

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

May 21, 2013

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Minutes of the Regular Meeting of the Power Authority of the State of New York held at the Clarence D. Rappleyea Building, 123 Main Street, White Plains, New York at approximately 11:00 a.m.

Members of the Board present were:

John R. Koelmel, Chairman
Eugene Nicandri, Trustee
Jonathan Foster, Trustee
Terrance P. Flynn, Trustee
Joanne M. Mahoney, Trustee

Trustee R. Wayne LeChase – excused

Gil C. Quiniones	President and Chief Executive Officer
Judith C. McCarthy	Executive Vice President and General Counsel
Edward Welz	Chief Operating Officer
Donald Russak	Chief Financial Officer
Joseph Kessler	Senior Vice President – Power Generation, Power Supply
Robert Lurie	Senior Vice President – Strategic Planning
William Nadeau	Senior Vice President and Chief Risk Officer – Energy Risk Assessment and Control
James Pasquale	Senior Vice President – Economic Development and Energy Efficiency
Paul Tartaglia	Senior Vice President – Energy Resource Management
Joan Tursi	Senior Vice President – Corporate Support Services
Bradford Van Auken	Senior Vice President and Chief Engineer – Operations Support Services
Paul Belnick	Vice President – Energy Efficiency
John Canale	Vice President – Project Manager
Thomas Davis	Vice President – Financial Planning and Budgets
Dennis Eccleston	Vice President – Information Technology/Chief Information Officer
Michael Huvane	Vice President – Marketing – Business and Municipal Marketing
John Kahabka	Vice President – Environmental, Health and Safety
Robert Knowlton	Vice President – Engineering
Joseph Leary	Vice President – Community and Government Relations
Lesly Pardo	Vice President – Internal Audit
Patricia Leto	Vice President – Procurement
John Suloway	Vice President – Project Development Licensing and Compliance
Phillip Toia	Vice President – Transmission
Harry Francois	Regional Manager – Western New York (Niagara)
Lynn Hait	Regional Manager – Central New York (B-G)
Arthur Cambouris	Deputy General Counsel – Litigation
Lori Alesio	Assistant General Counsel – Human Resources and Labor Relations
Karen Delince	Corporate Secretary
Brian McElroy	Treasurer
Brian Liu	Deputy Treasurer
Frank Deaton	Director – Enterprise Risk Management – Energy Risk Assessment and Control
Carol Geiger-Wank	Director – Labor and Special Projects
Mike Lupo	Director – Marketing Analysis and Administration
Mark Malone	Director – Project Development and Licensing
Michael Saltzman	Director – Media Relations
Mark Slade	Director – Licensing, Relicensing and Implementation
Guy Sliker	Director – Clean Energy Technology
Ricardo DaSilva	Project Manager – Generation and Facility Improvements
Gary Schmid	Manager – Network Services Infrastructure
Steve Schoenwiesner	Manager – Relicensing and Implementation
Joseph Crimi	Lead Project Engineer I – Energy Efficiency
Ruth Colon	Senior Business Integration Project Manager

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Brian Wilkie	Rotational BI Project Manager – Special Projects and Business Integration
John Giumarra	Account Executive – Business Marketing and Economic Development
Vanessa Perez	Associate Account Executive – Business and Municipal Marketing
Lorna M. Johnson	Associate Corporate Secretary
Sheila Baughman	Assistant Corporate Secretary
Lindsay Dean	Intern – Special Projects and Business Integration
Sheri Mooney	

Chairman Koelmel presided over the meeting. Corporate Secretary Delince kept the Minutes.

Introduction

Chairman Koelmel welcomed the Trustees and staff members who were present at the meeting. He said the meeting had been duly noticed as required by the Open Meetings Law and called the meeting to order pursuant to the Authority's Bylaws, Article III, Section 3.

1. **Adoption of the May 21, 2013 Proposed Meeting Agenda**

On motion made and seconded, the meeting Agenda was adopted.

2. **Consent Agenda:**

On motion made and seconded, the Consent Agenda was approved.

Trustee Flynn was recused from the votes on Items 2d (Direct Sale Contracts for the Sale of Western New York Hydropower – Transmittal to the Governor) as it relates to Klein Steel Service Inc. and 2r (Energy Efficiency Market Acceleration Program – Cities’ Energy Master Plans Development – Contract Award Authorization) as it relates to LaBella Associates, PC and Wendel Energy Services, LLC. Trustee Mahoney was recused from the vote on Item 2r as it relates to Wendel Energy Services.

a. **Approval of the Minutes**

The Minutes of the Annual Meeting held on March 21, 2013 were unanimously adopted.

b. Firm Market Power Service Tariff and Western New York Service Tariff Amendments – Notice of Proposed Rulemaking

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to authorize the Corporate Secretary to publish a Notice of Proposed Rulemaking (‘NOPR’) in the *New York State Register*, in accordance with the requirements of the State Administrative Procedure Act (‘SAPA’), to amend: (1) the Schedule of Rates for Sale of Firm Market Power (‘ST 1C’) to replace the Authority’s two current Direct Firm Power Service Tariffs applicable to its Market customers and (2) the Western New York tariff (‘ST WNY-1’) applicable to its Expansion and Replacement customers located in Western New York. Drafts of ST 1C and ST WNY-1 are attached as Exhibit ‘2b-A-1’ and Exhibit ‘2b-B-1,’ respectively. Authority staff will address any comments received during the 45-day public comment period and return to the Trustees at a later date to seek final action on the service tariffs set forth above.

BACKGROUND

“The two current market tariffs, ‘Direct Firm Power Service Tariff No. 1B (‘ST-1B’)’ and ‘Direct Firm Power Service Tariff No. 1 (‘ST-1’)’, collectively serve four customers in contractual agreement for continued service with the Authority until December 31, 2020. These customers include Brookhaven Science Associates, being served under ST-1B, and Air Products & Chemicals, Inc., Linde LLC and Reynolds Metal Company, being served under ST-1.

“Electricity for these four customers is sold under ‘direct sale’ contracts between the Authority and the customer. The Authority serves as the Load Serving Entity (‘LSE’) for these customers in accordance with the requirements of the New York Independent System Operator (‘NYISO’). To supply the Market customers with Firm Market Power, the Authority makes market-based purchases from the NYISO in either the day-ahead or real-time markets.

“The Western New York customers currently consist of 106 business customers, located within 30 miles of the Niagara Power Project, who have received an allocation for Expansion Power (‘EP’) and/or Replacement Power (‘RP’) from the Authority. Both of these power programs total 695 megawatts (‘MW’) with EP consisting of 250 MW and RP consisting of 445 MW. The currently effective ST WNY-1 was developed in December 2010 with ‘sale for resale’ as the primary business model and an effective date of July 1, 2013. The tariff, which was going to terminate on June 30, 2013, was developed well in advance of its effective date to coincide with the contract extension of almost all EP and RP customers. Since that time, at the urging of the utilities that provide delivery service, the business model has changed to ‘direct sale,’ driving the need to amend the tariff. The amended ST WNY-1 will remain effective July 1, 2013 and will replace the three existing Authority service tariffs that govern EP and RP and the currently effective ST WNY-1.

DISCUSSION

“A comprehensive review of the Authority’s current Market and Western New York tariffs was performed by Authority staff in an effort to update them. The following proposed amendments would be applicable to both tariffs:

- Format these tariffs to be consistent with the Authority’s other tariffs for easier reading, streamlining, and improved organization;
- Clarify existing charges for which customers are responsible; and
- Include certain standard provisions now applicable to all Authority service tariffs.

“The amended Market tariff, as proposed, will consolidate, into one document, the two current Market tariffs and various tariff provisions that were adopted at different times. The following is a summary of the proposed changes to the Market Power tariff:

- Add specific abbreviations and terms and updated terminology;
- Incorporate language on billing methodology, scheduling of firm market power and firm market energy, reconciliation of usage and billing between contracts and delivery of market power;
- Include provisions to allow the Authority to recover all costs incurred on the customer’s behalf.

“The amended Western New York tariff, as proposed, will specify how the Authority will render bills to the customer, depict what a bill should be based on and how the Authority shares energy with alternate suppliers. The following is a summary of the proposed changes to the Western New York tariff:

- Format the abbreviations and terms to be consistent with the other Authority tariffs and add necessary terms not previously defined;
- Include provisions regarding Estimated Billing, Adjustments to Charges and Rendition and Payment of Bills;
- Incorporate language on Billing Methodology;
- Remove provisions that are no longer relevant as they pertain to delivery, which is not provided by the Authority, including Transformer Losses and Power Factor.

FISCAL INFORMATION

“Adoption of both the proposed Market tariff and Western New York tariff will have no financial impact on the Authority. The changes proposed are administrative in nature and have no effect on current production rates.

RECOMMENDATION

“The Director – Market Analysis and Administration, recommends that the Trustees authorize the Corporate Secretary to file a Notice of Proposed Rulemaking for publication in the *New York State Register* for the revision of the service tariffs for the Authority’s Market customers, and Expansion and Replacement Power customers located in Western New York.

“It is also recommended that the Senior Vice President – Economic Development and Energy Efficiency, or his designee, be authorized to issue written notice of the proposed action to the affected customers under the provisions of the Authority’s tariffs.

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

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

RESOLVED, That the Corporate Secretary of the Authority be, and hereby is, directed to file a Notice of Proposed Rulemaking for publication in the *New York State Register* in accordance with the State Administrative Procedure Act to amend the Authority’s current Market tariffs applicable to its Market customers and the Western New York tariff applicable to its Expansion and Replacement Power customers located in Western New York, as set forth in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the Corporate Secretary of the Authority be, and hereby is, directed to file such other notice(s) as may be required by statute or regulation concerning the proposed tariff amendments; and be it further

RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency, or his designee, be, and hereby is, authorized to take any further actions as may be necessary to effectuate the foregoing; and be it further

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

c. Allocations of Hydropower and Notice of Public Hearing

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve allocations of available hydropower totaling 5,600 kilowatts (‘kW’) to Advance 2000, Inc. (2,900 kW) and Niagara Refining LLC (2,700 kW), as further described herein and in Exhibit ‘2c-A.’ These allocations, collectively, will support capital expansion of more than \$50.8 million and the creation of 117 jobs in Western New York (‘WNY’). The Trustees are also requested to authorize a public hearing pursuant to Public Authorities Law (‘PAL’) §1009 on proposed direct sale contracts for these allocations, the current form of which is attached as Exhibit ‘2c-B.’

BACKGROUND

“In summary, under PAL §1005(13), the Authority may contract to allocate up to 250 megawatts (‘MW’) of firm hydroelectric power as Expansion Power (‘EP’) and up to 445 MW as Replacement Power (‘RP’) to businesses in the State located within 30 miles of the Niagara Power Project, provided that the amount of power allocated to businesses in Chautauqua County on January 1, 1987 shall continue to be allocated in such county.

“Each application for an allocation of EP and RP must be evaluated under criteria that include, but need not be limited to, those set forth in PAL §1005(13)(a). Among the factors to be considered when evaluating a request for an allocation of hydropower are the number of jobs created as a result of the allocation; the business’ long-term commitment to the region as evidenced by the current and/or planned capital investment in the business’ facilities in the region; the ratio of the number of jobs to be created to the amount of power requested; the types of jobs created, as measured by wage and benefit levels, security and stability of employment and the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed.

“The Authority works closely with business associations, local distribution companies and economic development entities to garner support for the projects to be recommended for allocations of Authority hydropower. Discussions routinely occur with National Grid, Empire State Development Corporation, the Buffalo Niagara Enterprise, the Niagara County Center for Economic Development, and Erie County Industrial Development Agency to coordinate other economic development incentives that may help bring projects to New York State. Staff confers with these entities to help maximize the value of hydropower to improve the economy of WNY and the State of New York. The following recommendations have been discussed with each of these entities and each has indicated support for the proposed recommendation.

DISCUSSION

“At this time, there are 4,895 kW of unallocated EP and 40,453 kW of unallocated RP available for eligible businesses under the criteria set forth in PAL §1005(13)(a). The following companies have submitted applications for hydropower to support proposed expansion projects as described below.

Advance 2000, Inc.

“Advance 2000, Inc. (‘Advance’) has been operating for more than 22 years, delivering information technology (‘IT’) services to a variety of industries, including corporate health care and government agencies. Headquartered in Williamsville, Erie County, NY, Advance has other locations in Boston, Philadelphia, Charlotte, Chicago, New York City, Toronto and Rochester. Advance offers full-service IT solutions including private cloud computing, network design and implementation, integrated communications and IT consulting to small, medium and enterprise-size businesses including engineering, healthcare, and manufacturing firms.

“Advance currently operates a data center at its headquarters on Wehrle Drive in Williamsville. The company has applied for 5 megawatts (‘MW’) of hydropower to support a proposed expansion in a 74,000-square-foot manufacturing building on Pineview Drive in Amherst (an industrial park setting). The additional location is

needed to handle increased demand for hosted voice and data services and cloud computing for a variety of new companies nationwide.

“The initial phase of the Pineview Drive expansion would occupy 30,000 square-feet of the facility and include the installation of 250 data center racks, along with a cooling system and seven air handling units. The first phase investment of \$7,250,000 would be broken out as follows: \$2.4 million for building acquisition; \$1 million for improvements; \$2 million for cooling; \$1 million for generators; and \$850,000 for various equipment. Advance expects the first phase to be fully operational by the end of the year. The entire project build-out would span three years with a total capital investment commitment of \$21,350,000.

“Advance will agree to commit to create 67 positions within three years at its new facility with relatively high average wages and benefits. It also plans to transfer at least 80 current employees from the Wehrle Drive headquarters to the new facility. The existing site would remain as a disaster recovery location for the new site. The company expressed confidence that if this expansion plan moves forward, more jobs would be created in subsequent years.

“The calculated job creation/MW ratio for a 2.9 MW allocation is 23.1 jobs per MW. This ratio is above the historic average of 17.9 new jobs per MW for the last four years. The capital investment of \$21.35 million proposed by Advance would result in a capital investment/MW ratio of \$7.4 million per MW. This ratio is below the four-year historic average of \$21.3 million per MW.

“Low-cost power is a critical component to the success of Advance’s expansion plans and will allow it to compete with other leading technology firms in the growing cloud computing arena. As with any data center related project, power costs are a significant percentage of the cost of production at the facility. A hydropower allocation would also support this ‘home-grown’ technology company’s mission of being a ‘green company.’

“Staff recommends that an allocation of RP in the amount of 2,900 kW be awarded to Advance based on Advance’s commitments to make capital investments of approximately \$21.35 million and create 67 jobs.

Niagara Refining LLC

“Niagara Refining LLC (‘NiRef’), headquartered in Depew, Erie County, NY was formed to create a tungsten refining plant in WNY. The key purpose of the new plant is to provide its owners with an independent source of supply (tungsten) for production of tungsten carbide powders and other industrial materials. Currently, 80% of the world’s supply of tungsten comes from China. Historically, China has been reducing its exports of intermediary tungsten products in order to sell more finished goods. The tungsten refinery would free the owners from potential interruptions in supply and reduce dependence on foreign tungsten sources.

“NiRef has submitted an application requesting 5.4 MW of hydropower to develop the plant in 100,000 square feet of unused space at a ‘brownfield-site’ facility owned by one of its owners, Buffalo Tungsten Inc. (‘BTI’). BTI is a current hydropower customer with two contractually compliant allocations of RP totaling 2,050 kW. The project involves installation of new chemical process equipment, including tanks, piping and pumps. Also, refurbishment of existing building infrastructure is necessary. These improvements would include all new concrete floors, drains, dikes, metal platforms, and all new electrical infrastructure and controls. Two small ancillary buildings would also be constructed. The production output of the plant will be shared and fully utilized by the owners.

“NiRef plans to invest approximately \$29.583 million, including \$9.9 million for building construction, modifications and upgrades; \$1.2 million for engineering and office improvements; and \$18.2 million for plant components and infrastructure at the Depew location. The company hopes to be fully operational by the fourth quarter of 2013.

“NiRef would commit to creating 50 positions at its new facility as a result of the proposed allocation. The calculated job creation/MW ratio for a 2.7 MW allocation is 18.5 new jobs per MW. This ratio is above the historic average of 17.9 new jobs per MW over the last four years. The total project investment of \$29.583 million proposed

by NiRef would result in a capital investment/MW ratio of \$11.0 million per MW. This ratio is below the four-year historic average of \$21.3 million per MW.

“The availability of low-cost power is critical to NiRef’s decision to move forward with the project. An allocation will enable NiRef to compete effectively with firms overseas, in particular, China, which hosts most of the world’s tungsten supply production. Additionally, through the project’s reuse and renovation of a facility located on a brownfield site, the allocation would help NiRef reduce the environmental impact of the otherwise unused and distressed facility.

“Staff recommends that an allocation of RP in the amount of 2,700 kW be awarded to NiRef based on NiRef’s commitments to make capital investments of approximately \$29.583 million and create 50 jobs.

“In summary, staff recommends that RP allocations totaling 5,600 kW be awarded to Advance (2,900 kW) and NiRef (2,700 kW) in exchange for a total of \$50.8 million of capital investment and the creation of 117 new jobs at the proposed WNY facilities. The recommendation is described in Exhibit ‘2c-A’ showing, among other things, the amount of power requested by the applicant, the recommended allocation amounts, and the applicant’s proposed commitment to job creation and capital investment. Additional information on the projects is contained in the application summaries attached as Exhibits ‘2c-A-1’ and ‘2c-A-2.’

CONTRACT INFORMATION

“The Authority is in the process of discussing the proposed contract with these companies and anticipates receiving customer approval of a contract form substantially similar to Exhibit ‘2c-B.’ The Trustees are requested to authorize a public hearing pursuant to PAL §1009 on the negotiated direct sale contract for these recommended allocations, the current form of which is attached as Exhibit ‘2c-B.’

“As required by PAL §1009, when the Authority believes it has reached agreement with its co-party, it will transmit the proposed form of contract to the Governor and other elected officials and hold a public hearing on the contract. At least 30-days’ notice of the hearing must be given by publication once in each week during such period in each of six selected newspapers. Following the public hearing, the form of 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.

“The general form of the contract is consistent with recently approved contracts for the sale of EP and RP. Some pertinent provisions of the proposed form of contract include the provision for 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, as set forth in the Authority’s Service Tariff No. WNY-1. The proposed form of contract would also include (i) commercially reasonable provisions relating to financial security to reflect a direct billing arrangement between the Authority and its EP/RP customers, and (ii) provisions authorizing data transfers and addressing other utility-driven requirements which are necessary for efficient program implementation. Such provisions have been used in other Authority contracts forms, including the Authority’s recent Recharge New York Power Program contracts.

“In all cases of Authority hydropower, the allocation amounts are subject to enforceable employment and usage commitments. The standard contract form includes annual job reporting requirements and a job compliance threshold of 90%. Should Advance 2000, Inc. or Niagara Refining LLC’s actual jobs reported fall below the compliance threshold, the Authority has the right to reduce the allocation on a pro-rata basis. The allocation would be sold to these companies pursuant to the Authority’s Service Tariff No. WNY-1, which applies to all allocations of EP and RP commencing July 1, 2013. Transmission and delivery service for these allocations would be provided by National Grid or NYSEG, as applicable, and in accordance with each utility’s filed service tariffs.

RECOMMENDATION

“The Manager – Business Power Allocations and Compliance recommends that the Trustees approve the allocations of Replacement Power totaling 5,600 kW to Advance 2000, Inc. (2,900 kW) and Niagara Refining LLC

(2,700 kW) as detailed in Exhibit '2c-A.' It is also recommended that the Trustees authorize the Corporate Secretary to convene a public hearing on the form of the proposed contracts finally negotiated with these companies, the current form of which is attached as Exhibit '2c-B,' and transmit copies of such proposed form of contract to the Governor and legislative leaders pursuant to PAL §1009. Staff will report to the Board of Trustees on the public hearing and the contract and at that time make additional recommendations regarding the proposed contract.

"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."

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

RESOLVED, That allocations totaling 5,600 kW of Authority hydropower to Advance 2000, Inc. ("Advance") and Niagara Refining LLC ("NiRef") as detailed in Exhibit "2c-A," be, and hereby are, approved on the terms set forth in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing on the terms of the proposed form of direct sale contract for the sale of hydropower and energy finally negotiated with Advance and NiRef (the "Contract"), 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 to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee pursuant to Public Authorities Law ("PAL") §1009; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to arrange for the publication of a notice of public hearing in six newspapers throughout the State, in accordance with the provisions of PAL §1009; and be it further

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

d. Direct Sale Contracts for the Sale of Western New York Hydropower – Transmittal to the Governor

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to: (1) approve proposed final contracts for six existing Expansion Power (‘EP’) and/or Replacement Power (‘RP’) customers; and (2) authorize transmittal to the Governor of the proposed final proposed contracts for his approval and authorization for the Authority to execute the contracts. The contracts are for the direct sale of EP and/or RP allocations and would commence on July 1, 2013 upon the expiration of these customers’ current sale-for-resale agreements. Copies of the proposed final contracts are attached as Exhibit ‘2d-A.’ For your convenience, we have attached as Exhibit ‘2d-B’ a list of the customers along with the respective allocations and commitments that are provided for in the contracts.

BACKGROUND

“Under Public Authorities Law (‘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 the Authority’s hydropower to end-use customers on a sale-for-resale basis. These contractual arrangements expire on June 30, 2013, and the Authority has made arrangements to continue the sale of the EP and RP allocations under a direct sale contract with each of the 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 governing all EP and RP sales commencing July 1, 2013, Service Tariff No. WNY-1 (‘ST WNY-1’), which modified the production rate for EP and RP by applying a three-year phase-in to a specified target rate which is based on the Authority’s Preservation Power rate.

“The contracts before the Board would apply to six current EP and RP customers as described in Exhibit ‘2d-B.’ These customers did not receive long-term contract extensions as part of the initiative identified above because (i) the allocations at issue were awarded after the period when the Authority offered long-term extensions, (ii) delivery for these allocations commenced after such period, or (iii) the customers declined long-term extensions. As a result, the allocations of these customers extend beyond the term of the soon-to-expire sale-for-resale contractual arrangements with the customers’ local utilities. The contracts would enable the Authority to continue to sell these customers their allocations under a direct sale arrangement for the remaining 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, as set forth in ST WNY-1.
- The contracts would include each customer’s previously agreed-upon supplemental commitments (to be included in a schedule attached to each individual contract) with respect to employment, power utilization and capital investment. The Authority would retain the right to reduce or

terminate the 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, and it is appropriate to be included here as it would simplify 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 a 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, including the fact that each customer's supplemental commitments will not change, and in each case has received customer consent to the proposed contract. The customers acknowledge that ST WNY-1 rates will apply to their allocations effective July 1, 2013, as will be the case with all allocations of EP and RP being served at that time.

"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 February 21, 2013 meeting, the Trustees authorized the Corporate Secretary to transmit the proposed contract to the Governor and legislative leaders and schedule a public hearing on the contracts. A public hearing on the contracts was held on April 25, 2013 at the Niagara Power Project's Power Vista Visitors' Center in Lewiston. There was one oral statement made at the public hearing and no written statements were submitted. The oral statement largely did not pertain to the contracts. The official transcript of the public hearing is attached as Exhibit '2d-C.'

RECOMMENDATION

"The Manager – Business Power Allocations and Compliance recommends that the Trustees approve the six contracts for the sale of RP and/or EP allocations that are attached as Exhibit '2d-A' and authorize the transmittal of the contracts to the Governor for approval.

"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."

The following resolution, as submitted by the President and Chief Executive Officer, was adopted with Trustee Flynn being recused from the vote as it relates to the aforementioned company.

RESOLVED, That the contracts for the sale of hydroelectric power and energy generated by the Authority for sale to certain Replacement Power and Expansion Power customers are in the public interest and should be submitted to the Governor for approval and that 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 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 foregoing report of the President and Chief Executive Officer; and be it further

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

e. Municipal and Rural Electric Cooperative Economic Development Program – Allocation to the Village of Greene

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve an allocation of 375 kW of hydropower under the Municipal and Rural Electric Cooperative Economic Development Program (‘Program’) to the Village of Greene (or ‘Greene’).

BACKGROUND

“The 1991 amendment to the power sales agreement between the Authority and the Municipal and Rural Electric Cooperative Systems set aside a block of 54 MW from the 752 MW of hydropower allocated to the systems for economic development in the systems’ service territories. The total allocation was increased to 764.8 MW as a result of additional power resulting from the Niagara Project upgrade.

“Power from this block can be allocated to individual systems to meet the increased electric load resulting from eligible new or expanding businesses in their service area. Recommended allocations under the Program will now be made using guidelines that were approved by the Trustees at their meeting on September 23, 2008. Under the revised program, the first 100 kW allocated will be from 100% hydropower and any additional kW at 50% hydropower and 50% incremental power.

“To date, 32,345 kW of power has been allocated. The Village of Greene has submitted an application for power under the Program for consideration by the Trustees.

DISCUSSION

“An application has been submitted by the Village of Greene to the Authority on behalf of Sunrise Family Farms (‘Sunrise’). Sunrise is a fast growing specialty ‘Greek style’ yogurt manufacturer that started in 2004, primarily processing organic dairy products. The company’s primary market is private label processing of strained ‘Greek Style’ yogurt, which is growing exponentially with major National brands such as Chobani and Oikos (Dannon).

“In order to meet present customer demands, Sunrise will expand its operations in the Village of Greene. Sunrise also has an existing facility in Norwich NY. The company has partially operated from its Greene, New York location for the past three years, having used the space primarily as a dry inventory storage facility. The current 25,000 square feet facility in Greene will undergo an expansion of an additional 40,000 square feet and a 6000 square feet cooler expansion.

“Sunrise is a company that began as a family farm and continues to embrace an entrepreneurial spirit. The company is committed to the local New York State (‘NYS’) dairy farmers, in that, the business employs a business model that does not follow the federal milk pricing system when it comes to compensating farmers for milk. The company pays its farmers a flat fixed price with a premium for their milk so that it falls above the federal milk pricing Order. In addition to the stable fixed price offering, the company pays the farmers weekly, not bi-weekly, as is the norm in the industry. Sunrise values the farmers’ financial stability and ensures that they obtain the economic return needed to secure milk, a benefit for both parties.

“Capital investment for the expansion project is approximately \$3.4 – 4 million for the initial phase, with a total capital investment of \$6 – 8 million by 2016. The project will consist of site improvements, the construction of the new production facility and all related soft costs. The company anticipates that the expansion will add approximately 560 kW to the existing monthly peak demand at the expanded facility. This expansion will create 19 new full-time jobs at the expanded Greene Facility. In addition, the company also plans to maintain its existing

facility in Norwich, NY, which has a total of 50 local jobs. The company had started to explore options to move manufacturing to other sites outside NYS.

“Sunrise Farms has also received and accepted an Empire State Economic Development grant in the amount of \$275,000.

“It is recommended that the Trustees approve an allocation of 375 kW of Economic Development Power for the Village of Greene on behalf of Sunrise Family Farms. Expanding in Greene means the creation of 19 full-time jobs.

“In accordance with the Authority’s marketing arrangement with the municipal and cooperative customers, the hydropower will be added to the recipient system’s contract demand at the time the project becomes operational and the additional jobs and load commitments are reached. The hydropower earmarked for this Program is presently sold to the municipal and rural electric cooperative customers on a withdrawable basis.

RECOMMENDATION

“The Vice President – Marketing recommends that the Trustees approve the allocation of hydropower, totaling 375 kW, under the Municipal and Rural Electric Cooperative Economic Development Program, to the Village of Greene, in accordance with the discussion above.

“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.”

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

RESOLVED, That the allocation of power to the Village of Greene under the Municipal and Rural Electric Cooperative Economic Development Program is hereby approved as set forth in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency or his designee be, and hereby is, authorized to execute any and all documents necessary or desirable to effectuate this allocation, subject to the approval of the form thereof by the Executive Vice President and General Counsel; and be it further

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

f. Industrial Incentive Award Approval

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve an Industrial Incentive Award (‘IIA’) to Pratt Paper (NY), Inc. (‘Pratt’) in accordance with the existing IIA Economic Development Plan.

BACKGROUND

“Public Authorities Law (‘PAL’) §1005 (eighth unnumbered paragraph) directs the Authority to identify ‘net revenues’ produced by the sale of Expansion Power (‘EP’) and, further, to identify an amount of such net revenues that will be used solely for IIAs. The Authority is directed in PAL §1005 to identify net revenues available for IIAs no less often than annually. Net revenues are defined as any excess of revenues properly allocated to the sales of EP over costs and expenses properly allocated to such sales.

“IIAs are to be made in conformance with an Economic Development Plan (‘Plan’) covering all such ‘net revenues.’ The Authority submits a Plan to the Economic Development Power Allocation Board (‘EDPAB’) pursuant to Section 188 of the Economic Development Law (‘EDL’) which also provides for EDPAB’s approval of the Plan upon its determination that such Plan is consistent with, among other things, the economic development criteria provided for in EDL §§ 184 and 185 that evaluate applications for certain power.

“At its October 26, 2009 meeting, EDPAB approved a Plan that allows for the use of net revenues from the sale of EP for calendar years 2008 through, and including, 2016 to provide electric bill discounts to manufacturing companies located in New York State that are at identifiable risk of closing or relocating to another state.

DISCUSSION

“Economic conditions are placing financial burdens on many New York State manufacturing companies. Among these companies is Pratt, which operates a paper mill, a corrugated box factory and a sorting facility in Staten Island.

“Pratt’s Staten Island facility has been in operation since 1997. Its facility is located in Con Edison’s service area and its typical energy usage is up to 150,000,000 kWh per year. Manufacturing processes represents a substantial portion of Pratt’s total electricity consumption, and energy costs are a primary consideration for where Pratt will operate.

“Pratt is currently facing difficult economic challenges. In addition to being severely impacted by Super Storm Sandy and experiencing multi-million dollar losses not covered by insurance, Pratt has experienced significant increases in electricity costs. As a result, the competitiveness and long-term viability of its Staten Island facility is in jeopardy and it is considering relocating to a State offering substantial manufacturer incentives. Pratt’s manufacturing plants include two sister facilities, one in Conyers, GA, and the other in Shreveport, LA. Compared to these sites, Pratt’s Staten Island plant electricity cost per kWh is more than double the cost at Pratt’s Conyers site and more than 70% higher than the cost at its Shreveport site. With such severe deterioration in the competitive position of the Staten Island mill, Pratt has indicated that it will be forced to scale back operations and ultimately relocate the mill. Additionally, Pratt has established an in-house committee to study the phased relocation of the Staten Island campus out of New York State.

“It is recommended that the Board of Trustees authorize an IIA to Pratt in an annual amount of up to \$1 million per year for up to five years. Authority staff has been communicating with Pratt about its situation and staff has determined that Pratt has demonstrated that it meets the qualifying criteria for an IIA. This recommendation comes after careful consideration of Pratt’s business case.

“The proposed form of the IIA would be a cents per/kWh price discount applied to a level of annual electric consumption. The IIA would be subject to, among other appropriate terms and conditions:

- Reevaluation and reduction should Pratt’s electric rates decline during the term of the IIA.
- The availability of EP net revenue funding for IIAs, which is at NYPA’s sole discretion;
- Appropriate determination(s) by the Trustees that the funding of IIAs in any fiscal year will not have a significant impact on the Authority’s finances.
- Approval of an extension of the Plan by EDPAB beyond 2016 to the extent that an IIA to Pratt would extend beyond such year.
- A reduction in the amount of the IIA if Pratt does not meet agreed-upon job commitments (256 full-time employees) at the Staten Island facility.
- An agreement providing for the IIA and which address these and other appropriate terms and conditions in a form satisfactory to the Authority.

“Accordingly, it is recommended that the Trustees approve an IIA to Pratt in an annual amount of up to \$1 million per year for up to five (5) years, subject to the foregoing terms and conditions. The Authority will report to the Trustees annually on the actual disbursement of funds.

FISCAL INFORMATION

“Industrial Incentive Awards may only be paid if sufficient net revenues are produced by the sale of Expansion Power and since such net revenues and associated awards are anticipated in each year’s budget, it will not have a significant impact on the Authority’s finances.

RECOMMENDATION

“The Senior Vice President – Economic Development and Energy Efficiency recommends that the Trustees approve an Industrial Incentive Award to Pratt Paper (NY), Inc. in the amount proposed herein and subject to the aforementioned conditions.

“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.”

