

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

April 30, 2002

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Minutes of the Annual Meeting of the Power Authority of the State of New York held at the White Plains Office at 11:00 a.m.

Present: Louis P. Ciminelli, Chairman
Frank S. McCullough, Jr, Trustee
Timothy S. Carey, Trustee
Gerard D. DiMarco, Trustee

Trustee Joseph J. Seymour was excused from attendance.

Eugene W. Zeltmann	President and Chief Executive Officer
David E. Blabey	Executive Vice President, Secretary and General Counsel
Robert A. Hiney	Executive Vice President – Power Generation
Vincent C. Vesce	Executive Vice President – Business Services and Administration
Peter A. Barden	Senior Vice President – Public and Governmental Affairs
H. Kenneth Haase	Senior Vice President – Transmission
Louise M. Morman	Senior Vice President – Marketing, Economic Development and Supply Planning
Robert L. Tscherne	Senior Vice President – Energy Services and Technology
Michael H. Urbach	Senior Vice President and Chief Financial Officer
Arnold M. Bellis	Vice President – Controller
Woodrow W. Crouch	Vice President – Project Management
John M. Hoff	Vice President – Procurement and Real Estate
Robert J. Deasy	Vice President – Energy Resource Management
Charles I. Lipsky	Vice President - Chief Engineer
Anne Wagner-Findeisen	Vice President - Ethics & Regulatory Compliance and Deputy Corporate Secretary
Thomas H. Warmath	Vice President and Chief Risk Officer, Energy Risk Assessment and Control
George L. Johansen	Inspector General
Dennis T. Eccleston	Chief Information Officer
Carmine J. Clemente	Deputy Secretary and Deputy General Counsel
Stephen P. Shoenholz	Deputy Vice President – Public Affairs
Joseph J. Carline	Assistant General Counsel – Power and Transmission
Gerard C. Goldstein	Assistant General Counsel – Regulatory and Contracts
Gerard V. Loughran	Assistant General Counsel – Human Resources and Labor Relations
George W. Collins	Treasurer
Michael Brady	Deputy Treasurer
John L. Osinski	Executive Director – Regulatory Affairs
Arthur M. Brennan	Director – Internal Audit
Angelo S. Esposito	Director – Energy Services
John J. Hahn	Director – Security
John L. Murphy	Director – Public Relations
John J. Suloway	Director – Environmental and Licensing
William V. Slade	Director – Environmental Programs
Helen L. Eisenfeld	Manager – Cost Control
John Grzan	Senior Project Manager
James J. McCarthy	Regional Manager – Central New York
Diane Gil	Procurement Program Specialist
Bonnie Fahey	Executive Administrative Assistant
Betty C. Fennell	Assistant Secretary
Angela D. Graves	Assistant Secretary – Legal Affairs

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Andrew J. McLaughlin	Assistant Secretary – Legal Affairs
Alice F. Simon	Assistant Secretary – Ethics
Noelle Zandri	Secretary to General Counsel

Chairman Ciminelli presided over the meeting. Executive Vice President, Secretary and General Counsel Blabey kept the Minutes.

1. **Approval of the Minutes**

The minutes of the regular meeting of March 26, 2002 were unanimously adopted.

2. **Financial Reports for the Three Months Ending March 31, 2002**

Mr. Bellis provided the final Financial Report for the three months ending March 31, 2002.

Responding to questions from Trustee Carey, Mr. Bellis noted that ISO-related costs had risen in April; however, the results are not yet evident in the first quarter Financial Reports. Mr. Bellis also noted that, overall, the market is “soft.”

3. **Report from the President and Chief Operating Officer**

President Zeltmann introduced Mr. Thomas Warmath as the Authority's new Vice President and Chief Risk Officer and welcomed him to the Authority. President Zeltmann explained that Mr. Warmath would be responsible for establishing a formal Energy Risk Assessment and Control unit that would report directly to the President's Office.

At President Zeltmann's request, Inspector General Johansen then reported on certain security matters. Mr. Johansen reported that the Authority had received certain recommendations from Kroll Associates which are being reviewed by senior management. Mr. Johansen noted that a security manual is being prepared by staff, and that based on frequent meetings with security officials from other organizations, he believes that the Authority is well positioned on security matters. President Zeltmann confirmed that the recommendations from Kroll are being studied and analyzed to determine any areas for possible improvement, and he stressed that NYPA security personnel are working in conjunction with the Authority's various Regional Managers at the facilities on this initiative.

At President Zeltmann's request, Mr. Crouch then reported on the overall status of fiscal matters related to the 500-megawatt combined-cycle plant at the Poletti site. Mr. Crouch reported that the Authority had recently solicited bids for work to be performed but that only two bids had been received and that they were much higher than anticipated. He also reported that similar high costs are being encountered by other utilities seeking to construct power plants. Mr. Crouch stated that, consequently, staff is re-examining the submittals. Responding to questions from Acting Chairman Ciminelli and Trustee McCullough, Messrs. Crouch and Hoff explained that, although bids were solicited by NYPA from over 30 firms and a public notice had been published in the Contract Reporter, only two firms had bid. Responding to questions from Acting Chairman Ciminelli, Mr. Hoff explained that there is currently limited competition for this type of work and that many construction firms do not want to take on the high costs associated with working in New York City.

Responding to further questions from Acting Chairman Ciminelli, Messrs. Crouch and Hoff confirmed that the increased plant cost that could result from acceptance of either of the high bids is substantial. President Zeltmann stressed that this is an introductory informational report to the Trustees and that no formal action by the Trustees is requested. A general discussion of the Authority's plant expenditures to date among the Acting Chairman, Trustees and Messrs. Hiney, Crouch and Hoff followed. Acting Chairman Ciminelli and Trustee McCullough then requested that a full presentation on potential costs and alternatives be provided at the Trustees' next regular meeting.

4A. Election of Chairman, President and Chief Executive Officer and Executive Vice Presidents

On behalf of Trustee Seymour, Trustee McCullough submitted the following report:

SUMMARY

“In accordance with Section 1004 of the Public Authorities Law (the ‘Power Authority Act’), the Trustees are requested to elect Chairman Louis P. Ciminelli of Buffalo, New York as Chairman of the Authority, effective April 30, 2002. The Trustees are also requested to elect Eugene W. Zeltmann as President and Chief Executive of the Authority, effective the same date, as well as to elect certain other non-statutory officers of the Authority.

BACKGROUND AND DISCUSSION

“In accordance with Article IV, Section 6 (B) of the Authority’s By-Laws, Mr. Ciminelli, who became an Authority Trustee in 1995 and who thereafter served as Vice Chairman, became Chairman, effective January 3, 2002, after Trustee Joseph J. Seymour stepped down as Chairman and Chief Executive Officer of the Authority on January 2, 2002.

“Section 1004 of the Power Authority Act provides that the Trustees may select from among their own a Trustee to hold the position of Chairman of the Authority. Section 1003 of the statute also provides that when a Trustee is selected to serve as the Chairman, he or she is eligible to receive an annual salary to be set by the Trustees of the Authority and which shall not exceed the salary prescribed for the positions listed in paragraph (f) of subdivision one of Section 169 of the Executive Law. Trustee Ciminelli has advised that he wishes to serve as Chairman without compensation, and that he declines any eligibility for the prescribed salary.

“As a result of Trustee Seymour’s resignation as Chief Executive Officer on January 2, 2002, the Authority has been without a senior executive in that position. In addition, under Article IV, Section 2 of the Authority’s By-Laws, the Trustees are required each year at their annual meeting to elect certain non-statutory officers of the Authority. Section 3 of the same Article provides that such non-statutory officers shall hold office for a term expiring at the next annual Trustees’ meeting or until their successors are elected.

RECOMMENDATION

“Based on his substantial knowledge of Authority matters as well as his strong expertise and record of exemplary service to the Authority as a Trustee, Vice Chairman and Chairman, it is recommended that Louis P. Ciminelli be elected to fill the vacancy of Chairman created by Trustee Joseph J. Seymour’s January 2, 2002 resignation from that office.

“In addition, based on his very solid, professional and competent service as President and Chief Operating Officer of the Authority over the past four and one half years, it is further recommended under Article IV of the By-Laws, that the Trustees elect Eugene W. Zeltmann as President and Chief Executive Officer of the Authority to fill the non-statutory position vacated by Trustee Seymour’s resignation, for a term expiring at the next annual meeting of the Trustees in April 2003, or until his successor is elected.

“Finally, the following non-statutory officers provided for in Article IV of the By Laws, adopted December 18, 1984, and last amended on November 28, 2000, are proposed to be elected by the Trustees to hold office for terms expiring at the next annual Meeting of the Trustees in April 2003 or until their successors are elected:

Chairman Ciminelli then thanked the Trustees for their kind words and offered his own congratulations to President Zeltmann and Executive Vice Presidents Blabey, Hiney and Vesce, stating that he values their energy and great insight into all aspects of the Authority's business.

The following resolution, as recommended by Trustee McCullough, was unanimously adopted.

RESOLVED, That Louis P. Ciminelli of Buffalo, New York be and is hereby selected as Chairman of the Power Authority of the State of New York, effective April 30, 2002; and be it further

RESOLVED, That Eugene W. Zeltmann of Clifton Park, New York be and is hereby elected pursuant to Section 2 of Article IV of the By-Laws as President and Chief Executive Officer of the Power Authority, effective April 30, 2002, for a term of office expiring at the next annual meeting of the Trustees or until his successor is elected; and be it further

RESOLVED, That the following non-statutory officers of the Power Authority of the State of New York be, and each hereby is, elected pursuant to Section 2 of Article IV of the By-Laws, to hold office for terms expiring at the next annual meeting of the Trustees or until their successors are elected:

Robert A. Hiney	Executive Vice President - Power Generation
David E. Blabey	Executive Vice President, Secretary and General Counsel
Vincent C. Vesce	Executive Vice President — Business Services and Administration

4B. Amendments to Article IV, Sections 1, 2, 3, 4 and 6 and Article V, Sections 1 and 3 of the By-Laws

The Executive Vice President, Secretary and General Counsel submitted the following report:

DISCUSSION AND RECOMMENDATION

“The proposed amendments of Article IV, Sections 1, 2, 3, 4 and 6 and Article V, Sections 1 and 3 of the By-Laws would conform such provisions to reflect the changes in the Power Authority’s senior management adopted by the Trustees today.

