

January 27, 2015

MEMORANDUM TO THE TRUSTEES

FROM THE PRESIDENT and CHIEF EXECUTIVE OFFICER

SUBJECT: Extension of Hydropower Contracts with Upstate Investor-Owned Utilities for the Benefit of Rural and Domestic Consumers – Transmittal to the Governor

SUMMARY

The Trustees are requested to authorize: (1) the proposed contract extensions (“Contract Extensions”) for the sale to Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”), New York State Electric and Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RGE”) (collectively, the “Utilities”) of firm peaking hydropower, totaling 360 MW; and (2) in accordance with Public Authorities Law (“PAL”) §1009, transmittal of the Contract Extensions to the Governor for his review and to request his approval of the Contract Extensions. The form of the Contract Extensions with National Grid, NYSEG and RGE is attached as Exhibit “A,” Exhibit “B” and Exhibit “C,” respectively. This request follows the public hearing and comment period on the form of the Contract Extensions that was authorized by the Trustees at their October 15, 2014 meeting. The public hearing was held on January 8, 2015. The transcript of the public hearing is attached as Exhibit “D.”

BACKGROUND

In accordance with hydropower contracts signed with the Utilities in 1990 (“1990 Hydro Contracts”) and subsequent contract extensions, the Utilities have purchased both firm power and firm peaking power from the St. Lawrence/FDR and Niagara Power Projects.

The Utilities have purchased such power at the Authority’s cost-based hydropower rate, the benefits of which have been passed on to the Utilities’ residential and small farm customers (also referred to as their rural and domestic or “R&D consumers”) without markup, through the electric service provided by the Utilities under their retail tariffs.

Chapter 60 (Part CC) of the Laws of 2011 created the Recharge New York Power Program (“RNY Program”). This law authorized the Authority to use the firm hydropower previously allocated to the Utilities for the RNY Program. *See* PAL § 1005(13-a).

Effective August 1, 2011, the Authority withdrew the firm power allocations from the Utilities in accordance with the withdrawal provisions of the 2010 contract extensions and the new law, and terminated the firm power allocations of 189 MW for National Grid, 167 MW for NYSEG and 99 MW for RGE, but continued to sell the firm peaking power to the Utilities.

Beginning with the 2012 extension of the 1990 Hydro Contracts, the Authority's Trustees approved a two-year contract extension for the peaking hydropower. The Contract Extensions currently before the Trustees would extend the 1990 Hydro Contracts for up to three years (i.e., through December 31, 2017).

DISCUSSION

The Contract Extensions would provide for the sale of the peaking power in the amounts indicated above through December 31, 2017. The Contract Extensions specify the terms and conditions that would apply to the sale of the peaking power, including provisions providing for the cancellation of the Contract Extensions/allocation, with NYPA having the right to terminate each Contract Extension upon thirty days' notice to the Utilities, and each of the Utilities having the right to terminate its Contract Extension after one year, upon thirty days' notice to the Authority.

At their meeting of October 15, 2014, the Trustees authorized a public hearing on the Contract Extensions. To avoid an interruption of the financial benefits the peaking power provides to the R&D customers, the Trustees also authorized staff to execute the Contract Extensions on an interim basis pending the completion of the PAL § 1009 process. Accordingly, the Contract Extensions provide for their cancellation in the event that the Governor does not approve the Contract Extensions pursuant to PAL §1009.

In accordance with PAL §1009, a public hearing was held on the Contract Extensions on January 8, 2015, at the Authority's Niagara Project's Power Vista in Lewiston, New York. No oral statements made at the public hearing and no written statements were submitted. Therefore, the Authority has determined that no modifications to the Contract Extensions are required.

FISCAL INFORMATION

The Contract Extensions would provide that the Utilities continue to pay for firm peaking hydropower at the same rates they are currently charged, i.e., the cost-based rates that are currently charged to the Authority's preference customers and determined in accordance with the Authority's rate-setting methodologies and principles. The Trustees approved a preference power rate increase at their November 2011 meeting, which became effective in the December 2011 billing period. The Contract Extensions would reflect the new preference power rates. Accordingly, there will be no fiscal impact to the Authority associated with these Contract Extensions.

