or "the Power Authority") Economic Development Power ("EDP") and High Load Factor ("HLF") power. The Notice of Proposed Rulemaking, which was published in the August 10, 2005 *New York State Register*, stated that NYPA's proposed amending the service tariffs for its economic development power programs, namely, Service Tariff Nos. 1, 1S, 35 and 50. As set forth below, Multiple Intervenors opposes the proposed tariff amendments.

STATEMENT OF POSITION

NYPA has proposed to amend the tariffs for economic development power program customers, which previously have been served by NYPA's former FitzPatrick nuclear power plant. The tariff amendments increase rates for the customers taking service pursuant to service tariffs 1, 15, 35 and 50 by approximately 5 percent as of February 1, 2006 and approximately an additional 6 percent as of August 1, 2006. Effective January 1, 2007, the customers would be charged market-based rates.

In the proposed tariffs, the Power Authority reserves the right to increase the rates "at any time if, in the sole discretion of the Trustees," it is necessary based on the Trustees' evaluation of NYPA's financial condition. In addition, the proposed tariffs state "that tariff charges may be raised effective immediately to a level up to the full cost incurred by the Authority to serve the Customers." NYPA's proposed amendments also delete the requirement that NYPA provide customers with not less than 90 days written notice of any revision to the rates for power and energy contained in its service tariffs.

Multiple Intervenors opposes certain aspects of the proposed tariff amendments and urges NYPA to: (1) reduce the proposed rate increase to less than 11 percent during 2006; (2) after December 31, 2006, continue to utilize the net proceeds from the sale of up to 70 MW of Replacement Power and 38.6 MW of St. Lawrence Preservation Power to mitigate rates, if NYPA still sells the hydropower into the wholesale market; (3) delete the proposed provision that permits NYPA to increase the tariff rates "effective immediately up to the full cost incurred by the Authority to serve the Customers;" (4) reinstate the provision that currently is in the service tariffs requiring NYPA to provide 90 days written notice to customers prior to revising the service tariff rates; and (5) engage in discussions with interested stakeholders aimed at developing long-term economic retention and development rates.

POINT I

NYPA HAS NOT DEMONSTRATED THAT THE 2006 RATE INCREASES SHOULD BE 11 PERCENT

The Power Authority has proposed tariff amendments for customers who have been approved for an Energy Cost Savings Benefit ("ECSB") award, pursuant to Section 183(h) of the Economic Development Law. The first stage of the rate increase would go into effect on February 1, 2006. The second stage would become effective on August 31, 2006. Then, as of January 1, 2007, according to correspondence from NYPA to its economic development power and high load factor customers, the customers "will be subject to full market rates."

The Power Authority has not provided any basis for the level of increases in rates, namely approximately 5 percent beginning on February 1, 2006 and the additional increase of approximately 6 percent on August 1, 2006. There is no backup data to support the rates that NYPA is proposing. All agency actions require a rational basis and can not be arbitrary or capricious. The Power Authority must provide a justification for this level of increases in rates prior to amending its tariffs. If NYPA can not justify this level of increases, then the increases should be less than 11 percent.

Moreover, some of the EDP and HLF customers have experienced electric cost increases this year of greater than 20 percent! This earlier increase occurred this past summer as NYPA began charging customers for various ancillary service costs associated with the New York Independent System Operator. Electric cost increases of this magnitude are hurting business and industry in New York. In order to encourage economic retention and development, a reduction of the proposed 11 percent increase is warranted.

POINT II

CUSTOMERS SHOULD NOT BE SUBJECT TO FULL MARKET RATES BEGINNING JANUARY 1, 2007

In correspondence to its customers, the Power Authority has indicated that beginning January 1, 2007 all customers with a contract term beyond December 31, 2006 will be subject to full market rates. Although the legislation signed into law by the Governor on July 26, 2005 states that the ECSB Award will be available only from November 1, 2005 through December 31, 2006, the legislation does not include a provision authorizing NYPA to charge market-based rates after December 31, 2006.