“The President and Chief Executive Officer concurs in the recommendation.”

Mr. Blabey then introduced proposed changes to the Authority's By-Laws to reflect the results of the changes in management structure resulting from the elections. In response to questions from Chairman Ciminelli, Mr. Blabey explained that, under the amended By-Laws, the individual holding the office of Chairman is not precluded from also serving as Chief Executive Officer of the Authority.

The following resolution, as recommended by the Executive Vice President, Secretary And General Counsel, was unanimously adopted.

RESOLVED, That Article IV, Sections 1, 2, 3, 4 and 6 and Article V, Sections 1 and 3 of the By-Laws of the Power Authority of the State of New York are hereby amended as set forth in Exhibit “4-A”.

ARTICLE IV

Officers

Section 1. Officers. The statutory officers of the Authority shall be a Chairman and a Vice Chairman, whose offices are created by and named in Section 1004 of the Public Authorities Law and who shall be chosen from among the Trustees; the non-statutory officers of the Authority shall be a President and Chief Executive Officer, one or more Executive Vice Presidents, a Secretary and General Counsel, one or more Senior Vice Presidents, one or more Vice Presidents, one Deputy General Counsel, a Treasurer, a Controller and one or more Deputy and/or Assistant Secretaries, all of whom shall be employees of the Authority.

Section 2. Election and Appointment of non-statutory Officers. The President and Chief Executive Officer, Executive Vice President, Secretary and General Counsel, Executive Vice President - Power Generation and Executive Vice President – Business Services and Administration shall be elected annually at the annual Trustees' meeting. In addition, such officers may be elected from time to time at any regular or special meeting of the Trustees. All other officers of the Authority shall be appointed by and serve at the pleasure of the Chairman, except that the Inspector General, Deputy General Counsel and Deputy and Assistant Secretaries shall be appointed by and serve at the pleasure of the Executive Vice President, Secretary and General Counsel.

Section 3. Term of Office. The President and Chief Executive Officer, Executive Vice President, Secretary and General Counsel, Executive Vice President - Power Generation, and Executive Vice President – Business Services and Administration shall hold office for a term expiring at the next annual Trustees' meeting or until their successors are elected.

Section 4. Vacancies. The Trustees may leave unfilled for any such period any office except those of Chairman, Vice Chairman, President and Chief Executive Officer or Executive Vice President, Secretary and General Counsel.

Section 5. Removal. Any officer elected by the board shall be subject to removal at any time by the Trustees with or without cause

Section 6. Powers and Duties.

A. Chairman. The Chairman shall preside at all meetings of the Trustees and where elected by the Trustees, may also be the Chief Executive Officer of the Authority and shall exercise such duties and powers as hereinafter described and as customarily pertain to the Office of Chairman. In carrying out the policies as determined by the Trustees, the Chairman shall have the general supervision and control of the affairs of the Authority. The Chairman may appoint such assistants and employees as he may deem necessary in order to administer the affairs of the Authority and may fix their power, duties and compensations. The Chairman may delegate to the Vice Chairman, President and Chief Executive Officer, or other officer or officers such of the Chairman's powers and functions in the general supervision, administration and control of the business of the Authority.

B. Vice Chairman. The Vice Chairman shall possess such powers and shall perform such duties as may be assigned to him from time to time by the Trustees. The Vice Chairman shall be Chairman in the absence or incapacity of the Chairman and shall assume the powers and perform all duties of the Chairman if the Chairman is unable to perform such duties for any reason. The Vice Chairman, when acting in the capacity of Chairman under this section, may delegate the powers or duties of Chairman to another Trustee or the President and Chief Executive Officer during the period of disability or incapacity of the Chairman.

C. President and Chief Executive Officer. The President, where elected by the Trustees, may also be the Chief Executive Officer of the Authority, and subject to such supervision as the Chairman or the Trustees may from time to time exercise, shall have such duties and powers as hereinafter described and as customarily pertain to such office of officers. Except as may be prescribed by the Chairman or the Trustees, the President and Chief Executive Officer shall have general supervision over the property, business and affairs of the Authority and over its several officers, employees and agents other than the Chairman, the Vice Chairman and those officers reporting directly to the Chairman. The President and Chief Executive Officer

may sign, execute and deliver in the name of the Authority powers of attorney, contracts, agreements, leases, notes, checks, drafts, bonds, obligations and such documents other than those required by these By-laws, law or resolution to be executed by the Chairman and/or the Secretary. The President and Chief Executive Officer may delegate to such officers as he or she appoints such of the President and Chief Executive Officer's powers and functions in the general supervision and control of the business of the Authority as he or she deems appropriate.

D. Vice Presidents. Executive Vice Presidents, Senior Vice Presidents, Vice-Presidents and Inspector General, shall have such powers and perform such duties as customarily pertain to such officers and as may be assigned to them by the Chairman, Trustees, or the President and Chief Executive Officer, subject, however, at all times to the supervision and control of the Chairman and Trustees and subject further to any limitations which the Chairman or Trustees may from time to time prescribe. The activities of the Authority shall be organized into offices and departments as determined by the President and Chief Executive Officer after consultation with the Chairman and Trustees. In addition to the foregoing, there shall be separate Departments of Inspector General and Internal Audit which shall report to the Executive Vice President, Secretary and General Counsel. The Inspector General shall meet at least annually with a committee of trustees composed of trustees other than the Chairman. All other Departments of the Authority except for the Law Department shall report directly to the President and Chief Executive Officer. Any Senior or Executive Vice President at the direction of the Chairman, Trustees or President and Chief Executive Officer, may perform any of the duties of the President and Chief Executive Officer.

E. Executive Vice President and General Counsel. The Executive Vice President and General Counsel, who may also serve as Secretary, shall report to the Chairman and shall be the chief legal officer of the Authority and in that capacity shall advise and represent the Authority generally in all legal matters and proceedings, including legislative proceedings; shall designate those employees who shall be eligible to accept service of process on behalf of the Authority; and shall possess such powers and shall have general supervision over the property, business and affairs of the legal, secretaries, inspector general and internal audit offices and shall perform such other duties as customarily pertain to such office or may be from time to time assigned by the Chairman or prescribed by the Trustees, subject, however, at all times to the supervision and control of the Chairman and the Trustees and subject further to any limitations which the Chairman or Trustees may from time to time prescribe. The Deputy General Counsel shall have such powers and perform such other duties of the Executive Vice President and General Counsel as customarily pertain to the office in the absence or disability of the Executive Vice President and General Counsel.

F. Secretary. The Secretary shall attend all meetings of the Trustees and act as Secretary thereof and record all votes and shall keep a record of the proceedings of the Trustees in a Minute Book to be kept for that purpose. The Secretary shall cause notice to be given of all meetings of the Trustees and shall be custodian of the records of the actions of the Trustees and shall keep in safe custody the seal of the Authority and shall have the authority to affix such seal to all documents and papers authorized to be executed by the Trustees or officers of the Authority requiring such seal to be affixed. The Secretary shall attest to the signatures of the Trustees and officers of the Authority and shall have the authority to cause copies to be made of all minutes, resolutions, records and documents of the Authority and to deliver certificates under seal to the effect that such copies are true and accurate and that all persons dealing with the Authority may rely on same. The Secretary shall appoint one or more Deputy and/or Assistant Secretaries and shall possess such powers and perform such other duties as customarily pertain to the office or may be from time to time assigned by the Chairman, President and Chief Executive Officer or prescribed by the Trustees, subject, however, at all times to the supervision and control of the Chairman and the Trustees and subject further to any limitations which the Chairman or the Trustees may from time to time prescribe.

G. Treasurer. The Treasurer shall have general custody of all funds and securities of the Authority and have general supervision of the collection and disbursement of Authority funds and shall endorse on behalf of the Authority for collection checks, notes and other obligations, and shall deposit the same to the credit of the Authority in such bank or banks or depositories as the Trustees may designate. The Treasurer may sign with the President, or such other person or persons as may be designated for such purpose by the Trustees, all bills of exchange or promissory notes of the Authority and shall possess such powers and shall perform such other duties as customarily pertain to the office or as may be assigned from time to time by the

President and Chief Executive Officer or prescribed by the Chairman or Trustees, subject, however at all times to the supervision and control of the President and Chief Executive Officer, Chairman and the Trustees and subject further to any limitations which the President and Chief Executive Officer, Chairman or Trustees may from time to time prescribe.

H. Controller. The Controller shall be in charge of the accounting operations, the preparation of fiscal accounts and the coordination of all external audits of the Authority and shall possess such powers and shall perform such duties as customarily pertain to the office or as may be assigned by the President and Chief Executive Officer or prescribed by the Chairman or Trustees, subject, however, at all times to the supervision and control of the President and Chief Executive Officer, Chairman and the Trustees and subject further to any limitations which the President, Chairman or Trustees may from time to time prescribe

I. Deputy and Assistant Secretaries. The Deputy and Assistant Secretaries shall possess such powers and shall perform such duties as may be assigned from time to time by the Secretary or Chairman or prescribed by the Trustees, subject, however, at all times to the supervision and control of the Secretary, Chairman and the Trustees and subject further to any limitations which the Secretary, Chairman or the Trustees may from time to time prescribe. Each Deputy and Assistant Secretary may, in the absence or incapacity of the Secretary, assume and perform all powers and duties of the Secretary.

ARTICLE V

Committees

Section 1. Executive Management Committee. The Chairman, President and Chief Executive Officer, Executive Vice President, Secretary and General Counsel, the Executive Vice President - Power Generation, Executive Vice President – Business Services and Administration and such other officers as the Chairman may from time to time designate shall be members of an Executive Management Committee which shall periodically review and propose Authority corporate strategies, policies and programs and shall report on and make recommendations, with the Chairman’s concurrence, to the Trustees. Any officer so designated shall serve at the pleasure of the Chairman.

The President and Chief Executive Officer, or in his absence or disability the Chairman [President], shall preside at Executive Management Committee meetings, which shall meet quarterly or more often as the President and Chief Executive Officer may designate.

Section 2. Audit Committee. The Audit Committee shall consist of two Trustees, other than the Chairman. The Audit Committee shall have oversight of such activities of the Authority as set forth in the Audit Committee Charter adopted by the Trustees and may exercise such powers as the Trustees shall from time to time determine.

