JOINT MEETING OF
THE NEW YORK POWER AUTHORITY BOARD OF TRUSTEES
AND
NEW YORK STATE CANAL CORPORATION BOARD OF DIRECTORS

PROPOSED AGENDA

May 24, 2022 at 8:30 A.M. (approximately)
Videoconference

1. Adoption of the May 24, 2022 Proposed Meeting Agenda

2. DISCUSSION AGENDA:
   a. Strategic Initiatives
      i. Interim President and Chief Executive Officer’s Report -- (Justin Driscoll)
   b. Chief Operations Officer’s Report -- (Joseph Kessler)
   c. Chief Commercial Officer’s Report -- (Sarah Salati)
   d. Chief Financial Officer’s Report -- (Adam Barsky)
   e. NYPA Development Report -- (Philip Toia)
      i. Propel NY Project Proposal – Joint Development Agreement with NY Transco -- Resolution (Girish Behal)
   f. Finance & Risk Committee Report -- (Acting Chair John Koelmel)
      i. Finance & Risk Committee Recommendations for Approval:
         1. Recommend Release of Funds in Support of the New York State Canal Corporation (Adam Barsky)
         2. Smart Path Connect Transmission Line Construction Award -- Resolution (Andrew Boulais)
         3. Control Enclosures & Relay Panels On-Call Contract -- Resolution (Andrew Boulais)
         4. IT Co-Sourcing Value Contract Extension -- Resolution (Lisa Beaty)
5. Steel Waiver Request – Instrument Transformers -- Resolution (Andrew Boulais)

6. Steel Waiver Request – Current Limiting Reactors -- Resolution (Andrew Boulais)

3. CONSENT AGENDA:

a. Commercial Operations

   i. Economic Development Power Programs – Customer Cost Mitigation Measures -- Resolution (Keith Hayes)

   ii. Replacement Power Allocation -- Resolution (Keith Hayes)

   iii. Recommencement and Extension of Hydropower Contract with National Grid for the Benefit of Rural and Domestic Consumers and Transmittal to the Governor -- Resolution (Keith Hayes)

   iv. Contracts for the Sale of Hydropower – Final Approval and Transmittal to the Governor -- Resolution (Keith Hayes)

b. Procurement (Services) Contracts

   i. Procurement (Services) and Other Contracts – Business Units and Facilities – Awards, Extensions, and/or Additional Funding -- Resolution (John Canale)

   ii. Long-Term Operations Agreement for the Discover Niagara Shuttle Service -- Resolution (Joseph Leary)

c. Digital Innovation & Transformation

   i. Disposition of Excess Fiber Capacity under Public Authorities Law §1005(29) and Initial Pilot Program under New York State ConnectALL Initiative -- Resolution (Justin Driscoll)

d. Governance Matters

   i. Approval of the Minutes:

      1. Minutes of the Annual Joint Meeting of the New York Power Authority’s Trustees and Canal Corporation’s Board of Directors held on March 29, 2022.
4. Motion to Conduct an Executive Session

5. Motion to Resume Meeting in Open Session

6. Next Meeting
President & CEO Report

Justin E. Driscoll
Interim President & Chief Executive Officer

May 24, 2022
## April 2022 – VISION2030 Scorecard
Progress toward VISION2030 goals and organizational health

<table>
<thead>
<tr>
<th>Category</th>
<th>YTD Target</th>
<th>YTD Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Operations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial Availability (%)</td>
<td>95.0%</td>
<td>97.7%</td>
</tr>
<tr>
<td>Transmission Asset Base ($M)</td>
<td>$1,292</td>
<td>$1,277</td>
</tr>
<tr>
<td>Greenhouse Gas Saved (Tons)</td>
<td>2,736</td>
<td>4,313</td>
</tr>
<tr>
<td><strong>Workforce Management</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Days Away, Restricted or Transferred (DART) Rate (#)</td>
<td>0.78</td>
<td>1.77</td>
</tr>
<tr>
<td>Workforce Engagement &amp; Development (#) (Q)</td>
<td>1,745</td>
<td>2,014</td>
</tr>
<tr>
<td><strong>Financials</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Days Liquidity On Hand (#)*</td>
<td>200</td>
<td>218</td>
</tr>
<tr>
<td>Earnings Before Interest, Depreciation &amp; Amortization (EBIDA) ($M)</td>
<td>$172.0</td>
<td>$220.2</td>
</tr>
<tr>
<td><strong>Key Public Milestones</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Natural Gas Milestones (%)</td>
<td>90.0%</td>
<td>98.4%</td>
</tr>
<tr>
<td>Reimagine the Canals Priority Project Milestones (%)</td>
<td>90.0%</td>
<td>95.1%</td>
</tr>
</tbody>
</table>

*Values and analysis are reported on a one month delay

**Legend**
- Meeting or exceeding target
- Off target
- No update
- Informational, no target
- Significantly off target
New York’s electricity mix will change substantially to achieve 100% zero-emission by 2040

Current Resource Mix

Nuclear
Hydro
Wind
Solar
Storage
Fossil

Nation-leading CLCPA Goals

- Increase renewables to 70% by 2030
- Develop 9,000 MW OSW by 2035
- Triple distributed solar (BTM-PV) to 6,000 MW by 2025
- Double energy storage to 3,000 MW by 2030
- Eliminate fossil generation by 2040
New York’s 2040 installed capacity will need to increase and diversify to replace natural gas

Projected Installed Capacity
GW

- Installed capacity will need to nearly triple by 2040 (40 GW to >120 GW)
- Hydropower is expected to stay consistent
- Dispatchable Emission Free Resources (DEFR) will be required to fulfill a substantial amount of capacity in 2040 (e.g. emerging technologies like renewable gas, hydrogen, carbon capture, and small modular nuclear reactors)

Similarly, demand is projected to grow more than 60% by 2040 and must be met by a substantially different generation mix.

<table>
<thead>
<tr>
<th>Projected Generation</th>
<th>Key Insights</th>
</tr>
</thead>
<tbody>
<tr>
<td>TWh</td>
<td>• Electricity use is expected to increase substantially, predominately due to electrification of transportation and building heating/cooling</td>
</tr>
<tr>
<td></td>
<td>• Hydropower will continue to serve as the foundation of the grid</td>
</tr>
</tbody>
</table>

While the exact makeup of the 2040 grid is evolving, several trends appear across scenarios:

- **More diverse**: Significant deployment of on-shore and off-shore wind, solar, and batteries.
- **More distributed**: Significant ramp up of demand-side and customer-sited solutions.
- **More resilient**: Focus on stability in the face of climate change and influx of intermittent resources.
NYPA’s alignment with those trends enables CLCPA and ensures our financial strength for the benefit of the State

More diverse
- Investing in hydropower, the foundation of a renewable NY grid
- Exploring opportunities to replace peaker plants with energy storage
- Piloting new technology (such as green hydrogen and utility-scale storage)

More distributed
- Partnering with our customers
- Leading by example at NYPA facilities
- Developing Virtual Power Plants/Grid Flexibility Solutions

More resilient
- Investing in transmission
- Enhancing flexibility of our large-scale hydropower
Already in 2022, NYPA has demonstrated not only commitment to, but implementation of, a CLPCA future

More distributed

University at Albany Announces Completion of Largest Rooftop Solar Array in State University of New York System

NYPA Partners with New Paltz to Replace All Village Streetlights with LED Fixtures

High-Speed Chargers for Electric Vehicles Now Operating at Stewart's Shops in Latham and Clifton Park
We’ve also set in motion the next set of CLCPA-aligned projects

More distributed

NYCHA and NYPA Begin Construction on $72 Million Energy-Efficient Upgrades to Improve Heating Systems at Marble Hill Houses in the Bronx and Berry Houses on Staten Island

NYPA Partners with Port Authority to Replace Lights Throughout One World Trade Center

Purchase College To Host First Large-Scale Solar Energy System To Generate Clean Power And Provide Utility Savings To Community Subscribers
Our Mission:
Lead the transition to a carbon-free, economically vibrant New York through customer partnerships, innovative energy solutions, and the responsible supply of affordable, clean and reliable electricity.
NYPA Safety Culture

APPA Safety Award of Excellence Received

Safety winners are pictured with APPA VP of Technical and Operations Services – Alex Hofmann (L) and Chair of APPA’s Safety Committee, NYPA VP of Corporate EH&S – Patricia Meehan (C), and Industrial Hygiene and Corporate Risk Manager at Grand River Dam Authority – Bob Scudder (R)

NYPA has recorded 11 incidents meeting DART criteria
- YTD NYPA DART Rate: 1.77
- YTD NYPA OPS DART Rate: 2.34
Asset Management System

NYPA follows a Plan-Do-Check-Act approach to ensure an agile Asset Management System

