

July 23, 2013

MEMORANDUM TO THE TRUSTEES

FROM THE PRESIDENT and CHIEF EXECUTIVE OFFICER

**SUBJECT: Direct Sale Contracts for the Sale of Western New York
Hydropower – Transmittal to the Governor and
Notice of Public Hearing**

SUMMARY

The Trustees are requested to: (1) approve proposed final contracts for seven Expansion Power (“EP”) and/or Replacement Power (“RP”) customers; (2) authorize transmittal to the Governor of the proposed final contracts for his approval and authorization for the Authority to execute the contracts; and (3) authorize a public hearing on a proposed contract for the sale of hydropower to M&T Bank Corporation (“M&T”) and transmittal of copies of such proposed contract to the Governor and legislative leaders pursuant to Public Authorities Law (“PAL”) §1009. A list of the seven EP and/or RP allocations and the proposed final contracts to each customer are attached as Exhibit “A.” The proposed contract with M&T is attached as Exhibit “C.”

BACKGROUND

Under PAL §1005(13), the Authority may allocate and sell directly or by sale for resale, 250 MW of EP and 445 MW of RP to businesses located within 30 miles of the Niagara Power Project, provided that the amount of EP allocated to businesses in Chautauqua County on January 1, 1987 shall continue to be allocated in such county.

Since the late 1980s, the Authority’s sales of EP and RP have been handled almost exclusively under contracts that the Authority entered into with Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) and New York State Electric and Gas Corporation (“NYSEG”), both of which facilitated the provision of Authority hydropower to end-use customers on a sale-for-resale basis. These contractual arrangements expired on June 30, 2013, and the Authority now sells EP and RP through direct sales to customers.

The first significant step in this direction was made in September 2010 after a public hearing process, when the Trustees approved long-term contract extensions that accommodated direct sales to customers for approximately 185 EP and RP allocations for the period July 1, 2013 through June 30, 2020. The Trustees also approved a new Service Tariff No. WNY-1 (“ST WNY-1”), governing all EP and RP sales commencing July 1, 2013, which modified the production rate for EP and RP by applying a three-year phase-in to a specified target rate based on the Authority’s Preservation Power rate.

The seven proposed final contracts before the Trustees are for Ceres Crystal Industries, Inc., Delaco AMTB LLC, Greenpac Mill, LLC, Hammond Manufacturing Co. Inc., Nulife Glass NY Inc., Welded Tube USA, Inc., and Yahoo! Inc., as described in Exhibit "A." These customers have either been awarded allocations of hydropower in return for job creation and capital expansion commitments, or in the case of Ceres Crystal Industries Inc., Delaco AMTB, and Hammond Manufacturing Co., the companies have been approved for extensions of existing allocations in return for agreed-upon employment and annual capital spending levels. With the aforementioned sale-for-resale contractual arrangements with the customers' local utilities having expired June 30, 2013, the final proposed contracts would enable the Authority to sell these customers their allocations under a direct sale arrangement for the term of the allocations. Transmission and delivery service for these allocations would continue to be provided by National Grid or NYSEG, as applicable, and in accordance with their filed service tariffs.

The following is a summary of some pertinent provisions of these contracts:

- The contracts would provide for the direct billing of all production charges (*i.e.* demand and energy) as well as all New York Independent System Operator, Inc. ("NYISO") charges, plus taxes or any other required assessments, all as set forth in ST WNY-1.
- The contracts include each customer's agreed-upon commitments with respect to employment, power utilization and capital investment. The Authority would retain the right to reduce or terminate customers' allocations if employment, power utilization, or capital investment commitments are not met.
- The contracts include the ability to award additional allocations of EP or RP to the customers at the same facility, which would be incorporated into Schedule A of the contracts. The Trustees approved this convention in the 2010 long-term extension contracts, which simplifies contract administration.
- To accommodate non-payment risk that could result from a direct billing arrangement with the Authority, the contracts include commercially reasonable provisions concerning, among other things, the ability to require deposits in the event of the customer's failure to make payment for any two monthly bills. This is consistent with recent Authority contracts that incorporate direct billing, including the Authority's Recharge New York sales contracts.

The Authority has discussed each contract with the relevant customer and in each case has received the customer's consent to the proposed contract. The customers acknowledge that ST WNY-1 rates will apply to their allocations. This is consistent with all allocations of EP and RP being served after July 1, 2013.

As required by PAL §1009, when the Authority has reached agreement with its co-party on such a contract, it is required to transmit the proposed contract to the Governor and other elected officials and hold a public hearing on the proposed contracts. At least 30-days' notice of

the hearing must be given by publication once in each week during such period in each of six selected newspapers. Following the public hearing, the contract may be modified, if advisable.

Upon approval of the final proposed contract by the Authority, the Authority must “report” the proposed contract, along with its recommendations and the public hearing records, to the Governor and other elected officials. Upon approval by the Governor, the Authority may execute the contract.

DISCUSSION

At their March 21, 2013 meeting, the Trustees authorized the Corporate Secretary to transmit the proposed contracts to the Governor and legislative leaders and schedule a public hearing on the contracts. A public hearing on seven contracts was held on June 20, 2013 at the Niagara Power Project’s Power Vista Visitor Center in Lewiston. There were no oral statements made at the public hearing and no written statements were submitted. The official transcript of the public hearing is attached as Exhibit “B.”

Regarding M&T, at their March 21, 2013 meeting, the Trustees were unable to adopt the resolution to authorize a public hearing on the proposed contract for the sale of 3,000 kW of EP because based on conflicts of interest, it failed to attain the required number of votes necessary for its approval. Staff is therefore bringing the proposed contract, attached as Exhibit “C,” back to the Trustees requesting the authorization necessary to initiate the PAL §1009 process after which staff will make additional recommendations regarding the proposed contract, as necessary, and report to the Trustees.

The proposed contract with M&T is in the same form as the final proposed contracts described above. The Authority and M&T have agreed to the proposed contract and M&T acknowledges that ST WNY-1 rates will apply to its allocation.

RECOMMENDATION

The Manager – Business Power Allocations and Compliance recommends that the Trustees approve the seven proposed contracts for the sale of Replacement Power and/or Expansion Power allocations that are attached as Exhibit “A” and authorize the transmittal of the contracts to the Governor for approval. It is also recommended that the Trustees authorize the Corporate Secretary to convene a public hearing on the proposed contract for the sale of 3,000 kW of Expansion Power to M&T Bank Corporation and transmit copies of such proposed contract to the Governor and legislative leaders pursuant to Public Authorities Law §1009.

For the reasons stated, I recommend the approval of the above-requested action by adoption of a resolution in the form of the attached draft resolution.

Gil C. Quiniones
President and Chief Executive Officer

Att.

Proposed Final Contract List

Proposed Final Contracts (7)

Public Hearing Transcript

M&T Proposed Contract

RESOLUTION

RESOLVED, That the contracts for the sale of Expansion Power (“EP”) and/or Replacement Power (“RP”) to Ceres Crystal Industries, Inc., Delaco AMTB LLC, Greenpac Mill, LLC, Hammond Manufacturing Co. Inc., Nulife Glass NY Inc., Welded Tube USA, Inc., and Yahoo! Inc., are in the public interest and should be submitted to the Governor for his approval and that copies of the contracts, along with the record of the public hearing thereon, be forwarded to the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee; and be it further

RESOLVED, That the Chairman and the Corporate Secretary be authorized and directed to execute such contracts in the name of and on behalf of the Authority after the contracts have been approved by the Governor; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing on the terms of the proposed contract for the sale of Expansion Power by the Authority to M&T Bank Corporation, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit copies of the proposed contract for M&T Bank Corporation to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Committee on Ways and Means, the Temporary President of the Senate, the Minority Leader of the Senate and

the Chairman of the Senate Finance Committee, pursuant to Public Authorities Law §1009(1);
and be it further

RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency, or his designee, be, and hereby is, authorized, subject to the approval of the form thereof by the Executive Vice President and General Counsel, to negotiate and execute any and all documents necessary or desirable to implement the contracts with the companies as set forth in the attached memorandum of the President and Chief Executive Officer; and be it further

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

New York Power Authority
Expansion and Replacement Power Allocations
Direct Sale Contracts - Transmittal to the Governor

July 23, 2013
Exhibit "A"

Number	Company Name	Program	City	County	Trustee Approval Date	Approved Allocation(s) (kW)	New Jobs	Total Job Commitment	Capital Investment ⁽¹⁾	Proposed Direct Sale Contract Term
A-1	Ceres Crystal Industries, Inc.	RP	Buffalo	Erie	3/21/13	4,600	N/A	50	\$1,000,000	6/30/2018
A-2	Delaco AMTB LLC	RP	Tonawanda	Erie	3/21/13	250	N/A	16	\$2,425,000	6/30/2018
A-3	Hammond Manufacturing Co. Inc.	RP	Buffalo	Erie	3/21/13	100	N/A	27	\$25,000	6/30/2018
A-4	Greenpac Mill, LLC	RP	Niagara Falls	Niagara	6/29/10	10,000	108	108	\$380,000,000	5 Years
A-5	Nulife Glass NY Inc.	EP	Dunkirk	Chautauqua	3/27/12	500	25	25	\$3,750,000	7 Years
A-6	Welded Tube USA, Inc.	EP	Lackawanna	Erie	6/26/12	4,000	121	121	\$48,250,000	7 Years
A-7	Yahoo! Inc.	EP	Lockport	Niagara	3/21/13	7,200	115	115	\$170,000,000	7 Years
Totals						26,650	369	462	\$605,450,000	

(1) For Ceres Crystal, Delaco AMTB, and Hammond Manufacturing, the capital investment commitment is total over the 5 year term of the contract extension.

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER

to

Ceres Crystal Industries Inc.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Ceres Crystal Industries Inc. (“Customer”), with offices at 2250 Liberty Drive, Niagara Falls, New York 14304. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, Niagara Power Project hydroelectric power plays an important role in providing competitively priced power for sale to attract and retain business investment and to promote economic development in western New York State.

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, PAL § 1005(11) provides that the Authority is authorized to “[t]o exercise all the powers necessary or convenient to carry out and effectuate the purposes and provisions of ... title [1 of article 5 of the PAL] ... and as incidental thereto to . . . sell ... electric power, and generally to do any and every thing necessary or convenient to carry out the purposes of ... title [1 of article 5 of the PAL] ...”;

WHEREAS, the Authority has previously awarded the Customer one or more allocations of EP or RP (collectively, the “Allocation”) which expired on “Initial Expiration Date” specified in Schedule A;

WHEREAS, the Customer has applied for an extension of the Allocation;

WHEREAS, (i) the Authority has continued to provide electric service to the Customer on a month-to-month basis after the Initial Expiration Date to avoid a lapse of such electric service and potential hardship to the Customer as the Authority reviews the Customer's application for an extension of the Allocation, and (ii) such electric service has been provided on the basis of the terms and conditions that were applicable as of the Initial Expiration Date;

WHEREAS, on March 21, 2013 the Authority's Trustees approved an extension of the Customer's Allocation until the "Extended Expiration Date" specified in Schedule A of this Agreement;

WHEREAS, the Parties have reached an agreement on the terms and conditions that will be applicable to the sale of the Allocation commencing July 1, 2013;

WHEREAS, for avoidance of doubt, the Parties acknowledge that the Parties have separately agreed that the Authority will continue to provide electric service to the Customer for the period prior to July 1, 2013 on the basis of the terms and conditions that were applicable to the Allocation as of the Initial Expiration Date, subject to any necessary approvals of the Customer's local electric utility;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation(s) of EP and/or RP set forth in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).

