

December 17, 2013

**MEMORANDUM TO THE TRUSTEES**

**FROM THE PRESIDENT and CHIEF EXECUTIVE OFFICER**

**SUBJECT: Allocations of Hydropower and Notice of Public Hearing**

**SUMMARY**

The Trustees are requested to approve allocations of available hydropower totaling 7,100 kilowatts (“kW”) to Brunner International, Inc. (“Brunner”) (2,400 kW), Gracious Living USA (“Gracious Living”) (3,700 kW) and Ford Motor Company (“Ford”) (1,000 kW), as further described herein and in Exhibit “A.” These allocations, collectively, will support capital expansion of nearly \$207 million and the creation of 643 jobs in Western New York (“WNY”). The Trustees are also requested to authorize a public hearing pursuant to Public Authorities Law (“PAL”) §1009 on the proposed direct sale contract for the allocation to Gracious Living, the current form of which is attached as Exhibit “B.”

The allocation of hydropower to Brunner will support a capital investment of \$15 million and the creation of 43 new jobs in Medina (Orleans County). The allocation of hydropower to Ford will support a capital investment of \$150 million and the creation of 350 new jobs in Buffalo. The allocation of hydropower to Gracious Living will support a capital investment of \$41.975 million and the creation of 250 new jobs in Buffalo (Erie County).

**BACKGROUND**

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

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

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

## DISCUSSION

At this time, 8,245 kW of unallocated EP and 35,228 kW of unallocated RP are available to be awarded to businesses under the criteria set forth in PAL Section 1005(13)(a).

### 1. BRUNNER INTERNATIONAL, INC.

Brunner International, Inc., located in Medina in Orleans County, submitted an application for hydropower requesting 4,800 kW in connection with the construction of a 45,000-square-foot addition to expand the production of machined axle forgings sold to large, heavy-duty truck and trailer suppliers. A long-time Authority hydropower customer, Brunner currently receives four allocations totaling 5,500 kW.

Started in 1992, Brunner has built itself into a market/industry leader in the manufacturing of brake shoes, S-Cams and axles for heavy-duty trucks and trailers. Brunner is the largest private sector employer in Orleans County, with 363 full-time employees (an employment level well above Brunner's contractual commitment with NYPA). It also has two facilities in Niagara Falls, Ontario, Canada.

Brunner's project would expand axle shaft production, which began in Medina in 2007 with the help of a hydropower allocation. The expansion project would help Brunner compete with low cost manufacturers in India and China, significantly increase Brunner's already considerable market share, and solidify the overall long term future of the Medina plant. Brunner has also made a strong commitment to its facilities in Orleans County by investing over \$6 million in capital purchases, upgrades and repair and maintenance of existing equipment during the past two years alone.

The company proposes an investment of \$15 million with plans to begin production in the fall of 2014 and hire 43 new employees to support its expanded business operations.

The job creation ratio for a recommended amount of 2,400 kW is 18 new jobs per MW. This ratio is below the historic average of 19.2 new jobs per MW over the past four years. The total project investment of \$15 million results in a capital investment ratio of \$6.25 million per MW. This ratio is below the four-year historic average of \$20.9 million per MW.

Both Kentucky and Tennessee are courting Brunner for this expansion. Locating the new operations in that part of the country would provide certain advantages to Brunner including significantly reduced shipping costs, as most of Brunner's suppliers and customers are located in that region. An allocation of hydropower would help Brunner withstand increased competition from Asia and support the company's decision to choose Medina rather than other suitable locations in the United States for this expansion.

ESD has offered an incentive package of \$750,000 under the Excelsior Jobs Program. In addition, the Orleans County Economic Development Agency is offering its standard PILOT tax incentives.

Staff recommends that a RP allocation of 2,400 kW be awarded to Brunner International, Inc. in order to help secure an investment of \$15 million and creation of 43 new jobs at its facility in WNY, as detailed in Exhibit "A-1."

## 2. FORD MOTOR COMPANY

Ford Motor Company has submitted an application for hydropower requesting 1,000 kW to design, build, upgrade several press lines and install 10 new assembly lines to provide stamping and welded sheet metal assemblies for 2015 Ford vehicles.