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

RESOLVED, That the Authority hereby approves an Industrial Incentive Award (“IIA”) to Pratt Paper (NY), Inc., subject to the conditions provided for in the foregoing report of the President and Chief Executive Officer; and be it further

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

g. Niagara Power Project – Administration Building and Power Vista Reception Building Sidewalk Replacement – Contract Award

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve the award of a two-year contract in the amount of \$571,400 to EdBauer Construction (‘EdBauer’), of Blasdell, NY, to replace and renovate various sidewalks and staircases surrounding the Robert Moses Niagara Power Plant’s (‘RMNPP’) Administration Building and Power Vista Reception Building at the Niagara Power Project (the ‘Project’).

BACKGROUND

“In accordance with the Authority’s Expenditure Authorization Procedures, the award of non-personal services contracts exceeding a one-year term require the Trustees’ approval.

“The existing sidewalks surrounding RMNPP’s Administration Building and Power Vista Reception Building consist of a combination of sidewalks poured during the initial construction of the Project in the 1950’s for public access. A site inspection was performed in 2012 by Hatch Associates and a concrete condition survey report was developed to assess the general condition as well as useful available service life on the original concrete sidewalks. Over the past 50+ years, frost heaved sections of the sidewalks have created numerous tripping hazards which is a safety concern. Temporary repairs have been made on limited areas; however, based on heaving caused by freezing and thawing in cold weather seasons, the extensive damage is beyond repair. As recommended in the Investigation Report Condition Survey, permanent sidewalk replacement is necessary in order to eliminate numerous tripping hazards.

“Overall replacement of the surrounding facility sidewalks is the most cost-effective method in achieving safe walking surfaces. The scope-of-work under this contract includes:

- i) Improvements to the entrances of the Administration Building including structural concrete and structural crack repairs to the staircase structures and replacement of the sidewalks and granite curbing.
- ii) Replacement of the sidewalks and granite curbing from the Screen Well Building to the Power Vista Entrance portal along with the installation of new curb ramps which are compliant with the American with Disabilities Act.
- iii) Replacement of the Courtyard sidewalks in order to achieve a uniform appearance to the entrance of the Power Vista, a place commonly visited by thousands of tourists every year.

DISCUSSION

“The Authority issued an advertisement to procure bids in the New York State *Contract Reporter* on March 5, 2013 and bid packages were available as of March 4, 2013. The bid documents were downloaded by fifty eight (58) potential bidders and six (6) potential bidders participated in a site visit on March 12, 2013.

“The following three proposals were received on April 8, 2013:

<u>Bidder</u>	<u>Location</u>	<u>Lump Sum Bid</u>
EdBauer Construction	Blasdell, NY	\$563,200.00
Sicoli & Massaro., Inc.	Niagara Falls, NY	\$724,800.00
BVR Construction	Churchville, NY	\$1,057,000.00

“The proposals were reviewed by an evaluation committee comprising of Authority staff from Engineering, Procurement and Project Management.

“EdBauer’s bid was the lowest in price and was also technically acceptable. EdBauer’s proposed schedule and scope-of-work meet the Authority’s requirements as described in the bid document. EdBauer submitted a comprehensive work plan for the concrete repair and its proposed hazardous materials abatement program, manpower projection and health and safety program are in accordance with New York State Department of Transportation (‘NYSDOT’) and Authority standards. EdBauer has performed satisfactorily on previous Authority projects, including the construction of the Niagara University Wall and Berm Project completed in 2009.

“The evaluation committee recommends that the contract be awarded to EdBauer for the total lump-sum amount of \$571,400 which includes the cost of a performance bond. EdBauer’s experience, safety record, resources, pricing and technical capabilities are sufficient to perform this work and EdBauer took no commercial exceptions to the bidding document

“Funding for the first year of the two-year project has been included in the 2013 approved Operations Budget. Future funding will be included in the Operations Budget requests for that year.

FISCAL INFORMATION

“Payment associated with this project will be made from the Authority’s Operating Fund.

RECOMMENDATION

“The Senior Vice President and Chief Engineer – Operations Support Services, the Vice President – Project Management, the Vice President – Engineering, the Vice President – Procurement, the Project Manager and the Regional Manager – Western New York recommend that the Trustees approve the award of a multi-year contract to EdBauer Construction of Blasdell, NY, in the amount of \$571,400, to perform the Sidewalk Replacement work at the Power Vista and Administration Buildings located at the Niagara Power Project.

“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.”

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to award a two-year contract to EdBauer Construction, of Blasdell, NY, in the amount of \$571,400, to perform the Sidewalk Replacement work at the Power Vista and Administration Buildings located at the Niagara Power Project, as recommended in the foregoing report of the President and Chief Executive Officer;

<u>Contractor</u>	<u>Contract Approval</u>
EdBauer Construction, Blasdell, NY	<u>\$571,400</u>

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

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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.

**h. Transmission Life Extension and Modernization Program
St. Lawrence – Massena Substation
765 kV Reactors Refurbishment – Contract Award**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve the award of a multi-year contract in the amount of \$11.7 million to ABB, Inc. of St. Louis, MO to refurbish eight ASEA 765kV reactors at the Massena Substation.

BACKGROUND

“Section 2879 of the Public Authorities Law and the Authority’s Guidelines for Procurement Contracts require the Trustees’ approval for procurement contracts involving services to be rendered for a period in excess of one year. In accordance with the Authority’s Expenditure Authorization Procedures, the award of non-personal services or equipment purchase contracts exceeding \$3 million require the Trustees’ approval.

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

- Upgrades, refurbishments, and replacements associated with switchyards and substations
- Transmission line structures or towers and associated hardware, including tower painting
- Replacement of the submarine cable on PV-20
- Work along rights-of-way, including access roads

“The scope is a result of internal and external assessments and recommendations. Funding will be requested in a tiered approach for each project as the complete plan of work develops.

“In 2007, ABB conducted a Life Assessment and Risk of Failure Study covering the ASEA Shunt Reactors. The study centered on the operating condition, life assessment and risk of failure analysis and provided an extensive list of recommendations required to maintain reliability and extend the life of the reactors. The recommendation indicated a need to refurbish the reactors at the Massena Substation. Refurbishment efforts will be performed in a sequenced approach. The current schedule calls for the refurbishment of one reactor this year, and two units per year for 2014 through 2016 and completion of the final unit in 2017.

“The Massena Substation is a 765 kV substation. There are a total of eight reactors at the substation which were put into service in 1977. The reactors are critical components of the 765 kV transmission system. The refurbishment of the reactors will lengthen the service life of these assets to improve reliability and maintain a robust electrical grid while minimizing future losses which can result in a loss of a 765 kV transmission line and resulting in loss of revenue.

DISCUSSION

“The scope-of-work under this contract includes the refurbishment of eight ASEA reactors.

“In response to the Authority’s request for proposal advertised in the New York State *Contract Reporter* on January 17, 2013, fifty (50) firms downloaded the bid documents. The following three (3) proposals were received on January 18, 2013 as noted below:

Bidders:	Base Price	Evaluated Price
ABB, Inc. St. Louis, MO	\$ 7,513,116	\$ 11,744,436
Eaton Corp LeRoy, NY	\$ 12,639,616	\$ 14,435,610
GE Energy Tonawanda, NY	\$ 7,275,200	Non-Responsive

Post Bid Addendum #1 was issued 4/3/2103.

“In 2006, ABB conducted a Life Assessment and Risk of Failure Study, which indicated a need to refurbish the auto-transformers and reactors at the Marcy Substation. Refurbishment efforts will be performed in a sequenced approach. The current schedule calls for the refurbishment of one reactor this year with two units per year from 2014 through 2016 and completion of the final unit in 2017.

“In addition to the base proposal, \$1.7 million will be added to the contract award for work associated with civil improvements and extended warranty of five years. An initial release of \$9.2 million will be issued.

“Optional pricing was also requested of ABB, Inc., based on projected future expenses. These optional items, totaling \$2.6 million, will be exercised based on condition of equipment following inspection.

“The project work will commence in 2013 with the refurbishment of one reactor, and two units per year for 2014 through 2016, and the final reactor will be completed in 2017.

FISCAL INFORMATION

“Payment associated with this project will be made from the Authority’s Operating Fund.

RECOMMENDATION

“The Senior Vice President and Chief Engineer – Operations Support Services, the Vice President – Project Management, the Vice President – Engineering, the Vice President – Transmission, the Vice President – Procurement, and the Project Manager recommend that the Trustees approved the award of a multi-year contract to ABB, Inc. in the amount of \$11.7 million.

“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.”

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to award a contract to ABB, Inc., in the amount of \$11.7 million to provide refurbishment services to eight reactors for use at the Massena Substation, as recommended in the foregoing report of the President and Chief Executive Officer:

Contractor
ABB, Inc.
St. Louis, MO

Contract Approval

\$11.7 million

AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other

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

**i. Transmission Life Extension and Modernization Program
Clark Energy Center – Marcy 765kV
Auto-Transformers and Reactors – Contract Award**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve the award of a multi-year contract in the amount of \$19.6 million to ABB, Inc. of St. Louis, MO to refurbish three ASEA 765 kV auto-transformers, four ASEA 765 kV reactors, and three Westinghouse 765 kV auto-transformers at the Clark Energy Center (‘CEC’).

BACKGROUND

“Section 2879 of the Public Authorities Law and the Authority’s Guidelines for Procurement Contracts require the Trustees’ approval for procurement contracts involving services to be rendered for a period in excess of one year. In accordance with the Authority’s Expenditure Authorization Procedures, the award of non-personal services, construction and equipment contracts exceeding \$3 million require the Trustees’ approval.

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

- Upgrades, refurbishments, and replacements associated with switchyards and substations
- Transmission line structures or towers and associated hardware, including tower painting
- Replacement of the submarine cable on PV-20
- Work along rights-of-way, including access roads

“The scope is a result of internal and external assessments and recommendations. Funding will be requested in a tiered approach for each project as the complete plan of work develops.

“The CEC consists of a 765 kV and 345 kV substation. There are a total of seven auto-transformers and four reactors at the substation which were put into service in 1978. The refurbishment of auto-transformer (1B) is ongoing and scheduled to be completed this summer by ABB, Inc.

“The auto-transformers and reactors are critical components of the 765 kV transmission system. The refurbishment of the auto-transformers and reactors will lengthen the service life of these assets to improve reliability and maintain a robust electrical grid while minimizing future losses which can result in the loss of a 765kV transmission line and revenue.

DISCUSSION

“The scope-of-work under this contract includes the repair and refurbishment of three ASEA auto-transformers, four ASEA reactors, and three Westinghouse auto-transformers.

“In response to the Authority’s request for proposal advertised in the New York State *Contract Reporter* on January 24, 2013, forty-four (44) firms downloaded the bid documents. The following proposal was received on January 25, 2013 as noted below:

Bidder:	Base Proposal	Evaluated Proposal
ABB Inc. St. Louis, MO	\$11,557,832	\$19,556,074

“In 2006, ABB conducted a Life Assessment and Risk of Failure Study, which indicated a need to refurbish the auto-transformers and reactors at the Marcy Substation. Refurbishment efforts will be performed in a sequenced approach. The current schedule calls for the refurbishment of one additional auto-transformer this year with two units per year from 2014 through 2017 and completion of the final unit in 2018.

“In addition to the base proposal, \$3.4 million will be added to the contract award for work associated with wiring and extended warranty of five years. An initial release of \$15.0 million will be issued.

“During the ongoing refurbishment of auto-transformer (1B), there were unanticipated expenses due to the nature of the refurbishment project. Optional pricing was requested of ABB, Inc., based on lessons learned and projected future expenses. These optional items totaling \$4.6 million will be exercised based on the condition of the equipment following inspection.

FISCAL INFORMATION

“Payment associated with this project will be made from the Authority’s Operating Fund.

RECOMMENDATION

“The Senior Vice President and Chief Engineer – Operations Support Services, the Vice President – Project Management, the Vice President – Engineering, the Vice President – Transmission, the Vice President – Procurement, and the Project Manager recommend that the Trustees approve the award of a multi-year contract to ABB, Inc. in the amount of \$19.6 million.

“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.”

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to award a contract to ABB, Inc., in the amount of \$19.6 million, to refurbish six auto-transformers and four reactors for use at the Marcy Substation, as recommended in the foregoing report of the President and Chief Executive Officer;

Contractor

Contract Approval

**ABB, Inc.
St. Louis, MO**

\$19.6 million

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

**j. Alcoa Transmission Line Relocation Project
Capital Expenditure Authorization Request**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to authorize capital expenditures in the amount of \$3,715,000 for the Alcoa Transmission Line Relocation Project (the ‘Project’). This Project entails the relocation of the existing 115 kV Transmission Lines MRG1, MRG2 and MR3 in support of Alcoa’s Massena Modernization Project (‘MMP’).

“Alcoa will reimburse the Authority for 100% of the cost of the Project.

BACKGROUND

“In accordance with the Authority’s Expenditure Authorization Procedures, capital expenditure authorizations in excess of \$3 million require the Trustees’ approval.

“At their meeting on December 16, 2008, the Trustees approved a new long-term agreement between the Authority and Alcoa, Inc. for the sale of 478 MW of hydroelectric power generated at the St. Lawrence/FDR Project. The term of this agreement is for 30 years with a provision for a possible 10-year extension. As part of the agreement, Alcoa, Inc. committed to protect a minimum of 900 jobs at the aluminum production facilities. The agreement was contingent upon the Alcoa Board of Directors approving the investment of at least \$600 million for the Alcoa Massena Modernization Project.

“In March of 2013 the Alcoa Board of Directors announced the Company’s decision to proceed with the next phase of the project. Alcoa is planning to invest \$42 million for site preparation at the Massena East smelter and provide an additional \$10 million toward a North Country Economic Development Fund (‘NCEDF’). Before construction begins on the new smelter, certain projects must be completed, one being the Alcoa Transmission Line Relocation Project.

“The Alcoa Massena Modernization Project will install a new 115 kV Substation to feed the loads for the new Smelting Potline and the auxiliary 13.8 kV loads of Alcoa’s Massena East Plant. The proposed location of the new substation and new potline is currently encumbered by the present location of the Authority’s Transmission Lines MRG1, MRG2 and MR3. These lines currently feed Alcoa’s Reynolds Substation and other Customers (GM and Awkwesasne).

“The Authority and Alcoa executed an Agreement in January of 2011 to relocate Transmission Lines MRG1, MRG2 and MR3 around the proposed location of the new substation and potline while maintaining supply to the current plant.

“The Authority is responsible for the Preliminary Engineering, Detailed Engineering, and Construction scope of work associated with relocation of the transmission lines.

DISCUSSION

“Relocation of Transmission Lines MRG1, MRG2 and MR3 was structured to be performed in three (3) phases:

- Phase 1: Preliminary Engineering (2009)
- Phase 2: Detailed Engineering (2011 – 2012)
- Phase 3: Construction (2013)

“The Authority issued contracts to Hatch Energy (‘Hatch’) for the Phase 1 and 2 scope of work. Hatch completed the Preliminary Engineering in 2009 and Detail Engineering in 2012.

“The Authority issued a Request for Proposals (‘RFP’) for Phase 3 – Construction and has completed the bid evaluation to award an installation contract to Northline Utilities, LLC the lowest cost and technically acceptable bidder.

“This capital expenditure authorization is comprised of the following:

PHASE 1 – Preliminary Engineering	\$ 125,000
PHASE 2 – Engineering/Design	\$ 420,000
PHASE 3 – Procurement	\$ 100,000
PHASE 4 – Construction/Installation	\$2,750,000
PHASE 8A – NYPA Direct Expense (Project Mngmt, Construction Mngmt)	\$ 175,000
PHASE 8B – NYPA Indirect Expenses	\$ <u>170,000</u>
TOTAL	<u>\$3,715,000</u>

FISCAL INFORMATION

“Payments associated with this project will be made from the Authority’s Capital Fund. Alcoa will reimburse the Authority for 100% of the cost of the Project.

RECOMMENDATION

“The Senior Vice President and Chief Engineer – Operations Support Services, the Vice President – Project Management, the Vice President – Engineering, the Vice President – Transmission, the Vice President – Procurement, the Project Manager, and the Regional Manager – Northern New York recommend that the Trustees approve capital expenditures in the amount of \$3,715,000 for the Alcoa Transmission Line Relocation Project.

“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.”

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to authorize capital expenditures in the amount of \$3,715,000 for the Alcoa Transmission Line Relocation Project, as recommended in the foregoing report of the President and Chief Executive Officer; and be it further

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

**k. Moses-Willis Circuit Separation Project –
Capital Expenditure Authorization Request**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to authorize capital expenditures in the amount of \$6.1 million for the implementation of the Moses-Willis Circuit Separation Project (the ‘Project’). The President and Chief Executive Officer has already approved \$998,000 for preliminary engineering and acquisition of easements and transmission structures from Alcoa.

BACKGROUND

“In accordance with the Authority’s Expenditure Authorization Procedures, capital expenditure authorizations in excess of \$3 million require the Trustees’ approval.

“This Project is needed to remove the double-circuit contingency identified by the New York Independent System Operator (‘NYISO’) on the Moses to Plattsburgh Facility. This double-circuit contingency is a result of the Moses-Willis (‘MW’) 230 kV lines (MW-1 and MW-2) that are currently located on common structures for the first two miles from St. Lawrence (‘STL’) Moses-Switchyard and the only major transmission path east from STL. If a tower failure should occur, both MW lines could be out of service. As a result of the current configuration, the NYISO performs certain actions that affect system reliability.

“The Project involves the separation of the MW-1 and MW-2 circuits onto separate towers and the construction of five new tower structures in the Town of Massena, such that the loss of one structure does not disable the ability of both lines to transmit power.

“The following activities were required to support the separation of the MW-1 and MW-2 circuits:

- Acquire easements from private landowner by purchase or eminent domain
- Acquire easements and transmission structures from Alcoa
- File with the New York State Public Service Commission, an application to amend the existing MW Certificate of Environmental Compatibility and Public Need (‘Certificate’) to permit the Project.

“On April 18, 2013, the Public Service Commission approved the Authority’s application to amend the Certificate.

DISCUSSION

“In response to the Authority’s request for proposals (Q13-5424FS) advertised in the New York State *Contract Reporter* on February 19, 2013, thirty-nine (39) firms downloaded the bid documents and two proposals were received on March 25, 2013 for the construction services of the Project.

“The proposals were evaluated based on:

- Compliance with commercial, technical and quality assurance requirements
- Safety record
- Price
- Past performance

“Michels Power of Neenah, WI was determined to have submitted the lowest-cost and technically acceptable bid. Michels Power demonstrated an understanding of the Project and the ability to successfully complete the Project as planned. Additionally, Michels Power has a proven track record and familiarity with the Authority’s work practices.

“The work will be performed in 2013. Construction will commence in July 2013 and will be completed by December 2013.

“The capital expenditure authorization request is comprised of the following:

Preliminary Engineering (previously authorized)	\$ 998,000
Engineering and Design	\$ 243,000
Procurement	\$ 1,034,000
Construction/Installation	\$ 3,120,000
Authority Indirect and Direct Expenses	<u>\$ 674,000</u>
TOTAL	<u>\$ 6,069,000</u>

FISCAL INFORMATION

“Payment associated with this project will be made from the Authority’s Capital Fund.

RECOMMENDATION

“The Senior Vice President and Chief Engineer – Operations Support Services, the Vice President – Project Management, the Vice President – Engineering, the Vice President – Transmission, the Vice President – Procurement, the Project Manager and the Regional Manager – Northern New York recommend that the Trustees authorize capital expenditures in the amount of \$6.1 million for the implementation of the Moses-Willis Circuit Separation Project.

“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.”

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

RESOLVED, That pursuant to the Authority’s Expenditure Authorization Procedures, capital expenditures in the amount of \$6.1 million for the implementation of the Moses-Willis Circuit Separation Project are hereby authorized in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer; and be it further

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

I. Central Region Small Hydro Control System and Governor Upgrade – Capital Expenditure Authorization and Contract Award

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to authorize capital expenditures in the amount of \$5.2 million for the Central Region Small Hydro Control System and Governor Upgrade (the ‘Project’). The work will occur at the Authority’s Ashokan (\$1.4 million), Crescent (\$2.1 million) and Vischer Ferry (\$1.7 million) Small Hydro Facilities (total 10 generating units) and will include Engineering, Procurement, Construction, and Project Management.

“The President and Chief Executive Officer has approved the amount of \$100,000 for preliminary engineering.

“The Trustees are also requested to approve the award of a multi-year value contract to L&S Electric Inc. of Rothschild, WI, in the amount of \$3.7 million for the Project. The contract work is scheduled to commence in 2013 and be completed in 2016.

BACKGROUND

“In accordance with the Authority’s Expenditure Authorization Procedures, capital expenditure authorizations in excess of \$3 million require the Trustees’ approval.

“Section 2879 of the Public Authorities Law and the Authority’s Guidelines for Procurement Contracts require the Trustees’ approval for procurement contracts involving services to be rendered for a period in excess of one year. Also, in accordance with the Authority’s Expenditure Authorization Procedures, the award of non-personal services or equipment purchase contract exceeding \$3 million require the Trustees’ approval.

“The generating units that comprise the small hydro facilities were either installed or refurbished by the Authority during the 1980s and utilize a combination of electromechanical and programmable logic controller (‘PLC’) controls for unit operations.

“Basic operator control is currently provided via control switches and indicators. The obsolete GE Series 6 PLC controls the operation of interlocks and unit auxiliaries. The PLC also supports terminal type unit interfaces that are used for troubleshooting PLC inputs, outputs, and logic. However, the existing unit interfaces are out of service due to lack of support and available parts that has resulted in reduced unit reliability.

“The Ashokan units utilize hydraulic governor controls for both wicket gates and variable blade controls that were assembled from various parts not originally designed for hydroelectric use. The parts include a belt driven speed increaser and cam operated blade position control. With obsolete governor components that frequently fail, the Ashokan units are difficult to keep running.

“The inability to maintain and repair the equipment has resulted in increased maintenance cost and loss of revenues.

DISCUSSION

The small hydro control system and governor upgrade project includes the followings:

1. Replacement of the obsolete PLC with modern PLC of common architecture/platform that will standardize operations and control of the small hydro units.
2. Replacement of obsolete unit interfaces with modern HMI systems for units and central plant monitoring/operation as well as troubleshooting the controls.
3. Replacement of obsolete switches, meters, and indicators for unit controls.

4. Replacement of the hydraulic governor/blade position equipment at Ashokan with equipment specifically designed for hydroelectric facilities.
5. Replacement of MOOG gate/blade positioner controls at Unit 3 & Unit 4 of Crescent and Vischer Ferry with modern digital governors.
6. Replacement of Woodward flyball governors at Unit 1 & Unit 2 of Crescent and Vischer Ferry with modern digital governors.

“The Authority placed a notice to procure bids in the New York State *Contract Reporter* on July 13, 2012 for the Central Region Small Hydro Control System and Governor Upgrade Project. Five proposals were originally received on January 22, 2013. After several post bid inquiries, the following revised bid was received and evaluated:

Bidder	Location	Lump Sum
L&S Electric, Inc.	Rothschild, WI	\$3,713,930

“The proposals were reviewed by an evaluation committee comprised of the Authority’s staff from Blenheim-Gilboa, Engineering, Procurement, and Project Management.

“L&S Electric’s bid was technically acceptable and L&S Electric has extensive experience in projects of this type and magnitude and demonstrated knowledge of the scope-of-work, is capable of completing this project in a timely manner. The Authority’s prior experience with L&S Electric has been satisfactory.

“The project work will be performed from 2013 to 2016.

“The total project cost is estimated to be \$5.2 million as follows:

Task	Total
Preliminary Engineering	\$ 100,000
Engineering	\$ 157,400
Procurement	\$2,415,000
Construction	\$2,070,000
Authority Direct & Indirect	\$ 457,600
Total:	\$5,200,000

FISCAL INFORMATION

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

RECOMMENDATION

“The Senior Vice President and Chief Engineer – Operations Support Services, the Vice President – Project Management, the Vice President – Engineering, the Vice President – Procurement, the Project Manager, and the Regional Manager – Central New York recommend that the Trustees approve capital expenditures in the amount of \$5.2 million for the Central Region Small Hydro Control System and Governor Upgrade Project and a contract award to L&S Electric, Inc. in the amount of \$3.7 million for the engineering, procurement and construction of this project.

“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.”

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

RESOLVED, That pursuant to the Authority's Expenditure Authorization Procedures, capital expenditures in the amount of \$5.2 million are hereby authorized in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, that pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to award a multi-year contract to L&S Electric Inc. of Rothschild, WI, in the amount of \$3.7 million, for engineering, procurement, and construction of this project, as recommended in the foregoing report of the President and Chief Executive Officer:

<u>Contractor</u>	<u>Contract Approval</u>
L&S Electric Inc. Rothschild, WI	<u>\$3.7 million</u>

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

m. Blenheim Gilboa Power Project – Generator Step-Up Transformers – Capital Expenditure Authorization and Contract Award

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to authorize capital expenditures in the amount of \$6.9 million for the engineering, design, manufacture, shipment, assembly, installation, testing, and commissioning of two generator step-up transformers (the ‘Project’) for Blenheim-Gilboa Power Project (‘B-G’). One of the new transformers will be installed at Unit #2 and the other will serve as a standby spare.

“The Trustees are also requested to approve the award of a value contract to Hyundai Heavy Industries Co. (‘HHI’) of South Korea, in the amount of \$5.6 million to design, fabricate, test, deliver, assemble, install and commission the transformers. The contract work is scheduled to commence in 2013 and be completed in 2014.

BACKGROUND

“In accordance with the Authority’s Expenditure Authorization Procedures, capital expenditure authorizations in excess of \$3 million require the Trustees’ approval.

“Section 2879 of the Public Authorities Law and the Authority’s Guidelines for Procurement Contracts require the Trustees’ approval for procurement contracts involving services to be rendered for a period in excess of one year. Also, in accordance with the Authority’s Expenditure Authorization Procedures, the award of non-personal services or equipment purchase contract exceeding \$3 million requires Trustees’ approval.

“On August 26, 2012, the Unit #2 Generator Step-Up Transformer (‘GSUT’) at the B-G project had a significant internal failure which rendered the transformer unrepairable. The damaged GSUT was removed from service and replaced with the existing spare transformer allowing unit operation to be restored. The spare transformer, however, is undersized for long-term use with the turbine-generators that were upgraded during the recent B-G Life Extension and Modernization (‘LEM’) project. As a result of the loss of one transformer and the undersized condition of the existing spare, two new 325 MVA GSUTs will be purchased to match the three remaining transformers replaced during the LEM program.

DISCUSSION

“The Authority placed a notice to procure bids in the New York State *Contract Reporter* on October 9, 2012 and bid packages for the Procurement of Two Generator Step-Up Transformer for B-G were available as of October 15, 2012. Nine proposals were originally received on November 20, 2012.

“All proposals were reviewed by an Evaluation Committee comprising the Authority’s staff from B-G, Engineering, Quality Assurance, Asset Management, Procurement, and Project Management.

“The proposals were evaluated based on:

- Compliance with commercial, technical and quality assurance requirements
- Price
- Compatibility with the existing GSU transformers
- Engineering and Quality Assurance support and travel associated with overseeing the design, fabrication, and testing.

“As part of the bid evaluation process, post bid addenda were issued for technical and commercial clarifications from all bidders.

“The Evaluation Committee determined that HHI’s bid in the lump-sum price of \$5,600,942 to be technically acceptable.

“HHI is the original manufacturer of the existing GSUTs at B-G. HHI’s proposed design of the new GSUT will be identical to that of the three GSUTs purchased as part of the B-G/LEM project except for the tap changer. The proposed tap changer will be of a newer design to avoid premature failure that was experienced and lessons learned from the failed Unit #2 GSUT.

“Design and fabrication of the two new transformers will begin in 2013 and delivery and installation will occur in the third quarter of 2014.

“The total project cost is estimated to be \$6.9 million as follows:

Task	Total
Engineering	\$ 157,500
Procurement	\$5,880,000
Construction	\$ 379,500
Authority Direct & Indirect	\$ 464,000
Total:	\$6,881,000

FISCAL INFORMATION

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

RECOMMENDATION

“The Senior Vice President and Chief Engineer – Operations Support Services, the Vice President – Project Management, the Vice President – Engineering, the Vice President – Procurement, the Project Manager, and the Regional Manager – Central New York recommend that the Trustees approve capital expenditures in the amount of \$6.9 million for two generator step-up transformers for Blenheim-Gilboa Power Project and a contract award to Hyundai Heavy Industries Co. in the amount of \$5.6 million to design, fabricate, test, deliver, assemble, install and commission the transformers.

“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.”

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

RESOLVED, That pursuant to the Authority’s Expenditure Authorization Procedures, capital expenditures in the amount of \$6.9 million are hereby authorized in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to award a value contract to Hyundai Heavy Industries Co. in the amount of \$5.6 million to design, fabricate, test, deliver, assemble, install and commission the transformers, as recommended in the foregoing report of the President and Chief Executive Officer:

Contractor

Contract Approval

**Hyundai Heavy Industries
South Korea**

\$5.6 million

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

n. Transmission Rights-of-Way Vegetation Inventory Services – Contract Award

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve the award and funding of a four-year contract in the amount of \$1,250,000 to Gomez & Sullivan Engineers, P.C. of Williamsville, New York for the provision of Transmission Rights-of-Way Vegetation Inventory Services.

BACKGROUND

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

“The Authority’s Expenditure Authorization Procedures (‘EAPs’) require the Trustees’ approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts in excess of \$3 million, as well as personal services contracts in excess of \$1 million if low bidder, or \$500,000 if sole-source or non-low bidder.

DISCUSSION

“Since 1999, the Authority has developed a comprehensive Geographic Information System (‘GIS’) database for its overhead transmission line system. Data on vegetation structure and composition, land use, foreign utilities, maintenance issues and other features have been collected along the Authority’s right-of-way corridors using pen-top computers and field portable GIS. The Authority requires annual inventories for the portions of its transmission system that it plans to have treated for vegetation management the following year, as part of its Integrated Vegetation Management program which operates on a four-year treatment cycle. Since the existing contract for such services is expiring, and the need for these services is ongoing, staff prepared a new Request for Proposals (Q13-5405JM).

“To that end, the Authority issued an advertisement in the New York State *Contract Reporter* and bid packages were available as of January 28, 2013. Fifty-two (52) companies downloaded the bid documents via the Authority’s Web site. Six proposals were received and were evaluated using technical expertise, experience, ability to prosecute the work, and cost as the criteria, as further set forth in the Award Recommendation documents. This analysis was performed by an evaluation committee comprised of staff from Real Estate, Transmission, Environmental, and Procurement. Based on its qualifications, experience, ability to perform such work and responsiveness to the Authority’s specifications, as well as pricing, staff recommends the award of a contract to the lowest bidder, **Gomez & Sullivan Engineers, P.C. (‘G&S’)**, which was also determined to be the most technically qualified to perform such transmission line right-of-way vegetation inventory services and has provided satisfactory service under the existing contract for such work. The contract would become effective on June 1, 2013 for an intended term of up to four years (to be released annually), subject to the Trustees’ approval, which is hereby requested. Approval is also requested for the total estimated amount expected to be expended for the term of the contract, \$1,250,000.

“The term of this contract will be more than one year; therefore, the Trustees’ approval is required. This contract contains provisions allowing the Authority to terminate the services for the Authority’s convenience, without liability other than paying for acceptable services rendered to the effective date of termination. This contract award does not obligate the Authority to a specific level of personnel resources or expenditures.

FISCAL INFORMATION

“Funds required to support this contract have been included in the 2013 Approved O&M Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years. Payment will be made from the Operating Fund.

RECOMMENDATION

“The Senior Vice President – Corporate Support Services, the Vice President – Procurement, the Vice President – Transmission and the Director – Real Estate recommend that the Trustees approve the award and funding of a four-year contract in the amount of \$1,250,000 to Gomez & Sullivan Engineers, P.C. of Williamsville, New York for the provision of Transmission Rights-of-Way Vegetation Inventory Services.

“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.”

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to award a four-year contract in the amount of \$1,250,000 to Gomez & Sullivan Engineers, P.C. of Williamsville, New York for the provision of Transmission Rights-of-Way Vegetation Inventory Services, as recommended in the foregoing report of the President and Chief Executive Officer;

Contractor

Contract Approval

Gomez & Sullivan
Engineers, P.C.
Williamsville, N.Y.

\$ 1,250,000

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

o. Southeastern New York Air Program Support Services – Contract Award

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve the award of a five-year procurement (services) contract in the amount of \$1.3 million to TSI Turtle Services LLC (‘TSI Turtel’) of Linden, NJ for services in connection with the implementation of air program requirements for emission sources at the Authority’s Southeastern New York (‘SENY’) plants.

BACKGROUND

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

“The Authority’s Expenditure Authorization Procedures (‘EAPs’) require the Trustees’ approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts in excess of \$3 million, as well as personal services contracts in excess of \$1 million if low bidder or \$500,000 if sole-source or non-low bidder.