- F. **Facility** means the Customer's facilities as further described in this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.
- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity (or LSE)** means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power (or RP)** is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Commitments" which is attached to and made part of this Agreement.

- U. **Schedule C** refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of this Agreement.
- V. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.
- W. **Taxes** is as defined in Service Tariff No. WNY-1
- X. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Y. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. Commencing July 1, 2013, the Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.

- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Commencing July 1, 2013, Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement. The Authority shall have the right to reduce the Allocations based on reductions in the Contract Demand made pursuant to Schedule B if the Customer fails to meet such commitments.
- B. The Authority will provide written notice to the Customer of any reduction made pursuant to this Article within thirty (30) days of such determination and will furnish the Customer with a revised Schedule A which reflects the reduced Allocation.
- C. Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in Schedule B.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is

necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email: MED-BPAC@nypa.gov
Facsimile: 914-390-8156
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Ceres Crystal Industries
2250 Liberty Drive
Niagara Falls, New York 14304
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

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

XVIII. Execution

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

Ceres Crystal Industries Inc.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

**SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER TO
CUSTOMER**

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Ceres Crystal Industries

Type of Allocation (EP or RP)	Amount (kW)	Facility	Initial Expiration Date	Extended Expiration Date	Trustee Approval Date
RP	1,300	2250 Liberty Drive, Niagara Falls, New York 14304	12/31/2012	6/30/18	3/21/13
RP	1,600	2250 Liberty Drive, Niagara Falls, New York 14304	12/31/2012	6/30/18	3/21/13
RP	1,700	2250 Liberty Drive, Niagara Falls, New York 14304	12/31/2012	6/30/18	3/21/13

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Customer Commitments and Related Matters

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

C. Capital Investment

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's capital investment commitments set forth in the Appendix of this Schedule B.

The Customer shall furnish to the Authority records and other proof of the Customer's capital investments in the Facility for purposes of allowing the Authority to calculate a three-year historical average of the Customer's capital investments at the Facility ("Historical Average") that will serve as the minimum level of capital investment that the Customer must satisfy each year as provided in the Appendix to this Schedule B, provided, however, that the Authority shall take due regard for extraordinary capital investments by the Customer during this three-year period and reduce the Historical Average upon Customer demonstration satisfactory to Authority.

In addition, each year beginning with the first calendar year after the year in which this Agreement becomes effective, the Customer shall record its annual capital investments at the Facility, and provide such information to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority will use such information for the purpose of calculating a rolling three-year average ("Rolling Average") that shall be used to determine compliance with the Historic Average as provided in the Appendix to this Schedule B.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6)

highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment Levels

If the Customer's Rolling Average in any year is less than 90% of its Historical Average, the Contract Demand may be reduced by the Authority subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Historical Average. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or facilities upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Beginning on July 1, 2013 through the Extended Expiration Date as provided for in Schedule A, the Customer agrees to maintain a Base Employment Level of fifty (50) persons at the Customer's Facility located at 2250 Liberty Drive, Niagara Falls, New York 14304 in accordance with Article I of this Schedule B.

CAPITAL INVESTMENT

Beginning three years after the year in which this Agreement becomes effective and for each year thereafter, the Customer's Rolling Average of capital investments at the Facility as calculated by the Authority on the basis of the Customer's capital investments at the Facility during each of the previous three years shall be no less than the Historic Average of \$200,000.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

TAKEDOWN SCHEDULE

N/A

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER

to

Ceres Crystal Industries Inc.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Ceres Crystal Industries Inc. (“Customer”), with offices at 2250 Liberty Drive, Niagara Falls, New York 14304. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, Niagara Power Project hydroelectric power plays an important role in providing competitively priced power for sale to attract and retain business investment and to promote economic development in western New York State.

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, PAL § 1005(11) provides that the Authority is authorized to “[t]o exercise all the powers necessary or convenient to carry out and effectuate the purposes and provisions of ... title [1 of article 5 of the PAL] ... and as incidental thereto to . . . sell ... electric power, and generally to do any and every thing necessary or convenient to carry out the purposes of ... title [1 of article 5 of the PAL] ...”;

WHEREAS, the Authority has previously awarded the Customer one or more allocations of EP or RP (collectively, the “Allocation”) which expired on “Initial Expiration Date” specified in Schedule A;

WHEREAS, the Customer has applied for an extension of the Allocation;

WHEREAS, (i) the Authority has continued to provide electric service to the Customer on a month-to-month basis after the Initial Expiration Date to avoid a lapse of such electric service and potential hardship to the Customer as the Authority reviews the Customer's application for an extension of the Allocation, and (ii) such electric service has been provided on the basis of the terms and conditions that were applicable as of the Initial Expiration Date;

WHEREAS, on March 21, 2013 the Authority's Trustees approved an extension of the Customer's Allocation until the "Extended Expiration Date" specified in Schedule A of this Agreement;

WHEREAS, the Parties have reached an agreement on the terms and conditions that will be applicable to the sale of the Allocation commencing July 1, 2013;

WHEREAS, for avoidance of doubt, the Parties acknowledge that the Parties have separately agreed that the Authority will continue to provide electric service to the Customer for the period prior to July 1, 2013 on the basis of the terms and conditions that were applicable to the Allocation as of the Initial Expiration Date, subject to any necessary approvals of the Customer's local electric utility;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation(s) of EP and/or RP set forth in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).

- F. **Facility** means the Customer's facilities as further described in this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.
- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity (or LSE)** means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power (or RP)** is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Commitments" which is attached to and made part of this Agreement.

- U. **Schedule C** refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of this Agreement.
- V. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.
- W. **Taxes** is as defined in Service Tariff No. WNY-1
- X. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Y. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. Commencing July 1, 2013, the Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.

- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Commencing July 1, 2013, Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement. The Authority shall have the right to reduce the Allocations based on reductions in the Contract Demand made pursuant to Schedule B if the Customer fails to meet such commitments.
- B. The Authority will provide written notice to the Customer of any reduction made pursuant to this Article within thirty (30) days of such determination and will furnish the Customer with a revised Schedule A which reflects the reduced Allocation.
- C. Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in Schedule B.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is

necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email: MED-BPAC@nypa.gov
Facsimile: 914-390-8156
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Ceres Crystal Industries
2250 Liberty Drive
Niagara Falls, New York 14304
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

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

XVIII. Execution

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

Ceres Crystal Industries Inc.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

**SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER TO
CUSTOMER**

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Ceres Crystal Industries

Type of Allocation (EP or RP)	Amount (kW)	Facility	Initial Expiration Date	Extended Expiration Date	Trustee Approval Date
RP	1,300	2250 Liberty Drive, Niagara Falls, New York 14304	12/31/2012	6/30/18	3/21/13
RP	1,600	2250 Liberty Drive, Niagara Falls, New York 14304	12/31/2012	6/30/18	3/21/13
RP	1,700	2250 Liberty Drive, Niagara Falls, New York 14304	12/31/2012	6/30/18	3/21/13

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Customer Commitments and Related Matters

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

C. Capital Investment

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's capital investment commitments set forth in the Appendix of this Schedule B.

The Customer shall furnish to the Authority records and other proof of the Customer's capital investments in the Facility for purposes of allowing the Authority to calculate a three-year historical average of the Customer's capital investments at the Facility ("Historical Average") that will serve as the minimum level of capital investment that the Customer must satisfy each year as provided in the Appendix to this Schedule B, provided, however, that the Authority shall take due regard for extraordinary capital investments by the Customer during this three-year period and reduce the Historical Average upon Customer demonstration satisfactory to Authority.

In addition, each year beginning with the first calendar year after the year in which this Agreement becomes effective, the Customer shall record its annual capital investments at the Facility, and provide such information to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority will use such information for the purpose of calculating a rolling three-year average ("Rolling Average") that shall be used to determine compliance with the Historic Average as provided in the Appendix to this Schedule B.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6)

highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment Levels

If the Customer's Rolling Average in any year is less than 90% of its Historical Average, the Contract Demand may be reduced by the Authority subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Historical Average. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or facilities upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Beginning on July 1, 2013 through the Extended Expiration Date as provided for in Schedule A, the Customer agrees to maintain a Base Employment Level of fifty (50) persons at the Customer's Facility located at 2250 Liberty Drive, Niagara Falls, New York 14304 in accordance with Article I of this Schedule B.

CAPITAL INVESTMENT

Beginning three years after the year in which this Agreement becomes effective and for each year thereafter, the Customer's Rolling Average of capital investments at the Facility as calculated by the Authority on the basis of the Customer's capital investments at the Facility during each of the previous three years shall be no less than the Historic Average of \$200,000.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

TAKEDOWN SCHEDULE

N/A

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER

TO DELACO AMTB, LLC

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Delaco AMTB, LLC (“Customer”), with offices at 55 Milens Road, Tonawanda, NY 14150. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, Niagara Power Project hydroelectric power plays an important role in providing competitively priced power for sale to attract and retain business investment and to promote economic development in western New York State.

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, PAL § 1005(11) provides that the Authority is authorized to “[t]o exercise all the powers necessary or convenient to carry out and effectuate the purposes and provisions of ... title [1 of article 5 of the PAL] ... and as incidental thereto to . . . sell ... electric power, and generally to do any and every thing necessary or convenient to carry out the purposes of ... title [1 of article 5 of the PAL] ...”;

WHEREAS, the Authority has previously awarded the Customer an allocation of EP and/or RP (the “Allocation”) which expired on “Initial Expiration Date” specified in Schedule A;

WHEREAS, electric service provided to the Customer thereafter terminated;

WHEREAS, the Customer has applied for an extension of the Allocation beginning July 1, 2013;

WHEREAS, on March 21, 2013 the Authority's Trustees approved an extension of the Customer's Allocation for the period from July 1, 2013 through the "Extended Expiration Date" specified in Schedule A of this Agreement;

WHEREAS, the Parties have reached an agreement on the terms and conditions that will be applicable to the sale of the Allocation commencing July 1, 2013;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation(s) of EP and/or RP set forth in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as further described in this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).

- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.
- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity (or LSE)** means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power (or RP)** is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- W. **Taxes** is as defined in Service Tariff No. WNY-1
- X. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Y. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. Commencing July 1, 2013, the Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Commencing July 1, 2013, Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.

- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement. The Authority shall have the right to reduce the Allocations based on reductions in the Contract Demand made pursuant to Schedule B if the Customer fails to meet such commitments.
- B. The Authority will provide written notice to the Customer of any reduction made pursuant to this Article within thirty (30) days of such determination and will furnish the Customer with a revised Schedule A which reflects the reduced Allocation.
- C. Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in Schedule B.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a “load factor sharing” basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer’s local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit,

the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this

Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.

- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email: MED-BPAC@nypa.gov
Facsimile: (914) 390-8156
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Delaco AMTB, LLC
175 Ensminger Road
Tonawanda, New York 14150
Email: _____
Facsimile: _____
Attention: _____

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

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

XVIII. Execution

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

a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

CUSTOMER

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER TO CUSTOMER

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Delaco AMTB, LLC

Type of Allocation (EP or RP)	Amount (kW)	Facility	Initial Expiration Date	Extended Expiration Date	Trustee Approval Date
RP	250	55 Milens Road, Tonawanda, NY 14150	8/31/12	6/30/18	3/21/13

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Customer Commitments and Related Matters

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

C. Capital Investment

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's capital investment commitments set forth in the Appendix of this Schedule B.

The Customer shall furnish to the Authority records and other proof of the Customer's capital investments in the Facility for purposes of allowing the Authority to calculate a three-year historical average of the Customer's capital investments at the Facility ("Historical Average") that will serve as the minimum level of capital investment that the Customer must satisfy each year as provided in the Appendix to this Schedule B, provided, however, that the Authority shall take due regard for extraordinary capital investments by the Customer during this three-year period and reduce the Historical Average upon Customer demonstration satisfactory to Authority.

In addition, each year beginning with the first calendar year after the year in which this Agreement becomes effective, the Customer shall record its annual capital investments at the Facility, and provide such information to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority will use such information for the purpose of calculating a rolling three-year average ("Rolling Average") that shall be used to determine compliance with the Historic Average as provided in the Appendix to this Schedule B.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6)

highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment Levels

If the Customer's Rolling Average in any year is less than 90% of its Historical Average, the Contract Demand may be reduced by the Authority subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Historical Average. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or facilities upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Beginning on July 1, 2013 through the Extended Expiration Date as provided for in Schedule A, the Customer agrees to maintain a Base Employment Level of sixteen (16) persons at the Customer's Facility located at 55 Milens Road, Tonawanda, NY 14150, in accordance with Article I of this Schedule B.

CAPITAL INVESTMENT

Beginning three years after the year in which this Agreement becomes effective and for each year thereafter, the Customer's Rolling Average of capital investments at the Facility as calculated by the Authority on the basis of the Customer's capital investments at the Facility during each of the previous three years shall be no less than the Historic Average of \$485,000.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

TAKEDOWN SCHEDULE

N/A

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER

To

Hammond Manufacturing Company Inc.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Hammond Manufacturing Company Inc. (“Customer”), with offices at 475 Cayuga Road Suite 100, Cheektowaga, New York 14225. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, Niagara Power Project hydroelectric power plays an important role in providing competitively priced power for sale to attract and retain business investment and to promote economic development in western New York State.

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, PAL § 1005(11) provides that the Authority is authorized to “[t]o exercise all the powers necessary or convenient to carry out and effectuate the purposes and provisions of ... title [1 of article 5 of the PAL] ... and as incidental thereto to . . . sell ... electric power, and generally to do any and every thing necessary or convenient to carry out the purposes of ... title [1 of article 5 of the PAL] ...”;

WHEREAS, the Authority has previously awarded the Customer one or more allocations of EP or RP (collectively, the “Allocation”) which expired on “Initial Expiration Date” specified in Schedule A;

WHEREAS, the Customer has applied for an extension of the Allocation;

WHEREAS, (i) the Authority has continued to provide electric service to the Customer on a month-to-month basis after the Initial Expiration Date to avoid a lapse of such electric service and potential hardship to the Customer as the Authority reviews the Customer's application for an extension of the Allocation, and (ii) such electric service has been provided on the basis of the terms and conditions that were applicable as of the Initial Expiration Date;

WHEREAS, on March 21, 2013 the Authority's Trustees approved an extension of the Customer's Allocation until the "Extended Expiration Date" specified in Schedule A of this Agreement;

WHEREAS, the Parties have reached an agreement on the terms and conditions that will be applicable to the sale of the Allocation commencing July 1, 2013;

WHEREAS, for avoidance of doubt, the Parties acknowledge that the Parties have separately agreed that the Authority will continue to provide electric service to the Customer for the period prior to July 1, 2013 on the basis of the terms and conditions that were applicable to the Allocation as of the Initial Expiration Date, subject to any necessary approvals of the Customer's local electric utility;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation(s) of EP and/or RP set forth in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).

- F. **Facility** means the Customer's facilities as further described in this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.
- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity (or LSE)** means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power (or RP)** is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Commitments" which is attached to and made part of this Agreement.

- U. **Schedule C** refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of this Agreement.
- V. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.
- W. **Taxes** is as defined in Service Tariff No. WNY-1
- X. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Y. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. Commencing July 1, 2013, the Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.

- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Commencing July 1, 2013, Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement. The Authority shall have the right to reduce the Allocations based on reductions in the Contract Demand made pursuant to Schedule B if the Customer fails to meet such commitments.
- B. The Authority will provide written notice to the Customer of any reduction made pursuant to this Article within thirty (30) days of such determination and will furnish the Customer with a revised Schedule A which reflects the reduced Allocation.
- C. Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in Schedule B.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is

necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix, within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email: MED-BPAC@nypa.gov
Facsimile: 914-390-8156
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Hammond Manufacturing Company Inc.
475 Cayuga Road Suite 100
Cheektowaga, New York 14225
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication

of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

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

XVIII. Execution

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

Hammond Manufacturing Company Inc.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER TO CUSTOMER

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Hammond Manufacturing Company Inc.

Type of Allocation (EP or RP)	Amount (kW)	Facility	Initial Expiration Date	Extended Expiration Date	Trustee Approval Date
RP	100	475 Cayuga Road - Suite 100, Cheektowaga, NY 14225	12/31/2012	6/30/18	3/21/13

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Customer Commitments and Related Matters

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

C. Capital Investment

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's capital investment commitments set forth in the Appendix of this Schedule B.

The Customer shall furnish to the Authority records and other proof of the Customer's capital investments in the Facility for purposes of allowing the Authority to calculate a three-year historical average of the Customer's capital investments at the Facility ("Historical Average") that will serve as the minimum level of capital investment that the Customer must satisfy each year as provided in the Appendix to this Schedule B, provided, however, that the Authority shall take due regard for extraordinary capital investments by the Customer during this three-year period and reduce the Historical Average upon Customer demonstration satisfactory to Authority.

In addition, each year beginning with the first calendar year after the year in which this Agreement becomes effective, the Customer shall record its annual capital investments at the Facility, and provide such information to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority will use such information for the purpose of calculating a rolling three-year average ("Rolling Average") that shall be used to determine compliance with the Historic Average as provided in the Appendix to this Schedule B.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6)

highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment Levels

If the Customer's Rolling Average in any year is less than 90% of its Historical Average, the Contract Demand may be reduced by the Authority subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Historical Average. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or facilities upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Beginning on July 1, 2013 through the Extended Expiration Date as provided for in Schedule A, the Customer agrees to maintain a Base Employment Level of twenty four (27) persons at the Customer's Facility located at 475 Cayuga Road Suite 100, Cheektowaga, New York 14225 in accordance with Article I of this Schedule B.

CAPITAL INVESTMENT

Beginning three years after the year in which this Agreement becomes effective and for each year thereafter, the Customer's Rolling Average of capital investments at the Facility as calculated by the Authority on the basis of the Customer's capital investments at the Facility during each of the previous three years shall be no less than the Historic Average of \$5,000.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

TAKEDOWN SCHEDULE

N/A

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER

to
Greenpac Mill, LLC

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Greenpac Mill, LLC (“Customer”), with offices at 4400 Royal Avenue, Niagara Falls, New York, 14303. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, PAL § 1005(11) provides that the Authority is authorized to “[t]o exercise all the powers necessary or convenient to carry out and effectuate the purposes and provisions of ... title [1 of article 5 of the PAL] ... and as incidental thereto to . . . sell ... electric power, and generally to do any and every thing necessary or convenient to carry out the purposes of ... title [1 of article 5 of the PAL] ...”;

WHEREAS, the Customer applied to the Authority for an allocation of RP to support operations at the Facility;

WHEREAS, on June 29, 2010 the Authority’s Board of Trustees (“Trustees”) approved a 10,000 kilowatt (“kW”) allocation of RP to the Customer for a five (5) year term in connection with the construction and operation of the Facility (defined in Section I of this Agreement as the “Allocation”) as further described in this Agreement;

WHEREAS, on June 29, 2010, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as further described in this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).

- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.
- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity (or LSE)** means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power (or RP)** is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute

Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- W. **Taxes** is as defined in Service Tariff No. WNY-1
- X. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Y. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement, and the Customer's obligation to take and pay for such Electric Service, are expressly conditioned upon the Customer's timely completion of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility and/or the committed improvements thereto which has resulted in such Facility and/or such improvements being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility and/or the committed improvements thereto, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility and/or such improvements.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility and/or the

committed improvements thereto. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and/or such improvements and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility and/or the committed improvements thereto by June 29, 2013, the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility and/or such improvements, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the

Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.

- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.

- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in

this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B₂ within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the

Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email: MED-BPAC@nypa.gov
Facsimile: (914) 390-8156
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Greenpac Mill, LLC
4400 Royal Avenue
Niagara Falls, New York 14303
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

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

XVIII. Execution

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

Greenpac Mill, LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

**SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER TO
CUSTOMER**

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Greenpac Mill, LLC

Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
RP	10,000	4400 Royal Avenue Niagara Falls, New York 14303	June 29, 2010	<u>Five (5) years from commencement of Electric Service of any portion of this Allocation.</u>

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule , the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or facilities upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service and continuing through the term of the Allocation, the Customer shall employ at least one hundred and eight (108) full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation.

A “full-time employee” shall mean an individual who works at least thirty-five (35) hours per week at the Facility. For the purpose of calculating the Base Employment Level, an individual working less than thirty-five (35) hours per week shall not be counted as a full-time employee; provided, however, that two individuals each working at least twenty (20) hours per week but less than thirty-five (35) hours per week at the Facility shall be counted as one full-time employee.

The Base Employment Level may not be created or maintained by transfers of employees from previously held positions with the Customer or from any of its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for bona fide economic or management reasons.

CAPITAL INVESTMENT

The Customer shall build the Facility and/or make the committed improvements at the Facility as described in this Appendix, and make a capital investment of at least \$380 million therefor (the “Capital Investment”). The Capital Investment for the Facility and/or such improvements is expected to consist of the following specific expenditures:

Construct a new state-of-the-art facility to manufacture green corrugated packaging, purchase and install new machinery and equipment as well as train employees.