If the Power Authority is permitted to sell up to 70 MW of Replacement Power and up to 38.6 MW of Preservation Power into the wholesale markets after December 31, 2006, NYPA will make a profit on those sales. NYPA's net revenues from those sales, commencing January 1, 2007 should be used to mitigate the market-based prices for the economic development power program customers. It would be contrary to the economic development goals of the NYPA programs to allow NYPA to charge economic development customers market-based rates, when it is selling hydropower into the wholesale market at a price that exceeds NYPA's cost of production. The proceeds from the sale of such power should be utilized to mitigate the rates of economic development power program customers after December 31, 2006.[1]

POINT III

THE PROPOSED AMENDMENT ALLOWING NYPA TO RAISE THE TARIFF RATES TO FULL COST SHOULD BE DELETED

One of the proposed tariff amendments is the following:

> The rates shown in this tariff and these tables are subject to increase at any time if, in the sole discretion of the Trustees, they determine that such action is necessary based on their evaluation of the Authority's financial condition. Upon such a determination, the tariff charges may be raised effective

[1] NYPA predicts that the market price of Niagara Project hydropower will be approximately 4 cents per kilowatthour in 2007. NYPA Niagara Power Project (FERC No. 2216), Application for New License, Exh. D at D-4. Its cost of service is about 1 cent per kilowatthour.

> immediately to a level up to the full cost incurred by the Authority to serve the Customers.

This proposed tariff amendment should be deleted from the tariff approved by the Trustees. It gives NYPA the right to cancel, at any time, on no notice, the ECSB Awards created by the legislation signed into law by the Governor in July, 2005.

The governing statute provides that from November 1, 2005 until December 31, 2006, the economic development power program customers who qualify will receive an ECSB Award. During that period of time, the net revenues from the sale into the wholesale market of up to 70 MW of Replacement Power, up to 38.6 MW of Preservation Power and 20 MW of other power from the St. Lawrence Project shall be used for ECSB Awards "as deemed feasible and advisable by the Trustees." The proposed tariff provision would permit the Power Authority to retain all of the net earnings from the sale of this hydropower and not provide any benefits to the economic development power program customers. This would be contrary to the intent of the statute.

Moreover, the proposed tariff language attempts to vitiate the public notice requirements of the State Administrative Procedure Act ("SAPA") and NYPA's regulations. SAPA requires NYPA, which is a public authority, to publish rate schedules for public comment at least 45 days prior to effectuating a rate change. This tariff provision, if approved by NYPA's Trustees, would permit NYPA to raise its rates without a 45 day notice and comment period.

The only exception in SAPA is if the immediate adoption were necessary for the "preservation of the public health, safety or general welfare" and that complying with the formal requirements for notice would be contrary to the public interest. SAPA, § 202(6).

However, NYPA's proposed tariff language would permit NYPA to immediately increase rates even if it was not necessary for the preservation of the public health, safety or general welfare.

Part 455 of NYPA's rules and regulations also requires NYPA to give notice of proposed actions. *See* 21 NYCRR §455.1 Specifically, Section 455.1(a) requires NYPA to give notice whenever it proposes to undertake an "amendment of any rate schedule or tariff for the sale of power and/or energy." The NYPA procedures require notice at least 45 days prior to the adoption of such an action through publication in the State Register. *Id.*, §455.1(b)

The tariff provision that would authorize NYPA to change rates without any prior notice should be deleted from the service tariffs approved by the Trustees. It is inconsistent not only with the legislation which created the ECSB Awards, but also SAPA and NYPA's regulations.

POINT IV

THE CURRENT TARIFF PROVISION REQUIRING 90 DAYS ADVANCE NOTICE OF RATE CHANGES SHOULD NOT BE DELETED

In the proposed tariffs, NYPA has deleted the provision requiring the Power Authority to provide "not less than 90 days written notice" to its customers of any change in the rates for power and energy contained in the service tariff. The current service tariff provision provides NYPA's customers with an opportunity to comment on any proposed changes. Deleting the notice provision would have a negative impact on customers' ability to plan. The uncertainty that would result in the customers' business planning as the result of the deletion of this provision can not be understated. For a NYPA customer to be subject to the risk of an immediate change in the rates that it pays for power and energy, when these are one of the customers' most significant production costs, makes it virtually impossible for the customers to forecast their cost of doing business. This is a disincentive not only to new investment, but also the retention of existing manufacturing.