RECOMMENDATION

The Manager – Power Contracts recommends that the Trustees approve: (1) the terms of the Contract Extensions with Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric and Gas Corporation, and Rochester Gas and Electric Corporation; and (2) authorize transmittal of the Contract Extensions to the Governor for his consideration in accordance with PAL §1009.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the proposed contract extensions (“Contract Extensions”) for the sale of hydropower to Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”), New York State Electric and Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RGE”) be submitted to the Governor for review with a request that the Contract Extensions be approved, and that copies of the Contract Extensions 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, in accordance with Public Authorities Law §1009; and be it further

RESOLVED, That the Chairman, the Vice Chair, 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, certifications and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

2014 Amendment to 1990 Service Agreement

This 2014 Amendment to 1990 Service Agreement, dated this ____ day of _____, 2014 is made between Niagara Mohawk Power Corporation, d/b/a National Grid (“Company”) and the Power Authority of the State of New York (“Authority”).

WHEREAS, the Company and the Authority are parties to an agreement dated February 22, 1989 under which the Authority has sold certain quantities of hydroelectric power and energy in accordance with Authority Service Tariff (“ST”) No. 41 and ST. No. 42 from Authority’s Niagara and St. Lawrence Projects to Company for resale to its rural and residential consumers (the “1990 Service Agreement”).

WHEREAS, Company and Authority have previously modified and extended the 1990 Service Agreement, most recently by the “2012 Amendment to 1990 Service Agreement” (the “2012 Amendment”).

WHEREAS, by letter dated June 29, 2011, Authority withdrew all 189 MW of Firm Hydroelectric Power and Energy allocated under ST No. 41 and terminated service under the 1990 Service Agreement under ST No. 41 with respect to all 189 MW of Firm Hydroelectric Power and Energy, effective August 1, 2011, for use in the Recharge New York Power Program created pursuant to Chapter 60 (Part CC) of the Laws of 2011 (the “Firm Power and Energy Withdrawal/Termination”).

WHEREAS, Company and Authority agree to further modify and extend certain terms of the 1990 Service Agreement as follows:

- 1) As a result of the Authority’s Firm Power and Energy Withdrawal/Termination, the amount of Firm Hydroelectric Power and Energy allocated to Company under ST No. 41 is zero (0), and the Firm Peaking Power allocation of 175 MW under ST No. 42 will remain unchanged.
- 2) Article E - Rates. The current text is deleted in its entirety and is replaced with the following text.

“The rates charged by the Authority under this Agreement shall be established In accordance with this Article.

The Authority shall charge and Company shall pay the preference power rates adopted by the Authority on November 15, 2011, as such rates may be revised from time to time. Company waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority on November 15, 2011, except as otherwise provided for below.

Company waives any challenges to any of the following methodologies and principles used by the Authority to set future preference power rates, numbers (i) through (vii) as set forth in the “January 2003 Report on Hydroelectric Production Rates” as modified by the April 2003 “Staff Analysis of Public Comments and Recommendations”:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “*Auer Settlement*”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (i.e., retiree health benefits).
- (vii) Rate Stabilization Reserve (RSR) methodology.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Company shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.”

- 3) Article F - Transmission. The current text is deleted in its entirety and is replaced with the following text.

“In accordance with the terms of the existing transmission service agreement, which by its terms will expire on August 31, 2007, Company will cease taking transmission service from Authority and will instead take transmission service under the New York Independent System Operator’s (“NYISO”) Open Access Transmission Tariff. Company agrees to settle any outstanding transmission charges that may apply prior to September 1, 2007 including any subsequent NYISO true up settlements.”

- 4) Article G - Notification. In the contact address for Authority replace “10 Columbus Circle, New York, NY 10019” with 123 Main Street, White Plains, NY 10601”.
- 5) Article J- Cancellation or Reduction. The following sentence is added at the end of Article J:

Company may also cancel or reduce such service during the period from January 1, 2016 through December 31, 2017, for any reason upon thirty (30) days’ prior written notice to the Authority.

6) Article K - Restoration of Withdrawn Power and/or Energy is deleted in its entirety.

7) Article L - Term of Service, is revised to read as follows:

“Service under this contract shall commence at 12:01 A.M. on January 1, 1990 and shall continue unless cancelled as provided for In the “Withdrawals of Power and/or Energy” or the “Cancellation or Reduction” provisions until December 31, 2017, subject to earlier termination by the Authority at any time with respect to any or all of the quantities of power and energy provided hereunder on at least thirty (30) days’ prior written notice to Company.”