Construction Costs:	\$65,000,000
Machinery and Equipment Acquisition:	\$185,000,000
Machinery and Equipment Installation:	\$55,000,000
Remediation and Demolition:	\$15,000,000
Other/Contingency Costs:	\$60,000,000
Total Estimated Cost:	\$380,000,000

The Capital Investment shall be made, and the Facility and/or the improvements thereto shall be completed and fully operational, no later than June 29, 2013 (*i.e.*, within three (3) years of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended by the Authority in its sole discretion.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

TAKEDOWN SCHEDULE

N/A

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER

to
Nulife Glass NY Inc.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Nulife Glass NY Inc. (“Customer”), with offices at 3213 Middle Road, Dunkirk, New York 14048. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, PAL § 1005(11) provides that the Authority is authorized to “[t]o exercise all the powers necessary or convenient to carry out and effectuate the purposes and provisions of ... title [1 of article 5 of the PAL] ... and as incidental thereto to . . . sell ... electric power, and generally to do any and every thing necessary or convenient to carry out the purposes of ... title [1 of article 5 of the PAL] ...”;

WHEREAS, the Customer applied to the Authority for an allocation of EP to support operations at the Facility;

WHEREAS, on March 27, 2012 the Authority’s Board of Trustees (“Trustees”) approved a 500 kilowatt (“kW”) allocation of EP to the Customer for a seven (7) year term in connection with the construction and operation of the Facility (defined in Section I of this Agreement as the “Allocation”) as further described in this Agreement;

WHEREAS, on March 27, 2012, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as further described in this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).

- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.
- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity (or LSE)** means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power (or RP)** is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute

Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- W. **Taxes** is as defined in Service Tariff No. WNY-1
- X. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Y. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement, and the Customer's obligation to take and pay for such Electric Service, are expressly conditioned upon the Customer's timely completion of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility and/or the committed improvements thereto which has resulted in such Facility and/or such improvements being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility and/or the committed improvements thereto, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility and/or such improvements.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility and/or the

committed improvements thereto. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and/or such improvements and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility and/or the committed improvements thereto by March 27, 2015, the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility and/or such improvements, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the

Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.

- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.

- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in

this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B₂ within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the

Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email: MED-BPAC@nypa.gov
Facsimile: (914) 390-8156
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Nulife Glass NY Inc.
3213 Middle Road
Dunkirk, New York 14048
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

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

XVIII. Execution

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

Nulife Glass NY Inc.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

**SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER TO
CUSTOMER**

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Nulife Glass NY Inc.

Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
EP	500	3213 Middle Road, Dunkirk, New York 14048	March 27, 2012	<u>Seven (7) years from commencement of Electric Service of any portion of this Allocation.</u>

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule , the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or facilities upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service and continuing through the term of the Allocation, the Customer shall employ at least twenty five (25) full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation.

A “full-time employee” shall mean an individual who works at least thirty-five (35) hours per week at the Facility. For the purpose of calculating the Base Employment Level, an individual working less than thirty-five (35) hours per week shall not be counted as a full-time employee; provided, however, that two individuals each working at least twenty (20) hours per week but less than thirty-five (35) hours per week at the Facility shall be counted as one full-time employee.

The Base Employment Level may not be created or maintained by transfers of employees from previously held positions with the Customer or from any of its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for bona fide economic or management reasons.

CAPITAL INVESTMENT

The Customer shall build the Facility and/or make the committed improvements at the Facility as described in this Appendix, and make a capital investment of at least \$3.75 million therefor (the “Capital Investment”). The Capital Investment for the Facility and/or such improvements is expected to consist of the following specific expenditures:

The project includes purchasing and refurbishing a building, as well as installing a glass melting furnace, dust control system, mixing plant, control system, water cooling pumps, air cooling system, X-ray separator and magnets to remove steel from glass. The company will also install a roller crusher, screens, crusher belts and basic handling equipment.

Purchase Site:	\$1,000,000
Basic Handling Equipment:	\$50,000
Additional Equipment – Crushers, Conveyer Belts, Separators:	\$700,000
<u>Additional Equipment – Furnace, Feed System, Cooling System:</u>	<u>\$2,000,000</u>
Total Investment:	\$3,750,000

The Capital Investment shall be made, and the Facility and/or the improvements thereto shall be completed and fully operational, no later than March 27, 2015 (*i.e.*, within three (3) years of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended by the Authority in its sole discretion.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

TAKEDOWN SCHEDULE

N/A

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER

to
Welded Tube USA, Inc.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Welded Tube USA, Inc. (“Customer”), with offices at Tecumseh Business Park/Lackawanna Site Parcel 3, Route 5 & Ridge Road, Lackawanna, New York 14218. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, PAL § 1005(11) provides that the Authority is authorized to “[t]o exercise all the powers necessary or convenient to carry out and effectuate the purposes and provisions of ... title [1 of article 5 of the PAL] ... and as incidental thereto to . . . sell ... electric power, and generally to do any and every thing necessary or convenient to carry out the purposes of ... title [1 of article 5 of the PAL] ...”;

WHEREAS, the Customer applied to the Authority for an allocation of EP to support operations at the Facility;

WHEREAS, on June 26, 2012 the Authority’s Board of Trustees (“Trustees”) approved a 4,000 kilowatt (“kW”) allocation of EP to the Customer for a seven (7) year term in connection with the construction and operation of the Facility (defined in Section I of this Agreement as the “Allocation”) as further described in this Agreement;

WHEREAS, on June 26, 2012, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as further described in this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.

- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.
- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity (or LSE)** means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power (or RP)** is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the

Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.

- W. **Taxes** is as defined in Service Tariff No. WNY-1
- X. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Y. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement, and the Customer's obligation to take and pay for such Electric Service, are expressly conditioned upon the Customer's timely completion of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility and/or the committed improvements thereto which has resulted in such Facility and/or such improvements being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility and/or the committed improvements thereto, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility and/or such improvements.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility and/or the

committed improvements thereto. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and/or such improvements and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility and/or the committed improvements thereto by June 26, 2015, the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility and/or such improvements, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the

Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.

- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.

- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in

this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B₂ within a reasonable time after commencement of Electric Service for any such additional allocation.
- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the

Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email: MED-BPAC@nypa.gov
Facsimile: (914) 390-8156
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Welded Tube USA, Inc.
111 Rayette Road
Ontario, Canada L4K 2E9
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

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

XVIII. Execution

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

Welded Tube USA, Inc.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

**SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER TO
CUSTOMER**

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Welded Tube USA, Inc.

Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
EP	4,000	Tecumseh Business Park/Lackawanna Site Parcel 3, Route 5 & Ridge Road, Lackawanna, New York 14218	June 26, 2012	<u>Seven (7) years from commencement of Electric Service of any portion of this Allocation.</u>

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule , the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or facilities upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service and continuing through the term of the Allocation, the Customer shall employ at least one hundred and twenty one (121) full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation.

A “full-time employee” shall mean an individual who works at least thirty-five (35) hours per week at the Facility. For the purpose of calculating the Base Employment Level, an individual working less than thirty-five (35) hours per week shall not be counted as a full-time employee; provided, however, that two individuals each working at least twenty (20) hours per week but less than thirty-five (35) hours per week at the Facility shall be counted as one full-time employee.

The Base Employment Level may not be created or maintained by transfers of employees from previously held positions with the Customer or from any of its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for bona fide economic or management reasons.

CAPITAL INVESTMENT

The Customer shall build the Facility and/or make the committed improvements at the Facility as described in this Appendix, and make a capital investment of at least \$48.25 million therefor (the “Capital Investment”). The Capital Investment for the Facility and/or such improvements is expected to consist of the following specific expenditures:

Construct a new high speed steel tube production facility.

New Building Construction, land acquisition and site improvements:	\$14,200,000
Purchase of machinery and equipment:	\$27,550,000
Building expansion (30,000 sq. ft.):	\$2,300,000
Purchase hydrotester:	\$2,100,000
Construct new building (30,000 sq. ft.):	\$2,100,000
Total investment:	\$48,250,000

The Capital Investment shall be made, and the Facility and/or the improvements thereto shall be completed and fully operational, no later than June 26, 2015 (*i.e.*, within three (3) years of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended by the Authority in its sole discretion.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

TAKEDOWN SCHEDULE

N/A

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER
TO YAHOO! INC.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and Energy (“Agreement”) with YAHOO! INC. (“Customer”), with offices at 701 First Avenue, Sunnyvale, California 94089. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, PAL § 1005(11) provides that the Authority is authorized to “[t]o exercise all the powers necessary or convenient to carry out and effectuate the purposes and provisions of ... title [1 of article 5 of the PAL] ... and as incidental thereto to . . . sell ... electric power, and generally to do any and every thing necessary or convenient to carry out the purposes of ... title [1 of article 5 of the PAL] ...”;

WHEREAS, the Customer currently operates a data center in Lockport, New York, the operation of which is supported by an allocation of EP in the amount of 15,000 kilowatts (“kW”) awarded by the Authority on May 19, 2009 (the “Existing Data Center”);

WHEREAS, the 15,000 kW allocation is the subject of a contract between the Parties entered into in December 2010 (the “2010 Contract”);

WHEREAS, the Customer applied to the Authority for an additional allocation of EP to support the operations of (1) a supplemental data center to be constructed adjacent to the Existing Data Center (the “Supplemental Data Center”) in Lockport, New York, and (2) a contact center to be operated at a location yet to be determined within 30 miles of the Authority’s Niagara Power Project (the “Contact Center”) (collectively defined in Section I of this Agreement as the “Facilities”);

WHEREAS, on March 21, 2013, the Authority’s Board of Trustees (“Trustees”) approved a 7,200 kW allocation of EP to the Customer for a seven (7) year term in connection with the construction and operation of the Facilities (defined in Section I of this Agreement as the “Allocation”) as further described in this Agreement;

WHEREAS, on March 21, 2013, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer’s local electric utility;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of 7,200 kW of EP awarded to the Customer for a term of seven (7) years as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.

- E. **Expansion Power (or EP)** is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facilities** means the Customer's (1) Supplemental Data Center and (2) Contact Center, as further described in this Agreement.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.
- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity (or LSE)** means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power (or RP)** is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.

- S. **Schedule A** refers to the Schedule A entitled “Expansion Power and/or Replacement Power Allocations” which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled “Expansion Power and/or Replacement Power Commitments” which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of this Agreement.
- V. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.
- W. **Taxes** is as defined in Service Tariff No. WNY-1
- X. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Y. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facilities specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.

- E. The Contract Demand for the Customer's Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision. The Authority will use reasonable efforts to provide at least thirty (30) days prior written notice to the Customer of any such modification unless such notice is inconsistent with such ruling, order or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement, and the Customer's obligation to take and pay for such Electric Service, are expressly conditioned upon the Customer's timely completion of the commitments described in Schedule B.

- C. In the event of partial completion of the Facilities which has resulted in such Facilities being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facilities, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facilities.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facilities. The Authority will inspect the Facilities for the purpose of verifying the completion status of the Facilities and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.
- E. In the event the Customer fails to complete the Facilities by March 21, 2016 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facilities, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the

Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.

- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a “load factor sharing” basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer’s local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.
- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer

fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.
- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.
- E. Nothing in this Agreement shall prevent the Customer from procuring energy from a supplier other than the Authority in the event that the delivery of Firm Power and Firm Energy to which the Customer is entitled is curtailed pursuant to Section VIII.A of this Agreement, or from generating its own power and energy for use at the Facilities under any circumstances.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules. The Authority will use reasonable efforts to notify Customer of any proceeding before any regulatory or judicial body of competent jurisdiction that the Authority has knowledge of and that could result in the cancellation or modification of Electric Service under this Agreement. The Authority shall also provide at least thirty (30) days prior written notice to the Customer of such modification or cancellation unless such notice is inconsistent with such ruling, order or decision, or Service Tariff No. WNY-1 or the Rules provide for a shorter notice.

X. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

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

Email: _____

Facsimile:

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Yahoo! Inc.
701 First Avenue
Sunnyvale, CA 94089
Email: _____
Facsimile: _____
Attention: _____

With copy to:

Yahoo! Inc.
701 First Avenue
Sunnyvale, CA 94089
Email: _____
Facsimile: _____
Attention: _____

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XI. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XII. Venue

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

XIII. Successors and Assigns; Resale of Hydropower

- A. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that the Customer may not assign or otherwise transfer an interest in this Agreement without written approval by the Authority whose approval shall not be unreasonably withheld.

- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facilities specified in Schedule A.

XIV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. No modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XV. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVI. Waiver

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

XVII. Confidentiality

- A. The Parties recognize that information the Customer furnishes to the Authority in connection with this Agreement may comprise (1) a record which in whole or in part constitutes a trade secret, (2) information which if disclosed would cause substantial injury to the competitive position of the Customer, or (3) information that is otherwise exempted from disclosure pursuant to New York's Freedom of Information Law, New

York Public Officers Law, Article 6 (“FOIL”), as determined by the Authority (“Confidential Information”).

- B. The Authority agrees not to disclose Confidential Information to a third-party without the advance written consent of the Customer except to the extent disclosure is required: (1) pursuant to a court order; (2) pursuant to an order of a regulatory body having jurisdiction over the matter; or (3) pursuant to a law or regulation requiring such disclosure.
- C. Except as otherwise prohibited by law, in the event of a request to the Authority for Confidential Information by a third party, the Authority shall: (1) timely notify the Customer of the request; (2) keep the Customer informed of the status of its processing of the request; and (3) afford the Customer the rights and remedies otherwise available to a third party whose Confidential Information is in the Authority’s possession, including the rights and remedies available under FOIL and 21 NYCRR Part 453.
- D. The Authority shall not object to a Customer seeking protection from a court of competent jurisdiction to protect information from disclosure to a third party the Customer contends is Confidential Information.
- E. Nothing in this Article shall be construed as a waiver by the Authority of its obligations under FOIL to make a determination regarding disclosure, determine an appeal under FOIL, or make any other determination required pursuant to FOIL.

XVIII. Execution

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

XIX. Federal Contractor Status

The Customer represents that it is an equal employment opportunity employer and is a federal contractor. Neither this representation nor the Customer’s represented status as an equal opportunity employer or a federal contractor is intended to impose, and shall not be construed to impose, any obligations on the Authority beyond the specific obligations provided for under this Agreement.

XX. Use of Name, Trademarks and Service Marks

The Authority shall not use the Customer's name, trademarks, or service marks for the purpose of promoting any commercial services the Authority offers or proposes to offer without the Customer's prior written consent. For avoidance of doubt, the forgoing provision shall not preclude or otherwise limit the Authority from using the Customer's name, trademarks, or service marks or other descriptions of the Customer in: (a) any report, document, disclosure or other communication (collectively, "communication") made pursuant to any law, rule, regulation, request made pursuant to litigation or other legal process; or (b) any communication intended to inform any government official, any government agency or the public (individually or generally) of the Authority's activities.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

YAHOO! INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

**SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER TO
YAHOO! INC.**

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Yahoo! Inc.

Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
1. Expansion Power	7,200*	1. Supplemental Data Center, Lockport, NY 2. Contact Center (within thirty (30) miles of the Niagara Power Project; precise location to be determined)	March 21, 2013	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

*The Allocation applies to both listed Facilities collectively.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO YAHOO! INC.**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The Customer agrees to create and maintain the employment levels (the “Base Employment Level”) set forth in the Appendix to this Schedule B.

B. Employment Records and Reports

Records shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of employees at the (1) Supplemental Data Center and (2) Contact Center, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such records shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. In addition, the Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees at the (1) Supplemental Data Center and (2) Contact Center is less than 90% of the Base Employment Level set forth in this Schedule B for the subject calendar year, the Contract Demand may be reduced by Authority subject to Paragraph II.C of this Schedule B. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facilities receiving the power covered by this Agreement. If the average of the Customer's six (6) highest billing demands for expansion power is less than 90% of the Customer's Contract Demand in such calendar year, the Authority may reduce the Contract Demand. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest billing demands for expansion power in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced as provided above, at least ninety (90) days prior written notice of such reduction shall be given to the Customer, specifying the amount of the reduction of the Contract Demand and the reason therefore provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or facilities upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Supplemental Data Center and Contact Center, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

IV. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facilities and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facilities.

The Customer agrees to cooperate to make its Facilities available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Beginning no later than January 1, 2017, and continuing through the term of the Allocation, the Customer shall employ: (1) at least fifteen (15) full-time employees at the Supplemental Data Center; and (2) at least one hundred (100) full-time employees at the Contact Center. (Collectively, these one hundred fifteen (115) employees shall constitute the “Base Employment Level”). The Base Employment Level shall be maintained for the term of the Allocation.

A “full-time employee” shall mean an individual who works at least thirty-five (35) hours per week at the Facilities. For the purpose of calculating the Base Employment Level, an individual working less than thirty-five (35) hours per week shall not be counted as a full-time employee; provided, however, that two individuals each working at least twenty (20) hours per week but less than thirty-five (35) hours per week at the Facilities shall be counted as one full-time employee.

The Base Employment Level may not be created or maintained by transfers of employees from previously held positions with the Customer or from any of its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for bona fide economic or management reasons. In addition, the Base Employment Level may not be created or maintained with any of the same employees used to satisfy the Customer’s “Base Employment Level” under the 2010 Contract, including the component of such “Base Employment Level” applicable to “Other NYS Facilities” as provided for in the 2010 Contract.

CAPITAL INVESTMENT

The Customer shall build the Facilities as defined in Section I of the Agreement, specifically (1) a Supplemental Data Center in Lockport, New York, and (2) a Contact Center to be operated at a location yet to be determined but within 30 miles of the Authority’s Niagara Power Project.

The Customer will make a capital investment of at least \$170.0 million for the Facilities (the “Capital Investment”). The Capital Investment for the Facilities is expected to consist of the following specific expenditures:

Supplemental Data Center

<u>Components</u>	<u>Amount</u>
A. Basic Construction:	\$53 million
B. Data Center “Fit Out”:	\$8 million

C. Initial Server, Network
And Storage Equipment: \$100 million

D. Furniture, Fixtures and
Admin Equipment: \$2.7 million

Contact Center

Complete Project	Amount
	\$6.3 million

Total Capital Investment: \$170.0 million

The Capital Investment shall be made and the Facilities shall be completed and fully operational no later than March 21, 2016 (*i.e.*, within three (3) years of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended by the Authority in its sole discretion.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO YAHOO! INC.**

TAKEDOWN SCHEDULE

N/A



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

A. The following abbreviations are used:

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

B. The term "Agreement" means an executed "Agreement for the Sale of Expansion and/or Replacement Power and Energy" between the Authority and the Customer (each as defined below).

C. The term "Annual Adjustment Factor" or "AAF" shall have the meaning set forth in Section V herein.

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

E. The term "Customer" means a business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

F. The term "Electric Service" means the power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

- G. The term “Expansion Power and/or Replacement Power” means Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).
- H. The term “Firm Power” means capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.
- I. The term “Firm Energy” means energy (kWh) associated with Firm Power.
- J. The term “Load Serving Entity” or “LSE” shall have the meaning set forth in the Agreement.
- K. The term “Project” means the Authority’s Niagara Power Project, FERC Project No. 2216.
- L. The term “Rate Year” or “RY” means the period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.
- M. The term “Rules” means the Authority’s rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.
- N. The term “Service Tariff” means this Service Tariff No. WNY-1.
- O. The term “Target Rate” shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

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

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

1. The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.

C. Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

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

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

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

E. Billing Period

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

F. Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

G. Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

H. Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
2. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

1. The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.
2. Billing Demand – Unless separately metered, the billing demand charged by the Authority to each Customer will be the highest 15-minute integrated demand during each billing period recorded on the Customer's meter multiplied by a percentage based on load factor sharing, as applicable.
3. Billing Energy – Unless separately metered, the kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the billing period multiplied by a percentage based on load factor sharing, as applicable.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

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

2. Transmission Charge

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

3. NYISO Transmission and Related Charges ("NYISO Charges")

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

- A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
- B. Marginal losses;
- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Adjustment of Charges

1. Distribution Losses

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

2. Transformer Losses

If delivery is made at transmission voltage but metered on the low-voltage side of the Customer's substation, the meter readings will be increased two percent to compensate for transformer losses.

3. Power Factor

Power factor is the ratio of real power (kW) to apparent power (kVa) for any given load and time. The Authority may require the Customer to maintain a power factor of not less than 90%, lagging or leading, at the point of delivery, or as may otherwise be imposed upon the Authority by the local electric utility providing delivery and/or NYISO.

H. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

I. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
- a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.
 - b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.
- Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

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

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the

substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

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

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

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

- Index 2 – EIA Industrial Rate

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

Measuring Year -1 (2011)

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

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

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

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

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

Apply Collar of ±5.0% to Determine the Maximum/Minimum AAF.

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

New York Power Authority
Expansion and Replacement Power Allocations
Direct Sale Contract and Notice of Public Hearing

July 23, 2013
Exhibit "C"

Number	Company Name	Program	City	County	Trustee Approval Date	Approved Allocation (kW)	Existing Jobs	New Jobs	Total Job Commitment	Expansion Project Capital Investment	Proposed Direct Sale Contract Term
C-1	M&T Bank Corporation	EP	Amherst	Erie	7/26/11	3,000	45	124	169	\$51,625,000	5 Years
Totals						3,000		124	169	\$51,625,000	

* M&T will move 45 existing data center employees to the new facility and create 124 new jobs at the 191 Park Club Lane site.