Moreover, as indicated in Point III, *supra*, the Power Authority must provide customers with at least 45 days notice and an opportunity to comment on any rate changes. NYPA has not provided any reason for deleting the notice provision. Consequently, the current tariff provision requiring 90 days advance notice of rate changes should not be deleted.

POINT V

LONG TERM ECONOMIC RETENTION AND DEVELOPMENT RATES NEED TO BE DEVELOPED

Manufacturers need assurance that the Power Authority's economic development power programs will continue and that the power will be available at a price that makes it possible for them to compete in the global economy. In order for businesses to continue to make investment commitments in the State, there must be a long-term solution to the problem of escalating economic development power program rates. Long-term rate stability is critical to continued investment in New York State.

The legislative intent of the Power Authority programs is to provide low-cost power to businesses. The Legislature's findings, in 1997. pertaining to the Power for Jobs program are equally applicable to the EDP and HLF programs. The Legislature expressly determined that "the cost of electricity has a significant effect on economic development, employment levels and decisions to retain, attract or expand businesses in New York." 1997 N.Y. Laws, Ch. 316, at § 1. The Legislature determined that in the absence of the opportunity to avail themselves of a lower cost form of power in the future, "New York enterprises may not make the investments and commitments to maintain and expand facilities in New York State." *Id.*

It is imperative that the Power Authority work with the interested stakeholders within the next few months to formulate a long-term strategy that will ensure rate stability and low cost power for industry in New York State in the future.

CONCLUSION

For the reasons set forth herein, Multiple Intervenors urges NYPA to: (1) reduce the proposed rate increase to less than 11 percent during 2006; (2) after December 31, 2006, continue to utilize the net proceeds from the sale of up to 70 MW of Replacement Power and 38.6 MW of St. Lawrence Preservation Power to mitigate rates, if NYPA still sells the hydropower into the wholesale market; (3) delete the proposed provision that permits NYPA to increase the tariff rates "effective immediately up to the full cost incurred by the Authority to serve the Customers;" (4) reinstate the provision that currently is in the service tariffs requiring NYPA to provide 90 days written notice to customers prior to revising the service tariff rates; and (5) engage in discussions with interested stakeholders aimed at developing long-term economic retention and development rates.

Dated: September 26, 2005

Respectfully submitted

Barbara S. Brenner

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ULTRA FLEX

Printers • Laminators & Converters of Flexible Packaging Materials

September 22, 2005

Ms. Angela D. Graves
Deputy Secretary
Power Authority Of The State Of New York
White Plains, New York 10601

Re: RECOVERY OF NYISO ASSESSMENTS

Ms. Graves,

Ultra Flex Packaging Corporation (Ultra Flex) hereby registers its objection to:

1) any amendment proposed by the New York Power Authority (NYPA) that incorporates avoidable costs, such as those assessed NYPA by the New York Independent System Operator (NYISO); and
2) NYPA assessing any costs (past, present and future) that are due in part or in whole to charges and/or surcharges levied by NYISO.

NYPA voluntarily joined NYISO and has voluntarily subjected itself to such charges despite the fact that NYPA is exempt from Federal Energy Commission rules and regulations (as NYPA is a subdivision of the State of New York). Any costs resultant thereof should not be borne by customers who had entered into contract with NYPA without disclosure by NYPA that said customers would be subject to charges that could be imposed by NYISO. Therefore, Ultra Flex disagrees with the NYPA position and policy to recover NYISO imposed costs from NYPA's customers.