Ford's Buffalo Stamping Plant has been in operation for 63 years manufacturing various metal stampings and welded sub-assemblies for Ford's automotive car and truck assembly plants in North America. A long-time Authority hydropower customer, Ford currently receives three allocations totaling 8,700 kW. According to Ford, the hydropower allocations provided to this plant have been critical in maintaining operations, preserving as many jobs as possible and positioning the Buffalo facility to compete internally for new investment and production.

Ford's application for hydropower details its plans to invest \$150 million to upgrade tooling and add 10 new assembly lines to provide stampings and welded sheet metal assemblies for 2015 Ford vehicles at its Lakeshore Road location. The project would consist of design, build and installation of automation and support for several press lines and new assembly lines, including line tools and manufacturing aids. It will also include a tooling launch of the next generation of technologies including robots for material handling, welding and roll hemming; weld controllers with adaptive welding; and technologies to provide discrete drives, motion, process and safety control for automated sub-assembly equipment, servo driven pumps, and other systems.

Ford would commit to creating 350 new positions at its facility above its current employment of 640 as a result of this project, with a start-up of the new equipment and assembly lines in the fourth quarter of 2014.

The calculated job creation ratio for 350 new jobs and a 1 MW proposed allocation is 350 jobs per MW. This ratio is well above the historic average of 19.2 new jobs per MW for the last four years. The total capital investment of \$150 million committed by Ford would result in a capital investment ratio of \$150 million per MW. This ratio is well above the four-year historic

average of \$20.9 million per MW.

The automotive industry remains highly competitive in both North America and world-wide. Ford's Buffalo Stamping Plant is competing against the seven other Ford stamping plants in North America for this major expansion project. The application states that this project will not only secure the future growth of the Buffalo Stamping Plant, but will position the facility to handle Ford's next generation of business.

ESD has offered an incentive package of \$5 million under the NY Works Fund Capital Grant, up to \$2 million in tax credits under the Excelsior Jobs Program. In addition, the WNY Power Proceeds Allocation Board has recommended that NYPA provide Ford with a \$1 million grant from the Western New York Economic Development Fund.

Staff recommends that an EP allocation totaling 1,000 kW be awarded to Ford in exchange for a total of \$150 million of capital investment and the creation of 350 well-paying new jobs, as detailed in Exhibit "A-2."

### 3. GRACIOUS LIVING USA

Gracious Living USA ("Gracious Living") submitted an application for hydropower requesting 4,500 kW to renovate and refurbish four existing, abandoned buildings on 50 acres of property in Buffalo to open an injection molding manufacturing and warehouse facility. An owner-operated business, the Gracious Living family of companies was established in 1980 and has become the largest injection molding company in Canada (outside the automotive industry). The company manufactures and imports resin-based outdoor furniture, accessories, tables, storage units, pools, housewares and a variety of other indoor and outdoor plastic products.

Currently based in Woodbridge, Ontario, Gracious Living is looking to establish a greater presence in the U.S. and is planning to renovate and refurbish nearly 50 acres of property on Fuhrmann Boulevard along Buffalo's Outer Harbor. It would be their first move into the U.S. in an attempt to expand its manufacturing and distribution business in this market while at the same time lower operating costs and growing its U.S. customer base. Gracious Living is currently operating under a 120-day due diligence period to conduct environmental testing and other investigations at the property.

Gracious Living plans to renovate the four existing buildings for manufacturing and warehouse purposes during most of 2014 and intends to begin operations next winter. The company plans to install 40 injection molding machines over a three-year period with a total three-year investment of \$41,975,000. Gracious Living would hire 150 employees during the first year of operations and would commit to create a total of 250 jobs within three-years of operation.

The job creation ratio for a recommended amount of 3,700 kW is 68 new jobs per MW. This ratio is well above the historic average of 19.2 new jobs per MW over the past four years. The total project investment of \$41.975 million results in a capital investment ratio of \$11.34 million per MW. This ratio is below the four-year historic average of \$20.9 million per MW.