8) Article M - Availability of Energy - Firm and Firm Peaking Hydroelectric Power Service. In the third paragraph, line 1, starting with the words “In the event that...” through “... minimize the impact of such reductions.” on line 10, replace with the following:

“The Authority will have the right to reduce on a pro rata basis the amount of energy provided to Company under Service Tariff No. 42 if such reductions are necessary due to low flow (i.e. hydrologic) conditions at the Authority's Niagara Project hydroelectric generating station. In the event that hydrologic conditions require the Authority to reduce the amount of energy provided to Company, reductions as a percentage of the otherwise required, energy deliveries will be the same for all firm Niagara Project customers. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Company in later billing periods. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Company. The Authority shall provide reasonable notice to Company of any condition or activities that could result, or have resulted, in low flow conditions consistent with the notice provided to other similarly affected customers.”

9) This amendment shall be referred to as the “2014 Amendment to the 1990 Service Agreement”.

10) Continuation of service under this 2014 Amendment to the 1990 Service Agreement shall be subject to ultimate approval by the Governor of the State of New York pursuant to Public Authorities Law § 1009. If the Governor disapproves this 2014 Amendment to the 1990 Service Agreement, service will cease on the last day of the month following the month during which the Governor disapproved this 2014 Amendment to the 1990 Service Agreement. If the Governor takes no action within the time frame provided for in Public Authorities Law § 1009, service will cease on the last day of the month following the month during which such timeframe expired.

Except as expressly provided in this 2014 Amendment to the 1990 Service Agreement, the 1990 Service Agreement shall remain unchanged and in full force and effect.

This 2014 Amendment to the 1990 Service Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts and to be performed in such state, without regard to conflict of laws principles.

This 2014 Amendment to the 1990 Service Agreement may be signed in any number of

counterparts, each of which shall be an original, with the same effect as if the signature thereto and hereto were upon the same instrument.

Upon approval of the Governor of the State of New York pursuant to Public Authorities Law § 1009, and upon execution by the Chairman of the Authority, this 2014 Amendment to the 1990 Service Agreement shall come into full force and effect, provided however that pending such gubernatorial approval and execution, this 2014 Amendment to the 1990 Service Agreement shall take effect upon the expiration of the 2012 Amendment and continue on a month to month basis.

This 2014 Amendment to the 1990 Service Agreement may be amended or modified by written agreement signed by the Authority and the Company.

AGREED:

Niagara Mohawk Power Corporation, d/b/a National Grid

By: _____

Title: _____

Date: _____

Power Authority of the State of New York

By: _____

Name: John R. Koelmel

Title: Chairman

Date: _____

2014 Amendment to 1990 Hydropower Contract

This 2014 Amendment to 1990 Hydropower Contract, dated this ___ day of _____, 2014 is made between New York State Electric & Gas Corporation (“Company”) and the Power Authority of the State of New York (“Authority”).

WHEREAS, the Company and the Authority are parties to an agreement dated February 22, 1989 under which the Authority sells certain quantities of hydroelectric power and energy from Authority’s Niagara and St. Lawrence Projects to Company for resale to its rural and residential consumers (the “1990 Hydropower Contract”).

WHEREAS, Authority, Rochester Gas and Electric Corporation (“RGE”) and Company are also parties to a letter agreement dated February 14, 2008 (“February 14, 2008 Letter Agreement”) which modified Article D - Regulation of Rates and Charges as it pertained to the calculation of the monthly savings realized by the customers of Company and RGE from the purchase of Authority hydropower.

WHEREAS, Company and Authority have previously modified and extended the 1990 Hydropower Contract, most recently by the “2012 Amendment to 1990 Hydropower Contract” (the “2012 Amendment”).

WHEREAS, by letter dated June 29, 2011, Authority withdrew all 167 MW of Firm Hydroelectric Power and Energy allocated under Service Tariff No. 41 and terminated service under the 1990 Hydropower Contract with respect to all 167 MW of Firm Hydroelectric Power and Energy, effective August 1, 2011, for use in the Recharge New York Power Program created pursuant to Chapter 60 (Part CC) of the Laws of 2011 (the “Firm Power and Energy Withdrawal/Termination”).

WHEREAS, Company and Authority agree to further modify and extend certain terms of 1990 Hydropower Contract as follows:

- 1) As a result of the Authority’s Firm Power and Energy Withdrawal/Termination, the amount of Firm Hydroelectric Power and Energy allocated to Company under Service Tariff No. 41 is zero (0). The Firm Peaking Power allocation of 150 MW under Service Tariff No. 42 will remain unchanged.
- 2) Article E - Rates. The current text is deleted in its entirety and is replaced with the following text.

“The rates charged by the Authority under this Agreement shall be established in accordance with this Article.