ULTRA FLEX

Ultra Flex Packaging Corporation is a private corporation that is a customer of the New York Power Authority through a contract by and between our company and the New York City Public Utility Service (NYCPUS). As one of the last large private manufacturers remaining in the City of New York, our company was provided a NYCPUS Power Service Agreement in March, 2001, in consideration for our remaining in Brooklyn. As a result of that contract, and the representations thereof, we have made significant investment in our business, both acquiring over $10 million in state-of-the-art printing presses and related equipment, and expanding our facilities by over 25,000 square feet. We understood when we signed our contract with NYCPUS that NYPA was the supplier of power to NYCPUS. In fact, NYCPUS' application to NYPA and acceptance thereof (1990) was incorporated into our own contract with NYCPUS. We had reviewed those documents thoroughly, and understood NYPA's exempt status under the Federal Power Act. In fact, NYPA stipulates in one document that its rates are not even regulated by the New York State Public Service Commission.

ULTRA FLEX PKG. CORP. 975 Essex St., Brooklyn, NY 11208 Tel.(718)272-9100 Fax.(718)272-5424 flexo@ultraflex.com

The attempt by NYPA to pass through NYISO costs to Ultra Flex (through NYCPUS) erodes our company's ability to compete - and can cause irreparable harm to our business and our employees. The lower cost power supplied by NYPA to NYCPUS has been critical to our company in its efforts to compete.

Additionally, the principal reason why we declined another state's significant relocation offer was the NYCPUS contract, and that lower cost of NYPA power. At no time were we told that NYPA had joined NYISO and would be subject to future costs therefrom. Yet at that time (2001) NYPA was in fact a member of NYISO and we are profoundly disappointed that NYPA failed to disclose both that fact and the exposure to future charges therefrom.

Not only are we at risk to the unplanned and unanticipated NYISO costs now sought by NYPA, but we made multi-million dollar investments in our business which would not have occurred had NYPA made proper disclosure. Further, our company (with proper disclosure by NYPA) may have accepted the relocation offer, an offer that included cash incentives in excess of $20 million.

Thus, Ultra-Flex strongly disagrees with NYPA in its effort to recover any costs as a result of NYPA's voluntary joining of NYISO and therefore voluntary submission to its regulation, jurisdiction, tariffs, and costs. Further, our concern is only exacerbated by the efforts now to fold NYISO into a regional RTO, whereby additional charges and restrictions can be imposed on NYPA, a state authority over which the FERC has no authority.

NYPA EXEMPT STATUS

NYPA is exempt from federal regulation:

CITATION 1: FEDERAL ENERGY REGULATORY COMMISSION (FERC) ACKNOWLEDGES THAT NYPA IS EXEMPT

112 FERC ¶ 61,304
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

New York Power Authority — Docket No. EL05-123-000

v.

Consolidated Edison Company of New York, Inc.

ORDER ON COMPLAINT

(Issued September 19, 2005)

1. In this order, the Commission grants in part and denies in part the complaint filed by the New York Power Authority (NYPA)[1] against Consolidated Edison Company of New York, Inc. (Con Edison) regarding Con Edison's alleged interference with NYPA's desire to have certain of its New York City generating facilities utilize the station power procurement and delivery provisions of the New York Independent System Operator, Inc. (NYISO) Market Administration and Control Area Services Tariff (NYISO Services Tariff).[2] In so doing, we are enforcing the station power provisions of the NYISO Services Tariff, a rate schedule on file with the Commission and subject to its exclusive jurisdiction, and ensuring that NYPA may utilize the provisions of that rate schedule.