**Act**
Identify and implement needed adjustments to achieve objectives under shifting external conditions

**Check**
Monitor, analyze, and review the impact of market conditions on Cost, Performance, and Risk

**Plan**
Establish Asset Management strategy, objectives, and plans that reflect VISION2030 & external drivers

**Do**
Execute capital projects and optimize operations and maintenance under given market conditions
Remaining Agile in an Evolving Energy Landscape

Preserve Hydropower
- Headgate Automation
- Battery Storage
- Next Generation Niagara

Decarbonize Gas Plants
- Small Clean Power Plant Adaptation
- Green Hydrogen Demonstration
Trends Impacting Energy Markets

Preserving & enhancing hydro, decarbonizing gas fleet, supporting customers decarbonize

- Over 30% of Russian NG to EU, 33% via Ukraine
- Europe’s LNG terminals operating at max capacity
- Impact of China COVID rates on gas consumption
- Henry Hub >$8/mmbtu, highest since 2008
- US gas storage inventory 5-16% below 5-yr avg
- Lack of production response from US suppliers
- Lingering cooler temperatures in MW & NE
- US LNG export facilities at max capacity ~12.7 Billion feet per day
Merchant Hedge Status (as of 4/15)

Executing hedges to accelerate meeting year end targets while staying above 2022 budget

**2022 Hedges**
- 70% Energy
- 78% Capacity

**Hedge Notional**
- 2022 (BOY) – $126M
- 2023 – $140M
- 2024 – $86M
- 2025 – $15M
Electricity Supply – Through April 15 2022

2022 Merchant Gross Margin Projections

- **Power Allocated**: 1,724 Megawatts
- **Jobs Retained and Created**: 428,461
- **Capital Committed**: $22.5 Billion

- **YTD Merchant Margin**: $126M; $30M above Target $95.5M
- **Full Year Expected Value**: $328M; 23% above Target $267M

### Graph Details

- **Projection & Target Values**:
  - Projected Values: $201, $267, $334, $395
  - Target Values: $279, $328, $390

- **As of Date**:
  - $201 as of 10/8/2021
  - $279 as of 4/15/2022

- **Legend**:
  - Green: Within Target
  - Yellow: Outside of Target
  - Red: Significantly Outside of Target Range
Trends Impacting NYPA's Customer Business Lines

**Macroeconomics**
- 8.5% Y-o-Y Inflation
- Supply chain constraints
- Solar tariff circumvention

**Regulatory Landscape**
- Infrastructure Investment & Jobs Act
- Future of the Build Back Better Act
- NYS energy policy

**Customer Insights**
- Beginning decarbonization
- Strong growing interest in solar
- Electrification & equity
# Customer Business Lines: March YTD Results

<table>
<thead>
<tr>
<th>Key Performance Indicator</th>
<th>Actuals - Year to Date</th>
<th>YTD Target / 2022 YE Target</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Clean Energy Solutions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><img src="image" alt="CO₂" /></td>
<td>$49M Capital Spend</td>
<td>$58M / $259M</td>
</tr>
<tr>
<td></td>
<td>$42M Capital Project Contracts Signed</td>
<td>$19M / $200M</td>
</tr>
<tr>
<td><strong>e-Mobility</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><img src="image" alt="Electric Car" /></td>
<td>22 EVolve NY DCFC Charging Ports</td>
<td>22 / 80 Charging Ports</td>
</tr>
<tr>
<td></td>
<td>$0M Customer Contracts Signed for DCFCs</td>
<td>$5.6M / $9M</td>
</tr>
<tr>
<td><strong>NY Energy Manager + DER + Flexibility</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><img src="image" alt="Bar Graph" /></td>
<td>2MW Solar &amp; Storage Installed</td>
<td>2.5 MW / 33 MW Solar &amp; Storage Installed</td>
</tr>
<tr>
<td></td>
<td>23K Cumulative MMBtus (Saved/Recommended)</td>
<td>21K / 26K MMBtus</td>
</tr>
</tbody>
</table>

- **Within Target**
- **Outside of Target**
- **Significantly Outside of Target Range**
Chief Financial Officer Report

Adam Barsky
EVP & Chief Financial Officer

May 24, 2022
Year-to-Date Actuals Through April 30th

YTD ACTUALS (JANUARY-APRIL 2022)

<table>
<thead>
<tr>
<th>In $ Thousands</th>
<th>2022 Budget ($)</th>
<th>2022 Current ($)</th>
<th>Variance ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Operating Income</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating Revenue</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Generation Revenue</td>
<td>$959,420</td>
<td>$1,036,745</td>
<td>$77,325</td>
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<tr>
<td>Non Utility Revenue</td>
<td>10,867</td>
<td>8,243</td>
<td>(2,624)</td>
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<tr>
<td>Ancillary Service Revenue</td>
<td>10,911</td>
<td>17,724</td>
<td>6,813</td>
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<tr>
<td>NTAC and Other</td>
<td>80,979</td>
<td>107,362</td>
<td>26,383</td>
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<tr>
<td>Operating Revenue Total</td>
<td>1,062,177</td>
<td>1,170,074</td>
<td>107,897</td>
</tr>
<tr>
<td>Operating Expense</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchase Power</td>
<td>(287,803)</td>
<td>(328,393)</td>
<td>(40,590)</td>
</tr>
<tr>
<td>Ancillary Service Expense</td>
<td>(9,675)</td>
<td>(9,984)</td>
<td>(309)</td>
</tr>
<tr>
<td>Fuel Consumed</td>
<td>(140,359)</td>
<td>(131,637)</td>
<td>8,723</td>
</tr>
<tr>
<td>Wheeling</td>
<td>(229,171)</td>
<td>(256,171)</td>
<td>(27,000)</td>
</tr>
<tr>
<td>Operations &amp; Maintenance</td>
<td>(202,102)</td>
<td>(185,520)</td>
<td>16,582</td>
</tr>
<tr>
<td>Other Expense</td>
<td>(25,547)</td>
<td>(39,177)</td>
<td>(13,630)</td>
</tr>
<tr>
<td>Monetized Funds Support*</td>
<td>(7,050)</td>
<td>(39,177)</td>
<td>(32,127)</td>
</tr>
<tr>
<td>Allocation to Capital</td>
<td>11,485</td>
<td>13,197</td>
<td>1,712</td>
</tr>
<tr>
<td>Operating Expense Total</td>
<td>(890,222)</td>
<td>(949,853)</td>
<td>(59,631)</td>
</tr>
<tr>
<td>EBIDA Total</td>
<td>171,955</td>
<td>220,221</td>
<td>48,266</td>
</tr>
<tr>
<td>Non Operating</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest and Other Expenses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment and Other Income</td>
<td>6,036</td>
<td>6,037</td>
<td>0</td>
</tr>
<tr>
<td>Mark to Market Adjustments</td>
<td>0</td>
<td>(16,839)</td>
<td>(16,839)</td>
</tr>
<tr>
<td>FADS Total</td>
<td>177,991</td>
<td>209,419</td>
<td>31,428</td>
</tr>
<tr>
<td>Interest &amp; Other Expenses</td>
<td>(34,918)</td>
<td>(38,789)</td>
<td>(3,872)</td>
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<tr>
<td>Depreciation</td>
<td>(107,037)</td>
<td>(102,492)</td>
<td>4,545</td>
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<tr>
<td>Interest and Other Expenses Total</td>
<td>(135,918)</td>
<td>(152,084)</td>
<td>(16,165)</td>
</tr>
<tr>
<td>NET INCOME</td>
<td>$36,036</td>
<td>$56,137</td>
<td>$32,101</td>
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</table>

*Monetized Funds Support: Expected incremental expenses into the forecast.
EBIDA: Earnings Before Interest Depreciation & Amortization
Funds Available for Debt Service (FADS): EBIDA + Investment and Other Income + MTM Adjustments
### 2022 Year-End Projection