The Authority shall charge and Company shall pay the preference power rates adopted by the Authority on November 15, 2011, as such rates may be revised from time to time. Company waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority on November 15, 2011, except as otherwise provided for below.

Company waives any challenges to any of the following methodologies and principles used by the Authority to set future preference power rates, numbers (i) through (vii) as set forth in the “January 2003 Report on Hydroelectric Production Rates” as modified by the April 2003 “Staff Analysis of Public Comments and Recommendations”:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement settling *Auer v. Dyson*, No, 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “*Auer Settlement*”).
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (i.e., retiree health benefits).
- (vii) Rate Stabilization Reserve (RSR) methodology.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Company shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.”

- 3) Article F - Transmission. The current text is deleted in its entirety and is replaced with the following text.

“In accordance with the terms of the existing transmission service agreement, which by its terms will expire on August 31, 2007, Company will cease taking transmission service from Authority and will instead take transmission service under the New York Independent System Operator's (“NYISO”) Open Access Transmission Tariff. Company agrees to settle any outstanding transmission charges that may apply prior to September 1, 2007 including any subsequent NYISO true up settlements.”

- 4) Article G - Notification. In the contact address for Authority replace “10 Columbus Circle, New York, NY 10019” with 123 Main Street, White Plains, NY 10601”. For Company, delete the current reference in its entirety and replace with the following “Dave Kimiecik, Vice President, Energy Supply, New York State Electric & Gas

Corporation, 18 Link Drive, P.O. Box 5224, Binghamton, New York 13902-5224”.

- 5) Article J- Cancellation or Reduction. The following sentence is added at the end of Article J:

Company may also cancel or reduce such service during the period from January 1, 2016 through December 31, 2017, for any reason upon thirty (30) days’ prior written notice to the Authority.

- 6) Article K - Restoration of Withdrawn Power and/or Energy is deleted in its entirety.

- 7) Article L - Term of Service, is revised to read as follows:

“Service under this contract shall commence at 12:01 A.M. on January 1, 1990 and shall continue unless cancelled as provided for in the "Withdrawals of Power and/or Energy" or the "Cancellation or Reduction" provisions until December 31, 2017, subject to earlier termination by the Authority at any time with respect to any or all of the quantities of power and energy provided hereunder on at least thirty (30) days’ prior written notice to Company.”

- 8) Article M - Availability of Energy - Firm and Firm Peaking Hydroelectric Power Service. In the third paragraph, line 1, starting with the words “In the event that...” through “... minimize the impact of such reductions,” on line 10, replace with the following:

“The Authority will have the right to reduce on a pro rata basis the amount of energy provided to Company under Service Tariff No. 42 if such reductions are necessary due to low flow (i.e. hydrologic) conditions at the Authority's Niagara Project hydroelectric generating station. In the event that hydrologic conditions require the Authority to reduce the amount of energy provided to Company, reductions as a percentage of the otherwise required, energy deliveries will be the same for all firm Niagara Project customers. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Company in later billing periods. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Company. The Authority shall provide reasonable notice to Company of any condition or activities that could result, or have resulted, in low flow conditions consistent with the notice provided to other similarly affected customers.”

- 9) This amendment shall be referred to as the “2014 Amendment to the 1990 Hydropower Contract”.

- 10) Continuation of service under this 2014 Amendment to the 1990 Hydropower Contract shall be subject to ultimate approval by the Governor of the State of New York pursuant to Public Authorities Law § 1009. If the Governor disapproves this 2014 Amendment to the 1990 Hydropower Contract, service will cease on the last day of the month following the month during which the Governor disapproved this 2014 Amendment to the 1990 Hydropower Contract. If the Governor takes no action within the time frame provided for in Public Authorities Law § 1009, service will cease on the last day of the month

following the month during which such timeframe expired.

Except as expressly provided in this 2014 Amendment to the 1990 Hydropower Contract, the 1990 Hydropower Contract as modified by the February 14, 2008 Letter Agreement shall remain unchanged and in full force and effect.

This 2014 Amendment to the 1990 Hydropower Contract shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts and to be performed in such state, without regard to conflict of laws principles.

This 2014 Amendment to the 1990 Hydropower Contract may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signature thereto and hereto were upon the same instrument.

Upon approval of the Governor of the State of New York pursuant to Public Authorities Law § 1009, and upon execution by the Chairman of the Authority, this 2014 Amendment to the 1990 Hydropower Contract shall come into full force and effect, provided however that pending such gubernatorial approval and execution this 2014 Amendment to the 1990 Hydropower Contract shall take effect upon the expiration of the 2012 Amendment and continue on a month to month basis.