DISCUSSION

“The Authority’s SENY Region consists of nine (9) facilities, which contain fourteen combustion turbine generators. Each SENY facility has a Title V Air Permit, which allows the Authority to operate the combustion turbine generators as long as their emissions conform to the limits set forth in the permit. The Consultant would support the Authority’s efforts in the timely completion of reports as required by permitting agencies and would also provide an independent third-party review of all documents, ensuring conformance with permit requirements. The firm’s competent personnel would also support the day-to-day duties of the SENY Environmental Coordinator on an ‘as needed’ basis. Additionally, the Consultant would provide on-site services when new regulations or extensive revisions to existing regulations need to be implemented.

“In response to the Authority’s Request for Proposals (‘RFP’) advertised in the New York State *Contract Reporter* (Inquiry No. Q13-5430MR) on March 4, 2013, seventy-seven (77) companies downloaded the bid documents from the Authority’s Procurement website and eight (8) submitted proposals. The bid pricing is summarized below.

Bidder	City, State	Section A Total	Section B Total	Contract Total
TSI Turtle	Linden, NJ	\$797,875	\$502,125	\$1,300,000
Burns & Roe	Oradell, NJ	\$1,019,024	\$937,500	\$1,956,524
VIM Technologies	Glen Burnie, MD	\$975,000	\$1,031,250	\$2,006,250
Burns & McDonnell	Wallingford, CT	\$1,533,023	\$937,097	\$2,470,120
ESS Group	East Providence, RI	\$1,678,800	\$947,475	\$2,626,275
O’Brien & Gere	Hawthorne, NY	\$1,832,000	\$835,227	\$2,667,227
CHA	Albany, NY	\$1,820,750	\$928,750	\$2,749,500
NAES	Issaquah, WA	\$2,416,960	\$1,325,000	\$3,741,960

“Review of the submitted bid proposals established that all eight bidders understand the services required and are qualified to perform the work. All of the bidders provided detailed corporate experience as well as the resumes of the key personnel that would be involved in the program. The corporate work histories and the key personnel resumes were evaluated against the inquiry schedule of services and all of the bidders demonstrated adequate experience and, based on the resumes provided, are proposing to use adequately qualified personnel.

“Therefore, the final decision came down to cost and past Authority experience. Staff first reviewed the firm lump-sum pricing submitted by each bidder for data analysis, report preparation and compliance-related activities. Staff then calculated the projected costs based on estimated hours and pricing submitted by each bidder, as further set forth in the award recommendation documents. TSI Turtle, the current contract holder, is both the lowest-priced evaluated bidder and the most technically qualified for providing the SENY air program support services as outlined in the RFP. The company has an expert understanding of the Authority’s Continuous Emission Monitoring Systems (‘CEMS’) equipment, the Babcock & Wilcox software, PLC interface, operating facilities, and the reporting process. TSI Turtle reports have consistently been delivered on-time and with a high level of accuracy.

FISCAL INFORMATION

“Payment associated with this project will be made from the Authority’s Operating Fund.

RECOMMENDATION

“The Senior Vice President – Power Generation, the Vice President – Procurement, the Vice President – Environment, Health and Safety and the Regional Manager – SENY recommend that the Trustees approve the award of a five-year contract to TSI Turtle Services LLC of Linden, NJ in the amount of \$1.3 million to provide Air Program Support Services for the SENY power plants.

“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.”

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to award a contract to TSI Turtle Services LLC of Linden, NJ, in the amount of \$1.3 million, for Southeastern New York (“SENY”) Air Program Support Services as recommended in the foregoing report of the President and Chief Executive Officer;

<u>Contractor</u>	<u>Contract Approval</u>
TSI Turtle Services LLC Linden, NJ	<u>\$1,300,000</u>

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

p. Gregory B. Jarvis Power Project and Niagara Power Project – Independent FERC Consultant’s Part 12D Safety Inspection and Follow-up Service – Contract Award

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve the award of a procurement (services) contract (Q13-5425JDM) to the firm of Gomez and Sullivan Engineers, P.C. (‘Gomez and Sullivan’) located in Utica, NY for inspection and consulting services in support of an independent consultant’s inspection, report and follow-up service for the Gregory B. Jarvis Power Project and the Niagara Power Project, as mandated by the Federal Energy Regulatory Commission (‘FERC’). The intended term of the contract is five years for the total projected amount of \$512,000.

BACKGROUND

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

“The Authority’s Expenditure Authorization Procedures (‘EAPs’) require the Trustees’ approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts in excess of \$3 million, as well as personal services contracts in excess of \$1 million if low bidder, or \$500,000 if sole-source or non-low bidder.

DISCUSSION

“FERC regulations require the Authority to hire an independent consultant to perform an independent dam safety inspection and review at licensed projects every five years. FERC issued two letters, one on January 7, 2013 indicating that the report for Niagara Power Project was due for submittal by December 1, 2013, and another on January 16, 2013 indicating that the report for the Gregory G. Jarvis Power Project was due for submittal by January 2, 2014. In response to the Authority’s Request for Proposals (‘RFP’) advertised in the New York State Contract Reporter on February 22, 2013, seventy-seven (77) firms downloaded the bid documents from the Authority’s procurement website.

“Bidders were required to submit a detailed proposal in accordance with the RFP and scope-of-work, with bidders permitted to bid on just one project or both projects combined. Five bids were received and opened on March 21, 2013. Of this number, one firm bid on just the Gregory B. Jarvis Power Project Part 12D independent consultant safety inspection and follow-up services. All five bids were analyzed and evaluated in greater detail by a team of staff members from the Operations and the Procurement Department.

“The bid evaluation looked at the lump-sum contract price for the task of the first year (2013) for the dam safety inspection and report for the Gregory B. Jarvis Power Project and Niagara Power Project individually and both projects combined in addition to the cost for the work in the next four years (2014 thru 2017). Staff calculated total projected costs based on estimated man-hours needed for projected tasks based upon prior experience to address continuing engineering services to respond to FERC questions in years 2-5 of the contract and corresponding hourly rates provided by each firm in their proposal.

“Based on the foregoing, Gomez and Sullivan was the lowest-priced evaluated bidder of the five bids received and its proposal indicates a complete understanding of the FERC requirements for this work. Based on the company’s qualifications and ability to perform such work, staff recommends awarding a contract to Gomez and Sullivan. Its proposal is complete, competitive and fully responsive to the scope-of-work. The company has allocated proper resources to complete this work thoroughly and on-time. FERC’s new inspection report guidelines require the degree of staffing allocated by Gomez and Sullivan and the company has the knowledge and expertise to perform this work.

“The award is for \$69,000 for the first year of the contract including \$600 for any additional unforeseen work. FERC requires the independent consultant to be available to answer follow-up questions for a period of five years. Therefore, based upon prior experience to address continuing engineering services to respond to FERC’s questions in years 2-5 of the contract, the value of the contract is estimated to include \$110,750 in years 2-5 of the contract. The total value of the contract is \$512,000.

“FERC must approve the résumé of the specific independent consultants employed by Gomez and Sullivan to proceed with this work. Historically, FERC has required the Authority to utilize the FERC-approved independent consultant to conduct follow-up work; therefore the intended term of the contract is five years. This contract will permit the Authority to comply with the FERC mandate that the Authority conduct independent consultant inspections of its licensed hydropower project every five years. Pursuant to FERC’s letter dated January 7, 2013, the Authority is required to submit a letter for the approval of the proposed Niagara Power Project independent consultant to FERC no later than June 1, 2013, six months before the Part 12D Safety Inspection Report is due. Pursuant to FERC’s letter dated January 16, 2013, the Authority is required to submit a letter for the approval of the proposed Gregory B. Jarvis Power Project independent consultant to FERC no later than July 2, 2013, six months before the Part 12D Safety Inspection Report is due.

FISCAL INFORMATION

“Funds required to support the contract are included in the 2013 Approved O&M Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years. Payment will be made from the Operating Fund.

RECOMMENDATION

“The Senior Vice President – Operations Support Services and Chief Engineer, the Vice President – Engineering, the Vice President – Procurement, the Regional Manager – Central New York, the Regional Manager – Western New York and the General Manager – Clark Energy Center recommend that the Trustees approve the award of a five-year contract to Gomez and Sullivan Engineers, P.C. for inspection and consulting services as discussed above.

“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.”

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award and funding of the five-year procurement contract to Gomez and Sullivan Engineers, P.C., in the amount of \$512,000, is hereby approved, as recommended in the foregoing report of the President and Chief Executive Officer;

<u>Contractor</u>	<u>Contract Approval</u>
Gomez and Sullivan Engineers, P.C. Utica, NY	<u>\$512,000</u>

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

**q. Procurement (Construction) Contract –
Niagara Power Project Relicensing, Compliance
and Implementation of the Frog Island Wetland
Restoration Habitat Improvement Project –
Dredging and Excavation Work – Contract Award**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve the award of a procurement contract to L.D.C. Construction Co., Inc., (‘LDC’) for the Frog Island Wetland Restoration Habitat Improvement Project (‘HIP’) dredging and excavation work as part of the implementation of the Niagara Power Project (‘NIA’) new license and settlement commitments. The term of the contract will be from May 2013 through the end of 2014. The amount for which authorization is requested is \$4,167,735.

BACKGROUND

“Section 2879 of the Public Authorities Law and the Authority’s Guidelines for Procurement Contracts require the Trustees’ approval for procurement contracts involving services to be rendered in excess of one year. The Authority’s Guidelines for Procurement Contracts also require the Trustees’ approval for procurement contracts in excess of \$3 million.

“The Federal Energy Regulatory Commission (‘FERC’) issued the New License for the Project on March 15, 2007. The new license and associated Settlement Agreement and Section 401 Water Quality Certification (‘WQC’) from the New York State Department of Environmental Conservation require implementing the provisions of the Comprehensive Settlement Offer and the new License Terms and Conditions. Article 9A of the WQC requires the New York Power Authority (‘the Authority’) to establish a fund for the design, construction, operation, maintenance, and monitoring of eight specified HIPs; Frog Island is one of these HIPs.

“The area once known as Frog Island is presently a submerged area within the upper Niagara River in Erie County, NY. This shallow underwater area is owned by the People of the State of New York, under the jurisdiction of the Authority. The dredging and excavation at this location is one of two major elements of the Frog Island Wetland HIP, the goal of which is to re-establish approximately 3.9 acres of historic fish and wildlife habitat in an area of the river that is presently barren of useful habitat. This will be accomplished through reconfiguration of the river bottom by dredging to create channels and contours of varying depths, installing appropriate substrate materials to support growth of desirable submerged and emergent aquatic plants, installing logs and other features to attract a variety of aquatic and terrestrial species, and protecting these features from erosion by installing new stone berms. The second element of the Frog Island HIP (to be addressed through a separate contract) will involve cultivation and installation of wetland and upland plants within the dredged and excavated area. The Authority agreed to execute a project to restore this historic wetland during the relicensing of NIA.

DISCUSSION

“On March 1, 2013, the Authority issued a Request for Quotation (‘RFQ’) for the dredging and excavation work at Frog Island, including a notice in the New York State *Contract Reporter*. Three proposals were received on March 29, 2013 from BIDCO Marine Group of Buffalo, NY, Severson Environmental Services of Niagara Falls, NY, and L.D.C. Construction Co., Inc. of Grand Island, NY. The RFQ requested pricing for dredging and excavation work using three different disposal scenarios for excess dredged material. For the primary disposal scenario, one proposal price was within the Authority’s estimate for the project, while the other two were above the Authority’s estimate. For the alternate disposal scenarios, all prices were within the Authority’s estimate.

“Staff from the Authority’s Relicensing and Implementation (‘R&I’) Division, the Environmental Health and Safety Division, and the Procurement Division evaluated the proposals for technical qualifications and pricing. The Authority’s review team was assisted in the technical evaluation by staff from Kleinschmidt Associates, who

was responsible for the biological design and engineered elements of the HIP, and the Authority's Niagara Compliance Implementation Consultant, Gomez and Sullivan Engineers, who assist the Authority with project management of Niagara Project relicensing implementation projects.

"LDC was the lowest qualified bidder. LDC's proposal offers the lowest cost under each disposal scenario specified in the RFQ and the company has proposed a technically sound and more cost-effective alternate along with its base bid submittal. LDC's overall marine construction experience and successful performance on two river projects for NIA relicensing implementation supports the selection of that firm and its proposed alternate method for accomplishing the Frog Island dredging and excavation. The company's recent successful completion of the Little Beaver Island wetland restoration HIP and the Motor Island Shoreline Restoration HIP for the Authority amply demonstrated its capability to execute large earthwork projects in a marine environment. In addition to operating safely and with appropriate quality control, LDC demonstrated considerable resourcefulness on the Beaver Island project in overcoming challenges that were not of its making, and worked very well in coordinating overlapping work with a planting contractor, similar to what is planned for the Frog Island HIP. The company's successful experience on two other non-Authority marine projects at the nearby East River Marsh and Strawberry Island in the upper Niagara River is further indicative of its capabilities. LDC proposed no unacceptable deviations or exceptions for the Frog Island HIP dredging and excavation.

"Therefore, it is recommended that the contract be awarded to LDC. The contract term will be from May 2013 through the end of 2014, and the contract amount will be a lump-sum of \$3,788,850. In addition, it is recommended that an additional amount of \$378,885 be included in the Trustee authorization for potential field adjustments to address unanticipated subsurface conditions, effects of river level variation, or other factors using LDC's proposed contract unit prices. Including this additional amount, the total recommended authorization is \$4,167,735.

FISCAL INFORMATION

"Since these expenditures are related to implementing new project commitments in the New License and the Section 401 Water Quality Certificate issued by the New York State Department of Environmental Conservation, payments will be made from the Capital Fund.

RECOMMENDATION

"The Vice President – Licensing, Project Development and Compliance, the Vice President – Procurement and the Director – Relicensing and Implementation recommend that the Trustees authorize the award of a construction contract to L.D.C. Construction Co., Inc. for the Frog Island Wetland Restoration Habitat Improvement Project dredging and excavation work at the Niagara Power Project.

"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."

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to award a contract to L.D.C. Construction Co., Inc. from May 2013 through the end of 2014, in the amount of \$4,167,735, for construction services for the Frog Island Wetland Restoration Habitat Improvement Project dredging and excavation work at the Niagara Power Project, as recommended in the foregoing report of the President and Chief Executive Officer;

Contractor

Contract Approval

L.D.C. Construction Co., Inc.

\$4,167,735

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

**r. Energy Efficiency Market Acceleration Program –
Cities’ Energy Master Plans Development –
Contract Award Authorization**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to authorize the award of contracts to three firms: Ove Arup & Partners PC, LaBella Associates, PC and Wendel Energy Services, LLC for the development of City Energy Master Plans (‘CEMP’) for four cities over a fifteen-month period. The cumulative value of all four contracts is \$1,751,900, which will be funded from the \$30 million Energy Efficiency Market Acceleration Program (‘EE-MAP’) approved by the Trustees at their June 26, 2012 meeting.

BACKGROUND

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

“On June 26, 2012, the Trustees authorized up to \$30 million in funding over a five-year period to implement the EE-MAP, a program designed to grow the energy efficiency industry in New York and increase the efficiency and effectiveness of existing energy service programs in New York. EE-MAP is comprised of, among other things, research and market development activities targeting energy efficiency products and systems and specifically includes the development of energy efficiency master plans.

“To meet the goal of increasing energy efficiency set forth in Executive Order 88, Governor Andrew Cuomo launched ‘Build Smart NY’ to strategically implement and accelerate improvements in energy performance. The program contemplates cost-effective improvements for energy savings and supports the Governor’s economic development goals to accelerate projects that will create jobs and improve infrastructure within the State.

“To accomplish the energy efficiency master plan objective under EE-MAP and to complement the objectives under Governor Cuomo’s ‘Build Smart NY’ program at the municipal level, the Authority is engaging the services of three engineering consulting firms to develop CEMPs for four major New York cities: Yonkers, Rochester, Syracuse, and Buffalo.

DISCUSSION

“The CEMPs are intended to document current energy usage in four of New York’s largest cities and provide an actionable plan addressing short- and long-term goals toward sustainability and efficiency. The CEMPs will address the following:

- Urban Planning
- Energy Delivery Infrastructure
- Efficient Transportation Flow
- Energy Efficiency in Buildings

“The award of contracts to the following three firms is recommended to develop CEMPs for each of the four cities, as noted:

- Ove Arup & Partners PC (‘Arup’) in the amount of \$370,000 for the City of Yonkers;
- LaBella Associates, PC (‘LaBella’) in the amount of \$656,900 for the Cities of Rochester and Syracuse;
- Wendel Energy Services, LLC (‘Wendel’) in the amount of \$725,000 for the City of Buffalo.

“The Authority issued a Request for Proposals (‘RFP’) to Develop and/or Coordinate Energy Master Plans for Albany, Buffalo, Rochester, Syracuse and Yonkers on January 11, 2013. Two hundred and thirty-three (233) firms downloaded the bid document. On January 31, 2013, the Authority held a pre-bid video conference simultaneously in the cities of White Plains, Buffalo and Albany. Thirty (30) companies attended the video conference. On February 21, 2013, the Authority received eleven (11) proposals for the development of the CEMPs and five (5) proposals for the coordination of the CEMPs.

“The Authority’s evaluation committee of eight employees reviewed the proposals and recommended awards based on the best combination of cost and qualifications. In addition to the Authority’s committee members, each of the five cities designated an individual to serve as a committee member to score the proposal(s) relating to its respective city.

“The criteria established to score each proposal was established prior to evaluation of the bids. Scoring was weighted thirty percent (30%) on the cost of services. Seventy percent (70%) of the score was based on the experience and qualifications of the consultants combined with the overall quality of the proposal. The evaluation of the proposals included the review of the written proposals, confirmation of references and an interview of the most qualified consultants.

“Upon the review of all proposals, it was determined that the scope of services for the development of the CEMP for the city of Albany would be further refined to encourage reduced costs through greater competition. As a result, a contract will not be awarded for the city of Albany at this time, and the contract for these services will be re-bid. The RFP envisioned an option to engage a consultant for coordinating the various deliverables for each CEMP. Upon reviewing the individual CEMP proposals, the Authority was confident in the quality of those proposals and determined that a fixed price contract for coordination services was not in the Authority’s best interests.

“A summary of each of the recommended firms follows:

“Wendel submitted one proposal to develop an energy master plan for Buffalo. Wendel proposes to support the project from its corporate office in Amherst, New York, a suburb of Buffalo. Wendel submitted a high quality proposal and demonstrated especially strong industry experience with energy and water efficiency. Wendel has strong project management and city planning personnel to support the project. The evaluation committee recommended Wendel to develop the CEMP for Buffalo as the firm with the best aggregate score based on both qualifications and cost.

“LaBella submitted two proposals to develop energy master plans for Rochester and Syracuse. LaBella will develop the CEMP from its corporate headquarters in Rochester. LaBella demonstrated excellent experience with alternate fuel fleet vehicles and good experience with zoning and ordinance. The evaluation committee recommended LaBella to develop the CEMP for Rochester and Syracuse as the firm with the best aggregate score based on both qualifications and cost.

“Arup submitted one proposal to develop an energy master plan for Yonkers. Arup proposes to support the project from its New York City office. Arup demonstrated especially strong project management and city planning capabilities. Arup’s overall proposal quality was exemplary. The evaluation committee recommended Arup to develop the CEMP for Yonkers as the firm with the best aggregate score based on both qualifications and cost.

“The table below summarizes the Committee’s recommendation on award of each contract:

Contract	Recommended Consultant	Contract Value
CEMP for Buffalo	Wendel	\$ 725,000
CEMP for Rochester	LaBella	\$ 336,700
CEMP for Syracuse	LaBella	\$ 320,200
CEMP for Yonkers	Arup	\$ 370,000
Total CEMPs		\$1,751,900

FISCAL INFORMATION

“The CEMPs will be funded from the Operating Fund through the \$30 million fund established under EE-MAP, which was authorized by the Trustees at their June 26, 2012 meeting.

RECOMMENDATION

“The Senior Vice President – Economic Development and Energy Efficiency, the Vice President – Energy Efficiency and the Vice President – Procurement recommend that the Trustees formally approve the four City Energy Master Plan Development contract awards as described above.

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

The following resolution, as submitted by the President and Chief Executive Officer, was adopted with Trustees Flynn and Mahoney being recused as it relates to the aforementioned companies.

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, the Trustees hereby authorize the award of contracts to Wendel Energy Services, LLC, LaBella Associates, PC, and Ove Arup & Partners PC to be used for the development of four separate energy master plans, with such funds being utilized over a fifteen-month period for the Cities’ Energy Master Plans as described in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That Operating Fund monies will be used to fund such City Energy Master Plans in the amount and for the purposes listed below:

<u>Operating Funds</u>	<u>Expenditure Authorization (not to exceed)</u>	<u>Authorizations Expire</u>
Wendel: Buffalo	\$ 725,000	8/30/2014
LaBella: Rochester & Syracuse	\$ 656,900	8/30/2014
Arup: Yonkers	\$ <u>370,000</u>	8/30/2014
Total	\$ <u>1,751,900</u>	8/30/2014

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

Discussion Agenda:

3. a. **Report of the President and Chief Executive Officer**

President Quiniones said that before presenting his report he wanted to inform the Board that the Authority issued its Annual Report for the year 2012 on April 16th and he provided some highlights of the Report on the Authority's performance during 2012 as follows:

- *more than \$900 million in utility bill savings to customers in the state;*
- *generation of 28.1 billion kilowatt hours of electricity from the Authority's facilities, 71% of which came from low-cost hydropower;*
- *Allocation of 700 megawatts of power to approximately 600 businesses and not-for-profit organizations under the Governor's Recharge New York Power Program, providing support for a number of jobs.*
- *Financing of \$270 million in energy efficiency upgrades to state and local buildings across the state.*
- *All of the rating agencies affirmed its AA rating; Standard & Poor's raised the Authority's outlook from stable to positive.*
- *He ended by saying that the Authority had a great year in 2012, continues to have a solid financial position, and the credit goes to the staff that performed exceptionally well.*

President Quiniones continued with his report for the period ending May 2013 saying that, based on the Performance Scorecard, the Authority is performing well, to date. He said the Authority continues to closely monitor its costs. At a recent meeting with the senior staff there was discussion on managing costs and staff was asked to be mindful of this by tracking costs, keeping it as closely as possible to the budget plan. President Quiniones continued that the downward trend reflected in the Transmission System Reliability is the result of a failure experienced on the Y-49, Sound Cable transmission line that connects Westchester to Long Island.

In response to a question from Trustee Foster, President Quiniones said in terms of the workforce management measure, although the Authority employs certain qualitative measures to retain employees, the goal to retain employees is milestone driven rather than a qualitative measure.

Key Initiatives

Build Smart NY

President Quiniones said Governor Cuomo instituted the Build Smart New York program under Executive Order 88, the goal of which is to reduce energy consumption in all state facilities by 20% over seven years. He said at its first meeting, the Steering Committee responsible for this initiative, which comprises key agencies of the state and which the Authority Chairs as lead agency, identified best practices to address issues to reduce energy and operating costs for buildings in counties, cities, towns and villages across the state and to implement the program.

Energy Highway

President Quiniones said the Energy Highway Task Force issued an update to its Report submitted to the Governor in October 2012. He said all 13 actions identified in the Blueprint are either underway or ahead of schedule. He continued that on April 30th members of the Task Force attended the Advance Energy Conference at the Javits Center in New York City where they discussed the update to Energy Highway Blueprint.

President Quiniones also said the US Department of Energy had invited him to a meeting to discuss lessons learned from Hurricane Sandy and preparations that are being made for the upcoming hurricane season. He said President Obama attended the meeting, along with other executives from investor-owned and publicly-owned utilities. He said President Obama was very engaging, asked probing questions, and wanted to know what the Federal Government could do to help the states in the event of another hurricane.

In response to a question from Chairman Koelmel, President Quiniones said no major incidents have occurred that will cause the Authority to deviate from the Performance Scorecard. With respect to the unanticipated outage on the Y49 transmission line, it is scheduled to return to service on May 24th; this will ensure the supply of power to Long Island during the summer months. He said the Authority focuses on cost management and cost containment as it tracks its budget as set forth in its Budget Plan last year.

In response to further questioning from Chairman Koelmel, President Quiniones said the Build Smart New York program will be implemented over the next seven years. The target of the program is to reduce energy consumption by 20% in state buildings and subsequently extend it to include county and local jurisdictions. He added that the Cities' Energy Master Plans Development, approved by the Board, is an initiative in which the Authority will work with large cities in the state, e.g., Buffalo, Rochester, Syracuse and Yonkers, to help them

create energy master plans and thereby extend the goals of the Build Smart NY program to reduce energy consumption by 20% over seven years.

Responding to a question from Trustee Nicandri, President Quiniones said the program will focus on publicly-owned buildings such as schools districts, colleges, universities and public housing.

b. Report of the Chief Operating Officer

Mr. Paul Tartaglia, Senior Vice President of Energy Resource Management, provided highlights of the Chief Operating Officer's report to the Trustees.

Performance Measures

Generation Market Readiness

- *Systemwide Net Generation was above projections for April.*
- *Generation market readiness exceeded projection for March, 99.9%; target is 99.4% and April, 99.8%; target is 99.4%.*
- *Year-to-date generation market readiness is 99.42%; this is above the target for the year, 99.4%.*
- *No significant events during April.*

Transmission Reliability

- *Transmission reliability for March was 95.38%; this was above the target of 94.92%.*
- *Transmission reliability for April was 92.54%; this was slightly below the target of 94.59%.*
- *Year-to-date transmission reliability is 95.64%; this is just above target of 94.85%.*

Environmental Incidents

- *To date, there has been only one environmental incident.*
- *The DART rate, the measure of the Authority's safety performance, was .77%; the annual target is .78%.*
- *Staff continues to strive for continuous improvement in this area.*

Responding to a question from Trustee Foster, Mr. Tartaglia said that he attributed the implementing of the use of leading measures to address issues proactively and instituting measures to mitigate issues before they occur, to the Authority exceeding its target for environmental incidents.

KEY ISSUES:

Generation

Blenheim-Gilboa Unit 2 Generator Step-Up Transformer

- *There was a transformer failure of one of the four transformers at B-G;*
- *The original spare unit was put into service after the failure of the transformer;*
- *Staff conducted a root cause analysis with the goal of avoiding additional failure in the near term;*
- *The Trustees will be asked to approve the award of contracts for replacement of the transformer and spear unit scheduled to be delivered next fall.*

Small Clean Power Plants ("SCPP")

- *The scheduled engine overhaul of four of the eleven engines in the fleet at the SCPP has been completed.*

LPGP LEM

- *An issue with the LPGP LEM project (Unit 11) will affect the return-to-service date of August 16th.*
- *Staff is working with the Legal Department and the Vendor to resolve the issue.*

- *Staff is preparing the Authority's operations assets to be ready for the summer.*

Transmission

- *The Long island sound cable Y-49 tripped out of service on March 27th*
- *The fault was on West Shore Road, Port Washington, Long Island, 3300 feet from the south transition station.*
- *Repairs will soon be completed.*
- *Scheduled to return to service on May 24th.*
- *Root analysis efforts are continuing; staff is working with industry experts to pinpoint failure mechanism and identify preventive measures.*
- *Summer readiness complete. Staff filed required assessments with the New York State Department of Public Service.*

In response to a question from Chairman Koelmel, Mr. Tartaglia said the Authority will not be able to meet its year-end target because of the time it takes to locate the fault of the Y49 transmission failure and do the repairs, which has to be done by hand and involves detailed work in a controlled environment. He said the 60-day window from "shut-down" to "start-up" is not extensive; also, because the failure happened during an off-peak period, there is minimal impact to the Authority's customers. Mr. Welz added that the 60-day period is actually the fastest time the Authority has ever done repairs of that nature.

Responding to a question from Trustee Mahoney, Mr. Tartaglia said LIPA is responsible for the operations and maintenance of the feeder on the Nassau county side (South Transition Station); Con Edison for the North Transition Station and Sprain Brook Substation section and the Authority for the underwater section. The Authority also provides oversight on all of the activities that are performed.

Safety and Environmental

Safety

- *The Authority is on target with its safety goals.*
- *Authority-wide, the DART rate has shown some increase which includes two OSHA recordable injuries; these, however, did not result in time away from work.*
- *The Authority is on track for favorable results on all of its level 2 safety measures which were designed to be leading safety measures and which drives a safety culture.*
- *The Authority has also recognized the safety of the staff from random acts of violence in the work place. To that end, an "Active Shooter" training has been rolled-out to all NYPA staff at all locations. The Authority has also begun an assessment of all its facilities to identify measures to protect its employees.*
- *The Authority has received a 2nd place award for safety from the American Public Power Association ("APPA").*

Environment

- *Leading measures, as designed, are working and the Authority has sustained best of class performance in this area.*
- *One R-22, an ozone depleting gas, was released from an Air Conditioning unit at the Niagara Project.*
- *The Authority has reviewed its R-22 assets and is revising plans for the elimination of R-22 from its system by 2020.*

“Active Shooter” Training

Mr. Tartaglia said the Authority has put together a 45-minute presentation to educate employees on what their options are should someone enter a building armed with the intent of harming the staff. He said one basically has three options, “run,” “hide,” or “fight.” Mr. Tartaglia continued that in addition, the Authority has engaged the services of a consultant to do an assessment of its facilities with the goal of identifying proactive measures staff can take to prevent an “active shooter” occurrence and the means by which the Authority can improve the security of its facilities. In response to a question from Trustee Foster, Mr. Tartaglia said “Active Shooter” Training was conducted in order to prepare the Authority’s workforce in the event of danger to their lives in the workplace.

Personnel

Mr. Tartaglia congratulated Mr. Phil Toia in his promotion to Vice President of Transmission.

c. Report of the Chief Financial Officer

Mr. Thomas Davis, Vice President of Financial Planning and Budgets, provided highlights of the financial report to the Trustees. He said the financial performance for the month of February remains very strong.

Net Income

- *Net income through April was \$55.4 million, which was \$27.0 million higher than the budget largely due to a higher net margin on sales (\$28.9 million) partially offset by higher operations maintenance expenses (\$2.3 million).*
- *Positive variances in net margins at the generating facilities (\$23.8 million) were substantially attributable to higher capacity and energy prices on market-based sales.*
 - *Higher capacity prices stemming from closing certain generating stations statewide has resulted in a positive impact, primarily at Niagara and Blenheim-Gilboa;*
 - *Energy prices remained higher than anticipated, particularly in the downstate market, resulting in higher margins at Flynn and the SCPPs.*
- *Transmission facility results were also higher than budget (\$5.1 million).*
 - *Proportionally higher energy prices in the downstate markets increased congestion costs, which had a positive impact on revenue earned by the Authority's FACTS project.*
- *Year-to-date operations and maintenance expenses were higher primarily due to increased spending at the SCPP's (Brentwood combustion turbine and Gowanus bulkhead repairs.)*

In response to a question from Chairman Koelmel, President Quiniones said the Authority is planning to embark on a strategic planning process to be headed by Mr. Robert Lurie and asked him to brief the Trustees on that process. Mr. Lurie said, to that end, staff will begin the process with an outreach to seek information on investments from outside stakeholders, Authority management and the Trustees. By the fall, the formal process of identifying aggressive goals, targets and strategies for the use of the Authority's resources will be initiated, and by the end of the year a plan outlining the goals for use of the Authority's investment funds, going forward, will be in place.

Responding to a question from Trustee Foster, Mr. Lurie said the process is designed to identify specific projects and the necessary funds to be allocated for those projects. Major projects such as the transmission life

extension and modernization project and the TransCo Transmission project have already been identified. Mr. Russak said that the costs associated with the transmission LEM project, which is scheduled to be completed in 2015, is approximately \$726 million. He also said that the Authority has major investments in energy efficiency projects such as the Build Smart NY Program, and President Quiniones said that initiative is estimated at \$800 million over the next seven years. Mr. Russak added that the Authority's core business is to invest in its infrastructure as well as energy efficiency investments for the benefit of its customers.

Chairman Koelmel asked that at the next meeting staff provide definitive projects and additional information on the Authority's strategic plan.

4. Awards of Fund Benefits from the Western New York Economic Development Fund Recommended by the Western New York Power Proceeds Allocation Board

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to accept the recommendations of the Western New York Power Proceeds Allocation Board (‘WNYPPAB’) and approve the award of Fund Benefits from the Western New York Economic Development Fund to the eligible applicants listed in Exhibit ‘4-A,’ and authorize the other actions described herein with respect to such applicants and awards.