**YEAR END PROJECTION (JANUARY - DECEMBER 2022)**

<table>
<thead>
<tr>
<th>In $ Thousands</th>
<th>2022 Budget ($)</th>
<th>2022 Current ($)</th>
<th>Variance ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Operating Income</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating Revenue</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Generation Revenue</td>
<td>$2,632,904</td>
<td>$3,090,799</td>
<td>$457,895</td>
</tr>
<tr>
<td>Non Utility Revenue</td>
<td>32,970</td>
<td>29,219</td>
<td>(3,751)</td>
</tr>
<tr>
<td>Ancillary Service Revenue</td>
<td>28,876</td>
<td>37,635</td>
<td>8,759</td>
</tr>
<tr>
<td>NTAC and Other</td>
<td>229,160</td>
<td>259,501</td>
<td>30,341</td>
</tr>
<tr>
<td><strong>Operating Revenue Total</strong></td>
<td><strong>2,923,910</strong></td>
<td><strong>3,417,155</strong></td>
<td><strong>493,244</strong></td>
</tr>
<tr>
<td>Operating Expense</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchase Power</td>
<td>(692,404)</td>
<td>(920,399)</td>
<td>(227,995)</td>
</tr>
<tr>
<td>Ancillary Service Expense</td>
<td>(30,410)</td>
<td>(30,603)</td>
<td>(193)</td>
</tr>
<tr>
<td>Fuel Consumed</td>
<td>(272,271)</td>
<td>(375,251)</td>
<td>(102,980)</td>
</tr>
<tr>
<td>Wheeling</td>
<td>(797,974)</td>
<td>(824,118)</td>
<td>(26,144)</td>
</tr>
<tr>
<td>Operations &amp; Maintenance</td>
<td>(635,231)</td>
<td>(629,657)</td>
<td>5,574</td>
</tr>
<tr>
<td>Other Expense</td>
<td>(76,481)</td>
<td>(111,922)</td>
<td>(35,440)</td>
</tr>
<tr>
<td>Monetized Funds Support*</td>
<td>(7,293)</td>
<td>(37,635)</td>
<td>(8,759)</td>
</tr>
<tr>
<td>Allocation to Capital</td>
<td>50,579</td>
<td>49,021</td>
<td>(1,558)</td>
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<tr>
<td><strong>Operating Expense Total</strong></td>
<td><strong>(2,461,486)</strong></td>
<td><strong>(2,881,304)</strong></td>
<td><strong>(419,818)</strong></td>
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<tr>
<td>EBIDA Total</td>
<td>462,424</td>
<td>535,851</td>
<td>73,427</td>
</tr>
<tr>
<td>Non Operating</td>
<td></td>
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</tr>
<tr>
<td>Interest and Other Expenses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment and Other Income</td>
<td>18,041</td>
<td>18,042</td>
<td>0</td>
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<tr>
<td>Mark to Market Adjustments</td>
<td>0</td>
<td>(32,839)</td>
<td>(32,839)</td>
</tr>
<tr>
<td><strong>FADS Total</strong></td>
<td><strong>480,466</strong></td>
<td><strong>521,054</strong></td>
<td><strong>40,588</strong></td>
</tr>
<tr>
<td>Interest &amp; Other Expenses</td>
<td>(97,565)</td>
<td>(101,436)</td>
<td>(3,872)</td>
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<tr>
<td>Depreciation</td>
<td>(321,111)</td>
<td>(316,566)</td>
<td>4,545</td>
</tr>
<tr>
<td><strong>Interest and Other Expenses Total</strong></td>
<td><strong>(400,635)</strong></td>
<td><strong>(432,800)</strong></td>
<td><strong>(32,165)</strong></td>
</tr>
<tr>
<td><strong>NET INCOME</strong></td>
<td><strong>$61,790</strong></td>
<td><strong>$84,093</strong></td>
<td><strong>$103,051</strong></td>
</tr>
</tbody>
</table>

*Monetized Funds Support: Expected incremental expenses into the forecast.

**EBIDA:** Earnings Before Interest Depreciation & Amortization

**Funds Available for Debt Service (FADS):** EBIDA + Investment and Other Income + MTM Adjustments
NYPA Captive Formation

Adam Barsky
EVP & Chief Financial Officer

May 24, 2022
A "captive insurer" is generally defined as an insurance company that is wholly owned and controlled by its insureds; its primary purpose is to insure the risks of its owners, and its insureds benefit from the captive insurer's underwriting profits.

A “pure captive” is a wholly owned subsidiary formed to meet the parent needs and potential third-party risks.

The NYS Legislature passed legislation (Bill # S7087A/A7987) authorizing NYPA and any statutory subsidiary to form a pure captive insurance company. The bill was signed into law by Governor Hochul on May 9, 2022.
Why Form a Captive?

Captive Advantages

- **Ownership** – At the option of the parent, share in profitability of the Captive.
- **Operates outside of the traditional insurer market** – Ability to customize insurance products which will meet NYPA’s needs.
- **Direct access to reinsurance market**
- **Achievement of alternative risk financing objectives** – Broader coverage, pricing stability, increased control over risk, improved cash flow.
- **Loans** – Parent and the Captive have the ability to provide loans to each other.
- **Access to TRIA** – The Captive can access the federal government’s terrorism risk program created under the Terrorism Risk Insurance Act which provides a federal backstop for 80% of covered losses.

Value Drivers

- Act as a formal funding vehicle to insure risk that the parent has decided to self assume.
- Access reinsurance markets.
- Design and manuscript own policy form.
- Provide means to customize self insured retentions to desired levels.
- Centralize global insurance program.
- Provide evidence of insurance to meet contractual requirements with third parties or statutory obligations.
- Enable coverage for risks that are not currently insured, not insurable on the traditional commercial markets, or prohibitively expensive to insure through the commercial markets.
NYPA’s Captive Plan

Phase 1 – Captive Inception
Property + NBCR and Cyber Terrorism

Phase 2 – Commercial risks
Commerically Insurable Risks (Currently Retained and Newly Retained Layers)

- Further explore the following opportunities:
  - General Liability
  - Cyber
  - Workers Comp
  - Environmental
  - D&O
  - Auto Liability
  - Marine Hull & Machinery
  - Marine P&I
  - Water Quality
  - Crime Liability
  - Aviation
  - Health Insurance Stop Loss in Aggregate

Phase 3 – Difficult to Insure and Uninsurable Risks
Commercially Uninsurable Risks

- Further explore the following opportunities:
  - Regulatory Risk
  - Reputational Risk
  - Hydro Flow Risk
  - Transmission Project Coverage
  - Business Interruption Risk
  - Low Probability/High Impact, Catastrophic Risk (Earthquakes, Floods, Wildfires)
NYPA Development - Update

Philip Toia
President, NYPA Development

May 24, 2022
Growing NYPA’s Transmission Asset Base

Active Transmission Projects

- Smart Path
- Smart Path Connect
- Central-East Energy Connect
- Clean Path NY
- Propel NY Energy (SENY PPTN)
Date:   May 24, 2022

To:   THE TRUSTEES

From:   THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject:   Propel NY Energy – Joint Development Agreement with NY Transco

SUMMARY

The Trustees are hereby requested to approve New York Power Authority’s (the “Authority”) execution of a Joint Development Agreement (“JDA”) with NY Transco for the Propel NY Energy Transmission Project (“Project”) subject to selection by the New York Independent System Operator (“NYISO”) as part of the Southeastern New York Public Policy Transmission Needs (“PPTN”) solicitation process.

BACKGROUND

On March 19, 2021, the New York Public Service Commission (“PSC”) issued an Order identifying the need for additional transmission facilities between Long Island, potentially New York City, and Southeastern New York to deliver the output of offshore wind generating resources (the PPTN Order). More specifically, the PPTN Order identified the need for: (i) adding at least one bulk transmission intertie cable to increase the export capability of the LIPA-Con Edison interface that connects Zone K to Zones I and J to ensure that the full output of at least 3,000 MW of offshore wind is deliverable from Long Island to the rest of the State; and (ii) upgrading associated local transmission facilities to accompany the expansion of the proposed offshore export capability (the foregoing, collectively, Transmission Need). Subsequently, and per the PPTN Order, on August 12, 2021, NYISO issued a request for solutions (“RFS”) from qualified developers to address the Transmission Need. The Authority and NY Transco submitted seven proposed solutions (“solutions”) in response to the RFS on October 11, 2021, and six of these solutions were approved by the NYISO to progress to the selection phase of the PPTN process.

The PPTN process is a competitive process resulting from the Federal Energy Regulatory Commission’s (“FERC”) Order 1000. Projects selected under the PPTN process are entitled to receive regulated rate cost recovery for capital investment and ongoing operations and maintenance (“O&M”) services.

The Authority and NY Transco have reached an agreement on the terms and conditions for the co-development of the Project. Staff is seeking the Board of Trustees’ approval and adoption of the resolution.

DISCUSSION

The Authority, including senior staff from NYPA Development, Project & Business Development, Strategic Supply Management, Corporate Insurance, and Legal, reviewed the JDA, which sets forth terms and conditions between the Authority and NY Transco related to
Project development, cost recovery, indemnifications and operation and maintenance of the Project, among other issues.

RECOMMENDATION

The President of NYPA Development recommends that the Trustees approve the Authority’s execution of the Joint Development Agreement between the Authority and NY Transco for the development and construction of the Propel NY Energy Project.