As a plastic injection molding manufacturer, Gracious Living operates in a highly competitive market with major competitors for its products located in China, as well as Georgia, Massachusetts, and Pennsylvania. Additionally, the company's major customers (e.g., big box retailers) are continually demanding lower cost goods. A hydropower allocation will support the company's decision to move forward with this project, creating much-needed WNY-based jobs and using private investment to return a large parcel of land along the Buffalo Waterfront to productive use.

ESD has offered an incentive package of \$2 million under the Excelsior Jobs Program.

Staff recommends 3,700 kW of RP be awarded to Gracious Living in order to secure an investment of \$41.975 million and the creation of 250 jobs in WNY, as detailed in Exhibit "A-3."

#### 4. CONTRACT INFORMATION

The Authority is in the process of discussing a proposed hydropower sales contract with Gracious Living and anticipates receiving customer approval of a contract form substantially similar to that attached as Exhibit "B." Accordingly, the Trustees are requested to authorize a public hearing pursuant to PAL § 1009 on the contract form attached as Exhibit "B." A public hearing is not needed for Brunner or Ford as they are existing hydropower customers each with the WNY contract form that allows additional allocations and associated commitments to be folded into the existing contract.

As required by PAL §1009, when the Authority believes it has reached agreement with its prospective co-party on a contract for the sale of EP or RP, it will transmit the proposed form of contract to the Governor and other elected officials, and hold a public hearing on the contract. At least 30-days' notice of the hearing must be given by publication in each of six selected newspapers once per week during such period. Following the public hearing, the form of contract may be modified, if advisable. Upon approval of the final proposed contract by the Authority, the Authority must "report" the proposed contract, along with its recommendations and the public hearing records, to the Governor and other elected officials. Upon approval by the Governor, the Authority may execute the contract.

The general form of the proposed contract is consistent with recently approved contracts for the sale of EP and RP. Some pertinent provisions of the proposed form of contract include the provision for direct billing of all production charges (i.e., demand and energy) as well as all New York Independent System Operator, Inc. ("NYISO") charges, plus taxes or any other required assessments, all as set forth in the Authority's Service Tariff No. WNY-1. The proposed form of contract would also include (i) commercially reasonable provisions relating to financial security to reflect a direct billing arrangement between the Authority and its EP/RP customers, and (ii) provisions authorizing data transfers and addressing other utility-driven requirements which are necessary for efficient program implementation. Such provisions have been used in other Authority contracts forms, including the Authority's Recharge New York Power Program contracts.

As is typical, the provision of electric service for this hydropower allocation is subject to enforceable employment and usage commitments. The standard contract form includes annual job reporting requirements and a job compliance threshold of 90%. Should Gracious Living's actual jobs reported fall below the compliance threshold, the Authority has the right to reduce the allocation on a pro-rata basis.

Each of the recommended allocations would be sold to these companies pursuant to the Authority's Service Tariff No. WNY-1, which applies to all allocations of EP and RP commencing July 1, 2013. Transmission and delivery service would be provided by National Grid in accordance with its Public Service Commission-filed service tariffs.

### RECOMMENDATION

The Manager – Business Power Allocations and Compliance recommends that the Trustees approve the allocations of RP to Brunner International, Inc. (2,400 kW) and to Gracious Living USA (3,700 kW), and 1,000 kW of EP to Ford Motor Company, as detailed in Exhibit "A."

Lastly, the Trustees are requested to authorize the Corporate Secretary to convene a public hearing on the form of the proposed contract finally negotiated with Gracious Living, the current form of which is attached as Exhibit "B," and transmit copies of the proposed form of contract to the Governor and legislative leaders pursuant to PAL §1009.

Staff will report to the Board of Trustees on the public hearing and the proposed contract and at a later time and make additional recommendations regarding the proposed contract.