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER

to

M&T Bank Corporation

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with M&T Bank Corporation (“Customer”), with offices and/or facilities at 191 Park Club Lane, Amherst, New York 14221. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, FERC Project No. 2216, known as “Replacement Power” (or “RP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, RP consists of 445 MW of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP and/or RP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, the Customer applied to the Authority for an allocation of EP to support an expansion/upgrade at the Facility;

WHEREAS, on July 26, 2011 the Authority’s Board of Trustees (“Trustees”) approved a 3,000 kilowatt (“kW”) allocation of EP to the Customer for a five (5) year term in connection with the construction and operation of the Facility (defined in Section I of this Agreement as the “Allocation”) as further described in this Agreement;

WHEREAS, on July 26, 2011, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the

Customer, and delivery service will be performed by the Customer's local electric utility in accordance with the Utility Tariff;

WHEREAS, the Parties have reached an agreement on the sale of the Allocation to the Customer on the terms and conditions provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer as specified in Schedule A.
- C. **Contract Demand** is as defined in Service Tariff No. WNY-1.
- D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- F. **Facility** means the Customer's facilities as described in Schedule A.
- G. **Firm Power** is as defined in Service Tariff No. WNY-1.
- H. **Firm Energy** is as defined in Service Tariff No. WNY-1.
- I. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

- K. **Hydro Projects** is a collective reference to the Project and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. **Load Serving Entity (or LSE)** means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator or any successor organization.
- N. **NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- O. **Project** means the Niagara Power Project, FERC Project No. 2216.
- P. **Replacement Power (or RP)** is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- Q. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- R. **Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.
- S. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.
- T. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Commitments" which is attached to and made part of this Agreement.
- U. **Schedule C** refers to the Schedule C entitled "Takedown Schedule" which is attached to and made part of this Agreement.
- V. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.
- W. **Taxes** is as defined in Service Tariff No. WNY-1

- X. **Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.
- Y. **Utility Tariff** means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

II. Electric Service

- A. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified on Schedule A.
- B. The Authority will provide, and the Customer shall pay for, Electric Service with respect to the Allocation specified on Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall take and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
- C. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-1.
- D. The Customer acknowledges and agrees that Customer’s local electric utility shall be responsible for delivering the Allocation to the Facility specified in Schedule A, and that the Authority has no responsibility for delivering the Allocation to the Customer.
- E. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
- F. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion and/or Replacement Power Commitments

- A. Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement, and the Customer's obligation to take and pay for such Electric Service, are expressly conditioned upon the Customer's timely completion of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility and/or the committed improvements thereto which has resulted in such Facility and/or such improvements being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility and/or the committed improvements thereto, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility and/or such improvements.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility and/or the

committed improvements thereto. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and/or such improvements and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.

- E. In the event the Customer fails to complete the Facility and/or the committed improvements thereto by the date(s) specified in the Appendix to Schedule B, the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of the Facility and/or such improvements, provided that in such event, and upon request of the Customer, such date(s) may be extended by the Authority in its sole discretion.

V. Rules and Service Tariff

Service Tariff No. WNY-1, as may be modified or superseded from time to time by the Authority, is hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-1 and the Rules, the provisions of Service Tariff No. WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A. The Customer shall be responsible complying with all requirements of its local electric utility that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff.
- B. The Customer shall be solely responsible for paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff. Should the Authority incur any charges associated with such delivery service, the Customer shall reimburse the Authority for all such charges.
- C. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.
- D. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer

that the Authority and the local electric utility determine is necessary to provide for the Allocation, sale and delivery of EP and/or RP to the Customer, the proper and efficient implementation of the EP and/or RP programs, billing related to EP and/or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.

- E. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Customer's local electric utility on terms and conditions that are acceptable to the Authority.
- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
- B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C. The Authority may render bills to the Customer electronically.
- D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.

- E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
- F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.
- G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
- H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.
- I. All other provisions with respect to billing are set forth in Service Tariff No. WNY-1 and the Rules.
- J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

VIII. Hydropower Curtailments and Substitute Energy

- A. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority's firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with Service Tariff No. WNY-1 as applicable.

- B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.
- B. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-1, or the Rules; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in Service Tariff No. WNY-1.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-1, or the Rules.

X. Additional Allocations

- A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate

any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.

- B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email: MED-BPAC@nypa.gov
Facsimile: (914) 390-8156
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

M&T Bank Corporation
191 Park Club Lane
Amherst, New York 14221
Email:
Facsimile:
Attention:

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with

written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a).

XIII. Venue

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

XIV. Successors and Assigns; Resale of Hydropower

- A. The Customer may not assign or otherwise transfer an interest in this Agreement.
- B. The Customer may not resell or allow any other person to use any quantity of EP and/or RP it has purchased from the Authority under this Agreement.
- C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility specified in Schedule A.

XV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.
- B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

- A. If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVII. Waiver

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

XVIII. Execution

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

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

M&T Bank Corporation

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

**SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND/OR REPLACEMENT POWER TO
CUSTOMER**

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: M&T Bank Corporation

Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
EP	3,000	191 Park Club Lane, Amherst, New York 14221	July 26, 2011	Five (5) years from commencement of Electric Service of any portion of this Allocation.

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The provision of EP and/or RP to the Customer hereunder is in consideration of, among other things, the Customer's creation and/or maintenance of the employment level set forth in the Appendix of this Schedule (the "Base Employment Level"). Such Base Employment Level shall be the total number of full-time positions held by: (1) individuals who are employed by the Customer at Customer's Facility identified in the Appendix to this Schedule, and (2) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, "Base Level Employees"). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority's sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice

all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-1) for Expansion Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.D of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Capital Investment

The Customer agrees to undertake the capital investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's obligations provided for in this Schedule B.

D. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to this Schedule , the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or facilities upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Energy Efficiency Audits; Information Requests

Unless otherwise agreed to by the Authority in writing, the Customer shall undergo an energy efficiency audit of its Facility and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the Facility.

The Customer agrees to cooperate to make its Facility available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of commencement of Electric Service and continuing through the term of the Allocation, the Customer shall employ at least one hundred and sixty nine (169) full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation. The Base Employment Level is derived from: (1) a stipulation by the Customer at the time of the award of the Allocation that 45 existing jobs that will be transferred to the Facility; and (2) a commitment by the Customer to create 124 new jobs at the Facility.

CAPITAL INVESTMENT

The Customer shall build the Facility and/or make the committed improvements at the Facility as described in this Appendix, and make a capital investment of at least \$51.625 million (the “Capital Investment”). The Capital Investment for the Facility and/or such improvements is expected to consist of the following specific expenditures:

(1) Infrastructure upgrades (building and power):	\$7.1 million
(2) Cooling equipment/upgrades:	\$4.05 million
(3) Uninterruptable power supply and misc. equipment	\$2.475 million
(4) The purchase and installation at the Facility of computer equipment (<u>data servers, routers,</u> <u>related hardware and software</u>):	\$38.0 million
<hr/> Capital Investment	\$51.625 million

The portion of the Capital Investment related to items (1), (2), and (3), or \$13.625 million, shall be made, and the Facility and/or the improvements thereto shall be completed and fully operational, no later than July 26, 2014 (*i.e.*, within three (3) years of the Authority’s award of the Allocation), and the portion of the Capital Investment related to item (4), or \$38 million, shall be made within five (5) years of commencement of Electric Service of any portion of the Allocation.. Upon request of the Customer, such dates may be extended by the Authority in its sole discretion.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO CUSTOMER**

TAKEDOWN SCHEDULE

N/A

NYS Power Authority

*Hearing
June 20, 2013*



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New York State Power Authority
Thursday, June 20, 2013
2:30 p.m. - 6:30 p.m.
Niagara Power Project Visitors' Center
5777 Lewiston Road
Lewiston, New York 14092

Debra Doron, RPR, Notary Public

1	SPEAKERS	PAGE
2		
3	MS. DELINCE.....	3
4	MR. PASQUALE.....	6
5	MS. DELINCE.....	12
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		

1 MS. DELINCE: Good afternoon. This is a public
2 hearing required by law and authorized by the New York
3 Power Authority Board of Trustees on the proposed
4 direct sale contracts for the sale of Western New York
5 hydropower to certain Expansion Power and Replacement
6 Power customers.

7 My name is Karen Delince and I'm the Corporate
8 Secretary of the New York Power Authority.

9 As required by hearing procedures set forth in
10 the New York State Public Authorities Law, Section
11 1009, a notice of the hearing was published in six
12 newspapers once a week for the four weeks leading up
13 to this hearing.

14 The notice of this hearing appeared in the
15 following newspapers:

- 16
- 17 1. Niagara Gazette
- 18 2. Buffalo News
- 19 3. Buffalo Business First
- 20 4. Lewiston Porter Sentinel
- 21 5. Albany Times Union
- 22 6. Dunkirk Observer.
- 23

1 Also, pursuant to the Public Authorities Law,
2 notice of this hearing and a copy of the proposed
3 contract were sent to Governor Andrew Cuomo and the
4 following legislative leaders:

- 5
- 6 1. President Pro Temp of the New York State Senate
- 7 2. Speaker of the Assembly
- 8 3. Chairman of the Senate Finance Committee
- 9 4. Chairman of the Assembly Ways and Means Committee
- 10 5. Senate Minority Leader
- 11 6. Assembly Minority Leader.
- 12

13 During the 30-day period prior to today's
14 hearing, a copy of the proposed contract was made
15 available for inspection at the Authority's White
16 Plains office, as well as on the Authority's website.

17 If you plan to make an oral statement at this
18 hearing, I ask that you please see Lorna Johnson at
19 the sign-in table and fill out a card. Also, if you
20 have written statements, please give a copy to Ms.
21 Johnson and one to the reporter.

22 Your written statement may be of any length and
23 will appear in the record of the hearing in addition

1 to your oral statement. The record of the hearing
2 will remain open for additional comments or statements
3 through close of business Friday, June 21.

4 Any additional submissions should be mailed to
5 the Authority's Corporate Secretary at:

6 123 Main Street, 11-P.

7 White Plains, NY 10601;

8 or

9 faxed to (914) 390-8040;

10 or

11 e-mailed to secretarys.office@nypa.gov.

12 A complete transcript of the hearing, along with
13 all written submissions, will be submitted to the
14 Authority's Trustees, who shall reconsider the terms
15 of the proposed contract and make changes as they deem
16 necessary or advisable in light of the comments
17 received.

18 The transcript of this hearing will also be made
19 available to the public for review at the Authority's
20 White Plains office and on the Authority's website
21 (www.nypa.gov).

22 After the Trustees' final review, the contract
23 will be forwarded to the Governor for his

1 consideration and approval.

2 If you have additional questions, please see Ms.
3 Johnson at the sign-in table.

4 At this point, I would like to introduce Mr.
5 James Pasquale, Senior Vice President of Economic
6 Development and Energy Efficiency at the Authority,
7 who will provide additional details on the proposed
8 direct sale contract.

9 Thank you. Mr. Pasquale?

10 MR. PASQUALE: Thank you, Ms. Delince. Good
11 afternoon. My name is James F. Pasquale and I am the
12 Senior Vice President of Economic Development and
13 Energy Efficiency at the New York Power Authority. I
14 am here today to present a summary of the proposed
15 contracts to seven companies for the direct sale of
16 Expansion Power or Replacement Power - hydropower that
17 is generated here at the Authority's Niagara Power
18 Project.

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

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

5 Four of the companies have been awarded
6 hydropower allocations by the Authority's Trustees in
7 return for commitments made to create or expand their
8 businesses in Western New York. Specifically:

9 * Greenpac Mill was awarded 10,000 kilowatts to build
10 a containerboard mill in Niagara Falls, committing
11 \$380 million in capital investment and creating 108
12 jobs.