[1] NYPA, a political subdivision of the State of New [illegible] within the meaning of section [illegible] of the Federal Power Act (FPA), is an exempt public utility within the meaning of section [illegible] of the FPA [illegible]

CITATION 2: NYPA ACKNOWLEDGES THAT NYPA IS EXEMPT

Albany Office
[illegible]
[illegible]
518 432 6720

[illegible] Authority

March 4 2005

Hon Jaclyn A Brilling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany New York 12223

Re Case 05-M-0090 – In the Matter of the System Benefits Charge III

Dear Secretary Brilling

The New York Power Authority (NYPA) is a corporate municipal instrumentality and political subdivision of the State of New York. It is not subject to the jurisdiction of the Public Service Commission (Commission) in this matter. See e.g. Public Authorities Law § 1014. Pursuant to the Commission's Notice Soliciting Comments issued January 26 2005 (Notice) NYPA hereby submits its comments regarding several of the questions posed in the Notice. The stated purpose of the Notice is to give interested parties an opportunity to provide input to Department of Public Service Staff (Staff) before Staff prepares a proposal concerning whether the System Benefits Charge (SBC) program should continue after its current expiration date of June 30 2006.

CITATION 3: NYISO ACKNOWLEDGES THAT NYPA IS EXEMPT

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

[illegible]

COMMENTS OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

[illegible]

II. ASSESSMENT OF ANNUAL CHARGES

[illegible] political subdivision [illegible] State, or any agency, authority, or instrumentality of any one or more of the foregoing. [illegible] intent to limit annual charges to public utilities, the Commission continues that it proposes to continue its existing policy that municipals and rural electric utility systems that are financed by the Rural Utilities Service will not be required to pay annual charges. While these entities may be transmitting utilities subject to our authority under sections 211, 212, and 213 of the FPA, they are not public utilities under the FPA.

Two of the transmission owning entities whose transmission facilities are subject to the Agreement between the NYISO and the Transmission Owners are agencies of a state or a **political subdivision** of a state, and therefore are not public utilities: the New York Power Authority (**NYPA**) and the Long Island Power Authority (LIPA). As entities that are not public utilities, transmission over **NYPA** and LIPA's facilities should not be subject to the annual charges.

CITATION 4: GOVERNING FEDERAL STATUTES

- United States Code
  - TITLE 16 - CONSERVATION
    - CHAPTER 12 - FEDERAL REGULATION AND DEVELOPMENT OF POWER
      - SUBCHAPTER II - REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

U.S. Code as of: 01/05/99

Section 824. Declaration of policy; application of subchapter

(f) United States, State, political subdivision of a State, or agency or instrumentality thereof exempt

No provision in this subchapter shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

- United States Code
  - TITLE 16 - CONSERVATION
    - CHAPTER 12 - FEDERAL REGULATION AND DEVELOPMENT OF POWER
      - SUBCHAPTER I - REGULATION OF THE DEVELOPMENT OF WATER POWER AND RESOURCES

U.S. Code as of 01/06/03

Section 796. Definitions

(7) ''municipality'' means a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power;

CITATION 5: GOVERNING NEW YORK PUBLIC AUTHORITIES LAW

New York State Consolidated Laws

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Public Authorities

TITLE 1
POWER AUTHORITY OF THE STATE OF NEW YORK

NYPA IS A SUBDIVISION OF THE STATE

S 1002 Power Authority of the State of New York 1 For the purpose of effectuating the policy declared in section one thousand one of this chapter there is hereby created a corporate municipal instrumentality of the state to be known as "Power Authority of the State of New York" in this title referred to as "the authority" which shall be a body corporate and politic a political subdivision of the state exercising governmental and public powers perpetual in duration capable of suing and being sued and having a seal and which shall have the powers and duties hereinafter enumerated together with such others as may hereafter be conferred upon it by law

NYPA IS EXEMPT FROM PUBLIC SERVICE LAW

S 1014 Public service law not applicable to authority inconsistent provisions in other acts superseded The rates services and practices relating to the generation transmission distribution and sale by the authority of power to be generated from the projects authorized by this title shall not be subject to the provisions of the public service law nor to regulation by nor the jurisdiction of the department of public service Except to the extent article seven of the public service law applies to the siting and operation of a major utility transmission facility as defined therein and except to the extent section eighteen-a of such law provides for assessment of the authority for certain costs relating thereto the provisions of the public service law and of the conservation law and every other law relating to the department of public service or the public service commission or to the conservation department or to the functions powers or duties assigned to the division of water power and control by chapter six hundred nineteen of the laws of nineteen hundred twenty-six shall so far as is necessary to make this title effective in accordance with its terms and purposes be deemed to be superseded and wherever any provision of law shall be found in conflict with the provisions of this title or inconsistent with the purposes thereof it shall be deemed to be superseded modified or repealed as the case may require