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

Gil C. Quiniones  
President and Chief Executive Officer

Att.  
Hydro Alloc & NOPH

## RESOLUTION

RESOLVED, That allocations totaling 7,100 kW of Authority hydropower to Brunner International, Inc. (2,400 kW Replacement Power), Ford Motor Company (1,000 kW Expansion Power), and Gracious Living USA (3,700 kW Replacement Power), as detailed in Exhibit “A,” be, and hereby are, approved on the terms set forth in the attached memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing on the terms of the proposed form of direct sale contract for the sale of hydropower and energy finally negotiated with Gracious Living USA (the “Contract”), subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit copies of the proposed Contract to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee pursuant to Public Authorities Law (“PAL”) §1009; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to arrange for the publication of a notice of public hearing in six newspapers throughout the State, all done in accordance with the provisions of PAL §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, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

Exhibit Number	Company Name	Program	City	County	Power Requested (kW)	Existing Jobs	New Jobs	Estimated Capital Investment	New Jobs Avg. Wage & Benefits <sup>(1)</sup>	Power Recommended (kW)	Contract Term
A-1	Brunner International, Inc.	RP	Medina	Orleans	4,800	363	43	\$15,000,000	\$42,070	<b>2,400</b>	7 Years
A-2	Ford Motor Company	EP	Buffalo	Erie	1,000	640	350	\$150,000,000	\$99,400	<b>1,000</b>	7 Years
A-3	Gracious Living USA	RP	Buffalo	Erie	4,500	0	250	\$41,975,000	\$27,000	<b>3,700</b>	7 Years
<b>Total Hydropower Recommended</b>							<b>643</b>	<b>\$ 206,975,000</b>		<b>7,100</b>	

(1) For Gracious Living, a Canadian company with first US employment, this figure represents salary only; benefits package to be determined

**APPLICATION SUMMARY**  
**Replacement Power**

**Company:** Brunner International, Inc.

**Project Location:** Medina

**County:** Orleans

**IOU:** National Grid

**Business Activity:** Manufacturer of brake shoes, S-Cams and axles for heavy duty trucks and trailers

**Project Description:** Plans to construct a 45,000-square-foot addition to expand the production of machined axle forgings sold to large, heavy-duty truck and trailer suppliers.

**Existing Allocation(s):** 2,500 kW (RP), 1,500 kW (EP), 1,200 kW (RP), 300 kW (EP)

**Power Request:** 4,800 kW

**Power Recommended:** 2,400 kW

**Job Commitment:**  
    **Existing:** 363 jobs  
    **New:** 43 jobs

**New Jobs/Power Ratio:** 18 jobs/ MW

**New Jobs - Avg. Wage and Benefits:** \$42,070

**Capital Investment:** \$15 million

**Capital Investment/MW:** \$6.25 million/ MW

**Other ED Incentives:** Standard PILOT tax incentives from Orleans County Economic Development Agency and \$750,000 Excelsior Jobs Program Grant.

**Summary:** Brunner is the largest private sector employer in Orleans County and has been a long-time NYPA customer. This expansion will increase Brunner's market share of axle shafts to further solidify current employment levels and help create 43 new jobs. Brunner is looking at two southern states as alternatives, including Kentucky, the heart of Brunner's customer and supplier base, which is aggressively seeking this expansion.

**APPLICATION SUMMARY**  
**Expansion Power**

**Company:** Ford Motor Company

**Project Location:** Buffalo

**County:** Erie

**IOU:** National Grid

**Business Activity:** Produces various stampings and sub-assemblies for the bodies of Ford products.

**Project Description:** Phase I of this long-term project consists of the design, build, upgrade and installation of automation and support for several press lines and 10 new assembly lines to provide stampings and welded sheet metal assemblies for 2015 Ford vehicles.

**Existing Allocation(s):** 4.3 MW, 2.9 MW, 1.5 MW Expansion Power

**Power Request:** 1,000 kW

**Power Recommended:** 1,000 kW

**Job Commitment:**

**Existing:** 640 jobs

**New:** 350 jobs

**New Jobs/Power Ratio:** 350 jobs/ MW

**New Jobs - Avg. Wage and Benefits:** \$99,400

**Capital Investment:** \$150 million

**Capital Investment/MW:** \$150 million/ MW

**Other ED Incentives:** \$5 million under the NY Works Fund Capital Grant, up to \$2 million in tax credits under the Excelsior Jobs Program and \$1 million for employee training under the WNY Power Proceeds Allocation Board.