13 * Nulife Glass was awarded 500 kilowatts to build a
14 glass recycling facility in Dunkirk (Chautauqua
15 County), committing \$3.75 million in capital
16 investment and creating 25 jobs.

17 * Welded Tube USA was awarded 4,000 kilowatts to build
18 a tubular pipe facility in Lackawanna, committing
19 \$48.25 million in capital spending and creating 121
20 jobs, and

21 * Yahoo! was awarded 7,200 kilowatts to create a
22 100-person call center operation and a second data
23 center in Lockport, committing a total of \$170

1 million in capital spending and creating 115 jobs.

2 Also, on March 21, 2013, the Authority's Trustees
3 approved extensions to the terms of hydropower
4 allocations held by three companies in return for
5 commitments made to maintain employment and invest in
6 their facilities in Western New York. Specifically:

7 * 4,600 kilowatts to Ceres Crystal Industries in
8 Buffalo, as an extension of their current contract
9 for the retention of 50 jobs and an annual capital
10 investment of \$200,000 over a term of five years.

11 * 250 kilowatts to Delaco AMTB in Tonawanda as an
12 extension of their current contract for the
13 retention of 16 jobs and an annual capital
14 investment of \$485,000 over a term of five years.

15 * 100 kilowatts to Hammond Manufacturing in
16 Cheektowaga as an extension of their current
17 contract for the retention of 24 jobs and an annual
18 capital investment of \$5,000 over a term of five
19 years.

20 In aggregate, the companies have committed to
21 capital spending of over \$605 million in their Western
22 New York facilities while creating or retaining 459
23 jobs.

1 Regarding the proposed contracts, since the late
2 1980s, the Authority's sales of EP and RP have been
3 handled almost exclusively under agreements with the
4 local electric utilities - Niagara Mohawk Power
5 Corporation doing business as National Grid, and New
6 York State Electric and Gas Corporation, also known as
7 NYSEG - both of which facilitated the provision of
8 Authority hydropower to end-use customers on a
9 sale-for-resale basis. These contractual arrangements
10 between the Authority and the utilities expire on June
11 30, 2013, necessitating new direct sale contracts to
12 facilitate the sale of hydropower to customers beyond
13 that date.

14 To summarize some of the pertinent provisions of
15 the proposed contracts, first, the contracts provide
16 for the direct billing of all hydropower supply
17 charges, all New York Independent System Operator,
18 Inc. ("NYISO") charges and taxes.

19 Each contract includes the customer's agreed-upon
20 commitments with respect to employment and capital
21 investment. The contract retains the Authority's
22 right to reduce or terminate customers' allocations
23 if employment, power utilization, or capital

1 investment commitments are not met. For example, the
2 contracts include an annual job reporting requirement
3 and a job compliance threshold of 90 percent. Should
4 a company's average annual employment fall below the
5 compliance threshold of 90 percent of the employment
6 commitment, the Authority has the right to reduce the
7 allocation on a pro rata basis.

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

18 The contracts will serve the allocation in
19 accordance with the Authority's Service Tariff WNY-1,
20 which specifies the rates and which is applicable to
21 all EP and RP allocations effective July 1, 2013. The
22 Service Tariff specifies a three-year rate phase-in to
23 a target rate based on the rate of the Authority's

1 other hydropower program - Preservation Power - to
2 ultimately ensure consistency among the Authority's
3 three hydropower programs. Transmission and delivery
4 service for these allocations will be provided by
5 National Grid, or in the case of Yahoo, NYSEG, in
6 accordance with the utilities' Public Service
7 Commission approved delivery service tariffs.

8 Lastly, Ceres Crystal, Hammond Manufacturing, and
9 Delaco AMTB, having already been served their
10 allocations under resale contracts, require service to
11 be uninterrupted July 1, 2013. Greenpac's new project
12 is nearing completion and the company has requested
13 service as soon as July 1, 2013. In order to continue
14 or start service July 1st, the Authority is working
15 with these four companies on short-term "interim"
16 agreements whereby the Authority would sell the
17 hydropower until such time as the public hearing
18 process for the long-term contract concludes.

19 As Ms. Delince stated earlier, the Authority will
20 accept your comments on the proposed contracts until
21 the close of business on Friday, June 21st. I will
22 now turn the Hearing back to Ms. Delince.

23 MS. DELINCE: Thank you, Mr. Pasquale. We will

	among (1) 11:2	10:14	11:15	
\$	amount (1) 7:1	Board (1) 3:3	company (1) 11:12	D
\$170 (1) 7:23	AMTB (2) 8:11;11:9	both (1) 9:7	company's (1) 10:4	data (1) 7:22
\$200,000 (1) 8:10	Andrew (1) 4:3	Buffalo (3) 3:18,19;8:8	complete (1) 5:12	date (1) 9:13
\$3.75 (1) 7:15	annual (5) 8:9,13,17;10:2,4	build (3) 7:9,13,17	completion (1) 11:12	deem (1) 5:15
\$380 (1) 7:11	appear (1) 4:23	Business (4) 3:19;5:3;9:5;11:21	compliance (2) 10:3,5	Delaco (2) 8:11;11:9
\$48.25 (1) 7:19	appeared (1) 3:14	businesses (3) 6:23;7:2,8	concerning (1) 10:11	DELINCE (7) 3:1,7;6:10;11:19, 22,23;12:4
\$485,000 (1) 8:14	applicable (1) 10:20	C	concludes (1) 11:18	delivery (2) 11:3,7
\$5,000 (1) 8:18	approval (1) 6:1	call (1) 7:22	consideration (1) 6:1	deposits (1) 10:12
\$605 (1) 8:21	approved (2) 8:3;11:7	capital (10) 7:11,15,19;8:1,9, 13,18,21;9:20,23	consistency (1) 11:2	details (1) 6:7
A	arrangement (1) 10:9	card (1) 4:19	consistent (1) 10:15	Development (2) 6:6,12
ability (1) 10:11	arrangements (1) 9:9	case (1) 11:5	containerboard (1) 7:10	direct (7) 3:4;6:8,15;9:11,16; 10:9,15
accept (1) 11:20	arrive (1) 12:2	center (2) 7:22,23	continue (2) 7:3;11:13	directly (1) 6:21
accommodate (1) 10:8	Assembly (3) 4:7,9,11	Ceres (2) 8:7;11:8	contract (13) 4:3,14;5:15,22;6:8; 8:8,12,17;9:19,21; 10:10,14;11:18	Dunkirk (2) 3:22;7:14
accordance (2) 10:19;11:6	Authorities (3) 3:10;4:1;6:19	certain (1) 3:5	contracts (12) 3:4;6:15;9:1,11,15, 15;10:2,15,17,18; 11:10,20	During (1) 4:13
addition (1) 4:23	Authority (12) 3:3,8;6:6,13,20; 9:8,10;10:6,15;11:14, 16,19	Chairman (2) 4:8,9	contractual (1) 9:9	E
additional (4) 5:2,4;6:2,7	Authority's (16) 4:15,16;5:5,14,19, 20;6:17;7:6;8:2,9;2, 21;10:11,16,19,23; 11:2	changes (1) 5:15	copy (3) 4:2,14,20	earlier (1) 11:19
Additionally (1) 10:8	authorized (1) 3:2	charge (1) 10:12	Corporate (2) 3:7;5:5	Economic (2) 6:5,12
adjourned (1) 12:4	available (2) 4:15;5:19	charges (2) 9:17,18	Corporation (2) 9:5,6	effective (1) 10:21
advisable (1) 5:16	average (1) 10:4	Chautauqua (3) 7:2,4,14	County (3) 7:2,4,15	Efficiency (2) 6:6,13
afternoon (2) 3:1;6:11	awarded (5) 7:5,9,13,17,21	Cheektowaga (1) 8:16	create (2) 7:7,21	electric (2) 9:4,6
aggregate (1) 8:20	B	close (2) 5:3;11:21	creating (5) 7:11,16,19;8:1,22	e-mailed (1) 5:11
agreed-upon (1) 9:19	back (1) 11:22	comments (3) 5:2,16;11:20	Crystal (2) 8:7;11:8	employment (5) 8:5;9:20,23;10:4,5
agreements (2) 9:3;11:16	based (1) 10:23	commercially (1) 10:10	Cuomo (1) 4:3	end-use (1) 9:8
Albany (1) 3:21	basis (2) 9:9;10:7	Commission (1) 11:7	current (3) 8:8,12,16	Energy (2) 6:6,13
allocate (1) 6:20	below (1) 10:4	commitment (1) 10:6	customer (1) 10:13	ensure (1) 11:2
allocated (2) 7:2,3	beyond (1) 9:12	commitments (4) 7:7;8:5;9:20;10:1	customers (3) 3:6;9:8,12	EP (4) 6:22;7:2;9:2;10:21
allocation (2) 10:7,18	billing (2) 9:16;10:9	committed (1) 8:20	customer's (1) 9:19	event (1) 10:13
allocations (6) 7:6;8:4;9:22; 10:21;11:4,10	bills (1)	Committee (2) 4:8,9	customers' (1) 9:22	example (1) 10:1
almost (1) 9:3		committing (4) 7:10,15,18,23		exclusively (1) 9:3
along (1) 5:12		companies (5) 6:15;7:5;8:4,20;		expand (1)