STATE WILL NOT LIMIT NYPA RIGHTS

S 1011 Agreement of the state 1 The state of New York does hereby pledge to and agree with the holders of any obligations issued under this title and with those parties who may enter into contracts with the authority pursuant to the provisions in sub-paragraph five or six of section one thousand five above that the state will not limit or alter the rights hereby vested in the authority until such obligations together with the interest thereon are fully met and discharged and/or such contracts are fully performed on the part of the authority provided that nothing herein contained shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of such obligations of the authority or those entering into such contracts with the authority The authority as agent for the state is authorized to include this pledge and undertaking for the state in such obligations or contracts

2 Nothing in this title shall be construed as diminishing or enlarging any valid existing rights under any license heretofore issued pursuant to the provisions of the federal power act

NYISO Authority Originates with FERC (FERC Has No Such Authority Over NYPA)

According to documents filed by NYISO with the FERC, NYISO's raison d'état is FERC order. As NYISO only exists out of FERC authority, NYISO should have no jurisdiction over NYPA, as NYPA is exempt from FERC jurisdiction per: 112 FERC ¶ 61, 304; section 3(7) of the Federal Power Act (FPA); section 201(f) of the FPA; 16 U.S.C. §§ 796(7); 824(f) (2000); and 19 F.P.C. 186.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

[illegible]

COMMENTS OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

[illegible]

I. INTRODUCTION

The NYISO is the independent body which was conditionally established by the Commission in its June 30, 1998 Order, *Central Hudson Gas & Electric Corp. et al.*, 83 FERC ¶ 61,352 (1998), *order on reh'g*, 87 FERC ¶ 61,135 (1999).

* * * * * * *

Summary

Ultra Flex Packaging Corporation respectfully objects to the pass through of NYISO costs by NYPA. As NYPA is exempt from NYISO jurisdiction by law, the acceptance by NYPA of any charges is voluntary, and is not a cost that should be absorbed by customers under existing contracts. Further, Ultra Flex respectfully objects to any amendment of tariff proposed by NYPA that would similarly incorporate into the rate structure such avoidable costs.

Sincerely,

Ronald A. Bennett
Ultra Flex Packaging Corporation

New York City
Economic Development
Corporation

September 26, 2005

Mr. Joseph J. Seymour, Chair
Board of Trustees
New York Power Authority
123 Main Street
White Plains, New York 10601

Mr. Eugene W. Zeltmann
President & Chief Executive Officer
New York Power Authority
123 Main Street
White Plains, New York 10601

Gentlemen:

The New York City Economic Development Corporation (NYCEDC), acting on behalf of the City's Economic Development Power (EDP) and Municipal Distribution Agency (MDA) customers of the City of New York, submits the following comments in response to the New York Power Authority's (NYPA) proposed tariff amendments presently scheduled to be made effective in February 2006.

Central to the mission of NYPA is the provision of low-cost power for the benefit of its customers and all New Yorkers. The importance of this role is illustrated by the more than 50,000 jobs supported by the firms receiving EDP and MDA power from NYPA through the New York City Public Utility Service (NYCPUS). Based on the utility's load of 115 megawatts, this equates to some 435 jobs per MW, a highly favorable jobs per MW ratio in the State's preeminent market economy. Both NYCEDC and NYPA have a clear interest in preserving such a vital resource.

NYCEDC is charged with the administration of the NYCPUS program, and in that capacity: 1) Asks NYPA to provide documentation and background for these critical changes in the terms of service; 2) Seeks extension of the Energy Cost Savings Benefit (ECSB) rate moderation awards; and 3) Urges reconsideration by the NYPA Trustees of the proposed schedule of the planned rate increases.