Section 3. Other Committees. The Trustees or the Chairman may appoint other committees which shall have and may exercise such powers as shall be authorized by the Trustees or by actions of the Chairman or President and Chief Executive Officer.

5. **2001 Annual Report of Procurement Contracts and Annual Review of Open Procurement Contracts**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve the 2001 Annual Report of Procurement Contracts (Exhibit ‘5A-4’), and the Guidelines for Procurement Contracts (Exhibit ‘5A-2’), and to review open service contracts exceeding a year as detailed in the Annual Report (Exhibit ‘5A-3’). An Executive Summary is set forth in Exhibit ‘5A-1’.

BACKGROUND

“Section 2879 of the Public Authorities Law (‘PAL’) governs the administration and award of procurement contracts equal to or greater than \$5,000.00. Section 2879 of the PAL requires public authorities to adopt comprehensive guidelines detailing their operative policy and instructions concerning the use, awarding, monitoring and reporting of procurement contracts. The Authority’s current Guidelines were approved by the Trustees at their meeting of October 31, 1989 and, were implemented as of January 1, 1990.

“Section 2879 of the PAL also requires authorities to review and approve such guidelines annually and to file a report regarding procurement contracts with the Division of the Budget; the Department of Audit and Control; the Department of Economic Development; the Senate Finance Committee; and the Assembly Ways and Means Committee. The annual report must include a copy of the Authority’s current Guidelines, details concerning any changes to the Guidelines during the year and particular information concerning procurement contracts. For each procurement contract included in the report the following information must be identified:

[A] listing of all procurement contracts entered into [by the Authority], all contracts entered into with New York State business enterprises and the subject matter and value thereof, all contracts entered into with foreign business enterprises, and the subject matter and value thereof, the selection process used to select such contractors, all procurement contracts which were exempt from the publication requirements of article four-C of the economic development law, the basis for any such exemption and the status of existing procurement contracts.

“Lastly, Section 2879 of the PAL requires an annual review by the Trustees of open service contracts exceeding one year. Those long-term service contracts exceeding a year and awarded after January 1, 1990, are also included in the Annual Report. Open services contracts awarded prior to January 1, 1990, are listed in Exhibit ‘5A-3’.

DISCUSSION

“The 2001 Annual Report of Procurement Contracts is attached for review and approval by the Trustees (Exhibit ‘5A-4’). This report reflects activity for all procurement contracts equal to or greater than \$5,000, as identified by the Authority’s SAP computer system, that were open, closed, or awarded in 2001, including contracts awarded in 1990 through 2001 that were completed in 2001, or were extended into 2002 and beyond. All additional information required by the statute is also included. The Trustees are requested to approve the attached Annual Report pursuant to Section 2879 of the PAL prior to submittal thereof to the Division of the Budget; the Department of Audit and Control; the Department of Economic Development; the Senate Finance Committee; and the Assembly Ways and Means Committee.

“A copy of the Guidelines for Procurement Contracts, effective April 30, 2002 (Exhibit ‘5A-2’), is attached to the Report. These Guidelines are substantively the same as the version approved last year with some revisions. In this year’s Guidelines, Section 2, Definitions, Part A, Procurement Contracts, is being amended to read as follows:

Procurement Contracts shall not include contracts for differences, contracts for energy, capacity, ancillary services, transmission, distribution or related services in support of the provision of service to Authority customers, financial hedge contracts, including, but not limited to, swaps, calls, puts or swap options and credit rating services.

Also in Section 2, Definitions, Part B, Service Contracts, 'investment banking' would be deleted and 'financial advisory' would be added to the sentence as follows:

Personal Services include, but are not limited to: accounting, architectural, engineering, ~~investment banking,~~ financial advisory, legal, public relations, planning, management consulting, surveying, training (when provided on Authority property and/or exclusively for Authority employees), and construction management.

And the following would be added to Section 3, Solicitation Requirements, Part I:

In addition, this provision shall not apply to contracts for differences, contracts for energy, capacity, ancillary services, transmission, distribution or related services in support of the provision of service to Authority customers, financial hedge contracts, including, but not limited to, swaps, calls, puts or swap options and credit rating services, and shall not include memberships in various industry groups, professional societies, and similar cooperative associations, nor any cooperative projects and procurement activities, conducted or sponsored by such organizations, in which the Authority participates; advertising agreements with radio, television, and print media shall also be excluded.

Certain Procurement Contracts may require: (1) purchase on the spot market; (2) purchases which require a completion time less than the time limits for noticing in the Contract Reporter; or (3) purchases that do not lend themselves to the solicitation for proposal process. In accordance with paragraph 3(h) of § 2879 of the Public Authorities Law, the Authority declares it to be the policy that such purchases, including, but not limited to: oil or gas purchases on the spot market are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the Vice President of Procurement and Real Estate and the head of the initiating unit. Where appropriate, generic ads may be included from time to time in the Contract Reporter notifying potential bidders of such opportunities and soliciting qualification statements from such firms for consideration by the Authority.

The following would be added to Section 6, Award of Contract, Part A:

“Extensions of 12 months or less of the term of a contract previously approved by the Trustees shall be approved by authorized designee in accordance with existing Expenditure Authorization Procedures ('EAP's').

“The Guidelines describe the Authority's process for soliciting proposals and awarding contracts. Topics detailed in the Guidelines include solicitation requirements, evaluation criteria, contract award process, contract provisions, change orders, Minority/Women Business Enterprises ('M/WBE') requirements, employment of former officers and reporting requirements. The Guidelines have been designed to be self-explanatory.

RECOMMENDATION

“The Vice President - Procurement and Real Estate recommends that the Trustees approve the 2001 Annual Report of Procurement Contracts, the Guidelines for Procurement Contracts, and the review of open service contracts as attached hereto in Exhibits '5A-1' through '5A-4.'

“The Executive Vice President – Power Generation, the Executive Vice President, Secretary and General Counsel, the Executive Vice President – Business Services and Administration, the Senior Vice President – Chief Financial Officer and I concur in the recommendation.”

Mr. Hoff presented the highlights of staff's recommendations to the Trustees.

Mr. Hoff thanked Ms. Gil and the rest of the Procurement Division staff for their hard work in assembling and verifying the material for the annual report of procurement contracts.

Responding to questions from Trustee McCullough, Mr. Hoff summarized the highlights of the proposed revisions to the Guidelines for Procurement Contracts.

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

RESOLVED, That pursuant to Section 2879 of the Public Authorities Law and the Authority's Procurement Guidelines, the Annual Report of Procurement Contracts, as listed in Exhibit "5A-4", and the Guidelines for the use, awarding, monitoring and reporting of Procurement Contracts (Exhibit "5A-2") as amended below, be, and hereby are, approved as follows:

Section 2 Definitions, Part A, Procurement Contracts:

Procurement Contracts shall not include contracts for differences, contracts for energy, capacity, ancillary services, transmission, distribution or related services in support of the provision of service to Authority customers, financial hedge contracts, including, but not limited to, swaps, calls, puts or swap options and credit rating services;

Section 2 Definitions, Part B, Service Contracts, "investment banking" will be deleted and "financial advisory" will be added to the sentence as follows:

Personal Services include, but are not limited to: accounting, architectural, engineering, ~~investment banking,~~ financial advisory, legal, public relations, planning, management consulting, surveying, training (when provided on Authority property and/or exclusively for Authority employees), and construction management.

Section 3, Solicitation Requirements, Part I:

In addition, this provision shall not apply to contracts for differences, contracts for energy, capacity, ancillary services, transmission, distribution or related services in support of the provision of service to Authority customers, financial hedge contracts, including, but not limited to, swaps, calls, puts or swap options and credit rating services, and shall not include memberships in various industry groups, professional societies, and similar cooperative associations, nor any cooperative projects and procurement activities, conducted or sponsored by such organizations, in which the Authority participates; advertising agreements with radio, television, and print media shall also be excluded.

Certain Procurement Contracts may require: (1) purchase on the spot market; (2) purchases which require a completion time less than the time limits for noticing in the Contract Reporter; or (3) purchases that do not lend themselves to the solicitation for proposal process. In accordance with paragraph 3(h) of § 2879 of the Public Authorities Law, the Authority declares it to be the policy that such purchases, including, but not limited to: oil or gas purchases on the spot market are exempted from the noticing requirements of Article 4C of the Economic Development Law subject to the approval of the Vice President of Procurement and Real Estate and the head of the initiating unit. Where appropriate, generic ads may be included from time to time in the Contract Reporter notifying potential bidders of such opportunities and soliciting qualification statements from such firms for consideration by the Authority.

Section 6, Award of Contract, Part A:

April 30, 2002

Extensions of 12 months or less of the term of a contract previously approved by the Trustees shall be approved by authorized designee in accordance with existing Expenditure Authorization Procedures (“EAP’s”).

AND BE IT FURTHER RESOLVED, That the open service contracts exceeding a year be, and hereby are, reviewed.

POWER AUTHORITY OF THE STATE OF NEW YORK

ANNUAL REPORT OF PROCUREMENT CONTRACTS

EXECUTIVE SUMMARY

The Power Authority of the State of New York ("Authority") is a diversified energy corporation committed to meeting the electrical needs and challenges of New York ("N.Y.") State by providing lower cost electricity as well as being a leader in conservation, energy efficiency, electro-technologies and small scale renewable energy forms. A nonprofit, public energy corporation, the Authority does not use tax revenues or State funds or credit. It finances construction of its projects through bond and note sales to private investors and repays the debt holders with proceeds from operations.

A major achievement for the Authority during 2001 was the completion of installation of ten (10) LM6000 Gas Turbines and balance of plant equipment in New York City, with one (1) additional unit installed in Brentwood, Long Island. These Power Now! Projects were completed in less than one year, as compared to a two year schedule for a project of that magnitude. The units were available to provide electricity to New York City and Long Island during the summer of 2001 to help meet the electricity demand as identified by the New York Public Service Commission ("PSC") and the New York Independent System Operator ("NYISO").

In 2001, the Authority undertook a major effort to install new energy efficient lighting fixtures and ballasts in State and city facilities, public schools throughout the State, and municipal and local governments in N.Y. State.

