

September 24, 2013

**MEMORANDUM TO THE TRUSTEES**

**FROM THE PRESIDENT and CHIEF EXECUTIVE OFFICE**

**SUBJECT: Firm Market Power Service Tariff and Western  
New York Service Tariff Amendments –  
Notice of Adoption**

**SUMMARY**

The Trustees are requested to take final action to approve: (1) the replacement of the Authority's two current direct firm power service tariffs, Service Tariff Nos. 1 and 1B ("ST 1" and "ST 1B") applicable to certain market power customers with the proposed "Schedule of Rates for Sale of Firm Market Power," Service Tariff No. 1C ("ST 1C"); and (2) amend the current Western New York ("WNY") service tariff, Service Tariff No. WNY-1 ("ST WNY-1") which is applicable to the Authority's Expansion Power ("EP") and Replacement Power ("RP") customers. The proposed ST 1C and ST WNY-1 are attached as Exhibits "A" and "B," respectively. As proposed, these tariff revisions would become effective with the October 2013 billing period.

**BACKGROUND**

At their May 21, 2013 meeting, the Trustees directed the publication in the *New York State Register* ("State Register") of a notice that the Authority proposed to make several administrative changes to the Authority's current market tariffs and WNY tariff. The *State Register* notice was published on June 12, 2013 in accordance with the State Administrative Procedure Act ("SAPA"). The public comment period closed on July 29, 2013.

As explained in the May 21st memorandum to the Trustees, the Authority proposed these tariff changes in order to:

- Provide consistency with the Authority's other tariffs;
- Improve clarity and organization;
- Clarify the Authority's role with direct service billing by adding provisions addressing estimated billing, adjustments to charges, rendition and payment of bills, late payment charges, and deposits;
- Add provisions that have been included in other Authority tariffs and are applicable to the service provided to these customer groups; and
- Eliminate provisions that are no longer relevant.

In addition to the changes proposed at the May 21st meeting, the Authority proposes to make some ministerial formatting changes to the WNY tariff to further improve the tariff's organization and make it more consistent with the Authority's other service tariffs. Such

additional changes are administrative in nature, do not affect production rates or billing procedures, and make no substantive change to the original proposal in this SAPA proceeding.

## DISCUSSION

No comments were received in relation to the proposed ST-1C applicable to certain market power customers. Timely written comments were submitted by Power for Economic Prosperity (“PEP”) concerning the proposed ST WNY-1 changes, which are attached as Exhibit “C.” PEP is an organization that represents several large industrial consumers in New York State, many of whom purchase EP or RP from the Authority. A summary of the comments received, along with Authority staff’s analysis and recommendations are set forth below. Revisions consistent with such recommendations are incorporated in the service tariffs for which approval is requested today.

### Issue 1: Agreement References in Load Split Methodology Definition

PEP commented that the proposed definition of the term “Load Split Methodology (‘LSM’)” in the tariff revisions for ST WNY-1 excludes reference to “an Agreement between the Authority and the Customer, or an Agreement between the Authority, the Customer and the Customer’s local electric utility, or such utility’s tariff...” In addition, PEP expressed that this clarification should be incorporated into all sections of the tariff referencing the Agreements as they relate to the term LSM.

#### Staff Analysis:

The Authority accepts PEP’s proposed changes to the LSM’s definition in ST WNY-1. Staff has clarified the definition of the term Load Split Methodology in ST WNY-1 to include references to Customer Agreements involving the Authority and/or the Customer’s local electric utility.

### Issue 2: “Liquidated Damages” Term

PEP commented that the inclusion of the term “liquidated damages” in Section IV.G. of the WNY tariff, pertaining to the rendition and payment of bills, is inappropriate and should be deleted from the tariff. PEP states that “liquidated damages” is a legal term that references monetary compensation “awarded by a court judgment or by contract stipulation.” PEP argues that the interest provision in ST WNY-1 is a penalty to the customer and should not be deemed as liquidated damages. PEP proposed that all references to the term liquidated damages in ST WNY-1 should be deleted from the tariff.

#### Staff Analysis:

The Authority disagrees with PEP’s request to delete the “liquidated damages” term. The Authority currently employs this term in its other service tariffs where it performs direct billing, most notably in its Recharge New York tariff, Service Tariff No. RNY-1. In addition, the Authority’s service tariffs are incorporated into its power sales contracts, so this liquidated damages provision operates like a contractual stipulation. Black’s Law Dictionary defines liquidated damages as “an amount contractually stipulated as a reasonable estimation of actual

damages to be recovered by one party if the other breaches.”<sup>1</sup> There has been no suggestion that assessing interest charges in the manner described is an unreasonable way to be compensated for the harm resulting from late payments. Accordingly, the Authority declines to make the requested change.

### FISCAL INFORMATION

Adoption of the proposed ST WNY-1 and ST 1C will have no financial impact. The changes proposed are administrative in nature and will have no effect on current production rates.

### RECOMMENDATION

The Director – Market Analysis and Administration recommends that the attached amended WNY tariff, applicable to the Authority’s Expansion Power and Replacement Power customers, and the proposed market power tariff, applicable to certain Authority market power customers, be approved and that the Trustees authorize the Corporate Secretary to file a Notice of Adoption for publication in the *New York State Register* in accordance with the State Administrative Procedure Act. The requested effective date of these tariffs is October 1, 2013.