“For informational purposes, Exhibit ‘4-B’ lists (1) projects and applicants the WNYPPAB has determined are ineligible for Fund Benefits, (2) projects the WNYPPAB has determined are not being recommended for an award of Fund Benefits, (3) applications for Fund Benefits that have been withdrawn, and (4) applications that were deemed to be incomplete. No action by the Trustees is required on any of these matters.

BACKGROUND

1. Western New York Power Proceeds Allocation Act

“On March 30, 2012, Governor Cuomo signed into law the Western New York Power Proceeds Allocation Act (the ‘Act’). The Act provides for the creation, by the Authority, of the Western New York Economic Development Fund. The Fund consists of the aggregate excess of revenues received by the Authority from the sale of Expansion Power (‘EP’) and Replacement Power (‘RP’) produced at the Niagara Power Project that was sold in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis to an eligible EP or RP customer under the applicable tariff or contract.

“Under the Act, an ‘eligible applicant’ is a private business, including a not-for-profit corporation. ‘Eligible projects’ is defined to mean ‘economic development projects by eligible applicants that are physically located within the State of New York within a thirty-mile radius of the Niagara power project located in Lewiston, New York that will support the growth of business in the state and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments.’ Eligible projects include, for example, capital investments in buildings, equipment, and associated infrastructure owned by an eligible applicant for fund benefits; transportation projects under state or federally approved plans; the acquisition of land needed for infrastructure; research and development where the results of such research and development will directly benefit New York State; support for tourism and marketing and advertising efforts for Western New York tourism and business; and energy-related projects.

“Eligible projects do not include public interest advertising or advocacy; lobbying; the support or opposition of any candidate for public office; the support or opposition to any public issue; legal fees related to litigation of any kind; expenses related to administrative proceedings before state or local agencies; or retail businesses as defined by the board, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

“Fund Benefits will be provided to successful eligible applicants in the form of grants. It is anticipated that Fund Benefits will be disbursed as reimbursement for expenses incurred by an Eligible Applicant for an Eligible Project.

“At least 15% percent of Fund Benefits must be dedicated to eligible projects which are ‘energy-related projects, programs and services,’ which is ‘energy efficiency projects and services, clean energy technology projects and services, and high performance and sustainable building programs and services, and the construction, installation and/or operation of facilities or equipment done in connection with any such projects, programs or services.’

“Allocations of Fund Benefits may only be made on the basis of moneys that have been deposited in the Fund. No award may encumber future funds that have been received but not deposited in the Fund.

2. Western New York Power Proceeds Allocation Board

“Under the Act, the WNYPPAB is charged with soliciting applications for Fund Benefits, reviewing applications, making eligibility determinations, and evaluating the merits of applications for Fund Benefits. WNYPPAB uses the criteria applicable to EP, RP and Preservation Power (‘PP’), and for revitalization of industry as provided in Public Authorities Law §1005. Additionally, WNYPPAB is authorized to consider the extent to which an award of Fund Benefits is consistent with the strategies and priorities of the Regional Economic Development Council having responsibility for the region in which an eligible project is proposed. A copy of these criteria (collectively, ‘Program Criteria’), adapted from WNYPPAB’s ‘Procedures for the Review of Applications for Fund Benefits,’ is attached as Exhibit ‘4-C.’

“The WNYPPAB met on March 4, 2013 and, in accordance with the Act, adopted by-laws, operating procedures, guidelines related to the application, and a form of application. At that time, WNYPPAB defined ‘retail business’ to mean a business that is primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain goods or services.

“WNYPPAB also designated the Western New York Regional Director of Empire State Development Corporation (‘ESD’) to be its designee (‘Designee’) to act on its behalf on all administrative matters. Among other things, the Designee was authorized to preform analyses of the applications for Fund Benefits and make recommendations to WNYPPAB on the applications.

3. Application Process

“In an effort to provide for the efficient review of applications and disbursement of Fund Benefits, the WNYPPAB established a series of application due dates coupled with a schedule of dates through the end of 2013 on which the WNYPPAB would meet to consider applications. In addition, the application process was promoted through a media release and with assistance from state and local entities, including the Western New York and Finger Lakes Regional Economic Development Councils, the Empire State Development Corporation and other local and regional economic development organizations within the State. A webpage was created that is hosted on WWW.NYPA.GOV/WNYPPAB with application instructions, a link to the approved application form and other program details including a contact phone number and email address staffed by the Western New York Empire State Development regional office.

“As of April 8, 2013, the first application due date, the WNYPPAB had received 18 applications seeking over \$27 million in Fund Benefits. WNYPPAB’s staff analyzed the applications and made recommendations to WNYPPAB concerning each of the applications based on eligibility requirements and Program Criteria. Copies of the recommendations from WNYPPAB staff to the WNYPPAB can be found in Exhibit ‘4-D.’

“At its May 13, 2013 meeting, the WNYPPAB took the following actions on applications for Fund Benefits:

1. Recommendations for Awards of Fund Benefits

“The WNYPPAB is recommending to the Trustees that the three applications listed on Exhibit ‘4-A,’ each receive an award of Fund Benefits in the amount indicated. The applicants have indicated that the proposed projects would create or retain 152 jobs in Western New York. The total to be expended on the proposed projects is expected to exceed \$15 million. These are the recommendations that are presently before the Trustees for consideration.

2. Other Determinations

“For your information, Exhibit ‘4-B’ lists those applications for which the WNYPPAB has determined will not receive a recommendation for Fund Benefits. These applications fall into four categories: (1) applications that

WNYPPAB has determined will not receive a recommendation of Fund Benefits based on the application of Program Criteria; (2) applications that WNYPPAB has determined propose a project that is not an eligible project because it is a retail business as defined by WNYPPAB; (3) applications submitted by an applicant whom the WNYPPAB has determined is not an eligible applicant; and (4) applications that have been withdrawn. This information is being provided to the Trustees for their information only. No action by the Trustees is required with respect to these matters.

DISCUSSION

“Under the Act, a recommendation for Fund Benefits by WNYPPAB is a prerequisite to an award of Fund Benefits by the Authority, and the Act authorizes the Authority to award Fund Benefits to an applicant upon a recommendation of the WNYPPAB. Upon a showing of good cause, the Authority has discretion as to whether to adopt the WNYPPAB’s recommendation, or to award benefits in a different amount or on different terms and conditions than proposed by the WNYPPAB. In addition, the Authority is authorized to include within the contract covering an award (‘Award Contract’) such other terms and conditions the Authority deems appropriate.

“Given the nascent stage of the proposed projects, it was not possible at this time to identify all of the terms and conditions that would be applicable to each award and memorialized in an Award Contract. With the Trustees’ authorization, it is anticipated that the Authority, in consultation with ESD, will negotiate final terms and conditions with successful applicants after receipt of more detailed information concerning the projects and proposed schedules. In addition to appropriate business terms, staff anticipates that Award Contracts will contain provisions for periodic audits of the successful applicant for the purpose of determining contract and program compliance, and where appropriate, terms providing for the partial or complete recapture of Fund Benefits disbursements if the applicant fails to maintain agreed-upon commitments, relating to, among other things, employment levels and/or project element due dates.

RECOMMENDATION

“The Vice President, Marketing recommends that:

- (1) the Trustees accept the recommendations of the WNYPPAB and authorize the awards of Fund Benefits to the applicants and in the amounts listed in Exhibit ‘4-A,’ conditioned upon an agreement to be negotiated with each applicant on the final terms and conditions that would be applicable to each award to be contained in an Award Contract approved by the President and Chief Executive Officer and approved by the Executive Vice President and General Counsel as to form;
- (2) the Senior Vice President – Economic Development and Energy Efficiency, or his designee(s), in consultation with ESD, be authorized to negotiate with the applicants concerning such final terms and conditions; and
- (3) the Senior Vice President – Economic Development and Energy Efficiency, or his designee, be authorized to execute on behalf of the Authority Award Contracts for each of the awards listed on Exhibit ‘4-A’ subject to the forgoing conditions.

“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.”

Mr. Michael Huvane provided highlights of staff’s recommendation to the Trustees. In response to a question from Chairman Koelmel, Mr. Huvane said this is the first round of the process and approximately \$17 million is available in the fund for future rounds. Also, the Western New York Power Proceeds Allocation Board (“Proceeds Board”) has received 27 applications for Round 2 of the process and staff will be working with the Empire State Development Corporation (“ESD”) during the process.

Responding to a question from Trustee Mahoney, Mr. Huvane said the source of the funding is from a block of Expansion and Replacement Power, not being utilized by customers in Western New York, which is sold into the ISO wholesale market.

Responding to further questioning from Trustee Mahoney, Mr. Huvane said the Authority's priority is to allocate the power for eligible projects in Western New York and staff works with ESD to identify eligible projects in Western New York for allocation of this power.

Responding to a question from Trustee Nicandri, Mr. Huvane said eligible projects have to be exactly within the 30-mile radius of the Niagara Project as stated in the legislation. Responding to further questioning from Trustee Nicandri, Mr. Huvane said Launch NY is connected to the University of Buffalo to help them get access to the capital and provide management expertise.

In response to a question from Trustee Flynn, Mr. Huvane said staff uses several means to monitor the utilization of the funds; this includes, contract negotiation with the awardees; conducting audits of awardees' records; and, if the award is associated with job allocation, awardees have to provide their job numbers.

In response to further questioning from Trustee Flynn, Mr. Huvane said a final decision has not yet been made on the form of the compliance audits; however, staff will seek initial input from the Internal Audit division as well as guidance from experts at the ESD.

In response to still further questioning from Trustee Flynn, Mr. Huvane said the Authority hosts the Web site for the Proceeds Board where potential applicants can view information regarding the program. Also, if staff's recommendation is approved by the Trustees a media release will be made to that effect.

Before asking the Trustees to vote on staff's recommendation, Chairman Koelmel stated that it was brought to his attention that one of the members of the Proceeds Board who made the recommendation and voted for the Trustees to approve the allocations did not realize he had a conflict as it relates to Diversified Manufacturing. The member is counsel for Harris Beach, LLC, and Diversified Manufacturing is a client of that firm. The vote on the recommendation was unanimous, therefore the recommendation is passed. Chairman Koelmel said that in the interest of transparency he wanted to provide that clarification for the record.

The following resolution, as submitted by the President and Chief Executive Officer, was adopted with Trustee Flynn being recused from the vote as it relates to Diversified Manufacturing.

WHEREAS, the Western New York Power Proceeds Allocation Board (“WNYPPAB”) has recommended that the Authority make awards of Fund Benefits from the Western New York Economic Development Fund (“Fund”) to the eligible applicants listed in Exhibit “4-A”;

NOW THEREFORE BE IT RESOLVED, That the Authority hereby accepts the recommendations of the WNYPPAB and authorizes the awards of Fund Benefits to the applicants and in the amounts listed in Exhibit “4-A,” conditioned upon an agreement between the Authority with each applicant on the final terms and conditions that would be applicable to each award and set forth in a written award contract (“Award Contract”) between the Authority and each applicant approved by the President and Chief Executive Officer and approved by the Executive Vice President and General Counsel as to form; and be it further

RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency, or his designee, in consultation with the Empire State Development Corporation, is authorized to negotiate with successful applicants concerning such final terms and conditions; and be it further

RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency, or his designee, is authorized to execute on behalf of the Authority Award Contracts for each of the awards listed on Exhibit “4-A” subject to the forgoing conditions; and be it further

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

5. Selection of Investment Managers for the Authority's Other Post-Employment Benefits Trust Fund

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve the award of multiyear investment management service contracts to replace expiring agreements for professional investment management services in connection with the Authority's Other Post-Employment Benefits Trust Fund to the following firms: State Street Global Advisors ('SSgA'), GAMCO Asset Management Inc. ('GAMCO'), WCM Investment Management ('WCM'), Urdang Securities Management Inc. ('Urdang'), and Wells Capital Management, Inc. ('WellsCap').

“Due to the need to commence services, interim contract awards were issued to three of these firms, GAMCO, Urdang and WellsCap earlier in May 2013, in accordance with the Authority's Guidelines for Procurement Contracts and Expenditure Authorization Procedures, subject to the Trustees' approvals.

BACKGROUND

“Section 2879 of the Public Authorities Law and the Authority's Guidelines for Procurement Contracts require the Trustees' approval for procurement contracts involving services to be rendered for a period in excess of one year. Moreover, the Authority's Expenditure Authorization Procedures require the Trustees' approval for the award of personal services contracts in excess of \$1 million if low bidder, or \$500,000 if sole-source or non-low bidder. The terms of the contracts considered herein are for more than one year and, in some cases estimated to exceed the dollar thresholds over the term of the agreement, therefore, the Trustees' approval is required.

“Certain Governmental Accounting Standards Board ('GASB') standards* issued in 2004 require governmental employers to account for other post-employment benefit ('OPEB') liabilities on an 'accrual' basis (i.e., as the benefits are earned during the working career of the employee) rather than on a 'pay-as-you-go' basis, where costs are recorded as the benefits are paid during the employee's retirement years. OPEBs may include medical, prescription drug, dental, vision, life and other long-term care benefits for retirees and eligible beneficiaries. Similar GASB standards for pensions have existed since 1994. The Authority began reporting its OPEB obligations in this manner in 2002.

“The GASB rules do not mandate funding of the accrued OPEB obligations, only a recognition of the accrued OPEB liability on the employer's financial statements. If left unfunded, however, the amount of the unfunded liability could significantly impact the employer's overall financial condition and its credit rating with an attendant impact on the cost of debt financing.

“After an assessment by staff, it was determined that the establishment of a separately managed trust fund would be fiscally prudent. Authority staff, with the support of its financial advisor, PFM Advisors ('PFM'), then evaluated various portfolio strategies designed to meet the investment objectives of the Authority. Reviews of different strategies were conducted based on projected assets class returns, correlations and risk tolerances to determine the optimal allocations. The portfolio design considered to be most aligned with the Authority's overall return objectives and risk tolerances was a diversified approach employing domestic and international equity assets, fixed income assets, as well as real estate investment trust asset classes to further enhance diversification.

“At their July 31, 2007 meeting, the Trustees: (1) approved the creation of the Power Authority of the State of New York Other Post-Employment Benefits Trust (the 'Trust'); (2) adopted the Trust Investment Policy Statement; (3) appointed a Trustee Custodian and (4) approved an initial \$225 million funding plan. Subsequently, in October 2011, the Trustees approved an on-going annual funding plan for the OPEB Trust and certain amendments to the Investment Policy Statement clarifying diversification and credit quality standards.

* These standards include Statement No. 43 – Financial Reporting for Post-employment Benefit Plans Other Than Pension Plans and Statement No.45 – Accounting and Financial Reporting by Employers for Post-employment Benefits Other than Pensions.

“As of March 31, 2013, the market value of assets held in the OPEB Trust Fund totaled \$361 million, of which \$230 million were invested in equities, \$110 million were invested in fixed income securities, and \$21 million were invested in real estate investment trust securities. When compared to the actuarial accrued liability of \$544 million (as of December 31, 2012), this represents a funding level of 66%.

DISCUSSION

“In September 2012, as the Authority prepared to issue a Request for Proposal to rebid six expiring investment management agreements, staff and PFM evaluated the current portfolio construction for potential improvements in risks and returns. Based on this evaluation, an overall change in the allocation of assets amongst equities; fixed income and real estate is not being recommended; however, staff will be implementing the following strategies for the OPEB Trust:

1) Portfolio Strategy

At the inception of the Trust in 2007, it was recognized that equity markets typically exhibit cycles of relative outperformance by value and growth stocks versus a core approach. These cycles can last varying time periods from two years to much longer periods. Since the timing of which style will be in favor is nearly impossible to predict, a way to capitalize on those periods of style outperformance is to allocate equal portions of the assets to both a value and growth oriented strategy. Based on historical performance analysis over multiple trailing time periods, staff and PFM determined that returns for a balanced value/growth style allocation compared to returns for a full all cap core allocation was generally indistinguishable; however, the all cap core strategy exhibited lower risk. As such, staff will be reallocating the value/growth assets to an all cap core manager to reduce future portfolio volatility and expected increased risk adjusted returns.

2) Diversification Strategy

- a) In accordance with the OPEB Investment Policy Statement dated October 25, 2011, the Trust may expand investments into international fixed income securities. Staff will be allocating the intermediate fixed income assets to a core ‘plus’ (i.e. emerging markets, higher yield) strategy. As a result in the shift from the Intermediate U.S. Government/ Credit exposure to an Aggregate exposure, and the flexibility to invest in ‘plus’ sectors, additional diversification benefits and an increase in expected returns will be realized. The overall rating of the fixed income assets in the Trust will remain at least an ‘A’ in accordance with the Investment Policy Statement.
- b) While the U.S. Real Estate Investment Trust (‘REIT’) strategy has performed well for the Authority in the past, assets are being re-allocated to a global REIT strategy. A globally diversified portfolio is better positioned to benefit from a larger universe of potential investments, more attractive relative value of non-domestic REITs and greater prospects for future growth.

“On November 21, 2012, the Authority solicited proposals for professional equity, fixed-income, and alternative investment management services by notice to a number of firms providing such services and advertisement in the *New York State Contract Reporter* in order to determine qualified investment managers for the OPEB Trust Fund. On or before December 20, 2012, the Authority received a total of 54 proposals from thirty-eight bidders. After evaluating the 54 proposals, staff determined that the Authority received insufficient high quality responses for the REIT strategy and the All Cap strategies. For the REIT rebid, staff solicited proposals on January 24, 2013, and received a total of 19 proposals from thirteen bidders on or before February 14, 2013. For the All Cap equity strategy, staff solicited proposals on February 12, 2013, and received a total of 14 proposals from thirteen bidders on or before March 5, 2013.

“Authority staff, with the support of PFM, evaluated each proposal taking into consideration quantitative and qualitative criteria. From a quantitative standpoint, staff evaluated historical performance, various risk metrics and the schedule of fees. From a qualitative standpoint, firms were evaluated based on team duration and experience, investment style and research capabilities. After conducting extensive reviews and analysis of each proposal, a total weighted score combining the quantitative and qualitative criteria assessed by PFM was calculated and examined by Authority staff. The Authority, with the recommendation of PFM, invited sixteen firms with the

highest relative rankings to give oral presentations. Based on the above criteria and oral presentations, the following firms were identified to have the highest overall rankings to manage each of the respective asset classes in the OPEB Trust Fund: SSgA for Equity All Cap Core Passive; GAMCO for Equity All Cap Core Active; WCM for International Equity; Urdang for REIT; and WellsCap for Fixed Income Core Plus. A summary of the rationale for each selection follows:

“**SSgA** was the passive Russell 3000 index fund manager that the Authority selected in 2008. Due to its excellent customer support, being a product leader, and low fee structure, it is recommended that State Street continue to serve as a passive equity index fund manager of the OPEB Trust managing **\$86 million** in assets. Complementing the passive equity index strategy with an active overlay, staff is recommending that **GAMCO**, an all cap core manager with a unique investment process, rigorous approach in risk management, and perceived superior security selection expertise, be selected to manage **\$58 million** in assets. For the international large cap growth strategy, **WCM**, with a high conviction portfolio approach, a focus on higher quality companies and strong track record is recommended to manage **\$24 million** in assets.

“In respect to the REIT allocations, **Urdang**’s global strategy with a distinguished security valuation process, strong risk controls and depth of its research teams is recommended to serve as the global REIT portfolio manager of the OPEB Trust with **\$21 million** in assets. For the fixed income core plus strategy, the firm **Wells Capital Management** adopts a conservative investing approach in the high yield credit sectors. While taking less risk, WellsCap has shown the ability to deliver strong performances, historically, through security selection from domestic and international markets. It is recommended that Wells Capital Management manage this fund with **\$44 million** in assets.

“The recommended firms will be awarded five-year contracts, with asset allocations as noted below, subject, however, to early termination at any time by the Authority on 60 days’ notice. The allocation amounts are based on the assets ending market value as of March 31, 2013 and will be adjusted proportionally for the actual asset value on the transition date of the assets.

	<u>Asset Allocations</u> <u>(in \$millions)</u>
State Street	86.0
GAMCO	58.0
WCM	24.0
Urdang	21.0
Wells Capital Management	<u>44.0</u>
Total	<u>233.0</u>

FISCAL INFORMATION

“The fees for the five recommended investment managers, which will be paid from OPEB Trust assets, are expected to average approximately 39 basis points per annum (a basis point is equal to 1/100th of 1%, or 0.01%). The fees should equal about \$970,000 for the first year, growing in conjunction with the Fund’s growth. Over the course of the recommended five-year term of the investment manager contracts, fees are estimated to total about \$6.1 million assuming a normal growth rate in the Fund’s Assets.

RECOMMENDATION

“The Deputy Treasurer recommends the Trustees’ approval of the award of multiyear service contracts to State Street Global Advisors, GAMCO Asset Management Inc., WCM Investment Management, Urdang Securities Management Inc., and Wells Capital Management, Inc., for professional investment management services in connection with the Authority’s Other Post-Employment Benefits Trust Fund.

“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.”

Mr. Brian Liu provided highlights of staff's recommendation to the Trustees. In response to a question from Trustee Foster, Mr. Liu said the idea is not to magnify performances on a past basis as an indication of how the firms will perform in the future. PFM generally assigns a little higher weighting to people and investment processes; staff believes the talent of the investment team is where the value of picking these managers lies, as well as the investment processes. If a firm has a unique process that will allow them to make better security selection decisions, this will further attribute to better future performances.

Responding to a question from Chairman Koelmel, Mr. Russak said the Authority had a very good selection of candidates to choose from and those selected by the Authority are ranked among the highest in their peer groups. The initial screening process considered the candidates' past performance and the stability of the team. He said PFM provided statistical background of the candidates and Authority staff also did their own due diligence before selecting the candidates.

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

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award of the multiyear investment management service contracts to State Street Global Advisors, GAMCO Asset Management Inc., WCM Investment Management, Urdang Securities Management Inc., and Wells Capital Management, Inc., for professional investment management services in connection with the Authority's Other Post-Employment Benefits Trust Fund, as recommended in the foregoing report of the President and Chief Executive Officer, is hereby approved and the execution of such contracts by the Executive Vice President and Chief Financial Officer or the Treasurer, subject to the approval of the form thereof by the Executive Vice President and General Counsel, on behalf of the Authority is approved; and be it further

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

6. Energy Efficiency Market Acceleration Program – Contract Awards

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to ratify and approve the award of two contracts for services related to implementation of the Energy Efficiency Market Acceleration Program (‘EE-MAP’) each for a term of up to five years, in the aggregate amount of up to \$20 million. The contracts are with Syracuse University (Syracuse Center of Excellence) of Syracuse, New York and the Institute for Building Technology and Safety (‘IBTS’) of Ashburn, Virginia.

“Due to the need to commence services, interim contract awards were made in the initial aggregate amount of \$1 million in April 2013 in accordance with the Authority’s Guidelines for Procurement Contracts and Expenditure Authorization Procedures, subject to the Trustees’ approval.

BACKGROUND

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

“In accordance with the Authority’s Expenditure Authorization Procedures, the award of non-personal services, construction, equipment purchase or non-procurement contracts in excess of \$3 million, as well as personal services contracts in excess of \$1 million if low bidder, or \$500,000 if sole-source or non-low bidder, requires the Trustees’ approval.

“The Authority provides clean, low-cost, and reliable energy consistent with its commitment to the environment and safety, while promoting economic development, job development, energy efficiency, renewables and innovation, for the benefit of its customers and all New Yorkers. Since the late 1980s, the Authority has provided energy services programs throughout New York State (‘NYS’). In aggregate, the Authority’s energy services programs (‘ESP’) have achieved over \$140 million in annual customer savings at about 3,800 public facilities, including schools, hospitals and municipal buildings, for a reduction of annual greenhouse gas emissions of more than 830,000 tons.

“In June 2012, Authority Trustees authorized \$30 million to fund the EE-MAP program over a five-year period. EE-MAP will include research and market development activities as well as demonstration projects targeting the deployment of commercial, but not as yet widely deployed energy efficiency products and services. The program supports New York’s clean energy goals and will help increase economic development activity in the New York State energy efficiency industry.

DISCUSSION

“EE-MAP is designed to grow the energy efficiency industry in New York, help bring innovative energy saving technologies to market and advance New York’s technology leadership in this important industry. EE-MAP will also increase the efficiency and effectiveness of existing energy service programs in New York through improved implementation processes and delivery methods.

“The Authority advertised a Request for Proposals (‘RFP’) (Q12-5328MR) in the New York State *Contract Reporter* on September 18, 2012, soliciting firms and research institutions interested in providing EE-MAP implementation services. Two hundred and one (201) companies downloaded the RFP. Seven (7) proposals were received on November 20, 2012.

“The proposals were evaluated by an evaluation committee consisting of staff members from Clean Energy Technology, Economic Development and Energy Efficiency, and Procurement. Proposal evaluation was also conducted by the Electric Power Research Institute (‘EPRI’) and the New York State Energy Research and Development Authority (‘NYSERDA’) staff members who were non-voting members of the evaluation committee.

“The evaluation committee members reviewed the proposals and based their scores on pre-determined criteria and weighting factors. These criteria included the firm’s understanding of the program objectives, relevant technical experience with energy efficiency technology and programs, project team organization and experience, project management and controls, knowledge of applicable codes, previously completed work, financial security, deviations and exceptions, proposal content and format and proposed costs.

“Based on a thorough evaluation of the proposals, proposed costs, and subsequent interviews, and as further set forth in the award recommendation documents, Authority staff recommends the award of contracts to Syracuse University (Syracuse Center of Excellence) and the Institute for Building Technology and Safety.

“The initial services provided by the awardees will be to work with the Authority to develop a detailed business plan for implementation of the EE-MAP program. Follow-on services will include:

1. Screen and select energy efficiency products and services capable of gaining additional market share and providing economic benefits to New York.
2. Identify and implement energy efficiency demonstration projects at facilities of eligible participants of the Authority’s energy services programs to validate advanced and emerging energy efficiency technologies and equipment performance. Demonstration sites may also serve as testing laboratories and centers for training and education.
3. Develop new energy efficiency markets in coordination with state agencies and authorities and distribution utilities. These efforts will assist in forming strategic alliances and economic development opportunities for energy efficiency technology companies. Activities will include collaborating with research institutions, coordinating meetings between the technology companies, ESP eligible participants, and other state agencies, to improve industry access to efficiency investments made at public facilities.
4. Attract technology companies with commercial, but not yet widely deployed energy efficiency products and systems to New York from other states.
5. Create or facilitate market channels for emerging technology companies with commercial energy efficiency products and services. The Authority is ideally positioned to accelerate the deployment of these products and services because of its very large annual energy efficiency business with public entities.
6. Work closely and provide training to consulting engineers, architects, contractors and maintenance service providers to design, specify, install and maintain these commercial, but not yet widely deployed energy efficiency products and services.

FISCAL INFORMATION

“The aggregate award amount of up to \$20 million will come from Operating Funds as authorized for the EE-MAP program by the Trustees in June, 2012. The exact allocation of the funds between the two awardees will be determined during the business plan development phase of the program and will be based on each awardee’s roles and responsibilities for the program.

RECOMMENDATION

“The Senior Vice President – Strategic Planning recommends that the Trustees ratify and formally approve the award of contracts for services related to implementation of the Energy Efficiency Market Acceleration Program, including program development, Target Product selection and demonstration, and market development, for up to a five-year term, in the aggregate amount of up to \$20 million, to Syracuse University (Syracuse Center of Excellence) of Syracuse, New York and the Institute for Building Technology and Safety of Ashburn, Virginia.

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

Mr. Guy Sliker provided highlights of staff’s recommendation to the Trustees. In response to a question from Chairman Koelmel, Mr. Sliker said because the Institute of Building and Safety Technology has relationships with many of the municipal entities across the state, the company will be able to leverage the technology transfer lessons learned through this program to technology companies in an effort to accelerate the market potential for the products that will be targeted.

Responding to further questioning from Chairman Koelmel, Mr. Sliker said the Trustees had authorized \$30 million to fund the EE-MAP Program; the contract award for approximately \$20 million being recommended for approval is for one of the initiatives to implement the EE-MAP Program.

The following resolution, as submitted by the President and Chief Executive Officer, was adopted with Trustee Flynn being recused from the vote as it relates to Syracuse University Center of Excellence.

RESOLVED, That in accordance with the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, ratification and approval is hereby granted to award contracts in an aggregate amount of \$20 million for Energy Efficiency Market Acceleration Program implementation services, including program development, Target Product selection and demonstration, and market development, to the firms listed below:

<u>Consultant</u>	<u>Contract Approval</u>	<u>Completion Date</u>
Syracuse University (Syracuse Center of Excellence) and Institute for Building Technology and Safety	<u>\$20 million*</u> (aggregate)	4/10/2018
		4/04/2018

* Drawn from \$30 million authorized by the Trustees on 6/26/2012 for the EE-MAP Program

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

7. Marcy-South Series Compensation Project – Request for Authorization to Proceed

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to authorize staff to proceed with engineering and licensing of the Marcy-South Series Compensation Project. The President and Chief Executive Officer has approved \$2.8 million for preliminary engineering and licensing and detailed engineering and design due to the aggressive schedule required for the project’s implementation.

BACKGROUND

“Governor Cuomo announced the Energy Highway Initiative in his January 2012 State of the State address. The Energy Highway Initiative recognized a number of challenges to the State’s energy infrastructure including the expanding transmission to move excess power from upstate and the need to address potential retirement of several power plants. The Energy Highway Blueprint, developed by the Governor’s Energy Highway Task Force, recommended that the Public Service Commission (‘PSC’) 1) develop and implement a reliability contingency plan for the closure of the Indian Point Energy Center (‘IPEC’) and 2) invite developers and transmission owners to propose transmission projects to expand the capacity to move electricity from upstate/central New York to the Hudson Valley and New York City.

“On November 30, 2012, the PSC issued orders that 1) directed Con Edison, with the assistance of NYPA, to develop a contingency plan for the potential closure of IPEC upon the expiration of its existing licenses by the end of 2015 and 2) solicited written public Statements of Intent from developers and transmission owners proposing projects that will increase transfer capacity through the congested transmission corridor described above.

“On February 1, 2013, Con Edison and NYPA submitted their Indian Point Contingency Plan. The Contingency Plan included a three-pronged approach including that Con Edison and NYPA begin development of three Transmission Owners Transmission Solutions Projects (‘TOTS’) including the Marcy-South Series Compensation project (Project). NYPA, as part of the New York Transco, also submitted a Statement of Intent to propose construction of the Project to address congestion.

“On April 19, 2013, the PSC issued its Order authorizing Con Edison, New York State Electric and Gas, Central Hudson, and NYPA to move forward with the preliminary development activities for the TOTS, including the Project. The TOTS will be compared to other projects that are proposed in response to the Request for Proposals that NYPA issued on April 3, 2013 at the request of the PSC. In September, it is anticipated that the PSC will select which projects will move forward to address the IPEC issue.

“The PSC agreed with NYPA and Con Edison that for the TOTS to meet the June 2016 in-service deadline, the TOTS needed to initiate preliminary development activities in May 2013. The PSC imposed a spending cap of \$10 million for the TOTS projects that may be incurred prior to September 30, 2013. The individual cap applicable to the Project is \$1.2 million for costs incurred by that date. The PSC stated that a State rate recovery mechanism will be required to address the recovery of the preliminary development costs. The PSC found, with respect to cost allocation (i.e., the methodology used to allocate costs between utility customers), that it had the authority to develop a retail rate recovery mechanism that provides for the jurisdictional utilities to collect payments from their ratepayers for reliability-related activities and also to support actions taken by NYPA in conjunction with the Indian Point Contingency Plan. The PSC emphasized that it was not asserting jurisdiction over NYPA, the rates NYPA charges its customers, or wholesale transmission.

DISCUSSION

“The existing Marcy-South 345 kV lines originate in the Marcy Substation in Oneida County approximately 50 miles east of Syracuse. From Marcy, the lines generally traverse in a south and southeastern direction and interconnect NYPA’s Marcy Substation with Edic Substation (Niagara Mohawk Power Corporation), Fraser Substation (New York State Electric & Gas), Rock Tavern (Central Hudson Gas & Electric), Roseton (Central Hudson Gas & Electric), and East Fishkill Substation (Consolidated Edison). The line is a combination of single and double circuits carried on steel poles, steel lattice structures and wood pole structures. At the Hudson River, the line transitions into six submarine pipe type cables.