Other Energy Efficiency efforts include the Non-Electric End Use Program and the Electrotechnologies Program in public facilities throughout N.Y. State employing alternative fueled energy technologies; a Coal Conversion Program for New York City Schools and Buffalo Public Schools to replace obsolete coal boilers with modern boilers using optimized dual-fuel (gas or oil) technology and to replace the existing climate control distribution systems; a program for supplying super-efficient refrigerators for certain Authority Public Housing customers; an Electric Vehicle Program promoting the use of electric vehicles (cars, pick-ups and buses) throughout N.Y. State; installation of Photovoltaic ("PV") Systems on several facilities throughout N.Y. State, and installation of fuel cells power plants ("FCPPs") at several locations throughout New York State. Since their inception at the Authority, Energy Services & Technology initiatives are expected to approach \$1,200,000,000 of which \$104,000,000 was expended in 2001.

In the course of constructing and operating its facilities, the Authority requires the services of outside firms for accounting, engineering, legal, public relations, surveying, and other work of a consulting, professional or technical nature to supplement its own staff, as well as to furnish varied goods and services, and perform construction work. Many of these contracts are associated with the construction, maintenance and operation of the Authority's electric generating facilities and transmission lines, and support of the Energy Efficiency Projects noted above.

PROCUREMENT GUIDELINES

In compliance with the applicable provisions of Section 2879 of the Public Authorities Law, as amended by the laws of 1988, the Authority has established comprehensive guidelines detailing its operative policy and instructions concerning the use, awarding, monitoring, and reporting of procurement contracts.

A copy of the Authority's current Guidelines for Procurement Contracts governing solicitations and evaluation of proposals for procurement contracts is attached hereto. These Guidelines, approved by the Authority's Trustees, were implemented as of January 1, 1990, and have been amended annually as necessary. A copy of the Guidelines for Procurement Contracts, effective April 30, 2002 (Exhibit "A-2"), is attached to the Report. These Guidelines are substantively the same as the version approved last year with some revisions as indicated below.

In this year's Guidelines, Section 2, Definitions, Part A, Procurement Contracts, is being amended to read as follows:

Procurement Contracts shall not include contracts for differences, contracts for energy, capacity, ancillary services, transmission, distribution or related services in support of the provision of service to Authority customers, financial hedge contracts, including, but not limited to, swaps, calls, puts or swap options and credit rating services.

Also in Section 2, Definitions, Part B, Service Contracts, "investment banking" would be deleted and "financial advisory" would be added to the sentence as follows:

Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when provided on Authority property and/or exclusively for Authority employees), and construction management.

The following would be added to Section 3, Solicitation Requirements, Part I:

In addition, this provision shall not apply to contracts for differences, contracts for energy, capacity, ancillary services, transmission, distribution or related services in support of the provision of service to Authority customers, financial hedge contracts, including, but not limited to, swaps, calls, puts or swap options and credit rating services, and shall not include memberships in various industry groups, professional societies, and similar cooperative associations, nor any cooperative projects and procurement activities, conducted or sponsored by such organizations, in which the Authority participates; advertising agreements with radio, television, and print media shall also be excluded.

Certain Procurement Contracts may require: (1) purchase on the spot market; (2) purchases which require a completion time less than the time limits for noticing in the Contract Reporter; or (3) purchases that do not lend themselves to the solicitation for proposal process. In accordance with paragraph 3(h) of § 2879 of the Public Authorities Law, the Authority declares it to be the policy that such purchases, including, but not limited to: oil or gas purchases on the spot market are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the Vice President of Procurement and Real Estate and the head of the initiating unit. Where appropriate, generic ads may be included from time to time in the Contract Reporter notifying potential bidders of such opportunities and soliciting qualification statements from such firms for consideration by the Authority.

The following would be added to Section 6, Award of Contract, Part A:

Extensions of 12 months or less of the term of a contract previously approved by the Trustees shall be approved by authorized designee in accordance with existing Expenditure Authorization Procedures ("EAP's").

The Guidelines describe the Authority's process for soliciting proposals and awarding contracts. Topics detailed in the Guidelines include solicitation requirements, evaluation criteria, contract award process, contract provisions, change orders, Minority/Women Business Enterprises ("M/WBE") requirements, employment of former officers and reporting requirements. The Guidelines have been designed to be self-explanatory.

ACCOMPLISHMENTS

Major procurement efforts in 2001 included purchase of goods, services and construction work, in support of the Authority's operating projects, and headquarters' facilities, support of the Power Now! Projects, Life Extension Modernization ("LEM") Programs at Niagara and St. Lawrence, the Energy Services and Technology ("EST") Programs (e.g., High Efficiency Lighting Program ("HELP"), the Refrigerator Program for the New York City Housing Authority, the Electric Transportation Program, and Energy Services Program ("ESP")). Procurement is continuing efforts to optimize use of the Authority's credit card system for small dollar procurements, the SAP

procurement and materials management system, as well as supporting the requirements of our operating and capital projects, and headquarters operations.

(I) Credit Card Procurement System ("CCPS")

With the implementation of SAP, procurement credit card usage levels have declined. The decline is largely attributed to the placement of previously non-stock items into the SAP inventory system requiring the issuance of a formal purchase order regardless of dollar value. At the end of 2001, the number of cardholders was 160. Cardholders are located in headquarters and the operating facilities. Monthly credit card use averaged 1000 transactions, with a value of \$475,000.

(II) Negotiated Savings Program

The procurement staff at the Authority established a goal of achieving \$6,200,000 of additional savings through negotiation of improved pricing and other commercial terms with low recommended bidders and the resolution of back charges and claims with our outside Vendors and Contractors. In 2001, the estimated value of such savings was \$6,600,000, ranging from improved pricing terms for the 500 MW Combined Cycle Plant at Poletti, contracts in support of Energy Efficiency Programs, and Niagara Life Extension Project.

(III) Supplier Diversity Program ("SDP")

In 2001, the Power Authority continued to optimize the utilization of M/WBE providing goods and services in support of the Authority's operations. As noted in Attachment I, the Authority awarded nearly \$12,000,000 for goods and services in 2001 to M/WBE firms. This included direct and indirect procurements of office supplies, computer equipment, chemicals, consulting services, temporary engineering personnel, and design and construction work.

Our M/WBE goal in 2001 was 6% of the total reportable procurement expenditures. The actual percentage attained for calendar year 2001 was 6.1%.

The Authority includes subcontracting goals to M/WBE firms in non-construction procurements over \$25,000 and construction procurements over \$100,000. This has been and will continue to be a major focus for the Energy Efficiency and Electrotechnologies Programs. We will, however, continue to pursue other direct and indirect procurement opportunities when and wherever possible, including the upcoming 500 MW Combined Cycle Plant.

The Authority has also focused on increasing opportunities for M/WBE firms to participate in investment banking activities, treasury bill investments, as well as including an M/WBE firm as a co-manager in the Tax Exempt Commercial Paper Program. In 2001, M/WBE investment banking firms purchased and sold over \$550,000,000 (in principal) of securities transactions for the Authority.

Procurement representatives also worked closely with, and were members of, the National Minority Business Council ("NMBC"), the Association of Minority Enterprises of N.Y. ("AMENY"), the New York/New Jersey Minority Purchasing Council, the Westchester and Long Island Hispanic Chamber of Commerce, and the African American Chamber of Commerce for Westchester and Rockland Counties.

ANNUAL REPORT - 2001 PROCUREMENT CONTRACTS

The Annual Report includes specific details of procurements of \$5,000 or greater, awarded since January 1, 1990 and which were active in 2001. There were 2224 such contracts with an estimated value exceeding \$2,242,000,000, which also includes fossil fuel and Corporate Finance expenditures.

Total procurement expenditures in 2001 exceeded \$774,000,000. This included over \$182,000,000 for the purchase of fossil fuels, over \$295,000,000 for the purchase of major equipment and construction in support of the Power Now! Projects, and approximately \$33,000,000 for the purchase of design and furnishing of major equipment for the 500 MW Power Plant at Poletti. Approximately 62% of the contracts active in 2001 were closed out last year.

As noted in Attachment II, approximately 8% of these contracts were for construction work; over 57% were for the purchase of equipment and commodities; over 11% were for consulting contracts (e.g., engineering, design, specialized analysis); with 19% for other services, such as technician work and contracted personnel; the remaining 5% was for non-procurement contracts such as payments for memberships, co-funding agreements with the Electric Power Research Institute ("EPRI") and Petroleum Overcharge Restitution ("POCR") grants. It should also be noted that while approximately 49% of the 2001 non-fuel contracts covered by the Report exceeded \$25,000, the total value of those contracts were approximately 99% of the total non-fuel expenditures.

Attachment III indicates that based upon the total value of the contracts included in the Annual Report, approximately 94% of the total dollars expended (including fuels and corporate finance) were for contracts, which were competitively bid. In terms of the numbers of contracts processed (Attachment IV), approximately 68% were competitively bid and 32% were sole source awards. Major reasons for the sole source awards included the purchase of spare parts and services from original equipment manufacturers, and to procure services on an emergency basis and from proprietary sources.

GUIDELINES FOR PROCUREMENT CONTRACTS

1. PURPOSE

The purpose of these Guidelines for Procurement Contracts ("Guidelines"), which comply with the applicable provisions of Article 4-C of the Economic Development Law and § 2879 of the Public Authorities Law, is to establish the basis for soliciting and evaluating proposals from individuals and/or firms providing goods and/or services as defined below in section 2. Consistent with these Guidelines individual facilities or headquarters departments may establish specific supplementary guidelines based on their own needs.

2. DEFINITIONS

- A. "Procurement Contracts" are all contracts for the acquisition of goods and/or services in the actual or estimated amount of five thousand dollars (\$5,000.00) or more. Such goods and/or services shall consist of all those necessary to support the Authority's Headquarters Facilities, Operating and Capital Construction Projects, including but not limited to: goods, such as office supplies, major electrical equipment; construction and maintenance work; and services as more fully described in section 2. B below. Procurement Contracts shall not include contracts for differences, contracts for energy, capacity, ancillary services, transmission, distribution or related services in support of the provision of service to Authority customers, financial hedge contracts, including, but not limited to: swaps, calls puts or swap options, and credit rating services. In addition, Procurement Contracts shall not include memberships in various industry groups, professional societies, and similar cooperative associations, nor any cooperative projects and procurement activities, conducted or sponsored by such organizations, in which the Authority participates; advertising agreements with radio, television, and print media shall also be excluded.
- B. "Services Contracts" are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships or firms not officers or employees of the Authority) for a fee or other compensation. Services Contracts are comprised of three specific types: Personal Services, Non-Personal Services, and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when provided on Authority property and/or exclusively for Authority employees), and construction management. Non-Personal Services include, but are not limited to: skilled or unskilled temporary personnel, including clerical office staff, technicians or engineers working under Authority supervision; maintenance; repairs; and printing services. Construction includes Procurement Contracts involving craft labor.