<p>7:7 Expansion (3) 3:5;6:16,21 expire (1) 9:10 extension (3) 8:8,12,16 extensions (1) 8:3</p>	<p>Governor (2) 4:3;5:23 Greenpac (1) 7:9 Greenpac's (1) 11:11 Grid (2) 9:5;11:5</p>	<p>13,17,23 Johnson (3) 4:18,21;6:3 July (4) 10:21;11:11,13,14 June (3) 5:3;9:10;11:21</p>	<p>March (1) 8:2 may (2) 4:22;6:20 Means (1) 4:9 met (1) 10:1 miles (1) 6:23 Mill (2) 7:9,10 million (5) 7:11,15,19;8:1,21 Minority (2) 4:10,11 Mohawk (1) 9:4 monthly (1) 10:14 MW (2) 6:21,22</p>	<p>office (2) 4:16;5:20 once (1) 3:12 one (1) 4:21 open (1) 5:2 operation (1) 7:22 Operator (1) 9:17 oral (2) 4:17;5:1 order (1) 11:13 out (1) 4:19 over (4) 8:10,14,18,21</p>	
<p>F</p>	<p>H</p>	<p>K</p>	<p>N</p>	<p>P</p>	
<p>facilitate (1) 9:12 facilitated (1) 9:7 facilities (2) 8:6,22 facility (2) 7:14,18 failure (1) 10:13 fall (1) 10:4 Falls (1) 7:10 faxed (1) 5:9 fees (1) 10:12 fill (1) 4:19 final (1) 5:22 Finance (1) 4:8 First (2) 3:19;9:15 five (3) 8:10,14,18 following (2) 3:15;4:4 forth (1) 3:9 forwarded (1) 5:23 four (3) 3:12;7:5;11:15 Friday (2) 5:3;11:21</p>	<p>Hammond (2) 8:15;11:8 handled (1) 9:3 hearing (15) 3:2,9,11,13,14;4:2,14,18,23;5:1,12,18;11:17,22;12:4 held (1) 8:4 hydropower (10) 3:5;6:16;7:6;8:3;9:8,12,16;11:1,3,17</p>	<p>Karen (1) 3:7 kilowatts (7) 7:9,13,17,21;8:7,11,15 known (3) 6:22,23;9:6</p>	<p>name (2) 3:7;6:11 National (2) 9:5;11:5 nearing (1) 11:12 necessary (1) 5:16 necessitating (1) 9:11 New (14) 3:2,4,8,10;4:6;6:13;7:8;8:6,22;9:5,11,17;10:16;11:11 News (1) 3:18 newspapers (2) 3:12,15 Niagara (5) 3:17;6:17;7:1,10;9:4 non-payment (1) 10:8 notice (3) 3:11,14;4:2 Nulife (1) 7:13 NY (1) 5:7 NYISO (1) 9:18 NYSEG (2) 9:7;11:5</p>	<p>Pasquale (5) 6:5,9,10,11;11:23 payment (2) 10:12,13 percent (2) 10:3,5 period (1) 4:13 pertinent (1) 9:14 phase-in (1) 10:22 pipe (1) 7:18 Plains (3) 4:16;5:7,20 plan (1) 4:17 please (3) 4:18,20;6:2 point (1) 6:4 Porter (1) 3:20 Power (14) 3:3,5,6,8;6:13,16,16,17,22,22;7:1;9:4,23;11:1 present (1) 6:14 Preservation (1) 11:1 President (3) 4:6;6:5,12 prior (1) 4:13 Pro (2) 4:6;10:7 procedures (1) 3:9</p>	
<p>G</p>	<p>I</p>	<p>L</p>	<p>O</p>	<p>M</p>	
<p>Gas (1) 9:6 Gazette (1) 3:17 generated (1) 6:17 Glass (2) 7:13,14 Good (2) 3:1;6:10</p>	<p>J</p> <p>James (2) 6:5,11 January (1) 7:3 job (2) 10:2,3 jobs (8) 7:12,16,20;8:1,9,</p>	<p>M</p> <p>mailed (1) 5:4 Main (1) 5:6 maintain (1) 8:5 Manufacturing (2) 8:15;11:8</p>	<p>late (2) 9:1;10:12 law (4) 3:2,10;4:1;6:19 Leader (2) 4:10,11 leaders (1) 4:4 leading (1) 3:12 legislative (1) 4:4 length (1) 4:22 Lewiston (1) 3:20 light (1) 5:16 local (1) 9:4 located (1) 6:23 Lockport (1) 7:23 long-term (1) 11:18 Lorna (1) 4:18</p> <p>Observer (1) 3:22</p>	<p>Inc (1) 9:18 include (1) 10:2 includes (2) 9:19;10:10 including (1) 10:16 Independent (1) 9:17 individuals (1) 12:1 Industries (1) 8:7 inspection (1) 4:15 interim (1) 11:15 introduce (1) 6:4 invest (1) 8:5 investment (7) 7:11,16;8:10,14,18;9:21;10:1</p>	<p>Lackawanna (1) 7:18 Lastly (1) 11:8 lack (1) 9:1;10:12 law (4) 3:2,10;4:1;6:19 Leader (2) 4:10,11 leaders (1) 4:4 leading (1) 3:12 legislative (1) 4:4 length (1) 4:22 Lewiston (1) 3:20 light (1) 5:16 local (1) 9:4 located (1) 6:23 Lockport (1) 7:23 long-term (1) 11:18 Lorna (1) 4:18</p>

<p>process (1) 11:18</p> <p>program (1) 11:1</p> <p>programs (1) 11:3</p> <p>Project (3) 6:18;7:1;11:11</p> <p>proposed (9) 3:3;4:2,14;5:15; 6:7,14;9:1,15;11:20</p> <p>provide (2) 6:7;9:15</p> <p>provided (2) 7:1;11:4</p> <p>provision (1) 9:7</p> <p>provisions (3) 9:14;10:11,14</p> <p>public (7) 3:1,10;4:1;5:19; 6:19;11:6,17</p> <p>published (1) 3:11</p> <p>pursuant (1) 4:1</p>	<p>requested (1) 11:12</p> <p>require (2) 10:12;11:10</p> <p>required (2) 3:2,9</p> <p>requirement (1) 10:2</p> <p>resale (1) 11:10</p> <p>respect (1) 9:20</p> <p>result (1) 10:9</p> <p>retaining (1) 8:22</p> <p>retains (1) 9:21</p> <p>retention (3) 8:9,13,17</p> <p>return (2) 7:7;8:4</p> <p>review (2) 5:19,22</p> <p>right (2) 9:22;10:6</p> <p>risk (1) 10:8</p> <p>RP (3) 6:23;9:2;10:21</p>	<p>10:19,22;11:4,6,7, 10,13,14</p> <p>set (1) 3:9</p> <p>seven (1) 6:15</p> <p>shall (2) 5:14;7:3</p> <p>short-term (1) 11:15</p> <p>sign-in (2) 4:19;6:3</p> <p>six (1) 3:11</p> <p>soon (1) 11:13</p> <p>Speaker (1) 4:7</p> <p>Specifically (2) 7:8;8:6</p> <p>specifies (2) 10:20,22</p> <p>spending (3) 7:19;8:1,21</p> <p>start (1) 11:14</p> <p>State (3) 3:10;4:6;9:6</p> <p>stated (1) 11:19</p> <p>statement (4) 4:17,22;5:1;12:2</p> <p>statements (2) 4:20;5:2</p> <p>Street (1) 5:6</p> <p>submissions (2) 5:4,13</p> <p>submitted (1) 5:13</p> <p>Subsection (1) 6:20</p> <p>summarize (1) 9:14</p> <p>summary (1) 6:14</p> <p>supply (1) 9:16</p> <p>System (1) 9:17</p>	<p>Temp (1) 4:6</p> <p>temporarily (1) 12:1</p> <p>term (3) 8:10,14,18</p> <p>terminate (1) 9:22</p> <p>terms (2) 5:14;8:3</p> <p>three (2) 8:4;11:3</p> <p>three-year (1) 10:22</p> <p>threshold (2) 10:3,5</p> <p>Times (1) 3:21</p> <p>today (1) 6:14</p> <p>today's (1) 4:13</p> <p>Tonawanda (1) 8:11</p> <p>total (1) 7:23</p> <p>transcript (2) 5:12,18</p> <p>Transmission (1) 11:3</p> <p>Trustees (4) 3:3;5:14;7:6;8:2</p> <p>Trustees' (1) 5:22</p> <p>Tube (1) 7:17</p> <p>tubular (1) 7:18</p> <p>turn (1) 11:22</p> <p>two (1) 10:14</p>	<p style="text-align: center;">V</p> <p>Vice (2) 6:5,12</p> <p style="text-align: center;">W</p> <p>Ways (1) 4:9</p> <p>website (2) 4:16;5:20</p> <p>week (1) 3:12</p> <p>weeks (1) 3:12</p> <p>Welded (1) 7:17</p> <p>Western (4) 3:4;7:8;8:6,21</p> <p>whereby (1) 11:16</p> <p>White (3) 4:15;5:7,20</p> <p>wishing (1) 12:1</p> <p>within (1) 6:23</p> <p>WNY-1 (1) 10:19</p> <p>working (1) 11:14</p> <p>written (3) 4:20,22;5:13</p> <p>wwnypagov (1) 5:21</p>
R	S	T	U	Y
<p>rata (1) 10:7</p> <p>rate (3) 10:22,23,23</p> <p>rates (1) 10:20</p> <p>reasonable (1) 10:10</p> <p>received (1) 5:17</p> <p>recent (1) 10:15</p> <p>recess (2) 12:1,3</p> <p>Recharge (1) 10:16</p> <p>reconsider (1) 5:14</p> <p>record (2) 4:23;5:1</p> <p>recycling (1) 7:14</p> <p>reduce (2) 9:22;10:6</p> <p>Regarding (1) 9:1</p> <p>remain (1) 5:2</p> <p>Replacement (3) 3:5;6:16,22</p> <p>reporter (1) 4:21</p> <p>reporting (1) 10:2</p>	<p>sale (7) 3:4,4;6:8,15;9:11, 12;10:15</p> <p>sale-for-resale (2) 6:21;9:9</p> <p>sales (2) 9:2;10:16</p> <p>second (1) 7:22</p> <p>Secretary (2) 3:8;5:5</p> <p>secretarysoffice@nypagov (1) 5:11</p> <p>Section (2) 3:10;6:19</p> <p>sell (2) 6:20;11:16</p> <p>Senate (3) 4:6,8,10</p> <p>Senior (2) 6:5,12</p> <p>sent (1) 4:3</p> <p>Sentinel (1) 3:20</p> <p>serve (1) 10:18</p> <p>served (1) 11:9</p> <p>Service (8)</p>	<p style="text-align: center;">U</p> <p>ultimately (1) 11:2</p> <p>Under (3) 6:19;9:3;11:10</p> <p>uninterrupted (1) 11:11</p> <p>Union (1) 3:21</p> <p>up (1) 3:12</p> <p>USA (1) 7:17</p> <p>utilities (2) 9:4,10</p> <p>utilities' (1) 11:6</p> <p>utilization (1) 9:23</p>	<p style="text-align: center;">1</p> <p>1 (6) 3:17;4:6;7:3; 10:21;11:11,13</p> <p>10,000 (1) 7:9</p> <p>100 (1) 8:15</p> <p>1005 (1) 6:19</p> <p>1009 (1) 3:11</p>	

<p>100-person (1) 7:22</p> <p>10601 (1) 5:7</p> <p>108 (1) 7:11</p> <p>115 (1) 8:1</p> <p>11-P (1) 5:6</p> <p>121 (1) 7:19</p> <p>123 (1) 5:6</p> <p>13 (1) 6:20</p> <p>16 (1) 8:13</p> <p>1980s (1) 9:2</p> <p>1987 (1) 7:3</p> <p>1st (1) 11:14</p>	<p>6:22 459 (1) 8:22</p>			
	5			
	<p>5 (2) 3:21;4:10</p> <p>50 (1) 8:9</p> <p>500 (1) 7:13</p>			
	6			
	<p>6 (2) 3:22;4:11</p>			
	7			
	<p>7,200 (1) 7:21</p>			
	9			
2	<p>90 (2) 10:3,5</p> <p>914 (1) 5:9</p>			
<p>2 (2) 3:18;4:7</p> <p>2013 (5) 8:2;9:11;10:21; 11:11,13</p> <p>21 (2) 5:3;8:2</p> <p>21st (1) 11:21</p> <p>24 (1) 8:17</p> <p>25 (1) 7:16</p> <p>250 (2) 6:21;8:11</p>				
3				
<p>3 (2) 3:19;4:8</p> <p>30 (2) 6:23;9:11</p> <p>30-day (1) 4:13</p> <p>390-8040 (1) 5:9</p>				
4				
<p>4 (2) 3:20;4:9</p> <p>4,000 (1) 7:17</p> <p>4,600 (1) 8:7</p> <p>445 (1)</p>				