In its Notice of Proposed Rule Making of August 10, 2005, NYPA proposed to amend its service tariffs to reflect recent legislative changes, particularly as to the loss of the former Fitzpatrick nuclear power plant, and provided access to various Service Tariff rate provisions. NYPA also held a public forum in this matter on September 13, 2005. There, NYPA Deputy Secretary

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Angela Graves provided procedural information, and Jordan Brandeis, Director of Supply Planning and Pricing, made a brief statement for the record concerning the basis for the proposed increases. The gist of the latter was the 2005 legislative changes, the increased cost of purchasing electricity from the market, and the lack of a production rate increase since 1993. Mr. Brandeis additionally noted the mitigation effect of the proposed Energy Cost Savings Benefit (ECSB) awards. Public statements were taken at the Forum, and the record kept open to receive addition written submissions through September 26, 2005.

This form of notice and substantiation is not sufficient for a rate increase of the magnitude proposed here. It is undoubtedly true that some rate adjustments are necessary, given the fact that rates have not changed since 1993, and NYPA has itself experienced higher costs with the advent of the New York Independent System Operator (NYISO), and the many market changes in New York State in the last several years. However, customers and those who work closely with them, such as NYCEDC, need to have additional information in the form of supplemental and backup materials such as comprehensive cost studies in order to understand both this proposed increase and those that may follow in 2007 and beyond.

NYPA is of course not subject to Public Service Commission jurisdiction, and a full-scale regulatory rate making procedure is not required. However, in order to manage expectations for firms whose operation is critical to the City, and important to NYPA, a more extensive record should be developed, as was done for the Southeast New York (SENY) governmental customers by NYPA when similar rate increases were imposed. In part, this request for supporting information that explains the cost drivers and other factors that necessitate the tariff changes is intended to facilitate critical long-range planning for NYCPUS customers.

In addition, consideration should be given to the temporary nature of the ECSB awards. It is troubling that the rate moderating effects of these awards are of a thirteen-month duration, while the rate increases are presumably permanent. Moreover, NYPA suggests that additional increases may be needed to assure its financial well being in 2007 and beyond. While we recognize the reality of generally rising costs, it is important that any rate increases be fully supported, and communicated well in advance with as much precision as possible. The economic well being of NYPA and NYCPUS customers – and that of New York City – requires no less.

The timing of the tariff changes that NYPA staff proposes is also problematic. Not only are there two separate rate increases to be imposed on NYCPUS customers in 2006, thus creating a rapid compounding effect, but also the first of these increases is suggested for February of next year. Recent estimates from the federal Department of Energy Information Administration are that a sharp spike in winter fuel prices can be expected, particularly in the wake of the Gulf coast hurricanes. As many NYCPUS customers are also significant natural gas consumers, they will therefore be subject to multiple simultaneous burdens, particularly if the upcoming winter is severe.

To the extent that the Board of Trustees is inclined to approve the proposed tariff changes, it should do so only after careful review of the underlying support for same, and with the dissemination of all supporting materials to the public in the interest of full public policy transparency.

The Board should also utilize a considerably longer phase-in period for the rate increases, and provide extension of the ECSB for a period of more than thirteen months.

Finally, the first rate increase in February 2006 should be deferred until at least the spring of next year when the highest natural gas and oil prices will likely have diminished.

In sum, it is imperative that the Board of Trustees defer any action on increasing the EDP and MDA rates until additional information can be provided to customers, and equally important, until the peak winter season has passed. A deferral of even a few months would be of material benefit to our customers, and is fully warranted. It would also comport with NYPA precedents, as when the Board deferred the pass-through of NYISO transmission charges originally planned for January 1, 2004 into March of that year.

Thank you for your consideration of our views.

Sincerely yours,

Michael J. Delaney
Vice President – Regulatory Affairs

Gerard J. McLoughlin
General Manager
New York City Public Utility Service

cc: Ms. Elise M. Cusack
Mr. Frank S. McCollough, Jr.
Mr. Michael J. Townsend