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

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, that the Board of Trustees approves New York Power Authority’s (the “Authority”) execution of the Joint Development Agreement, subject to the conditions imposed by the Board of Trustees, between the Authority and NY Transco for the development and construction of the Propel NY Energy project in the event the New York Independent System Operator (“NYISO”) selects the project as part of the Southeastern New York Public Policy transmission Needs process; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and Chief Financial Officer and the Interim Executive Vice President and General Counsel.
2f. Finance and Risk Committee Report: (Chair Koelmel)

[Oral Report Only]
Memorandum

Date: May 24, 2022
To: THE BOARD OF TRUSTEES
From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER
Subject: Finance and Risk Committee Recommendations for Approvals

SUMMARY

The Finance and Risk Committee (the “Committee”) met on April 26, 2022 and considered and recommended the following resolutions which are now before the Board of Trustees (the “Board” or “Trustees”) for adoption.

ITEMS FOR ADOPTION

i. Release of Funds in Support of the New York State Canal Corporation

RESOLVED, That the Finance and Risk Committee hereby recommends that the Trustees authorize the release of an additional up to $21.3 million in funding to the Canal Corporation to support operations of the Canal Corporation in calendar year 2022, as discussed in the foregoing report of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Finance and Risk Committee recommends that the Trustees affirm the amounts presently set aside as reserves in the Operating Fund are adequate for the purposes specified in Section 503.2 of the Authority’s Bond Resolution, that the amount of up to $21.3 million in funding as described in the foregoing report is not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented, and that the release of such amount is feasible and advisable; and be it further

RESOLVED, That the Finance and Risk Committee recommends that the Trustees affirm that as a condition to making the payments specified in the foregoing report, on the day of such payments, the Executive Vice President and Chief Financial Officer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That the Finance and Risk Committee recommends that the Trustees affirm that the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer, the Interim General Counsel and Executive Vice President, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolution, subject to approval as to the form thereof by the Interim Executive Vice President and General Counsel.
ii. Transmission Line Construction Contract Award Smart Path Connect Project

RESOLVED, That the Finance and Risk Committee recommends that the Trustees approve, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, the award of a six-year construction contract to Michels Power Inc. in the not-to-exceed amount of $276 million as recommended in the foregoing memorandum of the Interim President and Chief Executive Officer;

RESOLVED, That the Authority will use Capital, which may include proceeds of debt issuances, to finance the cost of this Project.

<table>
<thead>
<tr>
<th>Contractors</th>
<th>Contract Approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michels Power Inc. (“Michels”) Neenah, WI</td>
<td>$276,000,000</td>
</tr>
</tbody>
</table>

RFP # Q21-7249MR

iii. Control Enclosures and Relay Panels On-Call Contract Award

RESOLVED, That the Finance and Risk Committee recommends that the Trustees approve, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, the award of a ten-year on-call equipment contract to Wunderlich-Malec Services, Inc. in the not-to-exceed amount of $36 million, with interim approval in the amount of $1.5 million, as recommended in the foregoing memorandum of the Interim President and Chief Executive Officer;

RESOLVED, That the Authority will use Capital or Operating Funds, which may include proceeds of debt issuances, to finance the costs of the projects.

<table>
<thead>
<tr>
<th>Contractors</th>
<th>Contract Approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wunderlich-Malec Services, Inc. Eden Prairie, MN</td>
<td>$36,000,000</td>
</tr>
</tbody>
</table>

RFP # Q21-7253MR

iv. Technology Co-Sourcing Value Contracts – Increase in Value and extension of contract period

RESOLVED, That the Finance and Risk Committee recommends that the Trustees increase the Information Technology personal service contracts for co-sourcing by $12 million to a new total value of $67 million in the amount listed below:

RESOLVED, That the Finance and Risk Committee recommends that the Trustees extend the Information Technology personal service contracts for co-sourcing by six (6) months to a new contract end date of June 30, 2023 listed below:
Contract Award

Ernst & Young LLP
Deloitte Consulting LLP
Cognizant Technology Solutions

Current Request $12,000,000

RFP # Q17-6135RM

v. Instrument Transformers Request for Waiver to Article 22 “STEEL COMPONENTS”

RESOLVED, That the Finance and Risk Committee recommends that the Trustees approve waiver of the Authority's Agreement Article 22 "STEEL COMPONENTS" that the purchasing of steel be produced or made in whole or substantial part in the United States or its territories or possessions, in compliance with Public Authorities Law §2603-a for instrument transformers, as recommended in the foregoing memorandum of the Interim President and Chief Executive Officer;

RESOLVED, That the Authority will use Capital or Operating Funds, which may include proceeds of debt issuances, to finance the costs of the projects.

Contractor

Hitachi Energy USA
Raleigh, NC

Trench Industries Ltd.
Scarborough, Ontario, Canada

RFP # S21-3091MW

vi. Current Limiting Reactors Request for Waiver to Article 22 “STEEL COMPONENTS”

RESOLVED, That the Finance and Risk Committee recommends that the Trustees approve waiver of the Authority's Agreement Article 22 "STEEL COMPONENTS" that the purchasing of steel be produced or made in whole or substantial part in the United States or its territories or possessions, in compliance with Public Authorities Law §2603-a for current limiting reactors, as recommended in the foregoing memorandum from the Interim President and Chief Executive Officer;

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of the projects.

Contractor

Trench Industries Ltd.
Scarborough, Ontario, Canada

RFP # Q22-7267AP

Justin E. Driscoll
Interim President and Chief Executive Officer
Date: May 24, 2022
To: THE TRUSTEES
From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER
Subject: Economic Development Power Programs – Customer Cost Mitigation Measures

SUMMARY

The Trustees are requested to:

1. Authorize the Authority to defer annual compliance action for business customers enrolled in the following economic development power (“EDP”) programs: (i) Recharge New York (“RNY”) power program; (ii) Expansion Power (“EP”) and Replacement Power (“RP”) programs (collectively, “WNY Hydro”); and (iii) Preservation Power (“PP”) program for the annual compliance periods identified below.

2. Authorize the authority to temporarily suspend application of the Annual Adjustment Factor (“AAF”) applicable to customers in the RNY power, WNY Hydro and PP programs to avoid projected rate increases pursuant to the AAF. The AAF applies annually effective July 1 to energy and demand rates for the programs mentioned above. The requested suspension would apply for a period of one year from July 1, 2022 through June 30, 2023.

BACKGROUND

Under the Authority’s EDP Programs, competitively priced power is made available to for-profit and not-for-profit businesses to, among other things, incentivize business development, business expansion, and job creation and retention in the State.

The sale of power under the EDP Programs is sold to business customers pursuant to an applicable tariff and the terms and conditions of a written contract between the Authority and the customer. In addition to the basic requirement to pay for energy products supplied, the Authority’s contracts address “supplemental commitments” made by customers relating to such matters as jobs, capital investment, and/or power utilization. For example, with respect to jobs, the contract may contain supplemental commitments to create and/or retain jobs for a specified term. On capital investment, the contract may obligate the customer to make a minimum capital investment in its facilities on an annual basis or over another specified period. The nature of the commitment may vary depending on the circumstances, such as whether the customer is establishing a new business presence in New York State, expanding existing operations, or sustaining an ongoing business.

In accordance with the contract, customers are required to report to the Authority annually on employment, capital spending and energy usage (“Annual Report”) covering a specified reporting or compliance period applicable to the specific EDP Program (“Compliance Period”). The annual Compliance Period for the RNY Power Program runs from July 1 to June
The annual Compliance Period for the WNY Hydro and PP programs runs from January 1 to December 31. The Authority uses the data contained in the Annual Report and potentially other sources to assess customer compliance with its supplemental commitments.

Each year staff presents an item to the Trustees wherein staff reports the results of its compliance analysis for each EDP Program to the Trustees, and makes recommendations on compliance action for customers whose compliance level falls below the specified threshold (typically 90%) for the Compliance Period. Compliance action typically consists of a reduction in the amount the Customer’s power allocation. Staff may recommend no compliance action for some customers due to extenuating circumstances that affected the customer’s ability to meet its supplemental commitments.

Additionally, under tariffs applicable for the EDP Programs, energy and demand rates are subject to adjustment based on the AAF. The AAF is based upon a weighted average of three economic indices: (1) BLS Industrial Power Price (35% weight); (2) EIA Average Industrial Power Price (40% weight); and (3) BLS Industrial Commodities Price Less Fuel (25% weight). The AAF, whether it represents an increase or decrease, is normally applied to program base rates annually effective on July 1st, in accordance with the applicable tariffs.

DISCUSSION

At this point each year staff begins its annual compliance assessment for the EDP Programs. This normally culminates in recommended compliance action for non-compliant customers, and this year’s assessment would focus on the: (1) RNY Power Program, for the annual Compliance Period running from July 1, 2020 to June 30, 2021 (“RNY 2020-21 Compliance Period”); and (2) the WNY Hydro and PP Power Programs, for the annual Compliance Period running from January 1, 2021 to December 31, 2021 (collectively, “Hydro 2021 Compliance Period”).