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient Authority staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies; or (5) for a combination of these factors.

- C. "Goods" include equipment, material and supplies of every kind.

3. SOLICITATION REQUIREMENTS

- A. Solicitation of proposals for Procurement Contracts is the joint responsibility of the Procurement Division at the Headquarters offices, or the Procurement Departments at the facilities, and the initiating unit. Except as otherwise authorized by these guidelines, a request for proposal ("RFP") shall be sought from a minimum of three providers and/or firms (if available) for purchases valued under \$25,000 and a minimum of five providers and/or firms (if available) for purchases valued at \$25,000 and greater commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance. It is preferable that more than five proposals be requested whenever possible and practicable.
- B. Pre-qualification of prospective bidders may be employed for Procurement Contracts to be bid by invitation. In such cases, proposals will be requested only from those providers and/or firms whose pre-qualification submittals show sufficient ability and competence to supply the particular goods and/or perform the particular services required.
- C. The Authority shall, in order to promote the use of minority and women-owned business enterprises, ("M/WBE's") solicit offers from minority and women-owned business enterprises known to have experience in the area of the goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, a minority or women-owned business enterprise shall be any business enterprise at least 51 percent owned by Blacks, Hispanics, Native Americans ("Indians"), Asians, Pacific Islanders, and Women, and as further described in the Authority's Minority and Women-Owned Business Enterprise Policy and Procedures, and Executive Law Article 15-A.
- D. In order to foster increased utilization of M/WBE's, a single proposal can be sought, negotiated, and accepted for purchases of goods or services not exceeding \$5,000 from an M/WBE certified by New York State offering a reasonable price for such items or services (not exceeding \$5,000).
- E. Pursuant to Public Authorities Law § 2879, it is the policy of New York State to promote the participation of and maximize the opportunities for New York State business enterprises and New York State residents in Procurement Contracts. The Authority shall use its best efforts to promote such participation and shall comply with the applicable provisions of the Act.
 - 1. For the purpose of this section 3, a New York State business enterprise shall mean a business enterprise, including a sole proprietorship, partnership, or corporation which offers for sale or lease or other form of exchange, goods which are sought by the Authority and which are substantially manufactured, produced or assembled in New York State or services which are sought by the Authority and which are substantially performed within New York State and as further described in Public Authorities Law § 2879.
 - 2. For the purpose of this section 3, a New York State resident means a natural person who maintains a fixed, permanent and principal home located within New York State and to which such person, whenever temporarily located, always intends to return and as further described in Public Authorities Law § 2879.
 - 3. For the purpose of this section 3, a foreign business enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods sought by the Authority and which are substantially produced outside New York State, or services sought by the Authority and which are substantially performed outside New York State, and as further described in Public Authorities Law § 2879.

- F. Pursuant to the Public Authorities Law § 2879, the Authority shall, where feasible, make use of the stock item specification forms of New York State manufacturers, producers and/or assemblers for any Procurement Contract for the purchase of goods when preparing a request for proposals, purchase order, price inquiry, technical specifications and the like. The Headquarters Procurement Group will develop a system for collecting such data and disseminating a listing of such New York State manufacturers for consultation by Authority employees preparing a specification or bill of materials for goods.
- G. Goods may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the state or federal government or any city or municipality where the Procurement Division at the Headquarters offices, or the Procurement Departments at the facilities, and the initiating unit determine that a reasonable potential exists for the savings of costs or other benefit to the Authority and have approved the specifications and proposed terms and conditions of such contract.
- H. An RFP will include a scope of work which defines the goods required and/or the services to be performed, the required completion of any "milestone" dates, the Authority's M/WBE Program requirements, if applicable, all other applicable Authority requirements, and any special methods or limitations which the Authority wishes to govern the work. Telephone solicitation, usually for those procurements valued at \$25,000 or less, may be used where time constraints do not permit issuance of an RFP, where issuance of an RFP is otherwise impracticable, or for goods which are catalog items or do not require a detailed bill of materials or specification.
- I. For all Procurement Contracts with a value equal to or greater than \$15,000 (except for those contracts noted below) the Authority shall, prior to solicitation of proposals, submit the following information to the Commissioner of Economic Development to be included in a weekly Contract Reporter published by that department (unless such publication would serve no useful purpose): (1) the Authority's name and address; (2) the contract identification number; (3) a brief description of the goods and/or services sought, the location where goods are to be delivered and/or services provided and the contract term; (4) the address where bids or proposals are to be submitted; (5) the date when bids or proposals are due; (6) a description of any eligibility or qualification requirement or preference; (7) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture, or co-production arrangement; (8) any other information deemed useful to potential contractors; (9) the name, address, and telephone number of the person to be contacted for additional information; and (10) a statement as to whether the goods or services sought had, in the immediately preceding three year period, been supplied by a foreign business enterprise. Such information shall be submitted to the Commissioner of Economic Development in accordance with the schedule set forth by the Department of Economic Development, in order that the pertinent information may be published in the Procurement Opportunities Newsletter (also referred to as the "New York State Contract Reporter"). A minimum of fifteen business days shall be allowed between the publication of such notice by the Commissioner of Economic Development and the due date of the bid or proposal.

This provision shall not apply to Procurement Contracts awarded on an emergency basis as described below in section 3. L; Procurement Contracts being re-bid or re-solicited for substantially the same goods or services, within 45 business days after the date bids or proposals were originally due; Procurement Contracts awarded to not-for-profit providers of human services.

In addition, this provision shall not apply to contracts for differences, contracts for energy, capacity, ancillary services, transmission, distribution or related services in support of the provision of service to Authority customers, financial hedge contracts, including, but not limited to, swaps, calls, puts or swap options and credit rating services, and shall not include memberships in various industry groups, professional societies, and similar cooperative associations, nor any cooperative projects and procurement activities, conducted or sponsored by such organizations, in which the Authority participates; advertising agreements with radio, television, and print media shall also be excluded.

Certain Procurement Contracts may require: (1) purchase on the spot market; (2) purchases which require a completion time less than the time limits for noticing in the Contract Reporter; or (3) purchases that do not lend themselves to the solicitation for proposal process. In accordance with paragraph 3(h) of § 2879 of the Public Authorities Law, the Authority declares it to be the policy that such purchases, including, but not limited to: oil or gas purchases on the spot market, are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the Vice President of Procurement and Real Estate and the head of the initiating unit. Where appropriate, generic ads may be included from time to time in the Contract Reporter notifying potential bidders of such opportunities and soliciting qualification statements from such firms for consideration by the Authority.

J. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as an Authority representative, a "competitive search" shall be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the work. Depending upon market conditions, at least five (5) potential sources should be evaluated. If there are less than five sources, all sources shall be evaluated. The Procurement Division shall interface with the initiating unit to gather information from potential sources, which should include a description of the qualifications of the consultant or firm, resumes of key personnel, past experience and proposed billing rates.

K. A Procurement Contract may be awarded on a sole source basis where:

1. The compatibility of equipment, accessories, or spare or replacement parts is the paramount consideration.
2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
3. A sole supplier's item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods or services.
5. Award to certified M/WBE firms for purchases not exceeding \$5,000, pursuant to section 3. D.

L. A Procurement Contract may be awarded without following the solicitation requirements that would ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:

1. A threat to the health or safety of the public or Authority employees or workers.
2. The proper functioning of the Authority's offices or construction or operating projects require adherence to a schedule that does not permit the time for ordinary procurement solicitation.

M. Whenever an initiating unit determines that a Procurement Contract should be awarded on either a sole source or emergency basis, the head of the unit shall provide to the Procurement Division at Headquarters or Procurement Departments at the Facilities, a written statement explaining the reasons therefore.

4. EVALUATION OF PROPOSALS

A. Evaluation of proposals shall be made by a fair and equitable comparison of all aspects of the proposals against the specifics of the RFP and against each other, including an analytic study of each offer considering: the quality of the goods and/or the competence of the bidder, the technical merit of the proposals, and the price for which the goods and/or services are to be supplied.

B. In the event that the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated on the contract requisition at the time of bidding, the initiating department shall prepare an explanation of any reasons why the initial cost estimate was incorrect or should be revised.

This will be reviewed by the Procurement Division at Headquarters and/or Procurement staffs at the Facilities and appropriate management levels for approval as stipulated in the Expenditure Authorization Procedures. Consideration will be given at that time for: 1) rejecting bids, re-soliciting proposals, and/or possibly modifying the scope of work; or 2) revising the cost estimate, and proceeding with the award of contract; or 3) negotiating with the low bidder(s), as determined by the Vice President - Procurement and Real Estate, to reduce the price quoted. Factors to be considered in reaching the proper course of action will include, but not be limited to, the effects (both schedule and cost) of a delay to the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if proposals are re-solicited, and the accuracy of the original cost estimate. The recommended course of action and the reasons therefore will be fully documented in a memorandum for consideration by the appropriate level of management prior to approval.

C. Important items to be considered in evaluating the goods to be supplied and/or competence of the bidder are: previous experience (including applicable experience within New York State and evaluations from other clients to whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the Authority's work; and the ability to provide any needed advanced techniques such as simulation and modeling. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of proposals, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services, and the ability to meet M/WBE goals, if any. The need to purchase the goods from and the need to subcontract performance of services to others will be evaluated as to effect on cost, as well as quality, schedule, and overall performance.

D. For Services Contracts, the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract, provided that the price for performing such work is reasonable and competitive.

E. For Procurement Contracts other than Personal Services (as defined in section 2. B of these Guidelines), award should usually be made to the bidder which is the lowest priced firm submitting a proposal which meets the commercial and technical requirements of the bid documents.