This 2014 Amendment to the 1990 Hydropower Contract may be amended or modified by written agreement signed by the Authority and the Company.

AGREED:

New York State Electric & Gas Corporation

By: _____

Name: Joseph J. Syta

Title: Vice President, Controller and Treasurer

Date: _____

By: _____

Name: Mark S. Lynch

Title: President

Date: _____

Power Authority of the State of New York

ACCEPTED:

By: _____

Name: John R. Koelmel

Title: Chairman

Date: _____

2014 Amendment to 1990 Hydropower Contract

This 2014 Amendment to 1990 Hydropower Contract, dated this ___ day of _____, 2014 is made between Rochester Gas and Electric Corporation (“Company”) and the Power Authority of the State of New York (“Authority”).

WHEREAS, the Company and the Authority are parties to an agreement dated February 22, 1989 under which the Authority sells certain quantities of hydroelectric power and energy from Authority’s Niagara and St. Lawrence Projects to Company for resale to its rural and residential consumers (the “1990 Hydropower Contract”).

WHEREAS, Authority, New York State Electric & Gas Corporation (“NYSEG”) and Company are also parties to a letter agreement dated February 14, 2008 (“February 14, 2008 Letter Agreement”) which modified Article D - Regulation of Rates and Charges as it pertained to the calculation of the monthly savings realized by the customers of Company and NYSEG from the purchase of Authority hydropower.

WHEREAS, Company and Authority have previously modified and extended the 1990 Hydropower Contract, most recently by the “2012 Amendment to 1990 Hydropower Contract” (the “2012 Amendment”).

WHEREAS, by letter dated June 29, 2011, Authority withdrew all 99 MW of Firm Hydroelectric Power and Energy allocated under Service Tariff No. 41 and terminated service under the 1990 Hydropower Contract with respect to all 99 MW of Firm Hydroelectric Power and Energy, effective August 1, 2011, for use in the Recharge New York Power Program created pursuant to Chapter 60 (Part CC) of the Laws of 2011 (the “Firm Power and Energy Withdrawal/Termination”).

WHEREAS, Company and Authority agree to further modify and extend certain terms of 1990 Hydropower Contract as follows:

- 1) As a result of the Authority’s Firm Power and Energy Withdrawal/Termination, the amount of Firm Hydroelectric Power and Energy allocated to Company under Service Tariff No. 41 is zero (0). The Firm Peaking Power allocation of 35 MW under Service Tariff No. 42 will remain unchanged.
- 2) Article E - Rates. The current text is deleted in its entirety and is replaced with the following text.

“The rates charged by the Authority under this Agreement shall be established In accordance with this Article.

The Authority shall charge and Company shall pay the preference power rates adopted by the Authority on November 15, 2011, as such rates may be revised from time to time. Company waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority on November 15, 2011, except as otherwise provided for below.

Company waives any challenges to any of the following methodologies and principles used by the Authority to set future preference power rates, numbers (i) through (vii) as set forth in the “January 2003 Report on Hydroelectric Production Rates” as modified by the April 2003 “Staff Analysis of Public Comments and Recommendations”:

- (i) The principles set forth in the March 5, 1986 Settlement Agreement settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the “Auer Settlement”).
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- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (i.e., retiree health benefits).
- (vii) Rate Stabilization Reserve (RSR) methodology.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Company shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority.”

- 3) Article F - Transmission. The current text is deleted in its entirety and is replaced with the following text.

“In accordance with the terms of the existing transmission service agreement, which by its terms will expire on August 31, 2007, Company will cease taking transmission service from Authority and will instead take transmission service under the New York Independent System Operator’s (“NYISO”) Open Access Transmission Tariff. Company agrees to settle any outstanding transmission charges that may apply prior to September 1, 2007 including any subsequent NYISO true up settlements.”

- 4) Article G - Notification. In the contact address for Authority replace “10 Columbus Circle, New York, NY 10019” with 123 Main Street, White Plains, NY 10601”. For Company, delete the current reference in its entirety and replace with the following “Dave Kimiecik, Vice President, Energy Supply, New York State Electric & Gas

Corporation, 18 Link Drive, P.O. Box 5224, Binghamton, New York 13902-5224”.

- 5) Article J- Cancellation or Reduction. The following sentence is added at the end of Article J:

Company may also cancel or reduce such service during the period from January 1, 2016 through December 31, 2017, for any reason upon thirty (30) days’ prior written notice to the Authority.