Last year, the Trustees, at their May 25, 2021 meeting, approved deferral of compliance action for each of the EDP Programs due to impacts related to the COVID-19 pandemic. Businesses across the State, including many customers in the EDP Programs, were severely impacted by the COVID-19 pandemic, suffering significant losses in business, increased operating costs, and supply chain difficulties, and were forced to curtail operations, reduce or eliminate capital spending, and/or reduce employment levels.

In 2020, the Trustees approved the suspension of the AAF under applicable tariffs to energy and demand rates for customers in the Authority’s EDP Programs, beginning with the adjustment that would have taken effect on July 1, 2020 for a period of one year from July 1, 2020 through June 30, 2021.

The compliance reporting periods being reviewed this year cover a period in which businesses continue to face negative economic pressures because of the pandemic and other factors such as inflation, rising energy costs and supply chain issues. These circumstances caused operational curtailments for many customers. Resource reductions were necessary for businesses to survive. Despite a year passing since the last compliance assessment, businesses are still under financial and operational stress as they seek to emerge from the pandemic and attempt to normalize business operations. Based on a review of the reported data, a higher than usual number of customers are non-compliant with the employment and capital investment commitments.

Given the ongoing impacts on the Authority’s customers from the pandemic and other circumstances, staff is recommending that the Trustees:
1. authorize the Authority to defer compliance action for RNY Power customers for RNY 2020-21 Compliance Period, and for WNY Hydro and PP customers for the Hydro 2021 Compliance Period; and
2. authorize the Authority to temporarily suspend application of the AAF applicable to energy and demand rates for customers in the Authority’s EDP Programs for a period of one year from July 1, 2022 through June 30, 2023.

Customers will benefit from a compliance deferral and a temporary AAF suspension, allowing more time to recover from operational reductions caused by the pandemic and other circumstances.

If these recommended actions are approved, staff will assess the business climate next year and make appropriate recommendations to the Trustees concerning compliance action for the next compliance periods.

FISCAL INFORMATION

Deferral of annual compliance action for the RNY 2020-21 Compliance Period and Hydro 2021 Compliance Period is not expected to have a significant impact on the Authority’s finances.

Though final data used to calculate the AAF is not yet available, based on current information, staff has projected that application of the AAF for the July 1, 2022-June 30, 2023 period would have resulted 4.6% increase to rates, and estimates that the increase would have generated approximately $7 million in revenues under the EDP programs over the same period.

RECOMMENDATION

The Senior Vice President – Clean Energy Solutions recommends that the Trustees:

1. authorize the Authority to defer compliance action for all RNY Power customers for the RNY 2020-21 Compliance Period, and all WNY Hydro Power and PP customers for the Hydro 2021 Compliance Period; and
2. authorize the Authority to temporarily suspend application of the AAF applicable to energy and demand rates for customers in the Authority’s EDP Programs for a period of one year from July 1, 2022 through June 30, 2023.

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

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That the Trustees hereby authorize the deferral of annual compliance action for (1) business customers enrolled in the Recharge New York (“RNY”) Power Program for the annual compliance period running from July 1, 2020 to June 30, 2021, and (2) business customers enrolled in the Expansion Power (“EP”), Replacement Power (“RP”) and Preservation Power (“PP”) Programs for the annual compliance period running from January 1, 2021 to December 31, 2021, for the reasons described in the foregoing memorandum of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Trustees hereby authorize the Authority to temporarily suspend application of the Annual Adjustment Factor, applicable pursuant to tariff to customers enrolled in the Authority’s economic development power programs (RNY Power, EP, RP and PP), which would otherwise be scheduled to apply to energy and demand rates annually as of July 1st, for a period of one year from July 1, 2022 through June 30, 2023, for the reasons described in the foregoing memorandum of the Interim President and Chief Executive Officer; and be it further

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

Date: May 24, 2022
To: THE TRUSTEES
From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER
Subject: Replacement Power Allocation

SUMMARY

The Trustees are requested to approve an allocation of 3,900 kilowatts (“kW”) of Replacement Power (“RP”) to GM Components Holdings, LLC (“GMCH”) to support the company’s proposed expansion at 200 Upper Mountain Road, Lockport (Niagara County). The project is discussed in more detail below and in Exhibit “A”.

BACKGROUND

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

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

The Authority works closely with business associations, local distribution companies, and economic development entities to gauge support for the projects that would be supported with allocations of Authority hydropower. Discussions routinely occur with National Grid, New York State Electric & Gas, Empire State Development, Invest Buffalo Niagara, the Niagara County Center for Economic Development, and the Erie County Industrial Development Agency (collectively, the “Economic Development Entities”) to coordinate other economic development incentives that may help bring economic development to New York State. Staff confers with the Economic Development Entities to help maximize the value of hydropower to improve the economy of Western New York and the State of New York. Each organization has expressed support for today’s recommended RP allocation.

At this time, 18,615 kW of unallocated EP and 134,529 kW of unallocated RP is available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).
DISCUSSION

Established in 2009, GMCH is a wholly owned subsidiary of General Motors LLC (“GM”). The company operates four facilities located in Lockport, New York, Rochester, New York, Indiana, and Michigan. The GMCH plants manufacture various products used in GM vehicles.

GMCH’s Lockport plant produces automotive heating, ventilation, and air conditioning systems. The company is a current NYPA hydropower customer and its Lockport facility receives 17,950 kW of EP with associated commitments of 701 jobs and nearly $5.2 million in capital spending.

The company’s Lockport plant is being considered for the new production of electric vehicle (“EV”) components. The project would support the transition from internal combustion engines to EVs. The expansion would include the production of the stator module which is a critical component in EV motors.

GMCH’s application has been considered under the Green Jobs Evaluation Incentive Plan approved by the Trustees on December 9, 2020. The plan allows for the consideration of green jobs impacts when evaluating applications for NYPA power. GMCH’s project meets the qualifying criteria as a green jobs company in New York State.

The company’s expansion project would involve a capital investment expenditure of at least $137 million. This includes the construction of a new building (a capital investment expenditure of approximately $20 million) and manufacturing equipment purchases (a capital investment expenditure of approximately $117 million).

GMCH is planning to complete the project in 2025. The company would commit to the creation of 200 new, permanent, full-time jobs, while retaining 1,249 current jobs, at its Lockport facility over the term of the allocation. Average annual compensation/benefits for the new jobs are estimated to be $98,850 per job.

The company applied for a 4,500 kW allocation of hydropower in connection with the expansion. Staff recommends an RP allocation in the amount of 3,900 kW for a term of ten years. If approved, the new allocation to GMCH would be added to the customer’s existing hydropower contract. ST WNY-2 would also apply to the sale of the allocation.

The job creation ratio for the proposed allocation of 3,900 kW is 51 new jobs per MW. This ratio is below the historic average of 64 new jobs per MW based on allocations previously awarded. The total investment of at least $137 million would result in a capital investment ratio of $35.1 million per MW. This ratio is above the historic average of $18 million per MW.

The Economic Development Entities have expressed support for the recommended allocation to GMCH.

CONTRACT INFORMATION

The following is a summary of some of the matters addressed in the contract with GMCH and ST WNY-2:

- Base rates for demand and energy, an annual adjustment factor, and a minimum monthly charge which helps the Authority cover fixed costs of serving a customer even when the customer does not utilize the allocation in a billing period.
• Direct billing of all production charges (i.e., demand and energy) as well as all New York Independent System Operator, Inc. charges, taxes and any other required assessments.

• The provision of substitute energy in the event of hydropower curtailments caused by adverse water conditions that impact power project operations.

• Basic requirements for customer metering.

• Early outreach to the customer concerning allocation extension initiatives by the Authority.

• Requirements for energy audits at the facility receiving the allocation. The customer would have the option to satisfy the audit requirement through either a traditional physical audit, or a virtual audit using the Authority’s New York Energy Manager which is expected to provide considerable savings for customers who select it.

• Periodic communications to customer about energy-related projects, programs and services offered by the Authority.

• Compliance provisions that allow the Authority to reduce a customer’s allocation for a failure to meet supplemental commitments, with an opportunity for the customer to present a proposed plan with actionable milestones to cure deficiencies.

• The collection of a Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge to allow the Authority to recover costs it incurs relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the customer’s load.

FISCAL INFORMATION

The actions recommended herein will not have a negative impact on the Authority’s finances.

RECOMMENDATION

The Senior Vice President, Clean Energy Solutions, recommends that the Trustees approve an allocation of 3,900 kW of RP to GMCH as described herein and in Exhibit “A” for a term of ten years for use at the company’s Lockport facility.