F. Award to "other than low bidder" can be made only with the approval of the appropriate management level as stipulated in the Authority's Expenditure Authorization Procedures, and should be based upon such a proposal providing a clear advantage to the Authority over that of the lower-priced proposal. Such factors justifying an "other than low bidder" award may include, but are not necessarily limited to, improved delivery schedules which will reduce outages, longer warranty periods, improved efficiency over life of equipment use, reduced maintenance costs, financial resources of the bidders, or ability to meet or exceed M/WBE goals.

5. RECOMMENDATION OF AWARD

- A. A recommendation for approval of a proposed award of a Procurement Contract will usually be prepared by the unit requiring the goods and/or services in the form of a memorandum. The recommendation will include an evaluation of proposals as specified in section 4, above, as well as proposed compensation terms which are specific and provide a clear breakdown of cost factors and methods of calculation including, as applicable:
1. Lump sum and/or unit prices for equipment and construction work.
 2. Hourly or daily rates for personnel.
 3. Markups for payroll taxes, fringe benefits, overhead and fees if the proposal is based on reimbursement of actual payroll costs.
 4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.
 5. Provisions, if any, for bonus/penalty arrangements based on target man-hours and/or target schedule.
- B. The recommendation shall also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, or bidding documents, including, but not limited to payment terms, warranties, and bonds (if any) requirements.

6. AWARD OF CONTRACT

- A. Services Contracts to be performed over a period in excess of 12 months shall be approved and reviewed annually by the Trustees. Services Contracts covering less than a 12-month period shall be approved by authorized designees in accordance with existing Expenditure Authorization Procedures. The extension beyond 12 months of a contract for services with an initial duration of less than 12 months shall be approved by the Trustees at the request of the initiating department and shall be reviewed by the Trustees annually. The extension for a cumulative term exceeding 12 months of a contract for services, which has previously been approved by the Trustees requires further Trustees' approval. Extensions of 12 months or less of the term of a contract previously approved by the Trustees shall be approved by authorized designee in accordance with existing Expenditure Authorization Procedures ("EAP's").
- B. A contract or contract task shall be deemed to be for services in excess of 12 months where it does not specify a definite term and the work will not be completed within 12 months, and any "continuing services" type contract with no fixed term which provides for the periodic assignment of specific tasks or particular requests for services. This would include contracts for architect/engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment, which have been approved by the Trustees. Each task authorized under such contracts (which may be referred to as a "Change Order", "Purchase Order" or Task Number) will be considered a separate commitment and will be separately approved in accordance with the Expenditure Authorization Procedures.

- C. Where time constraints or emergency conditions require immediate commencement of services to be performed over a period in excess of one year, and the total estimated contract value does not exceed \$250,000, the Business unit Head, with the prior concurrence of the Vice President - Procurement and Real Estate, may authorize the commencement/performance of such services, subject to Trustees' ratification of such as soon as practicable.
- D. Where time constraints or emergency conditions require the extension beyond a year of an existing contract with an initial duration of less than a year, and the incremental value of the short-term extension does not exceed \$100,000, the Business Unit Head, with the prior concurrence of the Vice President - Procurement and Real Estate, may authorize the extension of such contracts, subject to Trustees' ratification of such action as soon as practicable.
- E. In cases where the total estimated contract value or the value of the extension exceeds the aforementioned amounts, the President's interim approval will be required subject to Trustees' ratification of such as soon as practicable.
- F. The Procurement Division at the Headquarters offices, or the Procurement Departments at the project sites, will prepare the contract for execution by the Authority and the successful bidder to be awarded the purchase order/contract. No work shall commence by the selected contractor until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution. The Authority signatories of such letters must be authorized to approve contract awards pursuant to existing Expenditure Authorization Procedures.
- G. Pursuant to Public Authorities Law § 2879, the Authority shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase of goods or services from a foreign business enterprise (as defined in section 3. .E. 3 of these Guidelines) in an amount equal to or greater than one million dollars (\$1,000,000) simultaneously with notifying the successful bidder therefore. The Authority shall not enter into the Procurement Contract for said goods until at least fifteen (15) days have elapsed, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, telephone and facsimile number of the foreign business enterprise, the amount of the proposed Procurement Contract, and the name of the individual at the foreign business enterprise or acting on behalf of the same who is principally responsible for the proposed Procurement Contract.

7. **CONTRACT PROVISIONS**

Standard forms of contracts currently in use are available from the Procurement Division. They generally include: purchase order format for standard procurements of goods or services; furnish and deliver format for major equipment purchases; Letter Agreements and Agreement formats for consulting work; and contract work orders (for construction work of small magnitude), construction contracts (for major construction work), and furnish, deliver, and install contracts (for specialized major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of the services. Authority units proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions, which may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without prior approval of the Procurement Division, which, along with Procurement Departments at operating facilities, is solely responsible for requesting proposals.

A. The following types of provisions setting forth the responsibilities of contractors are to be contained in the standard forms of Procurement Contracts except that any of the provisions listed below which are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location or locations where they are to be performed or the type of compensation being paid therefore need not be included. Other provisions may be added as the particular needs of the Authority may require.

1. Schedule of Services or Specifications
2. Time of Completion
3. Compensation or Itemized Proposals
4. Relationship of Parties
5. Delays
6. Termination
7. Changes in the Work
8. Claims and Disputes
9. Warranty
10. Insurance
11. Records, Accounts, Inspection and Audit
12. Assignment
13. Notices
14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Testimony
18. Entire Agreement
19. Minority and Women-Owned Business Enterprise Program Requirements
20. Omnibus Procurement Act of 1992 Requirements

B. The following types of provisions setting forth the responsibilities of contractors are to be contained in the standard forms of Procurement Contracts except that any of the provisions listed below which are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location or locations where they are to be performed or the type of compensation being paid therefore need not be included. Other provisions may be added as the particular needs of the Authority may require.

21. Schedule of Services or Specifications
22. Time of Completion
23. Compensation or Itemized Proposals
24. Relationship of Parties
25. Delays
26. Termination
27. Changes in the Work
28. Claims and Disputes
29. Warranty
30. Insurance
31. Records, Accounts, Inspection and Audit
32. Assignment
33. Notices
34. Indemnification
35. Governing Law
36. Proprietary Nature of Work
37. Testimony
38. Entire Agreement
39. Minority and Women-Owned Business Enterprise Program Requirements
40. Omnibus Procurement Act of 1992 Requirements

- C. The following types of provisions setting forth the responsibilities of contractors are to be contained in the standard forms of Procurement Contracts except that any of the provisions listed below which are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location or locations where they are to be performed or the type of compensation being paid therefore need not be included. Other provisions may be added as the particular needs of the Authority may require.

41. Schedule of Services or Specifications
42. Time of Completion
43. Compensation or Itemized Proposals
44. Relationship of Parties
45. Delays
46. Termination
47. Changes in the Work
48. Claims and Disputes
49. Warranty
50. Insurance
51. Records, Accounts, Inspection and Audit
52. Assignment
53. Notices
54. Indemnification
55. Governing Law
56. Proprietary Nature of Work
57. Testimony
58. Entire Agreement
59. Minority and Women-Owned Business Enterprise Program Requirements
60. Omnibus Procurement Act of 1992 Requirements

Contract Attachments

1. Compensation Schedule
2. Schedule of Services or Specifications
3. Appendix "A" (miscellaneous statutory provisions)
4. Appendix "B" (Prompt Payment Provisions)
5. Appendix "C" (Minority and Women-Owned Business Enterprises provisions)
6. Appendix "E" (Omnibus Procurement Act of 1992 Requirements)
7. Appendix "G" (EEO Requirements)

8. CHANGE ORDERS

- A. Change Orders to existing contracts are justified in the following cases:
1. To incorporate additional work related to the original scope, to delete work or otherwise modify original work scope
 2. To exercise options previously included in the original contract to perform additional work or to extend the contract term
 3. Emergency conditions, defined in section 3. L which requires the immediate performance of work by a firm already under contract;
 4. Re-bidding would not be practical or in the best interests of the Authority's customers; and
 5. Meet the Authority's M/WBE goals in accordance with Executive Law Article 15-A.

- B. All Change Orders must be approved in accordance with the Authority's Expenditure Authorization Procedures, and should include specific schedules for completion of work at the earliest possible time.

9. EMPLOYMENT OF FORMER OFFICERS AND EMPLOYEES

- A. Former Authority officers and employees are eligible to be considered for employment as contractors and/or consultants, provided that: they meet all criteria for contractors and/or consultants generally as specified in these Guidelines; their employment is not barred by N.Y. Public Officers Law § 73 (8); if requested, they obtain an opinion by the state Ethics Commission that such employment is permissible; and upon the approval of the President.
- B. Pursuant to the provisions of N.Y. Public Officers Law § 73 (8):
 - 1. No Authority officer or employee is eligible, within a period of two years after the termination of Authority service, to appear or practice before the Authority or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before the Authority.
 - 2. No Authority officer or employee is eligible, at any time after the termination of Authority service to appear, practice, communicate or otherwise render services before the Authority or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and personally participated in during the period of service, or which was under his or her active consideration.

10. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) REQUIREMENTS

It is the objective of the Authority to continue to foster the development of business opportunities on Authority contracts for M/WBE firms. Article 15-A of the Executive Law established a state-wide office of M/WBE development which is responsible for developing rules and regulations for implementation of this new statute, certification of M/WBE firms, reviewing and monitoring goal plans, compliance reports, as well as contract provisions to be included in all non-construction contracts over \$25,000 and construction contracts over \$100,000. The definition of an M/WBE firm is included in section 3. C. of these Guidelines. It is the Authority's objective to solicit proposals from certified M/WBE firms, which are qualified to perform the required work. In addition, specific goals may be included in certain contracts for consulting work, construction and procurement of goods and other services requiring the contractor/vendor to sub-contract a portion of the work to certified M/WBE firms, as required by law. Bidders' proposals shall include Preliminary Subcontracting Plans as part of their proposal, where required, for M/WBE firms and failure of such bidders to meet these requirements may be grounds for rejection of the proposal, or cancellation of the contract if a contractor did not make a good faith effort to meet its goals after contract award.