- 6) Article K - Restoration of Withdrawn Power and/or Energy is deleted in its entirety.

- 7) Article L - Term of Service, is revised to read as follows:

“Service under this contract shall commence at 12:01 A.M. on January 1, 1990 and shall continue unless cancelled as provided for in the “Withdrawals of Power and/or Energy” or the “Cancellation or Reduction” provisions until December 31, 2017, subject to earlier termination by the Authority at any time with respect to any or all of the quantities of power and energy provided hereunder on at least thirty (30) days’ prior written notice to Company.”

- 8) Article M - Availability of Energy - Firm and Firm Peaking Hydroelectric Power Service. In the third paragraph, line 1, starting with the words “In the event that...” through “... minimize the impact of such reductions,” on line 10, replace with the following:

“The Authority will have the right to reduce on a pro rata basis the amount of energy provided to Company under Service Tariff No. 42 if such reductions are necessary due to low flow (i.e. hydrologic) conditions at the Authority's Niagara Project hydroelectric generating station. In the event that hydrologic conditions require the Authority to reduce the amount of energy provided to Company, reductions as a percentage of the otherwise required, energy deliveries will be the same for all firm Niagara Project customers. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Company in later billing periods. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Company. The Authority shall provide reasonable notice to Company of any condition or activities that could result, or have resulted, in low flow conditions consistent with the notice provided to other similarly affected customers.”

- 9) This amendment shall be referred to as the “2014 Amendment to the 1990 Hydropower Contract”.

- 10) Continuation of service under this 2014 Amendment to the 1990 Hydropower Contract shall be subject to ultimate approval by the Governor of the State of New York pursuant to Public Authorities Law § 1009. If the Governor disapproves this 2014 Amendment to the 1990 Hydropower Contract, service will cease on the last day of the month following the month during which the Governor disapproved this 2014 Amendment to the 1990 Hydropower Contract. If the Governor takes no action within the time frame provided for in Public Authorities Law § 1009, service will cease on the last day of the month following the month during which such timeframe expired.

Except as expressly provided in this 2014 Amendment to the 1990 Hydropower Contract, the 1990 Hydropower Contract as modified by the February 14, 2008 Letter Agreement shall remain unchanged and in full force and effect.

This 2014 Amendment to the 1990 Hydropower Contract shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts and to be performed in such state, without regard to conflict of laws principles.

This 2014 Amendment to the 1990 Hydropower Contract may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signature thereto and hereto were upon the same instrument.

Upon approval of the Governor of the State of New York pursuant to Public Authorities Law § 1009, and upon execution by the Chairman of the Authority, this 2014 Amendment to the 1990 Hydropower Contract shall come into full force and effect, provided however that pending such gubernatorial approval and execution this 2014 Amendment to the 1990 Hydropower Contract shall take effect upon the expiration of the 2012 Amendment and continue on a month to month basis.

This 2014 Amendment to the 1990 Hydropower Contract may be amended or modified by written agreement signed by the Authority and the Company.

AGREED:

Rochester Gas and Electric Corporation

By: _____

Name: Joseph J. Syta

Title: Vice President, Controller and Treasurer

Date: _____

By: _____

Name: Mark S. Lynch

Title: President

Date: _____

Power Authority of the State of New York

ACCEPTED:

By: _____

Name: John R. Koelmel

Title: Chairman

Date: _____

*NEW YORK STATE POWER AUTHORITY
PUBLIC HEARING*

*Lewiston, NY
January 8, 2015*



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AND ASSOCIATES

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New York State Power Authority
Thursday, January 8, 2015
2:30 p.m. - 6:30 p.m.
Niagara Power Project Visitors' Center
5777 Lewiston Road
Lewiston, New York 14092

Patricia A. Schreier

1 SPEAKERS :

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MS . DELINCE	3,11
MR . PASQUALE	5

1 MS. DELINCE: Good afternoon. This is a public
2 hearing required by law and authorized by the New York
3 Power Authority's Board of Trustees on the proposed
4 Direct Sale Contracts for the sale of hydropower to
5 Kreher's Sunrise Farms, LLC and Unifrax 1 LLC and
6 Contract Extensions for the sale of hydropower to
7 Niagara Mohawk Power Corporation (d/b/a National Grid),
8 New York State Electric and Gas Corporation and
9 Rochester Gas and Electric Corporation.