**Summary:** Ford's Buffalo Stamping Plant is competing internally with Ford's other seven stamping plants in North America for this major expansion and investment. Along with other economic development incentives, the hydro allocation would give the Buffalo facility an advantage to landing this \$150 million investment and the creation of 350 well-paying jobs in Western New York. In addition to new jobs, supporting this project will reverse the downward trend of automotive industry employment helping secure the 640 existing jobs in WNY.

**APPLICATION SUMMARY**  
**Replacement Power**

**Company:** Gracious Living USA

**Project Location:** Buffalo

**County:** Erie

**IOU:** National Grid

**Business Activity:** Production of resin-based outdoor furniture, tables, storage equipment and housewares

**Project Description:** Gracious Living is a Canadian company looking to establish U.S. operations to manufacture a variety of household plastic products. Their project would renovate and develop unused property on Buffalo's Outer Harbor to create manufacturing operations which would eventually include three daily shifts with 250 full-time jobs. The project includes installing injection systems and 40 injection machines over three years.

**Existing Allocation(s):** None

**Power Request:** 4,500 kW

**Power Recommended:** 3,700 kW

**Job Commitment:**  
    **Existing:** 0 jobs  
    **New:** 250 jobs

**New Jobs/Power Ratio:** 68 jobs/ MW

**New Jobs - Avg. Wage and Benefits:** \$27,000 plus benefits which are unknown at this time

**Capital Investment:** \$41.975 million

**Capital Investment/MW:** \$11.34 million/ MW

**Other ED Incentives:** \$2 million Excelsior Jobs Program grant from ESD and the potential for additional tax incentives.

**Summary:** Founded in 1980, Gracious Living has become the largest injection molding company in Canada (outside the automotive industry) and is looking to expand its production capacity and sales by creating a manufacturing facility in the U.S. The company, which operates in an extremely competitive market with major competitors in China, as well as Georgia, Massachusetts, and Pennsylvania, is seriously considering WNY provided it can meet the company's objectives of lowering manufacturing and operating costs. A low cost hydropower allocation will help create much-needed WNY-based jobs and help continue the economic revitalization of downtown Buffalo.

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POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street  
10<sup>th</sup> Floor  
Albany, New York 12207-3425

AGREEMENT FOR THE SALE  
OF EXPANSION POWER AND/OR REPLACEMENT POWER  
to  
GRACIOUS LIVING USA

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The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10<sup>th</sup> Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Gracious Living USA (“Customer”), with offices at 901 Fuhrmann Boulevard, Buffalo, New York 14203. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

## **RECITALS**

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

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

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

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

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

WHEREAS, the Customer applied to the Authority for an allocation of hydropower to support operations at a new facility to be constructed and operated by the Customer (defined in Section I of this Agreement as the “Facility”);

WHEREAS, on December 17, 2013, the Authority’s Board of Trustees (“Trustees”) approved a 3,700 kilowatt (“kW”) allocation of RP to the Customer for a seven (7) year term (defined in Section I of this Agreement as the “Allocation”) in connection with the construction and operation of the Facility as further described in this Agreement;

WHEREAS, on December 17, 2013, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

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

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

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

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

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

**NOW THEREFORE**, the Parties hereto agree as follows:

## **I. Definitions**

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

Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

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

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

## **II. Electric Service**

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

## **III. Rates, Terms and Conditions**

- A. Electric Service shall be sold to the Customer based on the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-1 and the Rules.
- B. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30