“The Project will add switchable series compensation to increase power transfer by reducing series impedance over the existing 345 kV Marcy-South lines. Specifically, the Project will add 40% compensation to the Marcy-Coopers Corners 345 kV line by installing a series capacitor bank near the Marcy Substation. In addition, the Project will add 25% compensation to the Edic-Fraser 345 kV line and the Fraser-Coopers Corners 345 kV line through the installation of two series capacitor banks near the Fraser Substation. Finally, the Project will also involve replacing the conductor on approximately 21.8 miles of the NYSEG-owned Fraser-Coopers Corners 345 kV line using existing towers and will involve relay protection and communication upgrades at the Marcy, Fraser, and Coopers Corners 345 kV substations. The Project will increase thermal transfer limits across the Total East interface and the UPNY/SENY interface and will contribute to solving reliability issues should the Indian Point Energy Center be retired. NYPA will be responsible for installing the capacitors and NYSEG will be responsible for reconductoring the Fraser-Coopers Corners 345 kV line.

“If preliminary engineering and licensing are completed by the end of 2013 or early 2014, detailed engineering and design begins in June 2013 and there are no delays or complications in procurement or construction, the Project can be in service by summer 2016, as required for the IPEC Contingency Plan. This is an aggressive schedule and to have all regulatory approvals in place by early next year, NYPA will have to complete several engineering and environmental studies to provide the information necessary for the applications for regulatory approvals.

“Based upon discussions with the Department of Public Service staff and previous experience with licensing transmission lines in New York, NYPA staff has developed a work plan for the required studies, environmental assessments and applications for regulatory approvals. This work includes a system impact study, geotechnical investigations and natural resource assessments. This work will form the basis for an application to the PSC for approval to install the series capacitors.

“To achieve the schedule, detailed engineering and design will begin in June. This work will be performed by an engineering consultant through an existing general services agreement. The scope-of-work will include preparation of engineering and design packages for installation of the series compensation capacitors and associated equipment at the identified locations. Engineering will also be performed concurrently for modifications of the relay protection and communication systems. The packages will include designs associated with electrical, civil and mechanical modifications and consist of drawings, equipment specifications and construction specifications. Services associated with project management and procurement support will also be provided.

“It is estimated that Licensing and Detailed Engineering and Design will cost \$ 2.8 million. Staff currently estimate that by the end of September less than \$1 million will be expended, which is under the cap of \$1.2 million established by the PSC.

“The Trustees are requested to authorize staff to proceed with preliminary engineering and licensing and detailed engineering and design for the Project. Staff will provide the Trustees with monthly progress reports on the project starting in June 2013.

FISCAL INFORMATION

“Costs related to the Project will be made from the Authority’s Capital Fund and are expected to be recovered under a new cost recovery mechanism to be finalized by the PSC in the summer of 2013.

RECOMMENDATION

“The Senior Vice President and Chief Engineer – Operations Support Services, the Senior Vice President – Strategic Planning, the Vice President – Project Development, Licensing and Compliance, the Director – Project Development and Licensing and the Director – Resource Planning and Project Analysis recommend that the Trustees authorize staff to proceed with the engineering and licensing of the Marcy-South Series Compensation Project.

“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.”

Mr. Mark Malone provided highlights of staff's recommendation to the Trustees. President Quiniones added that the primary goal of this project is to relieve the congestion and bottleneck in the transmission corridor. Responding to a question from Chairman Koelmel, President Quiniones said the project will result in significant improvements in the supply to upstate and downstate New York.

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

RESOLVED, That the Trustees authorize the Authority's staff to proceed with preliminary engineering and licensing and detailed engineering and design for the Marcy-South Series Compensation Project, as recommended in the foregoing report of the President and Chief Executive Officer; and be it further

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

8. **Risk Management Update**

Messrs. William Nadeau and Frank Deaton provided an update on current activities and near-term goals of the Authority's Enterprise Risk Management ("ERM").

Mr. Nadeau stated that risk management has been an activity at the Authority for the past decade, focusing initially on market risks associated with energy commodity and credit. More recently, following the introduction of the concept of ERM in 2007, the Trustees authorized the formalization of ERM at the Authority in 2009. That concept of ERM was for the coordinated approach of identifying, assessing and managing risks across the Authority. The objective was to transition toward risk informed "top-down" decisions and a risk-based corporate planning process, aligning risks with strategies. In 2010, the ERM group started a "bottoms-up" identification and assessment of the Authority's risks and that effort continued through 2012. A "top-down" and formal ERM structure that would enhance the quality and completeness of risk analysis and provide value was necessary. The Authority needed to mature ERM beyond an exercise in risk categorization to an essential consideration and be a part of every decision. To that end, in the past eight months, following the September 2012 Audit Committee meeting, the Authority began an aggressive effort to speedily mature its ERM activities.

Mr. Frank Deaton provided the following overview:

Governance

- *The Board of Trustees, via the Audit Committee Charter, provides oversight of the Risk Management activities. The Board needs assurance that the Authority's management has implemented a system that is appropriate and in alignment with the Authority's business model and strategy.*
- *In order to manage, monitor and mitigate risk, the Enterprise Risk Management Committee ("ERMC"): monitors on-going performance of Risk Management activities; aligns Risk Response to strategy; and coordinates decision-making activities.*
- *The Risk Management Department: supports the ERMC, Executive Management and the Board; facilitates governance and policy decisions, assessment methods, framework, measurement, aggregation, reporting and models; monitors risk profile and reports to the Board; enhances risk culture in the short-term and enables risk informed decision-making in the long-term.*

Enterprise Risk Report

- *Value Proposition for Enterprise Risk:*
 - o *Management manages risks daily.*
 - o *Enterprise Risk brings consistency, transparency and action to assist management.*
 - o *Goal is for risk to be part of the fabric of the organization.*
- *Upcoming assessment process:*
 - o *Staff has been active in benchmarking with other entities including participation in an Enterprise Risk Roundtable with more than 30 utilities represented.*
 - o *Top-Down approach – engages Executive Risk Management Committee as a compass.*
 - o *Middle-Out approach – facilitates risk workshops with management personnel from across the organization to ensure consistency and quality of the risk inventory.*
 - o *Bottom-Up approach – ensures risk is understood and identified from all corners of the organization to meet its business objective.*
 - o *Staff will focus on response planning for top risks at the conclusion of the 2013 assessment.*
- *Next Steps:*
 - o *Engage ERM as compass for risk management.*
 - o *Ongoing 2013 project with Asset Investment Planning group to integrate risk into the capital/O&M project planning process.*
 - o *Key Risk Indicator development – working with Strategic Planning on incorporating forward, risk-informed view to the Authority’s corporate goals as indicated on the Performance Scorecard.*
 - o *Coordination with Audit, Compliance and Strategic Planning Departments is ongoing.*

9. *Risk Mitigation Strategy - Lewiston Pump Generating Plant Life Extension and Modernization Program*

Mr. John Canale made a presentation on the Authority's risk mitigation strategy for the Lewiston Pump Generating Plant ("LPGP") Life Extension and Modernization ("LEM") Program. He discussed some of the risks associated with the Authority's generating facilities; the strategies staff used to mitigate or reduce those risks; how those mitigation strategies were applied to the LPGP LEM Program; and how lessons learned were utilized on other projects such as the Transmission LEM.

Mr. Canale said over the last twenty years, the Authority has undertaken several LEM Programs at its Generation Facilities, engaging companies and manufacturers all over the world. He continued that each LEM Program faces its own set of unique challenges; however, all had similar risks associated with maintaining schedule; global sourcing and shipping concerns; potential for force majeure; unforeseen field conditions; environmental issues and resource concerns. He then provided an overview on how the Authority typically mitigates the risks associated with those challenges.

In response to a question from Trustee Mahoney President Quiniones said because of the long "lead time" to procure spare parts, since most of the products are made abroad, the Authority is reviewing its spare parts inventory process. He said the Authority is part of the Governor's NYS 2100 Committee, made up of utilities with common types of equipment purchases, which is looking at spare parts policies and how utilities with common types of equipment can "pool" their spare parts resources. In response to further questioning from Trustee Mahoney, Mr. Welz said that based on the quantities and size of the equipment the Authority purchases, it is better to deal with the original manufacturers of the equipment.

10. **Motion to Conduct an Executive Session**

Mr. Chairman, I move that the Authority conduct an executive session pursuant to the Public Officers

Law of the State of New York section §105 (d)(e) and (f) to discuss:

- *Matters leading to the promotion or demotion of a particular person;*
- *Collective bargaining negotiations; and*
- *Current litigation.*

Upon motion made and seconded an Executive Session was held.

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

Mr. Chairman, I move to resume the meeting in Open Session. Upon motion made and seconded, the meeting resumed in Open Session.

12. **Next Meeting**

The Regular Meeting of the Trustees will be held on **July 23, 2013, at 11:00 a.m., at the Niagara Power Project**, unless otherwise designated by the Chairman with the concurrence of the Trustees.

Closing

Upon motion made and seconded, the meeting was adjourned by the Chairman at approximately 2:00 p.m.

A handwritten signature in black ink, appearing to read "Karen Delince". The signature is fluid and cursive, with a large initial "K" and "D".

Karen Delince
Corporate Secretary

EXHIBITS

For

May 21, 2013

Regular

Trustees' Meeting



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

Schedule of Rates for Sale of Firm Market Power

Service Tariff No. 1C
(Supersedes ST-1 & ST-1B)

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Schedule of Rates for Sale of Firm Market Power

I. Applicability

To direct sales of Firm Market Power in total or in part to a Customer for firm Electric Service.

II. Frequently Used Abbreviations and Terms

- kW kilowatt(s)
- kWh kilowatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- OATT NYISO Open Access Transmission Tariff
- PAL New York Public Authorities Law
- ROS Rest of State
- RY Rate Year
- UCAP Unforced Capacity

Adjusted Energy Usage: This term has the meaning provided for in Section IV.B of this Service Tariff.

Allocation: The amount of Market Power allocated to the Customer by the Authority.

Agreement: An executed agreement between the Authority and a Customer setting forth the terms and conditions applicable to the allocation and sale of Market Power to the Customer, including any amendments made to the agreement.

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

Billing Demand: The Contract Demand.

Billing Energy: This term has the meaning provided for in Section III.A.2. of this Service Tariff.

Billing Period: Any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer’s Facility receiving the Firm Market Power allocation is located.

Contract Demand: The amount of Firm Market Power allocated to the Customer which the Customer agrees to take and pay for in accordance with the Agreement. The Contract Demand shall equal the Allocation.

Customer: A customer that has received an Allocation and who purchases such Allocation from the Authority.

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

Facility: The Customer's place of business specified in the Agreement that will receive or is receiving the Allocation.

Firm Market Energy: Firm energy (kWh) associated with Firm Market Power supplied by Authority to the Customer.

Firm Market Power: Firm capacity (kW) supplied by Authority to the Customer from market sources and/or the Authority's non-Hydro Project-based resources as determined to be available for such use by the Authority.

Market Capacity Charge: This term has the meaning provided for in Section III.A.1 of this Service Tariff.

Market Energy Charge: This term has the meaning provided for in Section III.A.2 of this Service Tariff.

Minimum Demand Charge: This term has the meaning provided for in Section III.B.7 of this Service Tariff.

NYISO Day-Ahead Market: This term has the meaning provided for in the NYISO Tariffs.

NYISO Tariffs: The tariffs of the NYISO, including the NYISO OATT, as such tariffs are amended and in effect from time to time.

NYPA Administrative Charge: This term has the meaning provided for in Section III.A.3 of this Service Tariff.

Real Time Market: This term has the meaning provided for in the NYISO Tariffs.

Rate Year: Rate Year or **RY:** The July Billing Period through the June Billing Period of the following year, beginning July 2012, subject to change based on the Authority's sole discretion.

Rules: The Authority's rules and regulations set forth in Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York as may be modified from time to time by the Authority.

Service Tariff: This service tariff, denominated as "Schedule of Rates for Sale of Firm Market Power," as amended from time to time by the Authority.

Takedown: The portion of an Allocation the Customer requests to be scheduled for a specific period as provided for in the Agreement.

Taxes: This term has the meaning provided for in Section III.C.2 of this Service Tariff.

Zone: Geographical regions within New York State (sometimes referred to as "load zones" or "energy regions") designated by the NYISO and identified by letter (A-K) that are used to facilitate energy transactions and administration of the State's power grid.

Additional terms are defined in the text of this Service Tariff.

Unless otherwise indicated, all other capitalized terms and abbreviations used but not defined in this Service Tariff shall have the meaning as set forth in the Agreement.

III. Monthly Rates and Related Charges

A. Monthly Rates and Charges

Subject to the other provisions of this Service Tariff, the monthly rates and charges to be charged to the Customer by the Authority will be set as follows:

1. Market Capacity Charge

The Market Capacity Charge will be based on the following:

- a) The amount of capacity (kW) the Authority needs to secure on the Customer's behalf as required by the NYISO's rules. This is currently expressed by the NYISO as the Unforced Capacity or "UCAP" obligation. The UCAP obligation is inclusive of any locational requirements and adjustments for reserves needed to meet the installed reserve margin.

Capacity can be secured through a combination of sources consisting of the bilateral contracts, NYISO auctions, or any other means as determined to be most appropriate by the Authority in its sole discretion.

- b) The market capacity rate based on the actual monthly capacity price paid by the Authority in securing the NYISO UCAP obligation for the capacity (kW) or any other market capacity rate determined to be the most applicable by the Authority in its sole discretion.
- c) The market capacity rate multiplied by the monthly capacity (kW) quantity will yield the applicable Market Capacity Charge.

2. Market Energy Charge

The Market Energy Charge will be based on the following:

- a) Billing Energy. The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the Billing Period.

If there is more than Firm Market Power being billed to the Customer, the authority will determine the apportionment of the kilowatt-hours on a case by case basis. Generally, the total number of kilowatt-hours recorded on the meter shall be multiplied by a percentage based on

1. The methodology provided for in any agreement between the Authority and the Customer's local electric utility for delivery of Firm Market Energy and/or
2. The methodology provided for in Section IV.B of this Service Tariff.

The Authority may procure Firm Market Energy using short and long-term purchases, including purchases from the NYISO Day-Ahead Market and/or Real-Time Market, and/or through a purchase power agreement to the extent the Authority deems them appropriate. Financial hedging instruments may be used for the purposes of mitigating the risk in price movements. Any purchases of Firm Market Energy will be made in whichever portfolio combination the Authority deems to be appropriate in its sole discretion.

- b) Market Energy rate based on the monthly average of the NYISO Day-Ahead Market energy price and the NYISO Real-Time Market energy price based on the location (i.e., Zone) of Customer's Facility determined to be the most applicable by the Authority in its sole discretion.
- c) The Market Energy rate multiplied by the Billing Energy will yield the applicable Market Energy Charge.

3. NYPA Administrative Charge

The NYPA Administrative Charge will be based on the following:

- a) The amount of the highest interval integrated demand (kW) during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the methodology provided for in any agreement between the Authority and the Customer's local electric utility for delivery of Market Power. Demand (kW) may not exceed the amount of the Contract Demand.
- b) Monthly NYPA Administrative rate set by the Authority each Rate Year based on any associated overhead and other assigned costs as determined appropriate by the Authority.
- c) The NYPA Administrative rate multiplied by the demand (kW) allocated to the Customer will yield the applicable NYPA Administrative Charge.

B. Other Charges

The Customer shall be responsible for payment of such other charges (collectively, "Other Charges") as a separate charge from the monthly rates and charges to the extent they apply to such Customer.

1. NYISO Transmission Related Charges ("NYISO Charges")

NYISO Charges for services associated with the Authority's responsibilities as load serving entity for the Customer, provided by the NYISO pursuant to NYISO Tariffs, NYISO-related agreements and NYISO procedures associated with the Authority's provision of Electric Service to the Customer. NYISO Charges to be charged to the Customer by the Authority include:

- a. Charges for Ancillary Services 1 through 6 and any new ancillary services as may be provided in accordance with NYISO Tariffs;
- b. Transmission Usage Charges ("TUC") which are Marginal Losses and Congestion costs;
- c. The New York Power Authority "Transmission Adjustment Charge" or "NTAC";

- d. Congestion costs, less any associated grandfathered Transmission Congestion Contracts (“TCCs”) as provided in Attachment K of the OATT NYISO wide uplift as provided for in the NYISO Tariffs;
- e. Any and all other charges, assessments, or other amounts associated with delivery of Market Power sold to Customers by the Authority, or otherwise associated with the Authority’s responsibilities as a load serving Entity for Customers, that the NYISO assesses on the Authority under the provisions of the OATT or under other applicable NYISO Tariffs; and

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.

- f. When the Authority is not serving as the load serving entity for any of the power or energy that is sold to the Customer under this Service Tariff and the Agreement, should the Authority for any reason incur any such NYISO Charges, the Customer shall reimburse the Authority for all such NYISO Charges.

2. Taxes

The Authority will charge and collect from the Customer all local, state and federal taxes, assessments or other charges mandated by local, state or federal agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer (“Taxes”) if and to the extent such Taxes are not recovered by the Authority pursuant to another provision of this Service Tariff.

3. Market Transaction Charges

The Authority based on its sole discretion will pass through to the Customer any costs incurred from procuring any financial products described in Sections III.A.1 and III.A.2 of this tariff if applicable.

4. Transmission, Wheeling and Delivery Charges

Generally, transmission, wheeling and delivery charges are billed directly to the Customer by the local electric utility.

If there are any charges for transmission, wheeling and delivery made applicable to the Customer under other Authority’s tariffs and contracts, they will be charged to the Customer by the Authority as provided for in those documents.

5. Local Electric Utility Charges

The Customer shall reimburse the Authority for all charges, assessments, fees and other amounts, if any, the local electric utility imposes on the Authority in any way related to the provision of data and other information the Authority requires from the local electric utility in connection with providing Electric Service to the Customer. In the event that the local electric utility seeks to impose any such charges, assessments, fees and other amounts on the Authority for the provision of data and other information required by the Authority in order to

provide Electric Service to the Customer, the Authority shall provide prior notice thereof to the Customer, and the Customer and the Authority will discuss (i) the nature and amount of such charges, assessments, fees and other amounts, and (ii) whether there are alternative means for obtaining and providing such required data and information which are acceptable to the parties, provided that no party shall be required to agree to any alternative means for obtaining and providing such required data and information.

6. New Charges

The Customer shall be responsible for payment of any and all new costs or charges incurred by the Authority in connection with its provision of Electric Service to the Customer, including but not limited to, charges and costs incurred for supplying Firm Market Power, and any new NYISO Charges as may be defined and applied in any NYISO Tariffs, NYISO-related agreements and NYISO procedures from time to time (collectively, "New Charges"). The Authority, in its sole discretion, may include any such New Charges in the monthly rates or the NYPA Administrative rate, or bill the Customer separately for such New Charges.

7. Minimum Demand Charge

In the Authority's sole discretion, the Customer shall be subject to a monthly minimum billing demand charge calculated as follows. If in any given month Customer's monthly demand usage is less than 75 percent of its Contract Demand, a minimum demand charge equal to 75 percent of the Customer's Contract Demand, times the applicable NYPA Administrative Charge rate shall apply for that month. Such minimum monthly charge shall be in addition to all other charges provided for in this Service Tariff, including but not limited to Market Energy Charge, Market Capacity Charge and Other Charges as provided for in this Service Tariff.

8. Estimated Billing

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

For the purpose of calculating demand (kW) for an Estimated Bill, the demand (kW) will be calculated based on an average of the Customer's allocated demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Contract Demand (kW) amount, based on the Authority's sole discretion.

For the purpose of calculating energy (kWh) for an Estimated Bill, the energy (kWh) will be calculated based on an average of the Customer's allocated energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the Contract Demand (kW) amount at 75 percent load factor for that Billing Period, based on the Authority's sole discretion.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill in accordance with Section

III.B.9 of this Service Tariff and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The provisions of Section IV.D of this Service Tariff shall apply to Estimated Bills.

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

9. Adjustments to Charges

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

IV. General Provisions

A. Scheduling of Firm Market Energy and Firm Market Power

In each Billing Period the Authority shall, in accordance with the NYISO Tariffs, NYISO manuals and NYISO procedures, schedule and provide to the Customer Firm Market Energy associated with Firm Market Power in an amount equal to the product of: (i) Contract Demand; (ii) the number of hours in the Billing Period; and (iii) Estimated Load Factor. Such Firm Market Energy shall be scheduled to the load bus established by the NYISO for the Facility or any successor load bus thereto established by the NYISO.

With respect to each month in which Electric Service is provided to the Customer by the Authority, the Authority shall, in accordance with the NYISO Tariffs, NYISO manuals and NYISO procedures, ensure that it does not schedule to the Customer in any hour more energy than the lesser of Customer's load in such hour, or Customer's Contract Demand.

With respect to each month in which Electric Service is provided to the Customer by the Authority, the Authority shall, in accordance with the NYISO Tariffs, NYISO manuals and NYISO procedures, schedule and provide UCAP in an amount equal to the applicable value calculated pursuant to Section III.A.1 of this Service Tariff.

The Customer and Authority shall reasonably cooperate and coordinate, as necessary, to effectuate the required scheduling and provision of Firm Market Energy and Firm Market Power as required by this Service Tariff and the Agreement. The Authority acknowledges and agrees that the Customer may, from time to time, utilize the services of a third party agent, authorized by the NYISO, to assist the Customer with respect to such scheduling activities. In the event that the Customer appoints such a third party agent, the Authority shall reasonably cooperate and coordinate with such agent, and the Customer shall ensure that its agent reasonably cooperates and coordinates with the Authority, in the same manner as the Parties are required to cooperate in connection with such scheduling activities.

B. Reconciliation of Adjusted Energy Usage and Billing Energy

Where Firm Market Energy is delivered under this Service Tariff in conjunction with other firm energy, including but not limited to firm hydro energy, the amounts supplied by the Authority hereunder shall be reconciled as following.

In any Billing Period in which the Customer's Adjusted Energy Usage is less than the amount of Firm Energy scheduled in accordance with firm hydro power service tariff and/or Agreement applicable to the Customer (hereinafter referred to as an "Under Consumption"), the Authority will bill the Customer and the Customer shall pay an additional charge (i.e., in addition to any other amounts due under this Service Tariff and/or the Agreement) in an amount equal to the amount of the Under Consumption (measured in kWh) multiplied by the positive difference, if any, between (i) the average of the applicable NYISO day-ahead market locational based marginal price for the Zone for the Billing Period and (ii) the monthly base rate for Billing Energy applicable to the Customer under the firm hydro power service tariff.

For purposes of this provision, “Adjusted Energy Usage” means the product of (i) the Contract Demand (or, if applicable and less than the Contract Demand, the Takedown), (ii) the Load Factor for the Billing Period, and (iii) the number of hours in the Billing Period (i.e., Adjusted Energy Usage (kWh) = Contract Demand [or, if applicable and less than the Contract Demand, the Takedown] (kW) x Load Factor for the Billing Period (a percentage) x hours in the Billing Period).

The Authority will perform reconciliations for each Billing Period in accordance with this Section after the Authority obtains actual metered demand and energy data recorded on the Facility’s meter from the local electric utility or as otherwise provided for in any Agreement.

C. Delivery of Market Power

The Customer’s local electric utility shall be responsible for delivering Firm Market Power to the Customer. The Authority shall have no responsibility for delivering any Firm Market Power to the Customer.

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

D. Rendition and Payment of Bills

1. Specific Customer billed dates will be determined by the Authority on a case by case basis. Generally the Authority will render bills to the Customer for Electric Service no later than the 20th calendar day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in this Service Tariff and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.
2. Specific Customer payment dates will be determined by the Authority on a case by case basis. Generally the payment of bills by the Customer shall be due and payable by the Customer no later than the 1st business day of the following month.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of a bill rendered by Authority, the Customer shall pay such bill in the time provided for by this Service Tariff, and adjustments, if necessary, will be made thereafter.
5. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to this Service Tariff, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this

Service Tariff for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Service Tariff.

E. Conflicts

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

F. Resale

No customer shall resell any of the power supplied by Authority under this Service Tariff.



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

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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 "Load Split Methodology" or "LSM" refers to a load split methodology applicable to a Customer's allocation. It is usually provided for in an agreement between the Authority and the Customer's local electric utility, or such local utility's tariff, regarding the delivery of WNY Firm Power. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".
- L. The term "Project" means the Authority's Niagara Power Project, FERC Project No. 2216.
- M. The term "Rate Year" or "RY" means the period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.
- N. 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.
- O. The term "Service Tariff" means this Service Tariff No. WNY-1.
- P. 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. Estimated Billing

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

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

- For Customers whose allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average

of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's Takedown (kW) amount.

- For Customers whose allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's Takedown (kW) amount.

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

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

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

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

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

F. Adjustments to Charges

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

G. 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.

H. 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.

I. 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.

J. 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 –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the local utility, during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the Load Split Methodology provided for in any contract between the Authority and the Customer's local electric utility for delivery of WNY Power. Billing Demand may not exceed the amount of the Contract Demand.
3. Billing Energy –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the Billing Period multiplied by a percentage based on the methodology provided for in any contract between the Authority and the Customer's local electric utility for delivery of WNY Power.

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.

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

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

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Bills will reflect the amounts due and owing, and are subject to adjustment as provided for in the Agreement, Service Tariff No. WNY-1 and the Rules. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority shall render bills to the Customer electronically.

2. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
3. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
4. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its sole discretion to suspend Electric Service to the Customer or terminate this Agreement.

H. Adjustment of Charges

1. Distribution Losses

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

I. 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.

J. 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

Exhibit Number	Company Name	Program	City	County	Power Requested (kW)	New Jobs	Estimated Capital Investment	New Jobs Avg. Wage & Benefits	Power Recommended (kW)	Contract Term
A-1	Advance 2000, Inc.	RP	Amherst	Erie	5,000	67	\$21,350,000	\$78,270	2,900	7 Years
A-2	Niagara Refining LLC	RP	Depew	Erie	5,400	50	\$29,583,900	\$43,670	2,700	7 Years
Total Hydropower Recommended					10,400	117	\$50,933,900		5,600	

APPLICATION SUMMARY
Replacement Power

Company: Advance 2000, Inc.

Project Location: Amherst

County: Erie

IOU: National Grid

Business Activity: Delivers IT services to corporate healthcare, government and other business

Project Description: Plans to purchase a 74,000-square-foot building to expand operations due to increased demand for hosted voice, data services and cloud computing for various companies nationwide. Project includes building renovation, large data server and HVAC/ chiller purchases and installation.

Existing Allocation(s): None

Power Request: 5,000 kW

Power Recommended: 2,900 kW

Job Commitment:

Existing: 93 jobs (Williamsville)

New: 67 jobs

New Jobs/Power Ratio: 21.3 jobs/MW

New Jobs - Avg. Wage and Benefits: \$78,270

Capital Investment: \$21.350 million

Capital Investment/MW: \$7.4 million/MW

Other ED Incentives: Working with Amherst IDA

Summary: Advance 2000 is choosing whether to expand in Erie County where it began, or at one of seven other locations in the U.S. and Canada. The expansion plan is an effort to become a leader, nationally, in cloud computing and improve the company's ability to compete against large information technology companies. An allocation of hydropower remains vital to meet this goal due to the significance of electricity to data center operations. An allocation would allow Advance 2000 to grow its WNY workforce from 93 to 160 employees with above-average wages and

benefits within three years. The hydropower would also support its “green company” mission.

APPLICATION SUMMARY
Replacement Power

Company: Niagara Refining LLC

Location: Depew

County: Erie

IOU: National Grid

Business Activity: Tungsten powder manufacturing

Project Description: To create a new tungsten refining plant, the company would refurbish and upgrade 100,000 square feet of an existing facility, install new chemical process equipment, and construct small ancillary buildings at its Depew site. Process equipment includes tanks, heaters, piping, pumps and controls. The facility is located on a brownfield site.

Existing Allocation(s): None

Power Request: 5,400 kW

Power Recommended: 2,700 kW

Job Commitment:

Existing: 13 jobs

New: 50 jobs

New Jobs/Power Ratio: 18.5/MW

New Jobs - Avg. Wage and Benefits: \$43,670

Capital Investment: \$29.583 million

Capital Investment/MW: \$11.0/MW

Other ED Incentives: None

Summary: Niagara Refining LLC is deciding to locate a refining plant for strategically important raw materials in the United States. It benefits New York State by modeling the process for bringing industry back from China. An allocation of hydropower is critical for the company to be competitive with Chinese tungsten refiners that currently control a significant portion of the market. Additional benefits include supporting the local economy and revitalizing an old manufacturing facility located on a brownfield site.



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

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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**

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PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

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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.

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Apply AAF to Calculate the New Rate Year Base Rate

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

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

TO ADVANCE 2000, 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 Advance 2000, Inc. (“Customer”), with offices at 1140 Wehrle Drive, Williamsville, New York, 14221-7748. The Authority and the Customer are from 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 hydropower to support the operation of the Facility it proposes to build and operate;

WHEREAS, on May 21, 2013, the Authority’s Board of Trustees (“Trustees”) approved a 2,900 kilowatt (“kW”) allocation of RP 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 ____, 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 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 which has resulted in such Facility 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, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- 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. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility 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 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 Facility, 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 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: _____

Facsimile:

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Advance 2000, Inc.
1140 Wehrle Drive
Williamsville, New York 14221-7748

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:

ADVANCE 2000, 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: ADVANCE 2000, INC.

Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Replacement Power	2,900 kW	155 Pineview Drive, Amherst, NY 14228	May 21, 2013	Seven (7) 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 Facility 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, the Customer shall employ in aggregate at least one-hundred and sixty (160) full-time employees (“Base Employment Level”) at the Customer’s Facility and at Customer’s headquarters facility at 1140 Wehrle Drive, Williamsville, New York (“Headquarters”). The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B. The Base Employment Level is derived from (1) a stipulation by the Customer that there exist ninety-three (93) jobs at Headquarters at the time of the award of the Allocation by the Authority, and (2) a commitment by the Customer to create sixty-seven (67) new jobs at the Facility.

CAPITAL INVESTMENT

The Customer shall purchase, renovate and upgrade the Facility and make a total capital investment of at least \$21,350,000 for the Facility (the “Capital Investment). The Capital Investment for the Facility is expected to consist of the following specific expenditures:

Year 1 Expenditures:

Building Purchase, Improvements, Cooling, Generators, Other -- \$7,250,000

Year 2 Expenditures:

Software, Servers/Storage, Improvements, Cooling, Other -- \$6,700,000

Year 3 Expenditures:

Software, Servers/Storage, Cooling, Generators, Other -- \$7,400,000

Total Capital Investment: \$21,350,000

The Capital Investment shall be made and the Facility shall be completed and fully operational, no later than May 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 at the discretion of the Authority.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND/OR REPLACEMENT POWER 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 NIAGARA REFINING 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 Niagara Refining LLC (“Customer”), with offices at 5661 Transit Road, Depew, New York 14043. The Authority and the Customer are from 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 hydropower to support the operation of the Facility it proposes to build and operate;

WHEREAS, on May 21, 2013, the Authority’s Board of Trustees (“Trustees”) approved a 2,700 kilowatt (“kW”) allocation of RP 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 ____, 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 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 which has resulted in such Facility 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, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- 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. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility 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 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 Facility, 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 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: _____

Facsimile:

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Niagara Refining LLC
5661 Transit Road
Depew, NY 14043

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:

NIAGARA REFINING 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: NIAGARA REFINING LLC

Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Replacement Power	2,700 kW	5661 Transit Road, Depew, NY 14043	May 21, 2013	Seven (7) 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 Facility 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, the Customer shall employ at least fifty (50) full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer shall build the Facility and make a capital investment of at least \$29.58 million for the Facility (the “Capital Investment”). The Capital Investment for the Facility is expected to consist of the following specific expenditures:

1. Process Equipment	\$8.38 million
2. Platforms	\$0.75 million
3. Concrete	\$1.61 million
4. Environmental Equipment	\$2.85 million
5. Utilities	\$0.79 million
6. Laboratory	\$0.40 million
7. Electrical	\$2.09 million
8. Piping & Valves	\$5.53 million
9. Instrumentation & Controls	\$1.52 million
10. Building Modifications	\$2.09 million
11. Design & Engineering	\$1.16 million
12. Office & Computers	\$0.08 million
13. <u>Process Technology</u>	<u>\$2.33 million</u>
Total	\$29.58 million

The Capital Investment shall be made, and the Facility shall be completed and fully operational, not later than May 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 at the sole discretion of the Authority.