It is also recommended that the Senior Vice President – Economic Development and Energy Efficiency, or his designee, be authorized to issue written notice of adoption and the revised tariff leaves, as necessary, to the affected customers.

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

Gil C. Quiniones  
President and Chief Executive Officer

Att.  
NOA – Market and WNY  
Tariff Amendments

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<sup>1</sup> *Black’s Law Dictionary* at p. 447 (9<sup>th</sup> ed. 2009).

## RESOLUTION

RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency or his designee be, and hereby is, authorized to issue written notice of this final action by the Trustees to the affected Customers as recommended in the attached memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Corporate Secretary of the Authority be, and hereby is, directed to file such notices as may be required with the New York State Department of State for publication in the *New York State Register*; and be it further

RESOLVED, That the 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 delivery any and all certificates, agreements and other documents to effectuates the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.



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 20<sup>th</sup> 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 1<sup>st</sup> 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

- 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

**Agreement:** An executed “Agreement for the Sale of Expansion and/or Replacement Power and Energy” between the Authority and the Customer (each as defined below).

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

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

**Customer:** A business 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.

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

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

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

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

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

**Load Split Methodology** or **LSM**: A 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, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer 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".

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

**Rate Year** or **RY**: The period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

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

**Service Tariff**: This Service Tariff No. WNY-1.

**Target Rate**: This term 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, any contract between the Authority and the Customer, or any contract between the Authority, the Customer 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 (10<sup>th</sup>) 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 15<sup>th</sup> 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		<b>1.03</b>

- 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>	
<b>TOTAL</b>	<b>13,434,511</b>	<b>215,442,827</b>	<b>6.24</b>
<u>Measuring Year -1 (2011)</u>			
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>	
<b>TOTAL</b>	<b>13,016,880</b>	<b>209,059,931</b>	<b>6.23</b>
	<b>Ratio of MY/MY-1</b>		<b>1.00</b>

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

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

**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			<b>1.016</b>

**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 FOR ECONOMIC PROSPERITY'S COMMENTS ON THE  
PROPOSED RULEMAKING OF THE POWER AUTHORITY OF THE  
STATE OF NEW YORK I.D. NO. PAS-24-12-00013-P**

Preliminary Statement

In accordance with the Notice of Proposed Rulemaking published in the New York State Register on June 12, 2013, the Power for Economic Prosperity (“PEP”) group hereby files its comments requesting modifications to the proposed amendments to the tariff WNY-1. PEP is a coalition of manufacturing companies that purchase Replacement Power (“RP”) and Expansion Power (“EP”) pursuant to certain agreements and WNY-1. As set forth below, PEP urges the Power Authority to revise its proposed amendments to the tariff to: (1) include a reference to the Customer’s agreements with the Authority and the Customer’s agreements with the local electric utility in the provisions relating to “Load Split Methodology;” and (2) remove the reference to “liquidated damages” in the provisions relating to the payment of bills.

Load Split Methodology

The proposed tariff amendments include a definition of the term “Load Split Methodology” or “LSM” which states that the load split methodology applicable to a Customer’s allocation “...is usually provided for in an agreement between the Authority and the Customer’s local electric utility or such utility’s tariff regarding the delivery of WNY Firm Power.” (WNY- 1, Section II J). This definition is incomplete because the LSM is also provided for in agreements between the Customer and the Authority and three way agreements executed by the Customer, the Authority and the local electric utility. For National Grid customers, the LSM is provided for in the “Agreement Regarding Treatment of Allocations of New York Power Authority Expansion Power and Replacement Power Beginning January 1, 2012 and Thereafter” which was executed by the Authority, National Grid, PEP, and Multiple Intervenors. Consequently, in order to ensure that the definition is accurate, PEP proposes that the definition reference agreements

between the Customer and the Authority and the Customer and the local electric utility.

PEP recommends that the definition be revised to state that the LSM “is usually provided for in an agreement between the Authority and the Customer’s local electric utility, an Agreement between the Authority and the Customer, or an Agreement between the Authority, the Customer and the Customer’s local electric utility, or such utility’s tariff...” This clarification should track through to other sections of the proposed tariff in which there is a reference to the agreements as they pertain to the term LSM.

### Liquidated Damages

Section IV G pertains to the rendition and payment of bills. Subsection 3 provides that interest charges resulting from the late payment of bills will “be added thereto [to the amount due] as liquidated damages, and thereafter, as further liquidated damages...” The use of the term “liquidated damages” is inappropriate in a tariff and should be deleted. This is a legal term referencing monetary compensation that is awarded by a court judgment or by a contract stipulation. The interest provision in the tariff is a penalty and should not be denominated as liquidated damages. The references to liquidated damages should be deleted from the tariff.

### Conclusion

For the reasons stated above, PEP’s proposed amendments to WNY-1 should be incorporated into the final tariff.

Respectfully,

Barbara S. Brenner ([bbrenner@whitebrenner.com](mailto:bbrenner@whitebrenner.com))

On behalf of Power for Economic Prosperity