11. REPORTING REQUIREMENTS

At the Headquarters offices, the Procurement Division shall maintain records of such Procurement Contracts including bidder's names, the selection processes used, and the status of existing contracts including goods provided and/or services performed and fees earned, billed and paid. At the project sites, such records shall be kept by the Procurement Departments. After the end of each calendar year, the Vice President - Procurement and Real Estate shall prepare and submit to the Trustees for their approval an annual report which shall include:

- A. Such annual report, as approved by the Trustees, shall be submitted to the Division of Budget within one hundred twenty (120) days after the end of such calendar year and copies shall be distributed to the Department of Audit and Control, the Department of Economic Development, the Senate Finance Committee, and the Assembly Ways and Means Committee. Copies shall be made available to the public upon reasonable written request therefore.
1. A copy of the Guidelines,
 2. An explanation of the Guidelines and any amendments thereto since the last annual report,
 3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State business enterprises and the subject matter and value thereof and all contracts entered into with foreign business enterprises, and the subject matter and value thereof,
 4. A list of fees, commissions or other charges paid
 5. A description of work performed, the date of the contract and its duration, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of the existing Procurement Contracts,
 6. Method of awarding the contract (e.g., competitive bidding, sole source or competitive search), and
 7. Reasons why any procurements over \$15,000 were not noticed in the Contract Reporter.

12. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS

- A. These Guidelines are intended for the guidance of officers and employees of the Authority only, and nothing contained herein is intended or shall be construed to confer upon any person, firm or corporation any right, remedy, claim or benefit under, or by reason, of any requirement or provision hereof.
- B. Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of these Guidelines.

**6. St. Lawrence/F. D. Roosevelt and Niagara Power Projects –
Relicensing - Capital Expenditure Authorization Requests
and Initial Payment of the St. Lawrence Community Enhancement Fund**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to authorize an additional \$11.0 million in capital expenditures in 2002 for relicensing the St. Lawrence/F. D. Roosevelt Power Project (‘St. Lawrence’). The anticipated tasks related to the St. Lawrence Project involve: (1) performing eel studies and any additional studies required by the Federal Energy Regulatory Commission (‘FERC’) for the application for a new license including a Draft Environmental Impact Statement (‘DEIS’) for the St. Lawrence Project; (2) consultation with agencies, local governments, and other parties; and (3) third party contractor (‘TPC’) support for the cooperative environmental review process by FERC and the New York Department of Environmental Conservation (‘DEC’), including preparation of the DEIS; and (4) certain initial payments related to the settlement agreements with local governments and the St. Lawrence Aquarium and Ecological Center. To date, the Trustees have approved \$35.4 million for this project, of which approximately \$30.8 million has been spent. The current request would increase the total authorized amount for this project to \$46.4 million.

“The Trustees are further requested to authorize: 1) the initial payment of \$4 million to the St. Lawrence Local Government Task Force for the Community Enhancement Fund (‘Fund’) provided for in a settlement agreement executed by the Local Government Task Force and the Authority on February 22, 2002, and 2) the President and Chief Operating Officer, and any of his designees, to sign any documents or enter into any agreements necessary or desirable to effectuate such payment.

“The Trustees are also requested to approve an additional \$6.7 million in capital expenditures for relicensing-related activities this year at the Niagara Power Project. To date, the Trustees have approved \$19.8 million for this effort, of which approximately \$15.3 million has been spent. The current request would increase the total authorized amount for this project to \$26.5 million.

BACKGROUND

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

“The Authority's Expenditure Authorization Procedures require Trustees' approval when a personal services contract exceeds a cumulative change order value of \$500,000, or when a non-personal services or equipment purchase contract exceeds a cumulative change order limit of \$3,000,000.

“The Authority’s existing FERC license for the St. Lawrence Project expires in October 2003. In accordance with FERC regulations, the Authority’s application for a new license was filed by October 2001.

“At their meeting of December 18, 2001, the Trustees approved additional expenditures of \$15.6 million for the St. Lawrence relicensing effort to cover expenses through 2002. The focus in 2002 will be: continued consultation and finalization of settlement agreements with various members of the Cooperative Consultation Process (‘CCP’) Team; completing any additional studies identified by FERC; performing eel studies; and processing of the application for a new license, including a DEIS.

“At their meeting of December 18, 2001, the Trustees also approved additional expenditures of \$14.0 million for the Niagara relicensing effort to cover expenses through 2002. The Authority’s federal license for the Niagara Power Project expires in August 2007. In accordance with FERC regulations, the Authority’s application for a new license must be filed by August 2005.

DISCUSSION

St. Lawrence Project Relicensing

“Relicensing of the Project began in 1992 with the creation of a Hydro Relicensing Task Force (‘Task Force’) which included representatives from most of the non-nuclear departments within the Authority. From 1993 to 1995, the Task Force, led by the Licensing Division, identified potential issues to address during relicensing, conducted studies to collect and compile environmental information, and developed an overall plan for relicensing the St. Lawrence Project. Additional activities included obtaining data on existing environmental conditions, conducting turbine upgrade studies, reviewing issues related to license compliance, and initiating a public outreach program.

“Some of the significant milestones that have been reached since the Authority began the relicensing process in 1996 include: 1) a Memorandum of Understanding between the Authority, FERC and DEC to conduct an integrated environmental review of the Authority’s applications for both a new FERC license and a DEC Water Quality Certificate; 2) establishment of the CCP with FERC, resource agencies, local governments, the Mohawks of Akwesasne, non-governmental organizations, and the public; 3) identification of issues to be addressed during relicensing through a public scoping process; 4) completion of necessary studies for issues raised during the scoping process; 5) settlement negotiations with a number of CCP Team members; 6) filing of the Application for a New License (‘LA’), including Preliminary Draft Environmental Impact Statement (‘PDEIS’); and 7) filing of the Application for a Water Quality Certificate with DEC. In addition, a conceptual settlement agreement has been achieved with the New York State Office of Parks, Recreation, and Historic Preservation, and Settlement Agreements have been reached with the local governments and the St. Lawrence Aquarium and Ecological Research Institute.

“Funding has been included to continue support for:

- 1) Meeting with the CCP Team and facilitation support;
- 2) TPC to continue assisting FERC and DEC in settlement negotiations, meeting attendance, study review, and preparation of the DEIS and assistance with other licensing activities;
- 3) services of a Contractor who is managing eel studies and any additional study required by FERC, report preparation and responses to comments, coordination of information being provided to the TPC, and preparation of any amendments to the LA;
- 4) outside counsel to provide support in relicensing-related matters; and
- 5) initial payments related to settlement agreements including the Community Enhancement Fund.

“Representatives of the Local Government Task Force and the Authority executed a settlement agreement on February 22, 2002. As part of this agreement, the Authority agreed to establish the Community Enhancement Fund when it accepts the new license and that the principal amount of the Fund would be \$36 million, less the initial payments. The initial payment of \$4 million is to be made within 90 days of the execution of the agreement. If FERC accepts the Authority’s proposal to remove the Town of Lisbon from the Project boundary, an additional \$500,000 will be paid to the Town of Lisbon within 90 days of the acceptance of the license by the Authority. Annual payments of \$2 million will be provided from the Fund to the Beneficiaries for the term of the new license. The annual \$2 million payment is guaranteed for each year of the new license, even if the Fund should be depleted prior to the full term of the license. The Authority also agreed to a High Water Flow Adjustment that would be triggered when annual net generation exceeds 7 million-megawatt hours. Based on historic water flows, the adjustment will likely produce at least an additional \$10.9 million over the next 50 years. Under the terms of the agreement, the initial payment of \$4 million is due to be paid by May 22, 2002.

Niagara Relicensing

“Emphasis in 2002 will be on obtaining approval from the FERC for the Authority's Proposed Alternative Licensing Procedures, designed to enhance public participation, and submission of a notice of intent to relicense the project, as required by the Federal Power Act. Under the Authority's alternative licensing proposal, the public participation effort will formally commence in late 2002 with the release of a First Stage Consultation Report, which

is currently under development. In addition, several baseline environmental studies are being conducted. The Authority's public outreach effort will continue through 2002 focusing on educating stakeholders about the relicensing process. Funds have been included to support the efforts of the Office of Parks, Recreation and Historic Preservation to improve some recreational facilities in the Niagara area.

FISCAL INFORMATION

“Funds are included in the approved 2002 budget. It is anticipated that these funds will cover expenses through the end of 2002. Funds through 2007 will be included in future budget submittals. Payments will be made from a combination of Niagara bond proceeds and the Authority’s Capital Fund.

RECOMMENDATION

“The Senior Vice President - Public and Governmental Affairs recommends that the Trustees approve capital expenditures of \$11.0 million for the St. Lawrence/F.D. Roosevelt Power Project and \$6.7 million for the Niagara Power Project relicensing efforts in 2002.

“It is further recommended that the Trustees approve the payment of \$4 million to the St. Lawrence Local Government Task Force for the Community Enhancement Fund.

“The Executive Vice President –Power Generation, the Executive Vice President, Secretary & General Counsel, the Senior Vice President and Chief Financial Officer, the Vice President – Controller and I concur in the recommendation.”

Mr. Osinski presented the highlights of staff's recommendations to the Trustees.

Responding to questions from Trustee McCullough, Mr. Barden explained that certain Authority funds are currently being held in escrow. Mr. Barden also responded that litigation is possible but is not likely to directly involve the Authority.

Trustee Carey requested that a presentation of any outstanding re-licensing issues be provided at the next regular meeting of the Trustees. Trustee McCullough expressed agreement and added that a report on security matters should also be provided at that time to the Trustees.

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

RESOLVED, That additional capital expenditures are hereby approved in accordance with the Authority’s Expenditure Authorization Procedures, as recommended in the foregoing report of the President, in the amounts and for the purposes listed below:

	<u>Expenditure Authorization</u>	
<u>Capital</u>	<u>St. Lawrence/FDR Relicensing</u>	<u>Niagara Relicensing</u>
Current Request	\$11.0 million	\$ 6.7 million
Previous Authorizations	<u>\$35.4 million</u>	<u>\$19.8 million</u>
TOTAL AMOUNT AUTHORIZED	<u>\$46.4 million</u>	<u>\$26.5 million</u>

AND BE IT FURTHER RESOLVED, That the payment of \$4 million to the St. Lawrence Local Government Task Force is hereby approved in accordance with the Authority's Expenditure Authorization Procedures, as recommended in the foregoing report of the President, and that the President and Chief Executive Officer, and any of his designees, are authorized to sign any documents or enter into any agreements necessary to effectuate such payment.