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

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

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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

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 AND/OR REPLACEMENT POWER AND ENERGY

to

Buffalo Shredding and Recovery, LLC

The POWER AUTHORITY OF THE STATE OF NEW YORK ("Authority"), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title 1 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 and/or Replacement Power and Energy ("Agreement") with Buffalo Shredding and Recovery, LLC ("Customer"), with offices and/or facilities at 3175 Lakeshore Road, Hamburg, New York 14219. The Authority and the Customer are from 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") and "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"), and 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 New York State;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP 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 Authority's Board of Trustees ("Trustees") have previously authorized the Customer's Allocation of EP and/or RP, which is scheduled to expire after June 30, 2013 on the "Expiration Date" specified in Schedule A to this Agreement;

WHEREAS, the Authority and the Customer are currently parties to an agreement with the Customer's local electric utility ("Local Utility") governing the sale of the Allocation to the Local Utility for resale to the Customer at its Facility, and such agreement is scheduled to expire on June 30, 2013 (the "Expiring Agreement");

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 Utility;

WHEREAS, such transmission and delivery service will be made in accordance

with the applicable tariffs of the Local Utility;

WHEREAS, the Parties have reached an agreement on a contract governing the direct sale of the Allocation to the Customer for remaining term of the Customer's Allocation, on the terms and conditions set forth in this Agreement.

WHEREAS, the Parties intend that this Agreement will govern the terms and conditions of the sale of the Allocation to the Customer, commencing on July 1, 2013 for the remaining term of the Allocation;

WHEREAS, the Authority has complied with requirements of PAL § 1009, which specifies the approval process for certain 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:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer for a certain term as specified in Schedule A.
- C. **Contract Demand** is as defined in ST 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, ST 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 (13).
- F. **Expiring Agreement** has the meaning set forth in the recitals.
- G. **Facility** means the Customer's place of business identified in Schedule A.
- H. **Firm Power** is as defined in ST WNY-1.
- I. **Firm Energy** is as defined in ST WNY-1.
- J. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).

- K. **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.
- L. **Hydro Projects** is a collective reference to the Project (defined below) and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- M. **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.
- N. **Local Utility** has the meaning set forth in the recitals.
- O. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- P. **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.
- Q. **Project** means the Niagara Power Project, FERC Project No. 2216.
- R. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).
- S. **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.
- T. **Service Tariff No. WNY-1** (or **ST WNY-1**) means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority. ST WNY-1 shall be applicable to Electric Service provided to the Customer on and after July 1, 2013.
- U. **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.
- V. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Customer Commitments" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy sold to the Customer at its request which the Authority procures from markets administered by the NYISO to replace

hydroelectricity that would otherwise have been supplied to the Customer under this Agreement.

X. **Taxes** is as defined in ST WNY-1.

Y. **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

II. **Electric Service**

- A. Subject to the other provisions of this Agreement, commencing July 1, 2013, the Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, ST WNY-1 and the Rules.
- B. 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.
- C. 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.
- D. The Contract Demand may not exceed the Allocation.

III. **Rates, Terms and Conditions**

- A. Subject to the other provisions of this Agreement, commencing July 1, 2013, Electric Service shall be sold to the Customer based on the rates, terms and conditions determined in accordance with this Agreement, ST WNY-1 and the Rules.
- B. The Customer may not resell or permit any other person to use any quantity of the EP 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.
- D. Notwithstanding any other provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by the Authority at any time upon 30 days prior written notice to the Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the Project and the Authority's competitive position with respect to other suppliers, the 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 the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy charges pursuant to this provision. Any rate increase to the 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, the Authority shall forward to the Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which the Authority will obtain the total of increased revenues and the bases upon which the Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as the Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion Power and/or Replacement Power Customer Commitments

Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Customer Commitments." The commitments agreed to in Schedule B are in addition to the other rights and obligations of the Parties provided for in the Agreement, ST WNY-1 and the Rules.

V. Rules and ST WNY-1

ST WNY-1, as may be modified or superseded from time to time by the Authority in its discretion, 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 ST WNY-1 and the Rules, the provisions of ST WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and ST WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Related Issues

- A. The Customer shall pay the Local Utility for transmission and delivery service associated with the Allocation in accordance with all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the Allocation of Firm Power and Firm Energy supplied by the Authority under this Agreement. To the extent the Authority incurs transmission and delivery service charges or other costs associated with the Allocation during the term of this Agreement, the Customer agrees to compensate the Authority for all such charges and costs incurred.
- B. 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 ST 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.

- C. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Local Utility pertaining to the Customer that the Authority and the local Utility determine is necessary to provide for the Allocation, sale and delivery of EP or RP to the Customer, the proper and efficient implementation of the EP and RP programs, billing related to EP or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- D. 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 Local Utility on terms and conditions that are acceptable to the Authority.
- E. 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") the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP or RP program, the effective and proper administration of the EP or RP program, and/or the performance of contracts or other arrangements between the Authority and the Local 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 Local Utility's service tariffs and any agreement between the Authority and the Local Utility. An alternative basis for billing may be used provided the Parties agree in writing and the Local 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 ST WNY-1 or 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 ST 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 initiated, 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, ST WNY-1, or the Rules; (3) expiration of the Allocation by its own terms as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in ST 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, ST 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 A 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 A, 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
Attention: Manager – Business Power Allocations and Compliance
123 Main Street
White Plains, New York 10601
MED-BPAC@nypa.gov
Fax (914) 390-8156

To the Customer:

Buffalo Shredding and Recovery, LLC
Attention: Mr. Rick Rothfuss
3175 Lakeshore Road
Hamburg, NY 14219
rrothfuss@metallicobuffalo.com
Fax (716) 823-2741

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 U.S.C. §§ 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. Assignments and Transfers

The Customer may not assign or otherwise transfer an interest in this Agreement without written approval of the Authority.

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.

AGREED:

BUFFALO SHREDDING AND RECOVERY, LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Title: _____

Date: _____

SCHEDULE A

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Buffalo Shredding and Recovery, LLC

Type of Allocation (EP/RP)	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
EP	1,200	3175 Lakeshore Road, Hamburg, NY	6/28/2011	2/28/2017

SCHEDULE B

EXPANSION POWER AND/OR REPLACEMENT POWER CUSTOMER 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 Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of March 1, 2012, the Customer shall employ at least twenty-two (22) full-time employees ("Base Employment Level") at the Customer's Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B. The Base Employment Level is derived from (1) a stipulation by the Customer that there exist zero (0) jobs at the Facility at the time of the award of the Allocation by the Authority, and (2) a commitment by the Customer to create twenty-two (22) new jobs at the Facility.

CAPITAL INVESTMENT

The Customer has fulfilled the capital investment commitment for this Agreement.

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 AND/OR REPLACEMENT POWER AND ENERGY

to

Citigroup Technology, 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 1 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 and/or Replacement Power and Energy ("Agreement") with Citigroup Technology, Inc. ("Customer"), with offices and/or facilities at 580 Crosspoint Parkway, Getzville, NY, 14068. The Authority and the Customer are from 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") and "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"), and 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 New York State;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP 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 Authority's Board of Trustees ("Trustees") have previously authorized the Customer's Allocation of EP and/or RP, which is scheduled to expire after June 30, 2013 on the "Expiration Date" specified in Schedule A to this Agreement;

WHEREAS, the Authority and the Customer are currently parties to an agreement with the Customer's local electric utility ("Local Utility") governing the sale of the Allocation to the Local Utility for resale to the Customer at its Facility, and such agreement is scheduled to expire on June 30, 2013 (the "Expiring Agreement");

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 Utility;

WHEREAS, such transmission and delivery service will be made in accordance

with the applicable tariffs of the Local Utility;

WHEREAS, the Parties have reached an agreement on a contract governing the direct sale of the Allocation to the Customer for remaining term of the Customer's Allocation, on the terms and conditions set forth in this Agreement.

WHEREAS, the Parties intend that this Agreement will govern the terms and conditions of the sale of the Allocation to the Customer, commencing on July 1, 2013 for the remaining term of the Allocation;

WHEREAS, the Authority has complied with requirements of PAL § 1009, which specifies the approval process for certain 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:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer for a certain term as specified in Schedule A.
- C. **Contract Demand** is as defined in ST 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, ST 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 (13).
- F. **Expiring Agreement** has the meaning set forth in the recitals.
- G. **Facility** means the Customer's place of business identified in Schedule A.
- H. **Firm Power** is as defined in ST WNY-1.
- I. **Firm Energy** is as defined in ST WNY-1.
- J. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).

- K. **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.
- L. **Hydro Projects** is a collective reference to the Project (defined below) and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- M. **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.
- N. **Local Utility** has the meaning set forth in the recitals.
- O. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- P. **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.
- Q. **Project** means the Niagara Power Project, FERC Project No. 2216.
- R. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).
- S. **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.
- T. **Service Tariff No. WNY-1** (or **ST WNY-1**) means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority. ST WNY-1 shall be applicable to Electric Service provided to the Customer on and after July 1, 2013.
- U. **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.
- V. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Customer Commitments" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy sold to the Customer at its request which the Authority procures from markets administered by the NYISO to replace

hydroelectricity that would otherwise have been supplied to the Customer under this Agreement.

X. **Taxes** is as defined in ST WNY-1.

Y. **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

II. **Electric Service**

- A. Subject to the other provisions of this Agreement, commencing July 1, 2013, the Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, ST WNY-1 and the Rules.
- B. 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.
- C. 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.
- D. The Contract Demand may not exceed the Allocation.

III. **Rates, Terms and Conditions**

- A. Subject to the other provisions of this Agreement, commencing July 1, 2013, Electric Service shall be sold to the Customer based on the rates, terms and conditions determined in accordance with this Agreement, ST WNY-1 and the Rules.
- B. The Customer may not resell or permit any other person to use any quantity of the EP 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.
- D. Notwithstanding any other provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by the Authority at any time upon 30 days prior written notice to the Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the Project and the Authority's competitive position with respect to other suppliers, the 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 the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy charges pursuant to this provision. Any rate increase to the 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, the Authority shall forward to the Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which the Authority will obtain the total of increased revenues and the bases upon which the Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as the Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion Power and/or Replacement Power Customer Commitments

Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Customer Commitments." The commitments agreed to in Schedule B are in addition to the other rights and obligations of the Parties provided for in the Agreement, ST WNY-1 and the Rules.

V. Rules and ST WNY-1

ST WNY-1, as may be modified or superseded from time to time by the Authority in its discretion, 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 ST WNY-1 and the Rules, the provisions of ST WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and ST WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Related Issues

- A. The Customer shall pay the Local Utility for transmission and delivery service associated with the Allocation in accordance with all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the Allocation of Firm Power and Firm Energy supplied by the Authority under this Agreement. To the extent the Authority incurs transmission and delivery service charges or other costs associated with the Allocation during the term of this Agreement, the Customer agrees to compensate the Authority for all such charges and costs incurred.
- B. 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 ST 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.

- C. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Local Utility pertaining to the Customer that the Authority and the local Utility determine is necessary to provide for the Allocation, sale and delivery of EP or RP to the Customer, the proper and efficient implementation of the EP and RP programs, billing related to EP or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- D. 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 Local Utility on terms and conditions that are acceptable to the Authority.
- E. 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") the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP or RP program, the effective and proper administration of the EP or RP program, and/or the performance of contracts or other arrangements between the Authority and the Local 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 Local Utility's service tariffs and any agreement between the Authority and the Local Utility. An alternative basis for billing may be used provided the Parties agree in writing and the Local 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 ST WNY-1 or 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 ST 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 initiated, 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, ST WNY-1, or the Rules; (3) expiration of the Allocation by its own terms as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in ST 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, ST 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 A 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 A, 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
Attention: Manager – Business Power Allocations and Compliance
123 Main Street
White Plains, New York 10601
MED-BPAC@nypa.gov
Fax (914) 390-8156

To the Customer:

Citigroup Technology, Inc.
Attention: Mr. Paul Muck
580 Crosspoint Parkway
Getzville, NY, 14068
paul.muck@citi.com
Fax (877) 224-0917

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 U.S.C. §§ 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. Assignments and Transfers

The Customer may not assign or otherwise transfer an interest in this Agreement without written approval of the Authority.

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.

AGREED:

CITIGROUP TECHNOLOGY, INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Title: _____

Date: _____

SCHEDULE A

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Citigroup Technology, Inc.

Type of Allocation (EP/RP)	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
RP	1,100	580 Crosspoint Parkway, Getzville, NY, 14068	1/30/2007	9/30/2013

SCHEDULE B

EXPANSION POWER AND/OR REPLACEMENT POWER CUSTOMER 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 Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least five-hundred (500) full-time employees (“Base Employment Level”) at the Customer’s Facility to be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT

The Customer has fulfilled the capital investment commitment for this Agreement.

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 AND/OR REPLACEMENT POWER AND ENERGY
to
Galvstar 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 1 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 and/or Replacement Power and Energy ("Agreement") with Galvstar LLC ("Customer"), with offices and/or facilities at 1001 E. Delavan Avenue, Buffalo, New York 14215. The Authority and the Customer are from 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") and "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"), and 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 New York State;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP 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 Authority's Board of Trustees ("Trustees") have previously authorized the Customer's Allocation of EP and/or RP, which is scheduled to expire after June 30, 2013 on the "Expiration Date" specified in Schedule A to this Agreement;

WHEREAS, the Authority and the Customer are currently parties to an agreement with the Customer's local electric utility ("Local Utility") governing the sale of the Allocation to the Local Utility for resale to the Customer at its Facility, and such agreement is scheduled to expire on June 30, 2013 (the "Expiring Agreement");

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 Utility;

WHEREAS, such transmission and delivery service will be made in accordance

with the applicable tariffs of the Local Utility;

WHEREAS, the Parties have reached an agreement on a contract governing the direct sale of the Allocation to the Customer for remaining term of the Customer's Allocation, on the terms and conditions set forth in this Agreement.

WHEREAS, the Parties intend that this Agreement will govern the terms and conditions of the sale of the Allocation to the Customer, commencing on July 1, 2013 for the remaining term of the Allocation;

WHEREAS, the Authority has complied with requirements of PAL § 1009, which specifies the approval process for certain 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:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer for a certain term as specified in Schedule A.
- C. **Contract Demand** is as defined in ST 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, ST 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 (13).
- F. **Expiring Agreement** has the meaning set forth in the recitals.
- G. **Facility** means the Customer's place of business identified in Schedule A.
- H. **Firm Power** is as defined in ST WNY-1.
- I. **Firm Energy** is as defined in ST WNY-1.
- J. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).

- K. **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.
- L. **Hydro Projects** is a collective reference to the Project (defined below) and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- M. **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.
- N. **Local Utility** has the meaning set forth in the recitals.
- O. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- P. **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.
- Q. **Project** means the Niagara Power Project, FERC Project No. 2216.
- R. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).
- S. **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.
- T. **Service Tariff No. WNY-1** (or **ST WNY-1**) means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority. ST WNY-1 shall be applicable to Electric Service provided to the Customer on and after July 1, 2013.
- U. **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.
- V. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Customer Commitments" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy sold to the Customer at its request which the Authority procures from markets administered by the NYISO to replace

hydroelectricity that would otherwise have been supplied to the Customer under this Agreement.

X. **Taxes** is as defined in ST WNY-1.

Y. **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

II. **Electric Service**

- A. Subject to the other provisions of this Agreement, commencing July 1, 2013, the Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, ST WNY-1 and the Rules.
- B. 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.
- C. 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.
- D. The Contract Demand may not exceed the Allocation.

III. **Rates, Terms and Conditions**

- A. Subject to the other provisions of this Agreement, commencing July 1, 2013, Electric Service shall be sold to the Customer based on the rates, terms and conditions determined in accordance with this Agreement, ST WNY-1 and the Rules.
- B. The Customer may not resell or permit any other person to use any quantity of the EP 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.
- D. Notwithstanding any other provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by the Authority at any time upon 30 days prior written notice to the Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the Project and the Authority's competitive position with respect to other suppliers, the 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 the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy charges pursuant to this provision. Any rate increase to the 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, the Authority shall forward to the Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which the Authority will obtain the total of increased revenues and the bases upon which the Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as the Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion Power and/or Replacement Power Customer Commitments

Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Customer Commitments." The commitments agreed to in Schedule B are in addition to the other rights and obligations of the Parties provided for in the Agreement, ST WNY-1 and the Rules.

V. Rules and ST WNY-1

ST WNY-1, as may be modified or superseded from time to time by the Authority in its discretion, 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 ST WNY-1 and the Rules, the provisions of ST WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and ST WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Related Issues

- A. The Customer shall pay the Local Utility for transmission and delivery service associated with the Allocation in accordance with all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the Allocation of Firm Power and Firm Energy supplied by the Authority under this Agreement. To the extent the Authority incurs transmission and delivery service charges or other costs associated with the Allocation during the term of this Agreement, the Customer agrees to compensate the Authority for all such charges and costs incurred.
- B. 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 ST 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.

- C. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Local Utility pertaining to the Customer that the Authority and the local Utility determine is necessary to provide for the Allocation, sale and delivery of EP or RP to the Customer, the proper and efficient implementation of the EP and RP programs, billing related to EP or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- D. 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 Local Utility on terms and conditions that are acceptable to the Authority.
- E. 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") the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP or RP program, the effective and proper administration of the EP or RP program, and/or the performance of contracts or other arrangements between the Authority and the Local 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 Local Utility's service tariffs and any agreement between the Authority and the Local Utility. An alternative basis for billing may be used provided the Parties agree in writing and the Local 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 ST WNY-1 or 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 ST 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 initiated, 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, ST WNY-1, or the Rules; (3) expiration of the Allocation by its own terms as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in ST 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, ST 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 A 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 A, 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
Attention: Manager – Business Power Allocations and Compliance
123 Main Street
White Plains, New York 10601
MED-BPAC@nypa.gov
Fax (914) 390-8156

To the Customer:

Galvstar LLC
Attention: Mr. Daniel Bain
301 West 57th Street, Suite 46-A,
New York, New York 10019
dbain@galvstar.com
Fax (212) 582-4723

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 U.S.C. §§ 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. Assignments and Transfers

The Customer may not assign or otherwise transfer an interest in this Agreement without written approval of the Authority.

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.

AGREED:

GALVSTAR LLC

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Title: _____

Date: _____

SCHEDULE A

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Galvstar LLC

Type of Allocation (EP/RP)	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
RP	2,000	1001 E. Delavan Avenue, Buffalo, New York	4/29/2008	9/30/2016

SCHEDULE B

EXPANSION POWER AND/OR REPLACEMENT POWER CUSTOMER 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 Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of November 1, 2011, the Customer shall employ at least fifty (50) full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B. The Base Employment Level is derived from (1) a stipulation by the Customer that there exist zero (0) jobs at the Facility at the time of the award of the Allocation by the Authority, and (2) a commitment by the Customer to create fifty (50) new jobs at the Facility.

CAPITAL INVESTMENT

The Customer has fulfilled the capital investment commitment for this Agreement.

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 AND/OR REPLACEMENT POWER AND ENERGY
to
Klein Steel Service 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 1 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 and/or Replacement Power and Energy ("Agreement") with Klein Steel Service Inc. ("Customer"), with offices and/or facilities at 1050 Military Road, Buffalo, New York 14217. The Authority and the Customer are from 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") and "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"), and 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 New York State;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP 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 Authority's Board of Trustees ("Trustees") have previously authorized the Customer's Allocation of EP and/or RP, which is scheduled to expire after June 30, 2013 on the "Expiration Date" specified in Schedule A to this Agreement;

WHEREAS, the Authority and the Customer are currently parties to an agreement with the Customer's local electric utility ("Local Utility") governing the sale of the Allocation to the Local Utility for resale to the Customer at its Facility, and such agreement is scheduled to expire on June 30, 2013 (the "Expiring Agreement");

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 Utility;

WHEREAS, such transmission and delivery service will be made in accordance

with the applicable tariffs of the Local Utility;

WHEREAS, the Parties have reached an agreement on a contract governing the direct sale of the Allocation to the Customer for remaining term of the Customer's Allocation, on the terms and conditions set forth in this Agreement.

WHEREAS, the Parties intend that this Agreement will govern the terms and conditions of the sale of the Allocation to the Customer, commencing on July 1, 2013 for the remaining term of the Allocation;

WHEREAS, the Authority has complied with requirements of PAL § 1009, which specifies the approval process for certain 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:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer for a certain term as specified in Schedule A.
- C. **Contract Demand** is as defined in ST 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, ST 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 (13).
- F. **Expiring Agreement** has the meaning set forth in the recitals.
- G. **Facility** means the Customer's place of business identified in Schedule A.
- H. **Firm Power** is as defined in ST WNY-1.
- I. **Firm Energy** is as defined in ST WNY-1.
- J. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).

- K. **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.
- L. **Hydro Projects** is a collective reference to the Project (defined below) and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- M. **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.
- N. **Local Utility** has the meaning set forth in the recitals.
- O. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- P. **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.
- Q. **Project** means the Niagara Power Project, FERC Project No. 2216.
- R. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).
- S. **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.
- T. **Service Tariff No. WNY-1** (or **ST WNY-1**) means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority. ST WNY-1 shall be applicable to Electric Service provided to the Customer on and after July 1, 2013.
- U. **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.
- V. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Customer Commitments" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy sold to the Customer at its request which the Authority procures from markets administered by the NYISO to replace

hydroelectricity that would otherwise have been supplied to the Customer under this Agreement.

X. **Taxes** is as defined in ST WNY-1.

Y. **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

II. **Electric Service**

- A. Subject to the other provisions of this Agreement, commencing July 1, 2013, the Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, ST WNY-1 and the Rules.
- B. 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.
- C. 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.
- D. The Contract Demand may not exceed the Allocation.

III. **Rates, Terms and Conditions**

- A. Subject to the other provisions of this Agreement, commencing July 1, 2013, Electric Service shall be sold to the Customer based on the rates, terms and conditions determined in accordance with this Agreement, ST WNY-1 and the Rules.
- B. The Customer may not resell or permit any other person to use any quantity of the EP 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.
- D. Notwithstanding any other provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by the Authority at any time upon 30 days prior written notice to the Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the Project and the Authority's competitive position with respect to other suppliers, the 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 the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy charges pursuant to this provision. Any rate increase to the 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, the Authority shall forward to the Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which the Authority will obtain the total of increased revenues and the bases upon which the Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as the Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion Power and/or Replacement Power Customer Commitments

Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Customer Commitments." The commitments agreed to in Schedule B are in addition to the other rights and obligations of the Parties provided for in the Agreement, ST WNY-1 and the Rules.

V. Rules and ST WNY-1

ST WNY-1, as may be modified or superseded from time to time by the Authority in its discretion, 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 ST WNY-1 and the Rules, the provisions of ST WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and ST WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Related Issues

- A. The Customer shall pay the Local Utility for transmission and delivery service associated with the Allocation in accordance with all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the Allocation of Firm Power and Firm Energy supplied by the Authority under this Agreement. To the extent the Authority incurs transmission and delivery service charges or other costs associated with the Allocation during the term of this Agreement, the Customer agrees to compensate the Authority for all such charges and costs incurred.
- B. 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 ST 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.

- C. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Local Utility pertaining to the Customer that the Authority and the local Utility determine is necessary to provide for the Allocation, sale and delivery of EP or RP to the Customer, the proper and efficient implementation of the EP and RP programs, billing related to EP or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- D. 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 Local Utility on terms and conditions that are acceptable to the Authority.
- E. 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") the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP or RP program, the effective and proper administration of the EP or RP program, and/or the performance of contracts or other arrangements between the Authority and the Local 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 Local Utility's service tariffs and any agreement between the Authority and the Local Utility. An alternative basis for billing may be used provided the Parties agree in writing and the Local 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 ST WNY-1 or 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 ST 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 initiated, 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, ST WNY-1, or the Rules; (3) expiration of the Allocation by its own terms as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in ST 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, ST 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 A 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 A, 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
Attention: Manager – Business Power Allocations and Compliance
123 Main Street
White Plains, New York 10601
MED-BPAC@nypa.gov
Fax (914) 390-8156

To the Customer:

Klein Steel Service Inc.
Attention: Ms. Laurie Leo
1050 Military Road
Buffalo, New York 14217
lleo@kleinsteel.com
Fax (585) 647-5175

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 U.S.C. §§ 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. Assignments and Transfers

The Customer may not assign or otherwise transfer an interest in this Agreement without written approval of the Authority.

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.

AGREED:

KLEIN STEEL SERVICE INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Title: _____

Date: _____

SCHEDULE A

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Klein Steel Service Inc.

Type of Allocation (EP/RP)	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
RP	2,000	1050 Military Road, Buffalo, New York	6/26/2010	11/30/2016

SCHEDULE B

EXPANSION POWER AND/OR REPLACEMENT POWER CUSTOMER 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 Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of December 1, 2011 the Customer shall employ at least eighty four (84) full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B. The Base Employment Level is derived from (1) a stipulation by the Customer that there exist forty seven (47) jobs at the Facility at the time of the award of the Allocation by the Authority, and (2) a commitment by the Customer to create thirty seven (37) new jobs at the Facility.

CAPITAL INVESTMENT

The Customer shall make capital investments at the Facility consisting of construction of and upgrades to the Facility that total at least \$8,200,000 (the “Capital Investment”). The Capital Investment is expected to consist of the following items and expenditures:

1: Manual feeding steel plate production line 1:	\$1.2 million
2: Full Coil Line (auto feeding production line 1):	\$ 3.5 million
<u>3: 2nd Full Coil Line (auto feeding production line 2):</u>	<u>\$ 3.5 million</u>
Total Capital Investment	\$8.2 million

The entire Capital Investment shall be made and the Facility shall be completed and fully operational not later than June 26, 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 at the sole discretion of the Authority upon a showing of good cause by the Customer.

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 AND/OR REPLACEMENT POWER AND ENERGY
to
MOD-PAC 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 1 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 and/or Replacement Power and Energy ("Agreement") with MOD-PAC Corporation ("Customer"), with offices and/or facilities at 1801 Elmwood Avenue, Buffalo, New York 14207. The Authority and the Customer are from 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") and "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"), and 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 New York State;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP 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 Authority's Board of Trustees ("Trustees") have previously authorized the Customer's Allocation of EP and/or RP, which is scheduled to expire after June 30, 2013 on the "Expiration Date" specified in Schedule A to this Agreement;

WHEREAS, the Authority and the Customer are currently parties to an agreement with the Customer's local electric utility ("Local Utility") governing the sale of the Allocation to the Local Utility for resale to the Customer at its Facility, and such agreement is scheduled to expire on June 30, 2013 (the "Expiring Agreement");

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 Utility;

WHEREAS, such transmission and delivery service will be made in accordance

with the applicable tariffs of the Local Utility;

WHEREAS, the Parties have reached an agreement on a contract governing the direct sale of the Allocation to the Customer for remaining term of the Customer's Allocation, on the terms and conditions set forth in this Agreement.

WHEREAS, the Parties intend that this Agreement will govern the terms and conditions of the sale of the Allocation to the Customer, commencing on July 1, 2013 for the remaining term of the Allocation;

WHEREAS, the Authority has complied with requirements of PAL § 1009, which specifies the approval process for certain 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:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer for a certain term as specified in Schedule A.
- C. **Contract Demand** is as defined in ST 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, ST 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 (13).
- F. **Expiring Agreement** has the meaning set forth in the recitals.
- G. **Facility** means the Customer's place of business identified in Schedule A.
- H. **Firm Power** is as defined in ST WNY-1.
- I. **Firm Energy** is as defined in ST WNY-1.
- J. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).

- K. **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.
- L. **Hydro Projects** is a collective reference to the Project (defined below) and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- M. **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.
- N. **Local Utility** has the meaning set forth in the recitals.
- O. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- P. **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.
- Q. **Project** means the Niagara Power Project, FERC Project No. 2216.
- R. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).
- S. **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.
- T. **Service Tariff No. WNY-1** (or **ST WNY-1**) means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority. ST WNY-1 shall be applicable to Electric Service provided to the Customer on and after July 1, 2013.
- U. **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.
- V. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Customer Commitments" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy sold to the Customer at its request which the Authority procures from markets administered by the NYISO to replace

hydroelectricity that would otherwise have been supplied to the Customer under this Agreement.

X. **Taxes** is as defined in ST WNY-1.

Y. **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

II. **Electric Service**

- A. Subject to the other provisions of this Agreement, commencing July 1, 2013, the Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, ST WNY-1 and the Rules.
- B. 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.
- C. 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.
- D. The Contract Demand may not exceed the Allocation.

III. **Rates, Terms and Conditions**

- A. Subject to the other provisions of this Agreement, commencing July 1, 2013, Electric Service shall be sold to the Customer based on the rates, terms and conditions determined in accordance with this Agreement, ST WNY-1 and the Rules.
- B. The Customer may not resell or permit any other person to use any quantity of the EP 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.
- D. Notwithstanding any other provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by the Authority at any time upon 30 days prior written notice to the Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the Project and the Authority's competitive position with respect to other suppliers, the 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 the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy charges pursuant to this provision. Any rate increase to the 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, the Authority shall forward to the Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which the Authority will obtain the total of increased revenues and the bases upon which the Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as the Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion Power and/or Replacement Power Customer Commitments

Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Customer Commitments." The commitments agreed to in Schedule B are in addition to the other rights and obligations of the Parties provided for in the Agreement, ST WNY-1 and the Rules.

V. Rules and ST WNY-1

ST WNY-1, as may be modified or superseded from time to time by the Authority in its discretion, 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 ST WNY-1 and the Rules, the provisions of ST WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and ST WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Related Issues

- A. The Customer shall pay the Local Utility for transmission and delivery service associated with the Allocation in accordance with all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the Allocation of Firm Power and Firm Energy supplied by the Authority under this Agreement. To the extent the Authority incurs transmission and delivery service charges or other costs associated with the Allocation during the term of this Agreement, the Customer agrees to compensate the Authority for all such charges and costs incurred.
- B. 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 ST 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.

- C. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Local Utility pertaining to the Customer that the Authority and the local Utility determine is necessary to provide for the Allocation, sale and delivery of EP or RP to the Customer, the proper and efficient implementation of the EP and RP programs, billing related to EP or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- D. 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 Local Utility on terms and conditions that are acceptable to the Authority.
- E. 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") the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP or RP program, the effective and proper administration of the EP or RP program, and/or the performance of contracts or other arrangements between the Authority and the Local 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 Local Utility's service tariffs and any agreement between the Authority and the Local Utility. An alternative basis for billing may be used provided the Parties agree in writing and the Local 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 ST WNY-1 or 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 ST 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 initiated, 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, ST WNY-1, or the Rules; (3) expiration of the Allocation by its own terms as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in ST 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, ST 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 A 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 A, 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
Attention: Manager – Business Power Allocations and Compliance
123 Main Street
White Plains, New York 10601
MED-BPAC@nypa.gov
Fax (914) 390-8156

To the Customer:

MOD-PAC Corporation
Attention: Mr. Daniel Geary
1801 Elmwood Avenue
Buffalo, New York 14207
dgeary@modpac.com
Fax (716) 447-9201

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 U.S.C. §§ 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. Assignments and Transfers

The Customer may not assign or otherwise transfer an interest in this Agreement without written approval of the Authority.

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:

MOD-PAC CORPORATION

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Title: _____

Date: _____

SCHEDULE A

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: MOD-PAC Corporation

Type of Allocation (EP/RP)	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
EP	400	1801 Elmwood Avenue, Buffalo, New York	12/15/2011	10/31/2019

SCHEDULE B

EXPANSION POWER AND/OR REPLACEMENT POWER CUSTOMER 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 Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of November 1, 2012, the Customer shall employ at least four hundred and five (405) full-time employees ("Base Employment Level") at the Customer's Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B. The Base Employment Level is derived from (1) a stipulation by the Customer that there exist three hundred and sixty (360) jobs at the Facility at the time of the award of the Allocation by the Authority, and (2) a commitment by the Customer to create forty five (45) new jobs at the Facility.

CAPITAL INVESTMENT

The Customer has fulfilled the capital investment commitment for this Agreement.

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 AND/OR REPLACEMENT POWER AND ENERGY

to

Niagara Coatings Services, 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 1 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 and/or Replacement Power and Energy ("Agreement") with Niagara Coatings Services, Inc. ("Customer"), with offices and/or facilities at 8025 Quarry Road, Niagara Falls, New York 14304. The Authority and the Customer are from 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") and "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"), and 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 New York State;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP 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 Authority's Board of Trustees ("Trustees") have previously authorized the Customer's Allocation of EP and/or RP, which is scheduled to expire after June 30, 2013 on the "Expiration Date" specified in Schedule A to this Agreement;

WHEREAS, the Authority and the Customer are currently parties to an agreement with the Customer's local electric utility ("Local Utility") governing the sale of the Allocation to the Local Utility for resale to the Customer at its Facility, and such agreement is scheduled to expire on June 30, 2013 (the "Expiring Agreement");

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 Utility;

WHEREAS, such transmission and delivery service will be made in accordance

with the applicable tariffs of the Local Utility;

WHEREAS, the Parties have reached an agreement on a contract governing the direct sale of the Allocation to the Customer for remaining term of the Customer's Allocation, on the terms and conditions set forth in this Agreement.