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

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That an allocation of 3,900 kilowatts of Replacement Power be awarded to GM Components Holdings, LLC for a term of 10 years for use at the company’s Lockport, New York facility as detailed in the foregoing memorandum of the Interim President and Chief Executive Officer (“Memorandum”) and Exhibit “A”, be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

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

Company: GM Components Holdings, LLC (“GMCH”)

Location: Lockport, NY

County: Niagara County

IOU: New York State Electric & Gas

Business Activity: The company is a manufacturer of automotive heating, ventilation, and air conditioning systems.

Project Description: GMCH’s Lockport plant is being considered for the new production of electric vehicle (“EV”) components.

Existing Allocation(s): 17,950 kW of Expansion Power

Power Request: 4,500 kW of RP

Power Recommended: 3,900 kW of RP

Job Commitment:
- Base: 1,249
- New: At least 200 jobs

New Jobs/Power Ratio: 51 jobs/MW

New Jobs - Avg. Wage and Benefits: $98,850

Capital Investment: At least $137 million

Capital Investment/MW: $35.1 million/MW

Other ED Incentives: The company would receive $5.65 million from Empire State Development via the Excelsior Jobs Program.

Summary: GMCH is being considered for the new production of EV components at its Lockport facility. The company is a long-time NYPAR customer and its new project would support the transition from internal combustion engines to EV’s. The company anticipates that the expansion would include the creation of several new programs supporting the manufacturing of EV components. The application has been considered under NYPAR’s Green Jobs Evaluation Incentive Plan.

The project includes the construction of a new building in addition to new machinery and equipment purchases. These systems would support the production of the electric motor stator module. An allocation of low-cost hydropower, along with other state support offered for this project, could incentivize GMCH to consider additional expansion opportunities at its Lockport facility in the future.
Memorandum

Date: May 24, 2022

To: THE TRUSTEES

From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

SUBJECT: Recomencement and Extension of Hydropower Contract with National Grid for the Benefit of Rural and Domestic Consumers and Transmittal to the Governor

SUMMARY

The Trustees are requested to:

1. Approve the contract, entitled “2022 Agreement to Recomence Service Under 1990 Service Agreement, As Amended” (the “2022 Agreement”), under which the Authority would recommence the sale of 175 megawatts (“MW”) of firm peaking hydropower to Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) for an extended term. The form of the 2022 Agreement is attached as Exhibit “A”.

2. In accordance with Public Authorities Law (“PAL”) §1009, authorize transmittal of the 2022 Agreement to the Governor for her review and to request her approval of the 2022 Agreement.

BACKGROUND

In accordance with the hydropower contract signed with National Grid in 1990 (“1990 Service Agreement”) and certain extensions of such contract, National Grid has purchased both firm power and firm peaking power from the St. Lawrence/FDR and Niagara Power Projects.

National Grid has purchased such power at the Authority’s cost-based hydropower rate, the benefits of which have been passed on to National Grid’s residential and small farm customers (also referred to as domestic and rural consumers) without markup, through the electric service provided by National Grid under its retail tariff(s).

Chapter 60 (Part CC) of the Laws of 2011 created the Recharge New York Power Program (“RNY Program”). This law authorized the Authority to redeploy firm hydropower previously allocated to National Grid, New York State Electric and Gas Corporation (“NYSEG”), and Rochester Gas and Electric Corporation (“RGE”) for use in the RNY Program. See PAL §1005(13-a).

Effective August 1, 2011, the Authority withdrew the firm power allocations from National Grid, NYSEG and RGE in accordance with the 1990 Hydro Contracts that the Authority had with each of them (“1990 Hydro Contracts”) and Part CC and terminated the firm power allocations of 189 MW for National Grid, 167 MW for NYSEG and 99 MW for RGE. However, the Authority continued to sell the firm peaking power to National Grid, NYSEG and RGE.
In 2020, National Grid decided not to extend its peaking power allocation and term of the 1990 Hydro Contract, while NYSEG and RGE extended their allocations and contracts.

In 2022, National Grid reassessed its energy supply portfolio and requested to recommence the purchase of 175 MW of peaking power under the 1990 Hydropower Contract framework through December 31, 2023.

DISCUSSION

The 2022 Agreement specifies the terms and conditions that would apply to the sale of the firm peaking power, including provisions providing for the cancellation of the 2022 Agreement/allocation, with NYPA having the right to terminate the contract upon thirty days’ written notice to National Grid and National Grid having the right to terminate the contract after December 31, 2022, upon thirty days’ written notice to the Authority.

At their meeting on March 29, 2022, the Trustees authorized a public hearing on the 2022 Agreement.

In accordance with PAL §1009, a public hearing was held on the 2022 Agreement on May 9, 2022, via the Zoom platform, from 2:00 p.m. – 6:00 p.m.

Following the public hearing, the Authority determined that no substantive modifications to the 2022 Agreement are required. The transcript of the public hearing is attached as Exhibit “B.”

If the Trustees approve the final form of the 2022 Agreement, the parties will execute the 2022 Agreement and commence the sale of the firm peaking hydropower on a month-to-month basis pending completion of the PAL §1009 process for the benefit of Grid’s customers.

FISCAL INFORMATION

Under the 2022 Agreement, National Grid would pay for firm peaking hydropower at the cost-based rates that are charged to the Authority’s preference customers in accordance with the Authority’s rate-setting methodologies and principles. Accordingly, there will be no fiscal impact to the Authority.

RECOMMENDATION

The Senior Vice President – Clean Energy Solutions recommends that the Trustees approve: (1) the 2022 Agreement with National Grid; and (2) authorize transmittal of the 2022 Agreement to the Governor for her consideration pursuant to PAL §1009.

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

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That the 2022 Agreement to Recomence Service Under the 1990 Service Agreement, As Amended” (“2022 Agreement”) is approved; and be it further

RESOLVED, That the 2022 Agreement be submitted to the Governor for review with a request that the 2022 Agreement be approved, and that copies of the 2022 Agreement be forwarded to the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee pursuant to Public Authorities Law (“PAL”) §1009; and be it further

RESOLVED, That the Chairman, the Vice Chair, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.
2022 AGREEMENT TO RECOMMENCE SERVICE UNDER 1990 SERVICE AGREEMENT, AS AMENDED

This 2022 Agreement to Recomment Service Under 1990 Service Agreement, as Amended (“2022 Agreement” or “Agreement”) is entered this ___ day of ____, 2022 (“Effective Date”) by and between Niagara Mohawk Power Corporation, d/b/a National Grid (“Company”) and the Power Authority of the State of New York (“Authority”).

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

WHEREAS, Company and Authority have from time to time extended and modified the 1990 Service Agreement; and

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

WHEREAS, Company and Authority thereafter modified and extended the 1990 Service Agreement, including most recently by the “2017 Amendment to 1990 Service Agreement” dated January 11, 2018 (the “2017 Amendment”), to provide for the sale solely of Firm Hydroelectric Peaking Power and Firm Hydroelectric Peaking Energy (collectively, “Firm Peaking Hydroelectric Power Service”) to Company; and

WHEREAS, the 2017 Amendment to 1990 Service Agreement expired as of December 31, 2020, terminating the sale of Firm Peaking Hydroelectric Power Service; and

WHEREAS, Company and Authority desire, for the benefit of the Company’s rural and domestic customers, to recommence the sale of Firm Peaking Hydroelectric Power Service under the 1990 Service Agreement Service Agreement, as amended in accordance with the terms and conditions provided for in this 2022 Agreement.

NOW THEREFORE, in consideration of the foregoing premises and mutual promises as set forth herein, the Parties agree that service under the 1990 Service Agreement shall recommence under the 1990 Service Agreement as amended by this 2022 Agreement as follows:

1) As a result of the Firm Power and Energy Withdrawal/Termination, the amount of Firm Hydroelectric Power and Energy allocated to Company under ST No. 41 is zero (0) MW, and as of the Effective Date of this 2022 Agreement, the Firm Peaking Power allocated to Company under ST No. 42 is 175 MW. For avoidance of doubt, the Parties agree that the
Company is not entitled to any Firm Peaking Hydroelectric Power Service for the period from the date of expiration of the 2017 Amendment until the Recomencement Date as such term is defined in the 1990 Service Agreement, as amended by this 2022 Agreement.

2) Article E - Rates. The current text is deleted in its entirety and is replaced with the following text.

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

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

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


(ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.

(iii) Treatment of sales to third parties, including the New York Independent System Operator.

(iv) Allocation of Indirect Overheads.

(v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.

(vi) Post-employment benefits other than pensions (i.e., retiree health benefits).

(vii) Rate Stabilization Reserve (RSR) methodology.

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

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

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

4) Article G - Notification. In the contact address for Authority replace “10 Columbus Circle, New York, NY 10019” with “123 Main Street, White Plains, NY 10601”.

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

Company may also cancel or reduce such service during the period from January 1, 2023 through December 31, 2023, for any reason upon thirty (30) days’ prior written notice to the Authority.