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

#### **IV. Expansion and/or Replacement Power Commitments**

- A. Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.
- B. The Authority's obligation to provide Electric Service under this Agreement, and the Customer's obligation to take and pay for such Electric Service, are expressly conditioned upon the Customer's timely completion of the commitments described in Schedule B.
- C. In the event of partial completion of the Facility which has resulted in such Facility being partly operational and the partial attainment of the Base Employment Level, the Authority may, upon the Customer's request, provide Electric Service to the Customer in an amount determined by the Authority to fairly correspond to the completed portion of the Facility, provided that the Customer demonstrates that the amount of requested Electric Service is needed to support the operations of the partially completed Facility.
- D. The Customer shall give the Authority not less than ninety (90) days' advance notice in writing of the anticipated date of partial or full completion of the Facility. The Authority will inspect the Facility for the purpose of verifying the completion status of the Facility and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time after verification based on applicable operating procedures of the Authority, the Customer's local electric utility and the NYISO.
- E. In the event the Customer fails to complete the Facility by December 17, 2016 (*i.e.*, within three (3) years of the Authority's award of the Allocation), the Allocation, at the option and discretion of the Authority, may be canceled or reduced by the total amount of kilowatts determined by the Authority to fairly correspond to the uncompleted portion of

the Facility, provided that in such event, and upon request of the Customer, such date may be extended by the Authority in its sole discretion.

## **V.Rules and Service Tariff**

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

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

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

- F. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, “Information”) which the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP and/or RP program, the effective and proper administration of the EP and/or RP program, and/or the performance of contracts or other arrangements between the Authority and the Customer’s local electric utility. The Customer’s failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

## **VII. Billing and Billing Methodology**

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

such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

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

#### **VIII. Hydropower Curtailments and Substitute Energy**

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

notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

## **IX. Effectiveness, Term and Termination**

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

## **X. Additional Allocations**

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

## **XI. Notification**

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

To: The Authority

New York Power Authority  
123 Main Street  
White Plains, New York 10601  
Email: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Gracious Living USA  
901 Fuhrmann Blvd.  
Buffalo, New York 14203  
Email: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Attention: \_\_\_\_\_

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

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

## **XII. Applicable Law**

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

### **XIII. Venue**

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

### **XIV. Successors and Assigns; Resale of Hydropower**

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

### **XV. Previous Agreements and Communications**

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

### **XVI. Severability and Voidability**

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

## **XVII. Waiver**

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

## **XVIII. Execution**

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

**[SIGNATURES FOLLOW ON NEXT PAGE]**

AGREED:

**GRACIOUS LIVING USA**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

AGREED:

**POWER AUTHORITY OF THE STATE OF NEW YORK**

By: \_\_\_\_\_  
John R. Koelmel, Chairman

Date: \_\_\_\_\_

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

**EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS**

Customer: Gracious Living USA

Type of Allocation	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date
Replacement Power	3,700 kW	901 Fuhrmann Blvd., Buffalo, NY 14203	December 17, 2013	Seven (7) years from commencement of Electric Service of any portion of this Allocation.

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

**EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS**

I. Employment Commitments

A. Employment Levels

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

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

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

B. Employment Records and Reports

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

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

## II. Reductions of Contract Demand

### A. Employment Levels

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

### B. Power Utilization Levels

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

### C. Capital Investment

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

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

D. Notice of Intent to Reduce Contract Demand

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

III. Energy Efficiency Audits; Information Requests

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

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

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

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

**APPENDIX TO SCHEDULE B**

**BASE EMPLOYMENT LEVEL**

Within three (3) years of commencement of Electric Service, the Customer shall employ at least two hundred fifty (250) full-time employees at the Facility (“Base Employment Level”) The Base Employment Level shall be maintained thereafter for the term of the Allocation in accordance with Article I of Schedule B.

**CAPITAL INVESTMENT**

The Customer shall make a total capital investment of at least \$41,975,000 to purchase, build and furnish the Facility (the “Capital Investment”). The Capital Investment for the Facility is expected to consist of the following specific expenditures:

Real Estate/Building Acquisition:	\$ 4,700,000
Building Reparatons/Renovation:	\$ 6,000,000
Machinery/ Equipment Acquisition (over 3 years):	\$31,275,000
 Total Capital Investment:	 \$41,975,000

The Capital Investment shall be made, and the Facility shall be completed and fully operational, no later than December 17, 2016 (i.e., within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the sole discretion of the Authority.

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

**TAKEDOWN SCHEDULE**

N/A



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

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

**Service Tariff No. WNY-1**

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## Schedule of Rates for Firm Power Service

### I. Applicability

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

### II. Abbreviations and Terms

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