WHEREAS, the Parties intend that this Agreement will govern the terms and conditions of the sale of the Allocation to the Customer, commencing on July 1, 2013 for the remaining term of the Allocation;

WHEREAS, the Authority has complied with requirements of PAL § 1009, which specifies the approval process for certain 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:

I. Definitions

- A. **Agreement** means this Agreement.
- B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer for a certain term as specified in Schedule A.
- C. **Contract Demand** is as defined in ST 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, ST 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 (13).
- F. **Expiring Agreement** has the meaning set forth in the recitals.
- G. **Facility** means the Customer's place of business identified in Schedule A.
- H. **Firm Power** is as defined in ST WNY-1.
- I. **Firm Energy** is as defined in ST WNY-1.
- J. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).

- K. **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.
- L. **Hydro Projects** is a collective reference to the Project (defined below) and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- M. **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.
- N. **Local Utility** has the meaning set forth in the recitals.
- O. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- P. **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.
- Q. **Project** means the Niagara Power Project, FERC Project No. 2216.
- R. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).
- S. **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.
- T. **Service Tariff No. WNY-1** (or **ST WNY-1**) means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority. ST WNY-1 shall be applicable to Electric Service provided to the Customer on and after July 1, 2013.
- U. **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.
- V. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Customer Commitments" which is attached to and made part of this Agreement.
- W. **Substitute Energy** means energy sold to the Customer at its request which the Authority procures from markets administered by the NYISO to replace

hydroelectricity that would otherwise have been supplied to the Customer under this Agreement.

X. **Taxes** is as defined in ST WNY-1.

Y. **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

II. **Electric Service**

- A. Subject to the other provisions of this Agreement, commencing July 1, 2013, the Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, ST WNY-1 and the Rules.
- B. 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.
- C. 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.
- D. The Contract Demand may not exceed the Allocation.

III. **Rates, Terms and Conditions**

- A. Subject to the other provisions of this Agreement, commencing July 1, 2013, Electric Service shall be sold to the Customer based on the rates, terms and conditions determined in accordance with this Agreement, ST WNY-1 and the Rules.
- B. The Customer may not resell or permit any other person to use any quantity of the EP 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.
- D. Notwithstanding any other provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by the Authority at any time upon 30 days prior written notice to the Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the Project and the Authority's competitive position with respect to other suppliers, the 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 the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy charges pursuant to this provision. Any rate increase to the 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, the Authority shall forward to the Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which the Authority will obtain the total of increased revenues and the bases upon which the Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as the Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion Power and/or Replacement Power Customer Commitments

Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Customer Commitments." The commitments agreed to in Schedule B are in addition to the other rights and obligations of the Parties provided for in the Agreement, ST WNY-1 and the Rules.

V. Rules and ST WNY-1

ST WNY-1, as may be modified or superseded from time to time by the Authority in its discretion, 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 ST WNY-1 and the Rules, the provisions of ST WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and ST WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Related Issues

- A. The Customer shall pay the Local Utility for transmission and delivery service associated with the Allocation in accordance with all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the Allocation of Firm Power and Firm Energy supplied by the Authority under this Agreement. To the extent the Authority incurs transmission and delivery service charges or other costs associated with the Allocation during the term of this Agreement, the Customer agrees to compensate the Authority for all such charges and costs incurred.
- B. 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 ST 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.

- C. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Local Utility pertaining to the Customer that the Authority and the local Utility determine is necessary to provide for the Allocation, sale and delivery of EP or RP to the Customer, the proper and efficient implementation of the EP and RP programs, billing related to EP or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.
- D. 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 Local Utility on terms and conditions that are acceptable to the Authority.
- E. 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") the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP or RP program, the effective and proper administration of the EP or RP program, and/or the performance of contracts or other arrangements between the Authority and the Local 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 Local Utility's service tariffs and any agreement between the Authority and the Local Utility. An alternative basis for billing may be used provided the Parties agree in writing and the Local 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 ST WNY-1 or 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 ST 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 initiated, 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, ST WNY-1, or the Rules; (3) expiration of the Allocation by its own terms as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days' prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in ST 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, ST 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 A 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 A, 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
Attention: Manager – Business Power Allocations and Compliance
123 Main Street
White Plains, New York 10601
MED-BPAC@nypa.gov
Fax (914) 390-8156

To the Customer:

Niagara Coatings Services, Inc.
Attention: Mr. Allen Richards
8025 Quarry Road
Niagara Falls, New York 14304
arichards@niagaracoatings.com
Fax (716) 297-5603

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 U.S.C. §§ 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. Assignments and Transfers

The Customer may not assign or otherwise transfer an interest in this Agreement without written approval of the Authority.

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.

AGREED:

NIAGARA COATINGS SERVICES, INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Title: _____

Date: _____

SCHEDULE A

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Niagara Coatings Services, Inc.

Type of Allocation (EP/RP)	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
RP	200	8025 Quarry Road, Niagara Falls, New York	4/4/2011	11/30/2016

SCHEDULE B

EXPANSION POWER AND/OR REPLACEMENT POWER CUSTOMER 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 Facility upgrading periods when such events temporarily reduce plant employment levels or electrical demand as well as business cycle.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

Within three (3) years of December 1, 2011, the Customer shall employ at least seventeen (17) full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B. The Base Employment Level is derived from (1) a stipulation by the Customer that there exist fourteen (14) jobs at the Facility at the time of the award of the Allocation by the Authority, and (2) a commitment by the Customer to create three (3) new jobs at the Facility.

CAPITAL INVESTMENT

The Customer has fulfilled the capital investment commitment for this Agreement.

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

Exhibit "2d-B"
May 21, 2013

Number	Company Name	Program	City	County	Original Trustee Approval Date	Allocation (kW)	New Job Creation	Total Job Commitment	Project Capital Investment	Approved Allocation Term	Allocation Start Date ⁽¹⁾	Resale Agreement End Date	Proposed Direct Sale Contract Start Date	Proposed Direct Sale Contract Expiration Date
B-1	Buffalo Shredding and Recovery, LLC	EP	Buffalo	Erie	6/28/2011	1,200	22	22	\$12,500,000	5 Years	3/1/2012	6/30/2013	7/1/2013	2/28/2017
B-2	Citigroup Technology, Inc.	RP	Amherst	Erie	1/30/2007	1,100	500	500	\$8,000,000	5 Years	10/1/2008	6/30/2013	7/1/2013	9/30/2013
B-3	Galvstar LLC	RP	Buffalo	Erie	4/29/2008	2,000	50	50	\$30,000,000	5 Years	11/1/2011	6/30/2013	7/1/2013	9/30/2016
B-4	Klein Steel Service Inc.	RP	Tonawanda	Erie	6/29/2010	2,000	37	84	\$8,200,000	5 Years	12/1/2011	6/30/2013	7/1/2013	11/30/2016
B-5	MOD-PAC Corporation	EP	Buffalo	Erie	12/15/2011	400	45	405	\$6,000,000	7 Years	11/1/2012	6/30/2013	7/1/2013	10/31/2019
B-6	Niagara Coatings Services, Inc.	RP	Niagara Falls	Niagara	4/4/2011	200	3	17	\$300,000	5 Years	12/1/2011	6/30/2013	7/1/2013	11/30/2016
Totals						6,900	657	1,078	\$65,000,000					

(1) Each of the allocations commenced service under sale-for-resale agreements that expire on June 30, 2013

Power Authority Hearing

April 25, 2013



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AND ASSOCIATES

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New York State Power Authority
Thursday, April 25, 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
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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 contract 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 1. Niagara Gazette
- 17 2. Buffalo News
- 18 3. Buffalo Business First
- 19 4. Lewiston Porter Sentinel
- 20 5. Albany Times Union
- 21 6. Dunkirk Observer

22 Also pursuant to the Public Authorities Law,
23 notice of this hearing and a copy of the proposed
24 contract were sent to Governor Andrew Cuomo and the
25 following legislative leaders:

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

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

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

16 Your written statement may be of any length and
17 will appear in the record of the hearing in addition
18 to your oral statement. The record of the hearing
19 will remain open for additional comments or statements
20 through close of business Friday, April 26.

21 Any additional submissions should be mailed to
22 the Authority's Corporate Secretary at:
23 123 Main Street, 11-P.
24 White Plains, NY 10601;
25 or

1 faxed to (914) 390-8040;

2 or

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

4 A complete transcript of the hearing, along with
5 all written submissions, will be submitted to the
6 Authority's Trustees, who shall reconsider the terms
7 of the proposed contract and make changes as they deem
8 necessary or advisable in light of the comments
9 received.

10 The transcript of this hearing will also be made
11 available to the public for review at the Authority's
12 White Plains office and on the Authority's website
13 (www.nypa.gov).

14 After the Trustee's final review, the contract
15 will be forwarded to the Governor for his
16 consideration and approval.

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

19 At this point, I would like to introduce Mr.
20 James Pasquale, Senior Vice President of Economic
21 Development and Energy Efficiency at the Authority who
22 will provide additional details on the proposed direct
23 sale contract.

24 Thank you.

25 MR. PASQUALE: Thank you, Ms. Delince. Good

1 afternoon. My name is James F. Pasquale and I am the
2 Senior Vice-President of Economic Development and
3 Energy Efficiency at the New York Power Authority. I
4 am here today to present an overview of the proposed
5 form of contract applicable to hydropower allocations
6 held by six companies for the direct sale of Expansion
7 Power or Replacement Power, from the Niagara Power
8 Project commencing July 1, 2013.

9 Under Public Authorities Law Section 1005
10 Subsection 13, the Authority may allocate and sell
11 directly or by sale-for-resale, 250 MW of Expansion
12 Power, known as EP, and 445 MW of Replacement Power,
13 known as RP, to businesses located within 30 miles of
14 the Niagara Power Project, provided that the amount of
15 EP allocated to businesses in Chautauqua County on
16 January 1, 1987 shall continue to be allocated in
17 Chautauqua County.

18 Since the late 1980s, the Authority's sales of EP
19 and RP have been handled almost exclusively under
20 agreements with the local electric utilities - Niagara
21 Mohawk Power Corporation doing business as National
22 Grid, New York State Electric and Gas Corporation,
23 also known as NYSEG - both of which facilitated the
24 provision of Authority hydropower to end-use customers
25 on a sale-for-resale basis. These contractual

1 arrangements between the Authority and the utilities
2 expire January -- or June 30, 2013, necessitating new
3 direct sale contracts to facilitate the sale of
4 hydropower to customers having allocations with terms
5 expiring beyond that date.

6 This public hearing addresses the proposed
7 contracts for six such customers with allocations
8 whose terms extend beyond June 30, 2013. The
9 allocations are currently being delivered under
10 existing sale-and-resale contracts, and commencing
11 July 1, 2013, the proposed new contracts would cover
12 the remaining terms of the customers' allocations.
13 The six allocations totaling 6,900 kilowatts are:

- 14 * 1200 kilowatts to Buffalo Shredding and
15 Recovery, LLC located in Buffalo
- 16 * 1,100 kilowatts to Citigroup Technology,
17 Inc. located in Amherst.
- 18 * 2,000 kilowatts to Galvstar, LLC located in
19 Buffalo
- 20 * 2,000 kilowatts to Klein Steel Service,
21 Inc. located in Tonawanda.
- 22 * 400 kilowatts to MOD-PAC Corporation located in
23 Buffalo, and
- 24 * 200 kilowatts to Niagara Coating Services, Inc.
25 located in Niagara Falls.

1 In aggregate, the companies have committed to the
2 capital expansion of \$65 million to their Western New
3 York facilities while creating 657 jobs and retaining
4 421 existing jobs.

5 To summarize some of the pertinent provisions of
6 the proposed contracts, first, the contracts provide
7 for the direct billing of all hydropower supply
8 charges, all New York Independent System Operator,
9 Inc., also known as NYISO, charges and taxes.

10 Each contract would include customer's previously
11 agreed-upon commitments with respect to employment and
12 capital investment. The contract retains the
13 Authority's right to reduce or terminate customers'
14 allocations if employment, power utilization or
15 capital investment commitments are not met. For
16 example, the contracts include an annual job reporting
17 requirement and a job compliance threshold of 90
18 percent. Should a company's average annual employment
19 fall below the compliance threshold of 90 percent of
20 the employment commitment, the Authority has the right
21 to reduce the allocation on a pro rata basis.

22 Additionally, to accommodate non-payment risk
23 that could result from the direct billing arrangement,
24 the contract includes commercially reasonable
25 provisions concerning the Authority's ability to

1 charge late payment fees and to require deposits in
2 the event of customer failure to make payment for any
3 two monthly bills. These contract provisions are
4 consistent with recent Authority direct sale contracts
5 including the Authority's Recharge New York sales
6 contracts.

7 The contracts will serve the allocations in
8 accordance with the Authority's Service Tariff WNY-1
9 which specifies the rates and which is applicable to
10 all EP and RP allocations effective July 1, 2013. The
11 Service Tariff specifies a three-year rate phase-in to
12 a target rate based on the rate of the Authority's
13 other hydropower program, Preservation Power, to
14 ultimately ensure consistency among the Authority's
15 three hydropower programs. All six companies are
16 located in National Grid delivery service territory,
17 and therefore transmission and delivery service for
18 these allocations would continue to be provided by
19 National Grid in accordance with its Public Service
20 Commission-approved delivery service tariffs.

21 As Ms. Delince stated, the Authority will accept
22 your comments on the proposed contract until the close
23 of business on Friday, April 26th, 2013. I will now
24 turn the forum back to Ms. Delince.

25 MS. DELINCE: We have Mr. Frank?

1 MR. FRANK: Yes.

2 MS. DELINCE: Would you like to make an oral
3 statement?

4 MR. FRANK: Yes, if I could.

5 MS. DELINCE: Please state your name and your
6 affiliation for the record.

7 MR. FRANK: My name is Thomas Frank. I'm a
8 resident of the Village of Williamsville within the
9 Town of Amherst, and I'm working on a project for the
10 Western New York Power Proceeds Allocation Board as
11 far as the application for Western New York Economic
12 Development Fund Benefits having to do with the
13 Niagara National Heritage area, the Path Through
14 History Project. It's what the governor is calling
15 for to promote the tourism, this as a tourism
16 destination for the state. And what we're doing is
17 putting together -- I have a -- having to do with the
18 Western New York -- the three-year plan, the
19 transportation plan, what they're calling for as far
20 as the Niagara National Heritage Area is to have some
21 welcome centers that will be in conjunction with the
22 New York State Thruway. There are actually four
23 different or five different authorities that are
24 involved in this project having to do with Western New
25 York -- the Niagara Frontier Transportation Authority,

1 the Niagara Power Authority, the Thruway Authority,
2 and the Bridge Authority. That there's -- and this is
3 a part of the Western New York, the TIP, the
4 Transportation Improvement Plan, and the idea is to
5 upgrade, to do a part of one reaching forward for
6 Western New York's sustainability is to put together a
7 public/private sector partnership which will involve
8 the Seneca Nation as far as the Two Row Wampum Belt
9 Program, and hopefully with the Delaware North
10 Corporation to redesign and redevelop the travel plaza
11 in Clarence. And what they're doing is a study of the
12 transportation on Main Street in Williamsville and the
13 Town of Amherst, and it has to do with the -- they're
14 doing a study that will include the Niagara Falls
15 Boulevard, but also extend into the Ransom Road in
16 Clarence, and the idea, this is connected with a
17 relocation of the Williamsville thruway toll barrier
18 to Clarence to mitigate some of the negative impact of
19 the transportation, but also because the first Niagara
20 Power Project started back in the early 19th century
21 on the Onondaga Escarpment with the Williams Mill, and
22 this has to do with the historic preservation of
23 properties having to do with the -- much of history
24 and the connection to the bicentennial of the War of
25 1812. Thank you very much.

1 MS. DELINCE: Thank you. Do we have a copy of
2 your written statement, please?

3 MR. FRANK: I tried to get it off your website
4 and I've got a May 7th deadline, so I was putting
5 together the various components and I will e-mail it
6 to you if I can.

7 MS. DELINCE: The deadline is Friday.

8 MR. FRANK: Right.

9 MS. DELINCE: Thank you.

10 MR. FRANK: That's good.

11 MS. DELINCE: We will be here until 6:30.

12 (Whereupon, the hearing was open for further public
13 comment.)

14 MS. DELINCE: It is now 6:30. We have no
15 additional speakers, therefore this hearing is now
16 closed.

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	8:16,18	3:3;10:10	8:20	8:10
\$	appear (1) 4:17	both (1) 6:23	commitments (2) 8:11,15	customers' (2) 7:12;8:13
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New York Power Authority

Generating more than electricity

President & Chief Executive Officer Report

Gil Quiniones

May 21, 2013

Board of Trustees Meeting

Balanced Scorecard for April 2013

<i>Goal</i>	<i>Measure</i>	<i>YTD Target</i>	<i>YTD Actual</i>	<i>Status</i>	<i>Trend</i>
Maintain Infrastructure	Generation Market Readiness (%)	99.40	99.42		
	Transmission System Reliability (%)	94.85	95.64		
Financial Management	Debt Coverage Ratio (<i>Ratio</i>) Quarterly Measure Q1	2.4	2.75		
	O&M Budget Performance (<i>\$ Millions</i>)	117.5	119.8		
Energy Services	MMBTUs Saved (<i>Thousands</i>)	92.3	125.0		
	Energy Efficiency Investment in State Facilities (<i>\$ Millions</i>)	16.5	31.0		
Workforce Management	Retention (<i># of Touchpoints</i>) Quarterly Measure Q1	130	132		
Safety Leadership	DART Rate (<i>Index</i>)	0.78	0.77		
Environmental Responsibility	Environmental Incidents (<i>Units</i>)	11	3		

<u>Status</u>	
	Meeting or exceeding target
	Below target
	Significantly below target

<u>Trend</u>	
	Improving
	Stable
	Worsening

Highlights

- Build Smart NY-Steering Committee
- Energy Highway

Build Smart NY- Executive Committee

- Governor Andrew M. Cuomo issued Executive Order 88
- Goals:
 - Accelerate Implementation of energy efficiency improvements in state buildings
 - 20% energy use reduction in NYS buildings by 2020
- First Meeting of Executive Steering Committee—May 6, 2013
- Provides general oversight, identifies risks, addresses emerging issues and advises in policy
- Will meet quarterly
- NYPA is Chairing the Committee

BuildSmartNY

Energy Highway

- The Task Force issued the Update Report April 30
- Task Force is disbanded
- All Actions in the Blueprint are underway. Some of them:
 - PSC Orders issued to **ease transmission constraints** and plan for **major power plant retirements**
 - PSC Order issued to revise policies on extension of **natural gas service**; **NYPA Board approved** transmission life extension program
 - PSC Order issued to evaluate repowering; Solicitation issued for renewable resources; RGGI states proposed lower emissions cap
 - Nearly \$2.6 million in **funding awarded** to five Smart Grid demonstration projects





New York Power Authority

Generating more than electricity

Chief Operating Officer Report

Presented By:
Paul Tartaglia; P.E.
SVP Energy Resource Management
May 21, 2013
Board of Trustees Meeting

COO Report Overview

- Performance Measures
- Key Issues
 - Generation
 - Transmission
 - Safety
 - Environmental
 - People

Performance Measures

■ Corporate-Level Performance Summary

- Generation Market Readiness is above projections.
- Two significant operational events occurred in April:
 - **Generation** - At Niagara, a leak in the draft tube door of Robert Moses Unit 4 was found
 - **Transmission** – Y49, tripped due to an internally faulted A-phase cable

	April 2013		YTD	
NYPA OVERALL	Actual	Target	Actual	Target
Generation Market Readiness (%)	99.76	99.40	99.42	99.40
Transmission Reliability (%)	92.54	94.59	95.64	94.85
Environmental Incidents	1	3	3	32
DART Rate	1.44	0.78	0.77	0.78

Key Issues

- Generation
 - BG – transformer tap changers
 - SCPP – overhauls complete
 - Niagara – LPGP Unit Windings

- Transmission
 - Y-49 Outage

- Safety
 - Two DART incidents
 - Active Shooter training
 - APPA award

Key Issues

- Environmental
 - One reportable incident
- People



New York Power Authority

Generating more than electricity

Chief Financial Officer – Summary Report

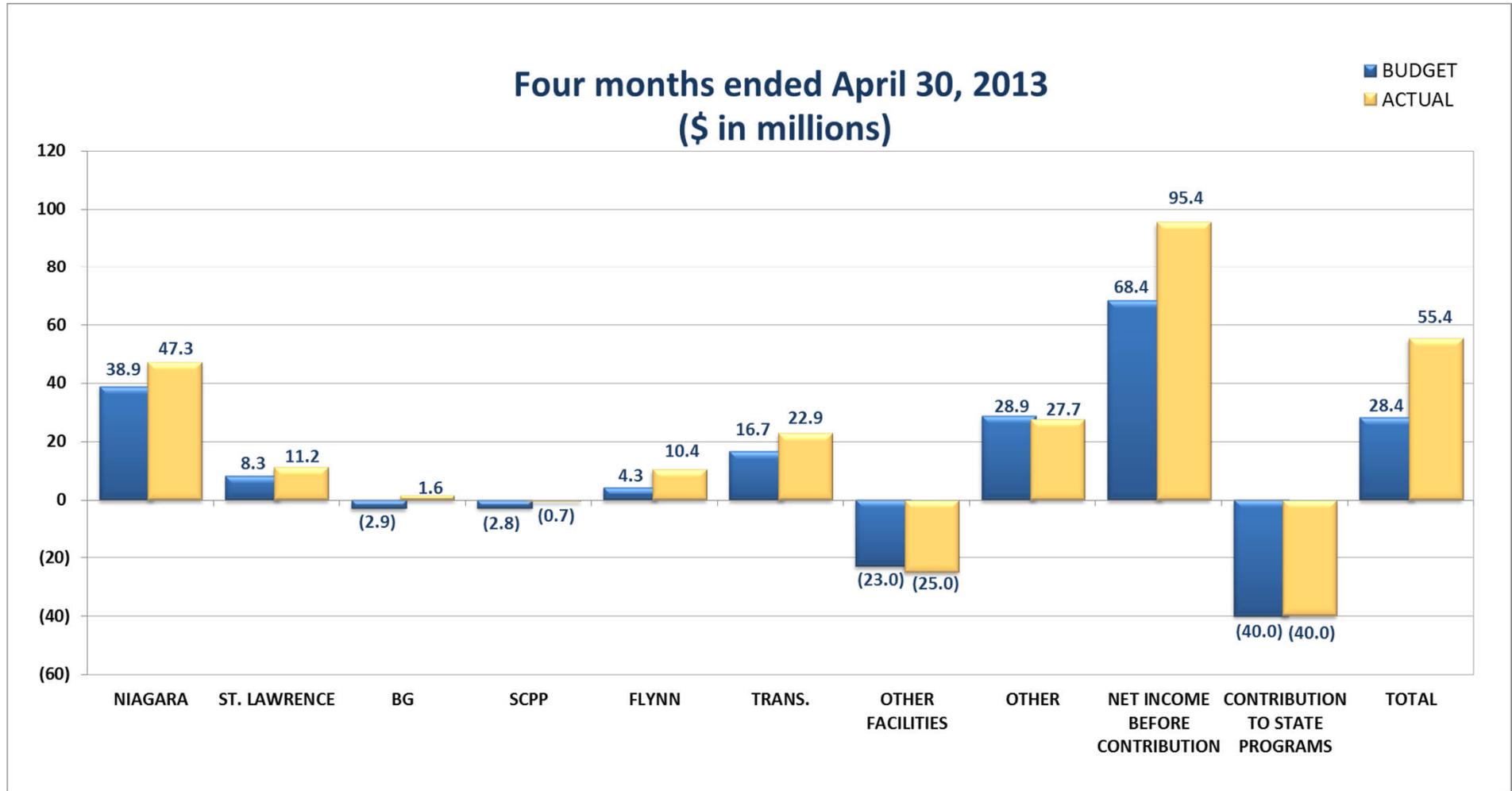
For the four months ended April 30, 2013

Executive Summary

■ Net Income

- Net income through April was \$55.4 million, which was \$27.0 million higher than the budget largely due to a higher net margin on sales (\$28.9 million) partially offset by higher operations maintenance expenses (\$2.3 million)
- Positive variances in net margins at the generating facilities (\$23.8 million) were substantially attributable to higher capacity and energy prices on market-based sales
 - Higher capacity prices stemming from the closing certain generating stations statewide has resulted in a positive impact, primarily at Niagara and Blenheim-Gilboa
 - Energy prices remained higher than anticipated, particularly in the downstate market, resulting in higher margins at Flynn and the SCPPs
- Transmission facility results were also higher than budget (\$5.1 million)
 - Proportionally higher energy prices in the downstate markets increased congestion costs, which had a positive impact on revenue earned by the Authority's FACTS project
- Year-to-date operations and maintenance expenses were higher primarily due to increased spending at the SCPP's (Brentwood combustion turbine and Gowanus bulkhead repairs)

Net Income



Executive Summary

■ Year-End Projection

- Net Income is expected to remain at levels above budget for the year with firmer capacity and energy prices and slightly higher than budgeted hydro generation as the principal drivers
 - **Capacity Prices** – With higher than expected capacity prices, Staff took steps to lock in these revenues by selling approximately half of the surplus capacity in the NYISO 6-month summer strip auction, thereby protecting these revenues from any potential downturn in the market
 - **Hydro Flows** – Coming out of the winter season, hydro generation is currently projected to run about 2% above budget for the year, but still about 7% below long-term average
- At currently projected levels, the Authority’s business requirements for cash flow, and liquidity are expected to be met

■ Risk Management Activities

- Following the Board’s approval last meeting of the updated governance documents – (the **Corporate Policy–Risk Management** and the **Executive Risk Management Committee Charter**) – work continues on a refresh of the risk inventory and the development of forward-looking Key Risk Indicators (KRIs)
- A full report will be provided later during this meeting

Recommended Award: Exhibit "A"

Applicant Name:	Launch NY	REDC Region:	Western New York
Project Type:	Innovation/Entrepreneur Development	County:	Erie & Niagara
Industry:	Several – Health/Life Sciences, high tech industries, Manufacturing, etc.	Locality:	Buffalo
Amount Requested:	\$5,418,000	Start Date:	June 2013
		Finish Date:	May 2014

RECOMMENDED OFFER

Recommended Total Award:	\$5,418,000
Total Project Cost:	\$7,693,513
% of Project Cost Recommended:	69%

REGIONAL IMPACT MEASUREMENTS

Number of Jobs Retained:	
Number of Jobs Created:	
Average Salary of Jobs:	TBD
Indirect Jobs Created	Over 1,000 (from business plan winners)
Other Impact	1,000 business plan applicants in first year exposed to the Buffalo Niagara region

PROJECT DESCRIPTION

Launch NY will create the most ambitious business plan competition (\$5M in awards) in the nation to attract entrepreneurs with new technology and products to locate their start up in the Buffalo Niagara Region. Launch will target life science, advanced manufacturing, high technology and MWBE participation in the plan competition. Launch will facilitate successful growth of new businesses and attraction of entrepreneurs with support of Entrepreneurs in Residence (management talent), incubation space and capital resulting in significant and sustainable job growth as well as an improved entrepreneur climate in the Region. The Business Plan Competition will be marketed broadly outside New York State to garner help in improving Buffalo Niagara’s image as a great place to start a business.

Business Plan competitions have a proven track record for assisting new businesses, and re-igniting regions. Two examples of success:

- The Rice Business Plan Competition: Starting in 2001, and billed as the “richest” with ~\$1million in prizes, the competition is aimed at students and has resulted in 199 business launched (average: half of total competitors, but rising as currently is 77%), 128 business successes (alive today or successful exit). Over \$460M in funding raised (majority in last 3 years).
- Start2Grow, Dortmund Germany: a business plan competition that regularly attracts 700+ applicants. The business plan competition commenced in 2000, has over 600 mentors, and has been responsible for over 700 companies and almost 4,000 jobs

.....

**Western New York Economic Development Fund
 Recommendation Memo**

OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED FOR THIS PROJECT	
SOURCE	AMOUNT
N/A	N/A
PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED	
SOURCE	AMOUNT
ESD	\$90,000
BASIS FOR RECOMMENDATION	
<p>This proposal has the potential to significantly change the entrepreneurial development environment in the Buffalo Niagara Region, enhance the Region’s image as a place where start-ups can succeed and directly assist 100’s of start-ups that can create upwards of 1,000 jobs. The Buffalo Niagara Region has long lacked meaningful support for entrepreneurs, including early stage financing, business development advisory services and other incubation support. At the same time, the Region has heavily invested in research while seeing little of that research translate into viable commercial enterprises in the Region. There are numerous examples of early stage technology companies that started in Buffalo Niagara, ultimately leaving the region to grow elsewhere where they could secure financing and management talent. The Launch NY organization and business plan project can significantly change that by offering incubation, management talent and advisement and early stage financing to new start-ups. In addition, because the business plan competition will be widely publicized, it is a great opportunity to promote the Region as one, open to and seeking entrepreneurs. The winners of the business plan competition are targeted on the key industries identified in the regional council plan (energy, agriculture, advanced manufacturing, health/life sciences, logistics, and financial services). It will also bring many visitors to the area and expose them to the wonderful attributes in the region as it attracts entrepreneurs to participate in the business plan competition from outside NYS, including Canada.</p>	

Applicants Deemed Ineligible

Line	Business	City	County	Economic Development Region	Business Description	Classification
1	Market Arcade Film and Arts Centre	Buffalo	Erie	Western NY	Cinematic Screenings, Live Theater, Arts Center	Retail ¹

Projects Deemed Ineligible

Line	Business	City	County	Economic Development Region	Business Description	Classification
2	Niagara Falls Memorial Medical Center	Niagara Falls	Niagara	Western NY	Onsite health care services and eldercare living	Retail ¹

Applicants Not Recommended for an Award

Line	Business	City	County	Economic Development Region	Business Description	Project Type
3	NBT Solutions, LLC	Buffalo	Erie	Western NY	Software developer	Business Investment
4	Roycroft Campus Corporation	Village of East Aurora	Erie	Western NY	Historic preservation, arts education, and cultural tourism	Tourism/Marketing
5	Twin Cities Community Outreach, Inc.	Tonawanda	Niagara	Western NY	Non-Profit organization housing NT Meals On Wheels, the Food Pantry, and the Clothes Closet	Other
6	Zoological Society of Buffalo, Inc.	Buffalo	Erie	Western NY	Exhibition of exotic animals from around the world; education programs for children and adults	Infrastructure/Downtown Investment
7	Graycliff Conservancy, Inc.	Town of Derby	Erie	Western NY	Museum	Infrastructure/Downtown Investment & Tourism Marketing
8	First Choice Health in collaboration with Niagara Hospice	Niagara Falls	Niagara	Western NY	Managed long term care case management for chronically ill medicaid enrollees	Health/Life Sciences
9	Content Savvy	Snyder	Erie	Western NY	Software developer	Innovation/Entrepreneur Development

Withdrawn Applications

Line	Business	Classification
10	Cleveland BioLabs, Inc.	Withdrawn by applicant
11	Trek, Inc.	Withdrawn by applicant
12	Buffalo Industries	Withdrawn by applicant
13	Niagara University	Withdrawn by applicant
14	Niagara Label Company	Withdrawn by applicant

Incomplete Applications

Line	Business	Classification
15	McGuire Development A.K.A Compass East A.K.A 425 Michigan Avenue, LLC.	Incomplete

¹ In accordance with EDL § 189-a(5), the Board defines "retail business" to mean a business that is primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain goods or services.

Western NY Power Proceeds Allocation Board
Exhibit C

Criteria adapted from the Western NY Power Proceeds Allocation Board's
"Procedures for the Review of Applications for Fund Benefits"

1. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council ("REDC") having responsibility for the region in which an Eligible Project is located.¹ The Western New York Regional Economic Development Council which is responsible for Eligible Projects in Erie and Niagara Counties Strategies & Priorities are:
 - Promote "Smart Growth" by investing in areas that infrastructure already exists and achieves certain goals, such as: preserving historic buildings; reviving downtowns; reviving main streets; investing in existing neighborhoods; and investing in former industrial sites. A project consistent with Smart Growth will also focus on: enhancing walkability; enhancing multiple modes of transportation; connecting disadvantaged communities to employment clusters; spurring mixed-use private investment in existing communities and preserving/enhancing natural lands and or resources.
 - Promote workforce development by increasing diversity in the labor force, developing and cultivating that includes workers with advancement potential, underemployed, unemployed and special population; align education and skills training to job market for current and future industry needs.
 - Foster entrepreneurship and new business formation and growth. Designing a plan that brings new technologies and/or products to the marketplace, increases new start ups in strategic industries and facilitates the commercialization of products that can lead to job growth in the Region.
 - Increase the industry profile of agriculture in WNY by: creating better access to markets; creating new products; creating new more efficient processes; creating strong regional brands; creating programs that promote careers in agriculture.
 - Utilize Western New York's proximity to Canadian and U.S. population centers to advance economic development in WNY. Bi-national projects will: utilize cross-border planning to create transportation and logistical infrastructure; improve operational relationships; promote the attractiveness of WNY as a hub for global trade.