**7. Charles Poletti 500 MW Combined Cycle Project –
Authorization for the President and Chief Executive Officer
to Accept the Certificate of Environmental Compatibility and Public Need
and Related Conditions and Other Regulatory Approvals and Permits**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to authorize the President and Chief Executive Officer to accept (i) the Certificate of Environmental Compatibility and Public Need (‘Certificate’) and Conditions for the Combined Cycle Project which is anticipated to be issued by the New York State Board on Electric Generation Siting and the Environment (‘Siting Board’) pursuant to Article X of the Public Service Law; and (ii) any other regulatory approvals and permits for the Project. The Authority will likely be required to accept the Certificate before any construction can begin.

BACKGROUND

“The Authority filed an Application for a Certificate for the 500 MW Combined Cycle Project at the Authority’s Poletti Station on August 18, 2000, and a Supplement to the Application on January 22, 2001. The Application was determined to be complete on April 30, 2001. Public hearings on the Application were held on June 5, 2001 and were followed by pre-hearing issues conferences. Adjudicatory hearings were held on September 10 and October 11, 2001, on emission rates, merchant plant status and the Market Assessment and Portfolio Strategies computer modeling (commonly known as ‘MAPS’), with briefs on these issues filed shortly thereafter. Topic agreements addressing issues related to construction and operation of the Project were signed by the Authority, the New York State Department of Public Service (‘DPS’), the New York State Department of Environmental Conservation (‘DEC’) and New York State Department of Health (‘DOH’) on October 18, 2001.

“A Recommended Decision from the DPS and the DEC administrative law judges recommending that the Project be approved by the Siting Board was issued on December 17, 2001.

“On January 24, 2002, the Siting Board remanded the proceeding to the Examiners to hold additional adjudicatory hearings on a single issue - the relationship of Particulate Matter sized 2.5 micron and public health. Such adjudicatory hearings were held on April 3-5, 2002, and briefs on the $PM_{2.5}$ issue were submitted to the Board on April 12, 2002.

“The Authority expects to receive a Certificate on or before April 30, 2002, because pursuant to Public Service Law, Article X, the Siting Board must determine whether or not to issue the Certificate by that date.

DISCUSSION

“The Project consists of a 500 MW combined cycle facility, which will primarily burn natural gas, with low sulfur oil as a back-up fuel. It will be located on an approximately eight-acre site adjacent to the Authority’s Charles Poletti Power Project in Astoria, Queens. The purpose of the Combined Cycle Project is to provide economical, reliable, efficient and environmentally safe electricity to government, institutional, and commercial customers in the New York City metropolitan area.

“As noted, it is anticipated that the Siting Board will issue a Certificate with associated Conditions on or before April 30, 2002. Following approval of the Compliance Package, which was submitted to the DPS on April 17, 2002, and as authorized by such Certificate, the Authority would proceed with construction of the Project. The proposed resolution would authorize the President and Chief Executive Officer to determine whether acceptance of the Certificate and any of its Conditions would be in the best interest of the Authority, and if so, to accept the Certificate and any of its Conditions.

OTHER APPROVALS

“Additional regulatory approvals include New York State air and water permits from the DEC; a nationwide permit from the U.S. Army Corps of Engineers for construction of a new outfall in the East River; and a New York State Department of State determination of consistency with the New York State Coastal Zone Management Plan. In addition, the Authority will seek various building permits from the City of New York. With the exception of the permit from the Corps of Engineers, it is expected that the other approvals will be received by the end of April. The Corps Permit is expected in the near future prior to the time work in the water is scheduled to commence.

FISCAL INFORMATION

“The acceptance of the Certificate may have fiscal consequences for the Authority. Such potential consequences will be considered by the President and Chief Executive Officer in making his determination to accept the Certificate. Payment for the construction of the Project will be made from the Authority’s capital fund.

RECOMMENDATION

“The Senior Vice President - Public and Governmental Affairs recommends that the President and Chief Executive Officer be authorized to accept the Certificate of Environmental Compatibility and Public Need for the Charles Poletti 500 MW Combined Cycle Power Project and any other approvals for the Project.

“The Executive Vice President – Power Generation, the Executive Vice President, Secretary and General Counsel, the Senior Vice President and Chief Financial Officer, the Senior Vice President – Marketing, Economic Development and Supply Planning, the Vice President – Project Management and I concur in the recommendation.”

Mr. Suloway presented the highlights of staff's recommendations to the Trustees.

Responding to questions from Trustee McCullough, Mr. Blabey explained the timing within which the Siting Board is anticipated to issue its decision.

Responding to questions from Trustees Carey and McCullough, Mr. Blabey explained the scope and significance of the requested authorization and he indicated that acceptance of the Certificate of Environmental Compatibility and Public Need by the Trustees would not place any obligation on the Authority to move forward with the Project although it is likely that the Certificate itself would expire at some point if construction is not undertaken.

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

RESOLVED, That in consideration of and as recommended by the President and Chief Executive Officer in the foregoing report, the Trustees hereby authorize the President and CEO to determine whether acceptance of the Certificate of Environmental Compatibility and Public Need (“Certificate”) and any of its Conditions would be in the best interests of the Authority and to accept: (i) the Certificate, together with any Conditions thereto for the 500 MW Combined Cycle Project, if such Certificate is issued by the New York State Board on Electric Generation Siting and the Environment pursuant to Article X of the Public Service Law; and (ii) the additional regulatory approvals and permits related to the Project as discussed herein.

8. LIPA Summer 2002 Combustion Turbine Project on Long Island

The Deputy Secretary and Deputy General Counsel submitted the following report:

SUMMARY

“The Trustees are requested to authorize the conveyance or transfer of real property by the New York Power Authority (‘Authority’) to the Long Island Power Authority (‘LIPA’). The sites were acquired by the Authority and are to be used by LIPA for the construction, operation and maintenance of electric generating units to be installed by LIPA for its Summer 2002 Combustion Turbine Project (the ‘Project’) and are located in Bethpage and Glenwood Landing in Nassau County and Port Jefferson in Suffolk County (the ‘Sites’). Such conveyance or transfer may include permanent or temporary easements necessary for the construction, operation and maintenance of the three generation facilities.

DISCUSSION

“At their December 18, 2001 meeting, the Trustees approved the Authority’s acquisition of the Sites for use by LIPA in constructing single cycle General Electric LM6000 electric generating units. The generators are to be installed on a schedule that would have them operational by the summer of 2002. Because of the need to expedite the real estate acquisition of these sites to support the scheduled in-service dates, LIPA, pursuant to a Memorandum of Understanding between the Authority and LIPA dated as of September 7, 2001, requested the Authority to (1) acquire the property at Bethpage, Glenwood Landing and Port Jefferson, and (2) convey the Sites to LIPA. These Sites have now been acquired by the Authority and construction of the Project has commenced.

“In accord with the terms of the MOU and the March 19, 2002 Access and Purchase Agreement between the Authority and LIPA, the Sites should be transferred to LIPA. To effect the transfer of the Sites, the Authority and LIPA will enter into a self-executing escrow agreement whereby the latest date for the actual transfer of the Sites will be July 31, 2003. However, LIPA and the Authority will seek to accomplish the transfer before that date.

“The construction, operation and maintenance of the electric generating units and the acquisition of the Sites were the subject of a SEQRA Environmental Assessment performed by LIPA, as lead agency. In November, 2001 LIPA determined that the action would not result in significant adverse environmental impacts and issued a Negative Declaration. The Negative Declaration was published in the Environmental Notice Bulletin on November 28, 2001.

FISCAL INFORMATION

“As the payments incurred in connection with the acquisitions of these Sites was advanced by LIPA prior to acquiring the Sites, there is no fiscal impact on the Authority.

RECOMMENDATION

“For the foregoing reasons, the Vice President- Project Management, the Vice President-Contracts and Real Estate and the Project Manager recommend that the Trustees approve and adopt the attached resolution authorizing the President and Chief Executive Officer, or his designee, to take all steps necessary and convenient to convey the Sites to LIPA.

“The Executive Vice President, Secretary and General Counsel, and the Executive Vice President-Power Generation and I concur in the recommendation.”

Mr. Clemente presented the highlights of staff's recommendations to the Trustees.

Responding to questions from Chairman Ciminelli and Trustee McCullough, Mr. Clemente confirmed that LIPA has advanced the funds required for these transactions and thus there will be no actual cost to NYPA.

The following resolution, as recommended by the Deputy Secretary and Deputy General Counsel, was unanimously adopted.

RESOLVED, That the Power Authority hereby approves the conveyance and transfer to the Long Island Power Authority of lands in the Towns of Bethpage, Glenwood Landing, and Port Jefferson as shown and described on Power Authority of the State of New York Map Nos. NO. 3, NO. 2 and SB. 1. Such conveyance or transfer will be on terms generally consistent with the foregoing report from the Deputy Secretary and Deputy General Counsel and further finds that this conveyance to Long Island Power Authority is necessary to meet the anticipated energy needs of Long Island and therefore finds that Pursuant to Article 5 Title 1 of the Public Authorities Law that it is not practicable nor reasonable to offer a first opportunity to the former owner to purchase this property; and be it further

RESOLVED, That the Executive Vice President – Business Services and Administration or the Vice President Procurement and Real Estate is authorized to execute and deliver to the Long Island Power Authority, in such form as approved by the Executive Vice President, Secretary and General Counsel of the Authority, a quit claim deed of those lands shown and described on Power Authority of the State of New York Maps NO 3, NO 2, and SB 1; and be it further

RESOLVED, That the Vice President- Procurement and Real Estate or the Director- Real Estate of the Authority or the Executive Vice President, Secretary and General Counsel of the Authority be and hereby are authorized to execute on behalf of the Authority, any and all other agreements, papers, or instruments which may be deemed necessary or desirable to carry out the foregoing, subject to the approval as to form thereof by the Executive Vice President, Secretary and General Counsel.

9. **Next Meeting**

The next Regular Meeting of the Trustees will be held on **Tuesday, May 28, 2002** at the **Albany Office at 11:00 a.m.**, unless otherwise designated by the Chairman with the concurrence of the Trustees.

10. Closing

Upon motion made and seconded, the meeting was closed at 11:55 A.M.

David E. Blabey
Executive Vice President,
Secretary and General Counsel

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