10 My name is Karen Delince and I'm the Authority's
11 Corporate Secretary.

12 New York State Public Authorities Law, Section
13 1009, sets forth procedures for executing certain
14 contracts negotiated by the Authority. First, prior to
15 the hearing, it requires that notice of hearing be
16 provided.

17 Therefore, a notice was sent to the Governor, the
18 Senates's President Pro Temp, the Senate Minority Leader
19 and the Senate Finance Committee Chair, the Assembly
20 Speaker, the Assembly Minority Leader, the Assembly Ways
21 and Means Committee Chair.

22 In addition, notices appeared in the following
23 newspapers once a week for the four weeks leading up to

1 this hearing: Albany Times-Union, Batavia Daily News,
2 Buffalo News, Massena Daily Courier Observer, Rochester
3 Democrat and Chronicle, Syracuse Post-Standard.

4 The public was also given access to the proposed
5 contracts on the Authority's website and at the
6 Authority's White Plains office during the 30 day period
7 prior to today's hearing.

8 After the hearing, the public will be given access
9 to the hearing transcript, once it is completed, at
10 www.nypa.gov and at the White Plains Office.

11 The next step in the process set forth in Section
12 1009 will be for the NYPA Trustees to reconsider the
13 proposed contracts, in light of public comments.

14 Once the Trustees have completed their final
15 review, the contracts will be forwarded to the Governor
16 for his consideration and approval.

17 If you plan to make an oral statement at this
18 hearing, I ask that you so indicate on the sign-in
19 sheet. Also, if you have a written statement, please
20 give a copy to Lorna Johnson at the sign-in table and
21 one to the reporter.

22 Written statements may be of any length and will
23 appear in the record of the hearing in addition to oral

1 statements.

2 The record of the hearing will remain open for any
3 additional comments through close of business, Friday,
4 January 9th. Additional comments should be mailed,
5 faxed or e-mailed to the Corporate Secretary at 123 Main
6 Street, 11-P White Plains, New York 10601 or
7 (914)390-8048 or secretarysoffice@nypa.gov.

8 At this point I would like to introduce Mr. James
9 Pasquale, the Authority's Senior Vice President of
10 Economic Development and Energy Efficiency, who will
11 provide additional details on the proposed direct sale
12 contracts. Thank you.

13 Mr. Pasquale.

14 MR. PASQUALE: Thank you, Ms. Delince.

15 Good afternoon. My name is James F. Pasquale and
16 I'm the Senior Vice President of Economic Development
17 and Energy Efficiency at the New York Power Authority.
18 I'm here today to present a summary of proposed
19 contracts.

20 First regarding power allocation contracts to two
21 companies for the direct sale of Expansion Power or
22 Replacement Power - hydropower that is generated here at
23 the Authority's Niagara Power Project and second

1 regarding proposed contract extensions with three
2 upstate investor owned utilities - National Grid, New
3 York State Electric and Gas and Rochester Gas and
4 Electric - for firm peaking power generated at both the
5 Niagara and St. Lawrence/FDR Power Projects.

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

15 Two companies have been awarded hydropower
16 allocations by the Authority's Trustees in return for
17 commitments made to create or expand their businesses in
18 Western New York.

19 Specifically, Kreher's Sunrise Farm, LLC, an
20 organic egg farm in Genesee County, was awarded 100
21 kilowatts of RP to expand operations to meet market
22 demand by constructing three new poultry houses, a
23 pullet house and an additional compost facility. The

1 \$7 million investment would create ten new jobs.

2 Unifrax 1 LLC was awarded 1,400 kilowatts of RP in
3 support of the construction of a new 82,000-square-foot
4 facility at an industrial park in the Town of Tonawanda
5 in Erie County to produce a new wool insulation product.
6 The \$18.5 million expansion will create 25 new jobs.

7 In aggregate, the two companies have committed to
8 capital spending of over \$25.5 million in their Western
9 New York facilities while creating 35 jobs.

10 To summarize some of the pertinent provisions of
11 the proposed contracts, first, the contracts provide for
12 the direct billing of all hydropower supply charges, all
13 New York Independent System Operator, Inc., (NYISO)
14 charges and taxes.

15 Each contract includes the customer's agreed upon
16 commitments with respect to employment and capital
17 investment. The contracts retain the Authority's right
18 to reduce or terminate a customer's allocation if
19 employment, power utilization or capital investment
20 commitments are not met.

21 For example, the contracts include an annual job
22 reporting requirement and a job compliance threshold of
23 90 percent. Should a company's average annual

1 employment fall below the compliance threshold of
2 90 percent of the employment commitment, the Authority
3 has the right to reduce the allocation on a pro rata
4 basis.