6) Article K - Restoration of Withdrawn Power and/or Energy, previously deleted by the 2017 Amendment, is deleted in its entirety.

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

“Service under this contract shall recommence within a reasonable time after the Effective Date of the 2022 Agreement to Recommence Service Under 1990 Service Agreement, as Amended, that amended this contract, subject to applicable operating procedures of the Authority and the NYISO (the “Recommencement Date”), and shall continue unless cancelled as provided for in the “Withdrawals of Power and/or Energy” or the “Cancellation or Reduction” provisions until December 31, 2023, subject to earlier termination by the Authority at any time with respect to any or all of the quantities of power and energy provided hereunder on at least thirty (30) days’ prior written notice to Company. Authority shall notify Company at least ten (10) business days prior to start the anticipated Recommencement Date.”

8) Article M - Availability of Energy - Firm and Firm Peaking Hydroelectric Power Service. In the third paragraph, line 1, starting with the words “In the event that...” through “...minimize the impact of such reductions.” on line 10, replace with the following:
“The Authority will have the right to reduce on a pro rata basis the amount of energy provided to Company under Service Tariff No. 42 if such reductions are necessary due to low flow (i.e. hydrologic) conditions at the Authority’s Niagara Project hydroelectric generating station. In the event that hydrologic conditions require the Authority to reduce the amount of energy provided to Company, percentage reductions applied to the otherwise required energy deliveries will be the same for all firm Niagara Project customers. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Company in later billing periods. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Company. The Authority shall provide reasonable notice to Company of any condition or activities that could result, or have resulted, in low flow conditions consistent with the notice provided to other similarly affected customers.”

9) This Agreement shall be referred to as the “2022 Agreement to recommence Service Under 1990 Service Agreement, as Amended”.

10) Continuation of service under this 2022 Agreement shall be subject to approval of this 2022 Agreement by the Governor of the State of New York pursuant to Public Authorities Law § 1009. If the Governor disapproves this 2022 Agreement, service will cease on the last day of the month following the month during which the Governor disapproved this 2022 Agreement.

11) Except as expressly provided in this 2022 Agreement, the 1990 Service Agreement shall remain unchanged and in full force and effect.

12) This 2022 Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts and to be performed in such state, without regard to conflict of laws principles.

13) This 2022 Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signature thereto and hereto were upon the same instrument.

14) Upon approval of the Governor of the State of New York pursuant to Public Authorities Law § 1009, and upon execution by the Chairman of the Authority, this 2022 Agreement shall come into full force and effect, provided however that pending such gubernatorial approval and execution, this 2022 Agreement shall take effect upon the Effective Date and continue on a month to month basis.
15) This 2022 Agreement may be amended or modified by written agreement signed by the Authority and the Company.

AGREED:

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

By: ______________________
Name: _____________________
Title: ______________________
Date: ______________________

Power Authority of the State of New York

By: ______________________
Name: John R. Koelmel
Title: Chairman
Date: ______________________
NEW YORK POWER AUTHORITY PUBLIC HEARING
  (Via video teleconference)

DATE:   May 9, 2022

TIME:   2:02 p.m. – 6:00 p.m.
(Based on Time Zone from Letter)
APPEARANCES

COUNCIL MEMBERS:

Karen Delince, Corporate Secretary, New York Power Authority
APPEARED VIA VIDEO TELECONFERENCE

Richard Smith, Senior Director of Economic Development, New York Power Authority
APPEARED VIA VIDEO TELECONFERENCE

Lorna Johnson, Senior Associate Corporate Secretary, New York Power Authority
APPEARED VIA VIDEO TELECONFERENCE

Joseph Rivera, Manager, New York Power Authority
APPEARED VIA VIDEO TELECONFERENCE

Glenn Martinez, Senior Network Analyst, New York Power Authority
APPEARED VIA VIDEO TELECONFERENCE

Michele Stockwell, Project Coordinator, New York Power Authority
APPEARED VIA VIDEO TELECONFERENCE

ALSO PRESENT:

Ludy Aristilde, Intern Court Reporter
Appeared via video teleconference
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PROCEEDINGS

Remote NEW YORK POWER AUTHORITY PUBLIC HEARING

before CHRISTINA MCCOY, CER No. 1082.

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(Proceedings commenced at 2:02 p.m.)

MS. DELINCE:  Good afternoon.  This is a public hearing required by law and authorized by the New York Power Authority's Board of Trustees on the proposed Customer Contracts for the sale of hydropower to LW1 Operator, LLC, Chocolate Delivery Systems, Inc., and Worksport Ltd., and on the recommencement and Contract Extension for the sale of hydropower to Niagara Mohawk Power Corporation d/b/a National Grid.

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

New York State Public Authorities Law, Section 1009, sets forth procedures for executing certain contracts negotiated by the Authority.

First, prior to the hearing, it requires that notice of the hearing be provided.

Therefore, a notice was sent to: The Governor, the Senate's President Pro Temp, the Senate Minority Leader, The Senate Finance Committee Chair, the Assembly Speaker, the Assembly Minority Leader,
and the Assembly Ways and Means Committee Chair.

In addition, notices appeared once a week, for the four weeks leading up to the hearing, in the following newspapers: Niagara Gazette, Buffalo News, Buffalo Business First, Lewiston Porter Sentinel, Albany Times-Union, and the Dunkirk Observer.

The public was also given access to the proposed contracts on the Authority's website during the 30-day period prior to today's hearing.

After the hearing, the public will be given access to the hearing transcript, once it is completed, at www.nypa.gov.

The next step in the process set forth in section 1009 will be for the NYPA Trustees to reconsider the proposed contracts in light of public comments.

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

If you plan to make an oral statement at this hearing, please write your name and affiliation in the chat function.

Also, if you have a written statement, you can mail or e-mail it to the Corporate Secretary.

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

The record of the hearing will remain open for additional comments through close of business, Tuesday, May 10, 2022.

Additional comments should be mailed, faxed, or emailed to the Corporate Secretary at: 123 Main Street, 9-B, White Plains, NY 10601; or (914) 390-8040; or secretarys.office@nypa.gov.

At this point, I would like to introduce Richard Smith, the Authority's Director of Economic Development, who will provide additional details on the proposed Customer Contracts. Thank you.

Mr. Smith?

MR. SMITH: Thank you, Ms. Delince. Good afternoon. My name is Richard Smith, and I am the Senior Director of Economic Development within NYPAs Clean Energy Solutions department. I am here today to present a summary of three proposed contracts for LW1 Operator, LLC, Chocolate Delivery Systems, Inc.,
Regarding the proposed contracts, under Public Authorities Law Section 1005 Subsection 13 the Authority may allocate and sell directly or by sale-for-resale, 250 megawatts of Expansion Power, known as EP, and 445 megawatts of Replacement Power, known as RP, to businesses located within 30 miles of the Niagara Power Project, provided that the amount of EP allocated to businesses in Chautauqua County on January 1, 1987, shall continue to be allocated in Chautauqua County.

At their January 25, 2022, meeting, the NYPA Trustees approved a 2,930 kilowatt allocation of EP to LW1 Operator, LLC ("LW1") for a term of ten years, based on commitments to create at least 75 new full-time jobs and make a capital investment of at least $24.2 million at the facility that will use the EP allocation.

LW1 represents the first applicant
considered under the Diversity, Equity, and Inclusion ("DEI") Evaluation and Incentive Plan approved by the NYPA Trustees on December 7, 2021. The plan allows for the consideration of positive DEI impacts when evaluating power allocations. LW1's proposed project site meets the qualifying criteria as a disadvantaged community in New York State. In addition, the company plans to hire Minority and/or Women Owned Business Enterprises to complete the project's construction requirements.

The Company is in the cannabis production business. LW1 proposes to establish a new manufacturing facility in Buffalo to produce raw cannabis flower, oils, edibles, and extracts. The capital investment will be for land acquisition, construction costs, and machinery and equipment purchases. The 2,930 kilowatt allocation will help support the manufacturing of cannabis products. LW1's project will support economic development and growth of the region.
At their March 29, 2022, meeting, the NYPA Trustees approved a 4,210 kilowatt allocation of RP to Chocolate Delivery Systems ("CDS") for a term of ten years, based on commitments to create at least 91 new full-time jobs over a base of 98 current full-time jobs and make a capital investment of at least $25.9 million at the facility that will use the RP allocation.

The Company manufactures chocolate and confectionary products, offering customized chocolate chips, chunks, bars and chocolate varieties and providing private label manufacturing at its facility in Buffalo. CDS proposes to expand chocolate manufacturing at its current facility to reduce reliance on external suppliers. The capital investment will be for a chocolate manufacturing system, machinery and equipment purchases. The 4,210 kilowatt allocation will help support the manufacturing of chocolate products. CDS’s project will support economic development and growth of the region, which incorporates a positive Diversity,
At their March 29, 2022 meeting, the NYPA Trustees approved a 430 kilowatt allocation of RP to Worksport Ltd. ("Worksport") for a term of ten years, based on commitments to create at least 20 new full-time jobs and make a capital investment of at least $14.2 million at the facility that will use the RP allocation.