¹ As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, "revitalization" projects.

- Position the WNY region as a global energy hub through new sources of clean energy, energy efficiency and energy efficient transportation.
- Support growth of advanced manufacturing by making research more available to manufacturers to help them innovate.
- Spur growth in the health and life sciences industry through improved commercialization, recruit high profile research talent and reducing the cost burden of healthcare while improving health outcomes.
- Expand the scope of higher education by increasing accessibility to Higher Education for communities that currently have limited access to educational opportunities; better aligning education with the industry needs and creating support structures for start-ups which will assist start-ups with commercialization, business planning, workforce preparation, facilities, etc.
- Grow visitors and visitor spending by raising the profile of WNY as a national and international destination; connect multiple tourist destinations in WNY; improve the profile of the WNY Gateway to the United States.

For more information on the Western New York Regional Economic Development Council please go to <http://regionalcouncils.ny.gov/content/western-new-york>.

2. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council (“REDC”) having responsibility for the region in which an Eligible Project is located.² The Finger Lakes Regional Economic Development Council which is responsible for Eligible Projects in Orleans and Genesee Counties Strategies & Priorities can be found at: <http://regionalcouncils.ny.gov/content/finger-lakes>.
3. The number of jobs that would be created as a result of an award of Fund Benefits.
4. The applicant’s long term commitment to the region as evidenced the current and/or planned capital investment in applicant’s facilities in the region.
5. The ratio of the number of jobs to be created to the amount of Fund Benefits requested.
6. The types of jobs that would be created, as measured by wage and benefit levels, security and stability of employment.
7. The amount of capital investment, including the type and cost of buildings, equipment and facilities, proposed to be constructed, enlarged or installed.
8. The extent to which an award of Fund Benefits would affect the overall productivity or competitiveness of the applicant and its existing employment.
9. The extent to which an award of Fund Benefits may result in a competitive disadvantage for other business in the State.

² As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, “revitalization” projects.

10. The growth potential of the applicant's facilities and the contribution of economic strength to the area in which the applicant's facilities are or would be located.
 11. The extent of the applicant's willingness to satisfy affirmative action goals.
 12. The extent to which an award of Fund Benefits is consistent with state, regional and local economic development strategies and priorities and supported by local units of government in the area in which the business is located.
 13. The impact of an award of Fund Benefits on the operation of any other facilities of the applicant, and on other businesses within the region.
 14. That the business is likely to close, partially close or relocate resulting in the loss of a substantial number of jobs.
 15. That the applicant is an important employer in the community and efforts to revitalize the business are in long-term interests of both employers and the community.
 16. That a reasonable prospect exists that the proposed award of Fund Benefits will enable the applicant to remain competitive and become profitable and preserve jobs for a substantial period of time.
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Applicant Name:	Launch NY	REDC Region:	Western New York
Project Type:	Innovation/Entrepreneur Development	County:	Erie & Niagara
Industry:	Several – Health/Life Sciences, high tech industries, Manufacturing, etc.	Locality:	Buffalo
Amount Requested:	\$5,418,000	Start Date:	June 2013
		Finish Date:	May 2014
RECOMMENDED OFFER			
Recommended Total Award:	\$5,418,000		
Total Project Cost:	\$7,693,513		
% of Project Cost Recommended:	69%		
REGIONAL IMPACT MEASUREMENTS			
Number of Jobs Retained:			
Number of Jobs Created:			
Average Salary of Jobs:	TBD		
Indirect Jobs Created	Over 1,000 (from business plan winners)		
Other Impact	1,000 business plan applicants in first year exposed to the Buffalo Niagara region		
PROJECT DESCRIPTION			
<p>Launch NY will create the most ambitious business plan competition (\$5M in awards) in the nation to attract entrepreneurs with new technology and products to locate their start up in the Buffalo Niagara Region. Launch will target life science, advanced manufacturing, high technology and MWBE participation in the plan competition. Launch will facilitate successful growth of new businesses and attraction of entrepreneurs with support of Entrepreneurs in Residence (management talent), incubation space and capital resulting in significant and sustainable job growth as well as an improved entrepreneur climate in the Region. The Business Plan Competition will be marketed broadly outside New York State to garner help in improving Buffalo Niagara’s image as a great place to start a business.</p> <p>Business Plan competitions have a proven track record for assisting new businesses, and re-igniting regions. Two examples of success:</p> <ul style="list-style-type: none"> • The Rice Business Plan Competition: Starting in 2001, and billed as the “richest” with ~\$1million in prizes, the competition is aimed at students and has resulted in 199 business launched (average: half of total competitors, but rising as currently is 77%), 128 business successes (alive today or successful exit). Over \$460M in funding raised (majority in last 3 years). • Start2Grow, Dortmund Germany: a business plan competition that regularly attracts 700+ applicants. The business plan competition commenced in 2000, has over 600 mentors, and has been responsible for over 700 companies and almost 4,000 jobs 			

OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED FOR THIS PROJECT	
SOURCE	AMOUNT
N/A	N/A
PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED	
SOURCE	AMOUNT
ESD	\$90,000
BASIS FOR RECOMMENDATION	
<p>This proposal has the potential to significantly change the entrepreneurial development environment in the Buffalo Niagara Region, enhance the Region’s image as a place where start-ups can succeed and directly assist 100’s of start-ups that can create upwards of 1,000 jobs. The Buffalo Niagara Region has long lacked meaningful support for entrepreneurs, including early stage financing, business development advisory services and other incubation support. At the same time, the Region has heavily invested in research while seeing little of that research translate into viable commercial enterprises in the Region. There are numerous examples of early stage technology companies that started in Buffalo Niagara, ultimately leaving the region to grow elsewhere where they could secure financing and management talent. The Launch NY organization and business plan project can significantly change that by offering incubation, management talent and advisement and early stage financing to new start-ups. In addition, because the business plan competition will be widely publicized, it is a great opportunity to promote the Region as one, open to and seeking entrepreneurs. The winners of the business plan competition are targeted on the key industries identified in the regional council plan (energy, agriculture, advanced manufacturing, health/life sciences, logistics, and financial services). It will also bring many visitors to the area and expose them to the wonderful attributes in the region as it attracts entrepreneurs to participate in the business plan competition from outside NYS, including Canada.</p>	

**Western New York Economic Development Fund
Recommendation Memo**

Applicant Name:	Diversified Manufacturing	REDC Region:	Western New York
Project Type:	Business Investment	County:	Niagara
Industry:	Manufacturing	Locality:	Lockport
Amount Requested:	\$950,000	Start Date:	May 2013
		Finish Date:	October 2013
RECOMMENDED OFFER			
Recommended Total Award:		\$500,000 maximum, depending on assistance received from ESD and applicants confirmation that they can undertake project with \$500,000 in total grant funds instead of full \$950,000 requested.	
Total Project Cost:		\$4,984,000	
% of Project Cost Recommended:		10%	
REGIONAL IMPACT MEASUREMENTS			
Number of Jobs Retained:		145	
Number of Jobs Created:		0	
Average Salary of Jobs:		\$ 58,275	
Indirect Jobs Created			
Other Impact			
PROJECT DESCRIPTION			
<p>Diversified Manufacturing, a fabrication, machining and assembly shop is consolidating its facilities in Amherst and Lockport into the Lockport location, through an expansion. The consolidation is necessary to eliminate significant fixed costs of running two separate facilities that are causing a financial strain on the company. The company has sold and is closing the Amherst facility. If the expansion of the Lockport facility does not occur, the company will sell off a portion of its operations and reduce its workforce by 46 jobs. The project consists of the construction of a 45,000 sq.ft. high bay addition to the existing 120,000 sq.ft. manufacturing plant located in Lockport. The company has secured significant debt financing and private equity for the expansion but still has a financing gap to fund the facility expansion.</p>			
OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED			
SOURCE		AMOUNT	
ESD		\$250,000 under consideration	
IDA		\$250,000 loan	
NYPA: Recharge NY		196kW/per month	
Other: Lockport Dev. Corporation		\$250,000 Loan	
PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED			
SOURCE		AMOUNT	
Power for Jobs		255kW/per month	
BASIS FOR RECOMMENDATION			

Without grant assistance from the state, the applicant has demonstrated that the consolidation and expansion project will not go forward, putting 46 good paying manufacturing jobs at high risk of being lost. This consolidation project will ultimately improve the financial stability and growth opportunities for this company. This project will also help secure an additional 99 jobs currently in Lockport as it will help the company become more efficient. The company pays very good wages at an average of over \$58,000.

Manufacturing continues to be a critical component of the WNY economy as the third largest employment sector. It is one of the top industry sectors identified in the Regional Council strategy with a particular emphasis on the need to help manufacturer's innovation and improve productivity to remain competitive.

If the applicant receives grant assistance, they have demonstrated their ability to move forward with the project. The applicant has successfully secured private financing, debt financing from other private and public sources and cannot take on any additional debt to support this project.

The project is consistent with smart growth principles as it will expand on an existing site that already has infrastructure, is in a Brownfield Opportunity area and a developed area.

There is a buyer in place for the applicant's current Amherst facility, making way for another local company to expand.

**Western New York Economic Development Fund
Recommendation Memo**

Applicant Name:	Coolture	REDC Region:	Western New York
Project Type:	Business Investment	County:	Erie
Industry:	Advanced Manufacturing, Health/Life Sciences	Locality:	Buffalo
Amount Requested:	\$300,000	Start Date:	June 2013
		Finish Date:	December 2015
RECOMMENDED OFFER			
Recommended Total Award:	\$300,000		
Total Project Cost:	\$3,150,000		
% of Project Cost Recommended:	10 %		
REGIONAL IMPACT MEASUREMENTS			
Number of Jobs Retained:	5		
Number of Jobs Created:	32		
Average Salary of Jobs:	\$45,313		
Indirect Jobs Created			
Other Impact			
PROJECT DESCRIPTION			
<p>Coolture introduced the first athletic-styled cooling apparel designed to improve human performance during exercise, physical therapy, leisure activities, competitive sports, or whenever heat becomes a challenge; a life-changing product for those who are chronically ill and/or active and athletic. Recently Coolture has gained great momentum and the demand for our product is growing faster than the supply. We have asked for approximately 10% of our project cost to help our company ramp up production and grow our brand and our employment base at an accelerated pace. We believe this project will lead to the next great Buffalo company that will gain Global notoriety, shine a spotlight on the new Western New York entrepreneurial friendly community and provide new employment opportunities for under-represented communities.</p>			
OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED			
SOURCE		AMOUNT	
N/A		N/A	
PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED			
SOURCE		AMOUNT	
N/A		N/A	
BASIS FOR RECOMMENDATION			

This project is based in Advanced Manufacturing and is striving to become the example of the kind of success an entrepreneurial venture can experience in Western New York. The applicant has demonstrated a desire to grow new jobs and is providing job opportunities to historically underrepresented populations. The company is contributing significant equity to the project as well. The applicant is contributing to the renaissance of the City of Buffalo by pursuing space in currently vacant buildings that will be redeveloped, preferably in a “green” manner. This applicant has demonstrated great commitment to smart growth, eco friendly design and workforce development, all of which represent the priorities of the Western New York Region.

Applicant Name:	Content Savvy, Inc.	REDC Region:	Western New York
Project Type:	Innovation/Entrepreneur Development	County:	Erie
Industry:	All (software to benefit all industries)	Locality:	Snyder
Amount Requested:	\$500,000	Total Project Cost:	\$3,643,000
REGIONAL IMPACT MEASUREMENTS			
Number of Jobs Retained:	12 (current project workforce)		
Number of Jobs Created:	5+		
Average Salary of Jobs:	Not Listed		
Indirect Jobs Created			
Other Impact			
PROJECT DESCRIPTION			
<p>Content Savvy offers software as a service (SaaS) solutions to organizations enabling them to leverage “big data” for real-time competitive advantage and smarter decision making. Competitive intelligence covers many mission critical business functions including reputation tracking, industry tracking, sales prospecting, trend spotting, etc. It allows companies to stay ahead of the news, ward off potential PR crises, and gather rapid research when exploring new opportunities.</p>			
OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED FOR THIS PROJECT			
SOURCE		AMOUNT	
N/A		N/A	
PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED			
SOURCE		AMOUNT	
N/A		N/A	
BASIS FOR RECOMMENDATION			
<p>This company has been offered funding assistance from Innovate NY, a venture capital fund supported by State assistance, which should move the project forward.</p>			

**Western New York Economic Development Fund
Recommendation Memo**

Applicant Name:	Graycliff Conservancy, Inc.	REDC Region:	Western New York
Project Type:	Infrastructure/Downtown Investment & Tourism Marketing	County:	Erie
Industry:	Tourism	Locality:	Derby
Amount Requested:	\$219,088	Total Project Cost:	\$219,088
REGIONAL IMPACT MEASUREMENTS			
Number of Jobs Retained:	0		
Number of Jobs Created:	0		
Average Salary of Jobs:	N/A		
Indirect Jobs Created	0		
Other Impact			
PROJECT DESCRIPTION			
Complete the restoration of the interior of the Graycliff's Estate Foster House, which will allow tours of the building; purchase of a point-of-sale system to track visitorship both for Graycliff and its tourism partners.			
OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED FOR THIS PROJECT			
SOURCE		AMOUNT	
N/A		N/A	
PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED			
SOURCE		AMOUNT	
NYS EPF		\$149,782	
NYS EPF		\$125,000	
BASIS FOR RECOMMENDATION			
Graycliff has received recent state assistance for renovations and they did not identify any other leverage/private fundraising, or equity contribution.			

Applicant Name:	NBT Solutions, Inc.	REDC Region:	Western New York
Project Type:	Business Investment	County:	Erie
Industry:	Logistics/Trade	Locality:	Buffalo
Amount Requested:	\$33,230	Total Project Cost:	\$166,150
REGIONAL IMPACT MEASUREMENTS			
Number of Jobs Retained:	3		
Number of Jobs Created:	2		
Average Salary of Jobs:	\$62,000		
Indirect Jobs Created	0		
Other Impact			
PROJECT DESCRIPTION			
<p>On March 16, 2010, the FCC's (Federal Communications Commission) National Broadband Plan was unveiled in an effort to improve broadband Internet access throughout the United States by 2020. The American Recovery and Reinvestment Act of 2009 (ARRA) required that the FCC draft the National Broadband Plan which is intended to achieve affordability and maximizing use of broadband to advance consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, employee training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.</p> <p>The plan is having an impact on the number of households now connected to the Internet. In its report issued in November of 2013, RVA, LLC estimated that Fiber to the Home (FTTH) services are now available to 21.3 million North American homes, an increase of more than 10 percent over the past six months. In addition, the report goes on to say that all but eight of nearly 880 FTTH service providers surveyed have fewer than 30,000 subscribers, with only five having more than 50,000 access lines and 97 percent of them having fewer than 10,000. "While large providers such as Verizon in the U.S., Bell and Bell Aliant in Canada and Telmex in Mexico continue to be very important, small providers such as rural telcos, real estate developers, small competitive providers and even rural electric cops are playing a key role in driving the expansion of fiber to the home," said Michael Render, president of RVA LLC, which tracks FTTH deployment for the Council.</p> <p>The implications of the report are that the gap in broadband and Internet services are being filled by smaller providers. NBT Solution believes- and our market research confirms- that as these small providers grow they will require tools to help them design, manage, and market, the fiber assets they are putting in place. Through a series of focus group meetings with small fiber provides such as GWI (Maine) and Pangaea (North Carolina) we have determined that there is not a fiber optic management tool available to small fiber providers. The products that are on the market are too expensive, require large licensing fees, are "feature-bloated", and require extensive training and setup to use. Our proposed project is to design, build, and market a web-based, geospatial fiber optic management tool that is intended for small fiber companies (200-2000 miles of fiber). The application will help these organizations with the lifecycle of fiber optic construction and management by helping them with the costing and sizing required at the design phase of a project; the marketing of these fiber assets to clients; and the maintenance of these assets. The product will be cloud-based to eliminate large computer technology investments by the fiber providers and it will be built on open source technologies to minimize licensing fees. Clients will pay for the application using a subscription payment model that includes monthly payments.</p>			

OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED FOR THIS PROJECT	
SOURCE	AMOUNT
N/A	N/A
PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED	
SOURCE	AMOUNT
N/A	N/A
BASIS FOR RECOMMENDATION	
<p>Although the project has merits and it is likely to benefit the company, the applicant indicates the project will proceed without an allocation of Fund benefits over a longer time horizon. It was also not clear if the applicant sought any loan assistance to help finance the working capital request for this project.</p>	

Applicant Name:	Niagara Hospice/First Choice Health	REDC Region:	Western New York
Project Type:	Business Investment	County:	Niagara
Industry:	Health/Life Sciences	Locality:	Niagara Falls
Amount Requested:	\$500,000	Total Project Cost:	\$1,192,254
REGIONAL IMPACT MEASUREMENTS			
Number of Jobs Retained:	0		
Number of Jobs Created:	27		
Average Salary of Jobs:	Undetermined		
Indirect Jobs Created	200		
Other Impact			
PROJECT DESCRIPTION			
Through comprehensive case management, goals include: Keep enrollees living healthier in their homes; Increase employment opportunities; Reduce Medicaid waste/abuse and provide greater access to healthcare; Create cost savings for NYS Medicaid program reducing counties/state share of Medicaid costs; Enhance viability of WNY network providers to the program; reduce inappropriate utilization of nursing home admissions, ER, Urgent Care & inpatient admissions, and promote prevention/patient safety.			
OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED FOR THIS PROJECT			
SOURCE		AMOUNT	
N/A		N/A	
PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED			
SOURCE		AMOUNT	
N/A		N/A	
BASIS FOR RECOMMENDATION			
Although the social/health benefits of this program may be beneficial to the community, the project does not have direct economic development benefits that warrant a Fund award. In addition, the applicant is requesting funds to pay for another state agency's (NYDOH) requirement of a reserve fund.			

Applicant Name:	Roycroft Campus Corporation	REDC Region:	Western New York
Project Type:	Tourism/Marketing	County:	Erie
Industry:	Preservation	Locality:	East Aurora
Amount Requested:	\$150,000	Total Project Cost:	\$150,000
REGIONAL IMPACT MEASUREMENTS			
Number of Jobs Retained:	0		
Number of Jobs Created:	2		
Average Salary of Jobs:	N/A		
Indirect Jobs Created	0		
Other Impact			
PROJECT DESCRIPTION			
<p>The Roycroft Campus, located in the village of East Aurora, is undergoing restoration to its grandeur of the turn of the 20th Century. The Copper Shop, built in 1902, is operated as an Arts & Crafts Gallery and Gift Shop, the gathering and concluding point for tours, a demonstration area for Roycroft Era typesetting printing, and administrative offices. Work to be completed in this phase of the project includes restoration of exterior concrete blocks, windows, and doors.</p>			
OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED FOR THIS PROJECT			
SOURCE		AMOUNT	
NYS EPF		\$100,000	
PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED			
SOURCE		AMOUNT	
CCAP		\$250,000	
Capital Grant		\$1,500,000	
CCAP		\$100,000	
BASIS FOR RECOMMENDATION			
<p>NYS has already made significant investment into the Roycroft Campus which includes an award of \$100,000 toward this project.</p>			

**Western New York Economic Development Fund
Recommendation Memo**

Applicant Name:	Twin Cities Community Outreach, Inc.	REDC Region:	Western New York
Project Type:	Other	County:	Niagara
Industry:	Health/Life Sciences	Locality:	Tonawanda
Amount Requested:	\$175,000	Total Project Cost:	\$185,000
REGIONAL IMPACT MEASUREMENTS			
Number of Jobs Retained:	0		
Number of Jobs Created:	0		
Average Salary of Jobs:	100% Volunteer facility		
Indirect Jobs Created	0		
Other Impact			
PROJECT DESCRIPTION			
We have three projects; one of which is of dire need. The projects are: (1) roof replacement, which is by far our greatest need as we must provide adequate facility for our non-profit agencies; (2) stand-by generator, to provide power in the event of an outage, resulting in the loss of thousands of dollars worth of perishable food; and, (3) solar panels, to reduce future utility costs.			
OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED FOR THIS PROJECT			
SOURCE		AMOUNT	
N/A		N/A	
PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED			
SOURCE		AMOUNT	
N/A		N/A	
BASIS FOR RECOMMENDATION			
The services provided by the organizations housed in the applicant's facility seem to provide valuable social services to the community; however, the Fund benefits are designed to promote economic development in the designated area. This is not an economic development project.			

Applicant Name:	Zoological Society of Buffalo, Inc.	REDC Region:	Western New York
Project Type:	Infrastructure/Downtown Investment	County:	Erie
Industry:	Tourism	Locality:	City of Buffalo
Amount Requested:	\$1,000,000	Total Project Cost:	\$13,936,356
REGIONAL IMPACT MEASUREMENTS			
Number of Jobs Retained:	0		
Number of Jobs Created:	4		
Average Salary of Jobs:	\$40,613		
Indirect Jobs Created	0		
Other Impact			
PROJECT DESCRIPTION			
<p>The Buffalo Zoo is requesting \$1 million to assist in the funding of a new \$14 million polar bear habitat. The current bear exhibit, last updated in the 1930s, does not meet modern standards of the Association of Zoos and Aquariums. As a result, Buffalo's adult polar bears have had to be relocated to other zoos out of state. Unless a new exhibit is built, the loss of the Zoo's most popular species will become permanent, which will be devastating to attendance and financial stability.</p>			
OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED FOR THIS PROJECT			
SOURCE	AMOUNT		
Erie County & City of Buffalo	\$4,085,000		
ESD/Other State	\$926,000		

**Western New York Economic Development Fund
 Recommendation Memo**

PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED	
SOURCE	AMOUNT
EDF	\$37,500
CEFAP	\$100,000
EOF	\$ 1,250,000
Community Projects Grant	\$6,750,000
BASIS FOR RECOMMENDATION	
<p>Since 2002, the Zoo has been the recipient of various grants from NYS, Erie County and the City of Buffalo totaling \$13,000,000 for various renovation projects at the Zoo. For this project (arctic polar bear exhibit), the Zoo has secured over \$5,000,000 to date in public funded grants.</p>	

**Western New York Economic Development Fund
Recommendation Memo Finding**

Applicant Name:	Market Arcade Film & Arts Center, Inc.	REDC Region:	Western New York
Project Type:	Infrastructure/Downtown Investment	County:	Erie
Industry:	Arts & Entertainment	Locality:	Buffalo
Amount Requested:	\$1,300,000	Total Project Cost:	\$1,850,000

PROJECT DESCRIPTION

Market Arcade Film & Arts Center must upgrade to digital projection in mid-2013 or it will be forced to close. This project would mean an upgrade of film projection equipment for commercial movie viewing.

BASIS FOR RECOMMENDATION

Economic Development Law (“EDL”) § 189-a(5) defines “eligible projects” and further excludes certain categories of projects from such definition, including “retail businesses” as defined by the WNYPPAB and “residential properties” . As noted above, the Board has defined “retail business” to mean “a business that is primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain goods or services”.

Based on a review of the application and the Board’s definition of “retail business,” Staff recommends that the Board find and determine that the project is not an eligible project. The application submitted by the Market Arcade Film & Arts Center, Inc. proposes a project that constitutes a retail business.

Applicant Name:	Niagara Falls Memorial Medical Center	REDC Region:	Western New York
Project Type:	Workforce Development	County:	Niagara
Industry:	Health/Life Sciences	Locality:	Niagara Falls
Amount Requested:	\$2,000,000	Total Project Cost:	\$13,376,411

PROJECT DESCRIPTION

Transformation of vacant South Jr. High School into a vibrant Center for Community Health and assisted living programs. The project is located on a Brownfield site. This project will turn one of the 3 floors of the building into a Senior residence and another floor will be designed for carry out medical services.

BASIS FOR RECOMMENDATION

Economic Development Law (“EDL”) § 189-a(5) defines “eligible projects” and further excludes certain categories of projects from such definition, including “retail businesses” as defined by the WNYPPAB and “residential properties” . As noted above, the Board has defined “retail business” to mean “a business that is primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain goods or services”.

Based on a review of the application and the Board’s definition of “retail business,” Staff recommends that the Board find and determine that the application proposes a project that is not an eligible project. The application submitted by the Niagara Falls Memorial Medical Center proposes a project that is both a retail business and a residential property.



New York Power Authority

Generating more than electricity

Risk Management Update

William Nadeau/Frank Deaton
SVP and Chief Risk Officer/Director Enterprise Risk

May 21, 2013

Board of Trustees Meeting

NYPA's Risk Management History

Concept Introduction

Trustee Commitment – 2009

- Creation of Enterprise Risk Department
- Initial approach

Risk Inventory Build-out

- Bottoms-up assessment approach – 2010-12
- 2012 – Participation of all Business Units/operating facilities

Risk Metrics

Governance

- Formalize and align to existing governance structure
- Clarify roles and responsibilities

Enterprise Risk Report – starts to tell the story

2013 and Beyond – Realizing Value

Assessment Process – maturity

- Top-down – enterprise/top risks
- Bottom-up – inform enterprise/top risks
- Risk Workshops
- Response Plans

Emerging Risks

- Internal – risk as part of the discussion
- External – enhance awareness

2013 – Next Steps



Executive Risk Management Committee (ERMC)

- *Priority Consensus*
- *Top Risks*

Incorporate Risk in Capital Allocation

- *Asset Investment Planning*



Governance
- Finalize Materials
- Audit Committee Update

Complete March 2013



Key Risk Indicators (KRI)

- *Development*

Enhance Coordination

- *Strategy*
- *Audit*
- *Compliance*





New York Power Authority

Generating more than electricity

Risk Mitigation Strategy

Lewiston Pump Generating Plant Life Extension and Modernization Program

John Canale

Vice President – Project Management

May 21, 2013

Trustee Meeting

NYPA Previous and Current Life Extension and Modernization Projects

- NYPA has undertaken several Life Extension and Modernization Projects (LEMs) at our Generation Facilities.
- Each LEM faced its own set of unique challenges.
- But all had similar risks regarding schedule, global sourcing, shipping, potential for force majeure, unforeseen conditions, environmental and resources.
- We are here today to discuss some of our risk mitigation strategies.

LEMs	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total Cost
GENERATION																															\$1,174M
RMNPP																															\$298M
St. Lawrence																															\$281M
BG																															\$135M
LPGP																															\$460M



Sampling of Fabrication Locations for LPGP LEM

Major Contracts Awarded	Location
Pump/Turbine Runner Components, Head Covers, Wicket Gates and Shafts	Slovenia, Canada, China, South Korea (respectively)
Motor/Generator	Brazil, Canada
Potheads	Illinois
Generator Step Up Transformers	China
Transformer Transfer Car	New York
Exciters	Virginia
Circuit Breakers	Puerto Rico
Control System Integration	Maine
Servomotors	Alabama, Netherlands



Risk Mitigation Strategy - Schedule

Risk	Risk Mitigation Strategy
Long Project Duration	Maintain and update an overall Unit Project Schedule, coordinate and participate in contractor/vendor schedule update meetings.
Aggressive Schedule	Release material in advance. Order spare parts. Coordinate activities multiple contractors/vendors. Integrated unit schedule. Incorporate “lessons learned” into future work.
Storage of equipment	Lease/rent/build additional space for storage of equipment. Define space needs early. Determine need based on project criteria (uniformity of equipment, schedule, etc.)
Equipment consistency , maintenance & performance	Release material for multiple units. Continue with QA presence in vendor facilities.

Risk Mitigation Strategy – Global Sourcing

Risk	Risk Mitigation Strategy
Quality (Global Sourcing)	Engage QA & expeditors at vendor facilities to ensure equipment and material quality and schedule adherence.
Differing Codes/Standards	Provide additional Engineering time to review and interpret and additional QA support to inspect materials.
Language Barrier	Engage local bi-lingual inspectors and include clauses in contracts for English speaking counterparts.
Time Zones	Conduct meetings and conferences at times where all parties can reasonably meet.
Travel	Include additional dollars in the budget for travel to foreign destinations as well as local fabrication/ machine shops. Use videoconferencing to facilitate conversation.
Exchange Rates	Include exchange rate clauses into the RFQ's/contract documents for the locations where work is being performed.
Escalation Indices	Include indices in the RFQ's/contract documents for both material and labor escalation. If no US index is appropriate a mutually agreed upon index should be used.
Cultural Differences	Be aware of various cultural differences and ask vendors prior to award for any insight into work hours and holidays that they may be used to. Some places shut down for extended holidays.



Inconsistent wrapping

Failed HiPot Indication



Risk Mitigation Strategy – Shipping

Risk	Risk Mitigation Strategy
Shipping	<p>Schedule shipments & request permits early.</p> <p>Conduct shipping study to determine shipping restrictions.</p> <p>Tracking of Shipments.</p> <p>Store equipment on site and at off site storage facilities (Portable cranes may be required to offload larger inventory).</p>
Delivery	<p>Walkthroughs of the delivery entrances to the site as well as determination of the final location of equipment should be performed in advance of deliveries and a rigging plan should be provided by the vendors.</p>



Risk Mitigation Strategy – Force Majeure

Risk	Risk Mitigation Strategy
Earthquake/Tsunami	Develop Recovery Schedules, work additional shifts in factories to recover time and fabricate additional equipment that may be required. Shift work to other locations unaffected by natural disaster.



Risk Mitigation Strategy – Unforeseen Conditions

Risk	Risk Mitigation Strategy
Site Conditions	Equipment conditions should be inspected to the best extent possible. Assumptions as to wear of certain components should be conservative. Work additional shifts at site to account for unforeseen unit conditions.
Facility Closings	Discussions with vendors must occur early regarding any foreseeable issues at their facilities. When not advised, contingency and recovery plans will be worked on immediately. Additional factory locations must be identified to continue work.
Facility Fires	Recovery schedule must be worked on immediately.



Crack on Lower Facing Plate



Stay Ring O-Ring Groove Deteriorated Condition



GSU #4 JSHP Stop Work Order Plant Accident 2/14/12

Risk Mitigation Strategy – Environmental

Risk	Risk Mitigation Strategy
Lead	All paint is assumed to contain lead and OSHA standards are required to be followed. New “lead free” paint is allowed to contain lead.
Asbestos	Perform Additional Testing as required, vendor code interpretations Request, maintain and update HASPs from Vendors Work with Stakeholders to Identify Possible ACM, PCBs and Lead
PCB's	Testing for PCB's should occur (at the earliest) one year prior to starting work. An abatement plan and disposal plan must be developed. Require vendor HASPs prior to starting work
Silica	Silica in dust created by grinding or cutting operations requires additional containment and ventilation

Photos of New & Refurbished Unit LPGP LEM Components



*Crown for Third Runner
(Slovenia)*



*Blade Machining for Third Runner
(Slovenia)*



Wicket Gates for Second Unit (China)



*Original Turbine Shaft to be refurbished
(Canada)*

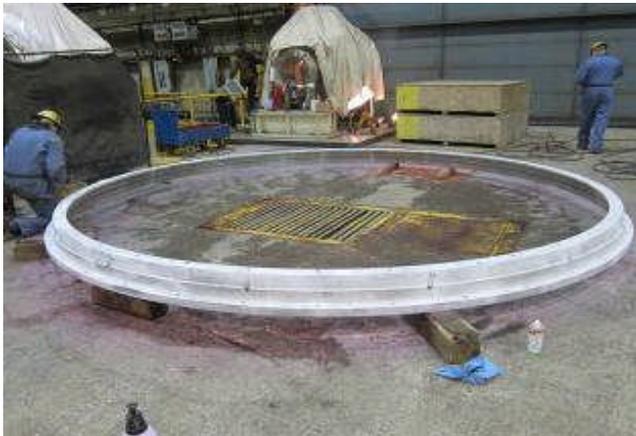
Photos of New Unit LPGP LEM Components



Runner Unit 11 – In Assembly Bay (LPGP)



Outer head cover – Installation (LPGP)



Head cover wear ring – final inspection (Canada)



Inner head cover – Delivered (LPGP)

Photos of New Unit LPGP LEM Components



Unit Control Board – Factory Acceptance Testing (Maine)



Unit Control Board – front view (Maine)