5 The contract compels the company to perform an
6 energy audit at the facility at least once within five
7 years helping to ensure the customer uses the hydropower
8 efficiently.

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

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

1 Preservation Power - to ultimately ensure consistency
2 among the Authority's three hydropower programs.

3 Transmission and delivery service for these
4 allocations will be provided by National Grid or NYSEG,
5 in accordance with the utilities' Public Service
6 Commission approved delivery service tariffs.

7 And, now, to summarize the peaking power contracts
8 to three investor owned utilities: Starting in 1990,
9 NYPA has sold both firm power and firm peaking power
10 from the St. Lawrence/FDR and Niagara Power Projects to
11 National Grid, New York State Electric and Gas and
12 Rochester Gas and Electric in accordance with hydropower
13 contracts and subsequent contract extensions.

14 The utilities have purchased such power and energy
15 at NYPA's cost-based hydropower rate, the benefits of
16 which have been passed on to the utilities' residential
17 and small farm customers (also referred to as their
18 rural and domestic or R&D consumers), without markup,
19 through the electric service provided by the utilities
20 under their retail tariffs.

21 Chapter 60 (Part CC) of the Laws of 2011
22 authorized the Authority to use the firm hydropower
23 previously allocated to the utilities to support

1 economic development in the form of the Recharge New
2 York Power Program.

3 Effective August 1, 2011, NYPA withdrew the firm
4 power allocations from the utilities in accordance with
5 the withdrawal provisions of the contracts and the new
6 law; but NYPA continued to sell and the utilities
7 continued to purchase the firm peaking power under the
8 contracts.

9 The Authority's Trustees provided contract
10 extensions which continued peaking hydropower sales to
11 the utilities through December 31, 2014. The proposed
12 contract extensions would continue the sale of 360 MW of
13 firm peaking hydropower to the utilities for up to three
14 years, consisting of 175 MW to National Grid, 150 MW to
15 New York State Electric and Gas and 35 MW to Rochester
16 Gas and Electric. These peaking power allocations would
17 continue to allow NYPA to pass on the benefits of the
18 firm peaking power to the utilities' R&D consumers.

19 NYPA and the utilities have agreed in form and
20 substance to the proposed contract expenses, where the
21 Authority would have the right to terminate the contract
22 upon 30 days notice to any of the utilities and the
23 utilities, after the initial term of one year, would

1 have a right to terminate the contract upon 30 days
2 notice to the Authority. The contracts provide firm
3 peaking service under Service Tariff Number 42 which
4 specifies the rates and other terms applicable to the
5 sale of firm peaking power to the upstate utilities.

6 Lastly, because the 2012 extensions were scheduled
7 to expire on December 31, 2014 the Authority has agreed
8 to execute contract extensions on a month to month basis
9 pending completion of the public hearing process and
10 gubernatorial approval.

11 As Ms. Delince stated earlier, the Authority will
12 accept your comments on the proposed contracts until the
13 close of business on Friday, January 9th. I will now
14 turn the forum back to Ms. Delince.

15 MS. DELINCE: Thank you, Mr. Pasquale for that
16 detailed explanation. We will now recess and reconvene
17 when speakers arrive. Thank you.

18 (recess)

19 MS. DELINCE: The January 8, 2015 public
20 hearing on the proposed direct sale contract and
21 contract extensions is now officially closed.

22 As previously stated, the record of the hearing
23 will remain open for additional comments through close

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of Friday, January 9th.

Thank you and good night.

(Hearing closed at 6:30 p.m.)

1 STATE OF NEW YORK
2 COUNTY OF ERIE

3 I, Patricia A. Schreier, a Notary Public in and for
4 the State of New York, do hereby certify:

5 That the witness, whose testimony appears herein
6 before, was, before the commencement of his testimony, duly
7 sworn to testify the truth, the whole truth and nothing but
8 the truth; that such testimony was taken pursuant to notice at
9 the time and place herein set forth; that said testimony was
10 taken down in shorthand by me and thereafter under my
11 supervision transcribed into the English language, and hereby
12 certify the foregoing testimony is a full, true and correct
13 transcription of the shorthand notes so taken.

14 I further certify that I am neither counsel for nor
15 related to any parties to said action, nor in anywise
16 interested in the outcome thereof.

17 IN WITNESS WHEREOF, I have here unto subscribed my
18 name this 13th day of January, 2015.

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Notary Public
State of New York

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