The Company is a Canadian manufacturer of tonneau covers for trucks and vans and will expand into the United States with a manufacturing facility in West Seneca. Worksport would manufacture tonneau covers with integrated solar panels at the new facility, which would allow customers to charge electric vehicles or store electricity in mobile power stations. The capital investment will be for buying and renovating a facility and for machinery and equipment purchases. The 430 kilowatt allocation will help support the manufacturing of integrated solar panels in tonneau covers. Worksport's project will
support economic development and growth in the region, which incorporates a positive Green Jobs impact.

The following is a summary of pertinent provisions in the proposed contracts:

The contracts provide for the direct billing of all hydropower supply charges and all New York Independent System Operator, Inc. ("NYISO") charges and taxes.

The contracts include customer agreed-upon commitments with respect to employment, capital investment and power utilization.

Under the contracts, the Authority may reduce or terminate the allocations if employment, power utilization or capital investment commitments are not met.

Relatedly, the contracts include an annual job reporting requirement and a job compliance threshold of 90 percent. Should the company's average annual employment fall below the compliance threshold of 90 percent of the employment commitment, the Authority may reduce the amount of the allocations.

The contracts provide for the companies to perform an energy audit at their facilities at least
once within 5 years, helping to ensure that customers
use the hydropower efficiently.

To address non-payment risk that could
result from the direct billing arrangement, the
contracts include commercially reasonable provisions
concerning the Authority's ability to charge late
payment fees and to require deposits in the event of
the customer's failure to make payment for any two
monthly bills. These contract provisions are
consistent with other Authority direct sale contracts,
including the Recharge New York sales contracts.

The contracts provide for collection of a
Zero Emission Credit charge and a Renewable Energy
Credit charge to allow the Authority to recover costs
it would incur relating to its purchase of Zero
Emission Credits and Renewable Energy Credits
attributable to the customer's load.

The contracts will address the allocations
along with the Authority's Service Tariff WNY-2 which
specifies rates and other terms applicable to other EP
and RP allocations.

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

Lastly, in accordance with a hydropower contract signed with National Grid in 1990 and subsequent contract extensions ("1990 Hydro Contract"), National Grid has purchased both firm power and firm peaking power from the St. Lawrence/FDR and Niagara Power Projects. National Grid purchased such power at NYPA's cost-based hydropower rate. The benefits of the power have been passed on to National Grid's residential and small farm customers (also referred to as their domestic and rural consumers), without markup, through the electric service provided by National Grid under its retail tariff.

Chapter 60, (Part CC), of the Laws of 2011 created the Recharge New York Power Program ("RNY Program"). This law authorized the Authority to redeploy the firm hydropower previously allocated to National Grid, New York State Electric and Gas Corporation ("NYSEG"), and Rochester Gas and Electric
Corporation ("RGE") (collectively, the "Utilities") for use in the RNY Program. See PAL § 1005(13-a).

Effective August 1, 2011, NYPA withdrew the firm power allocations from the Utilities in accordance with Part CC and terminated the firm power allocations of 189 megawatts for National Grid, 167 megawatts for NYSEG and 99 megawatts for RGE.

However, NYPA continued to sell the firm peaking power to the Utilities, including National Grid which was allocated 175 megawatts.

In 2020, National Grid decided not to extend its peaking power allocation and term of the 1990 Hydro Contract, while NYSEG and RGE extended their allocations and contracts.

In 2022, National Grid reassessed its energy supply portfolio, and requested to recommence the purchase of 175 megawatts of peaking power under the 1990 Hydro Power Contract framework through December 31, 2023.

At their meeting on March 29, 2022, the Trustees approved recommencement of the sale of the
175 megawatts allocation of firm peaking power to National Grid through December 31, 2023. The sale of this allocation would enable National Grid's domestic and rural customers to enjoy the benefits of the firm peaking power.

In summary, under the Contract, NYPA would have the right to terminate the Contract upon thirty days' notice to National Grid and National Grid would have the right to terminate the Contract upon thirty days' notice to NYPA after December 31, 2022. The allocation would expire on December 31, 2023.

Additionally, in contemplation of approval of the Contract, the Authority would execute the Contract and commence the sale of the firm peaking hydropower after NYPA's Trustees approve the final proposed Contract, on a month-to-month basis, pending completion of the PAL §1009 process.

As Ms. Delince stated earlier, the Authority will accept your comments on the proposed contracts until the close of business on Tuesday, May 10, 2022.
I will now turn the hearing back to Ms. Delince.

MS. DELINCE: Thank you, Mr. Smith.

Since, we have no one signed up to speak at this Hearing at this time, we will recess and reconvene as speakers arrive. Thank you.

(Recess taken from 2:19 p.m. to 5:58 p.m.)

MS. JOHNSON: Christina, I would -- Karen, our -- let's see. We are mailing to the members on the 16th, so I'm going to ask Christina if she can expedite it for the 13th.

THE REPORTER: Okay.

MS. DELINCE: All right. So are we ready to close?

MS. JOHNSON: Yes.

MS. DELINCE: All right. It is now 6:00 p.m. as previously stated, the record of the hearing will remain open for additional comments through close of business, Tuesday, May 10, 2022.

The May 9, 2022, Public Hearing on the proposed customer contracts for the sale of Customer
Contracts for the sale of hydropower to LW1 Operator, LLC, Chocolate Delivery Systems, Inc., and Worksport Ltd., and on the recommencement and Contract Extension for the sale of hydropower to Niagara Mohawk Power Corporation d/b/a National Grid is now officially closed.

Thank you and good night.

(Proceedings concluded at 6:00 p.m.)
CERTIFICATE OF REPORTER

STATE OF NEW YORK   )
COUNTY OF NEW YORK  )

I, CHRISTINA MCCOY, CER No. 1082, do hereby certify that I was authorized to and did electronically report the foregoing remote NEW YORK POWER AUTHORITY PUBLIC HEARING proceedings; and that the foregoing is a true and accurate electronic recording of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the proceeding, nor am I financially interested.

DATED this 12th day of May 2022.

CHRISTINA MCCOY, CER No. 1082
CERTIFICATE OF TRANSCRIPTIONIST

I, JEANNE MURIE, do hereby certify that I transcribed the electronic recording produced by CHRISTINA MCCOY, CER No. 1082 of the foregoing remote NEW YORK POWER AUTHORITY PUBLIC HEARING proceedings; and that the foregoing transcript is a true transcript of said electronic recording.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with these proceedings, nor am I financially interested.

DATED this 12th day of May 2022.

JEANNE MURIE
Memorandum

Date: May 24, 2022

To: THE TRUSTEES

From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Contracts for the Sale of Hydropower – Final Approval and Transmittal to the Governor

SUMMARY

The Trustees are requested to:

1. Approve final contracts ("Contracts") for the sale of 4,210 kilowatts ("kW") of Replacement Power ("RP") to Chocolate Delivery Systems, Inc. ("CDS"), 2,930 kW of Expansion Power ("EP") to LW1 Operator, LLC ("LW1"), and 430 kW of RP to Worksport Ltd. ("Worksport"). Copies of these Contracts, along with the applicable service tariff, Service Tariff No. WNY-2 ("ST WNY-2"), are attached as Exhibits “A”, “B”, and “C”, respectively.

2. Authorize transmittal of the Contracts to the Governor for her review and requested authorization for the Authority to execute the Contracts pursuant to Public Authorities Law ("PAL") §1009.

BACKGROUND

Under PAL §1005(13), the Authority may allocate and sell directly or by sale for resale, 250 megawatts ("MW") of EP and 445 MW of Replacement Power (collectively, "WNY Hydropower") to businesses located within 30 miles of the Niagara Power Project, provided that the amount of EP allocated to businesses in Chautauqua County on January 1, 1987 shall continue to be allocated in such county.

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

Upon approval of the final proposed contract by the Authority, the Authority “reports” the proposed contract, along with its recommendations and the public hearing record, to the Governor and other elected officials. Upon authorization of the Governor, the Authority may execute the contract.
DISCUSSION

At their meeting on March 29, 2022, the Trustees awarded a 4,210 kW RP allocation for a term of ten years to CDS to support a chocolate and confectionary manufacturing facility at 180 Elmwood Avenue, Buffalo, NY (Erie County). CDS has committed to make a capital investment of at least $25,995,987 at its facilities that would receive the allocation, and employ at least 91 full-time, permanent employees over a base of 98 full-time employees at the facilities for the term of the allocation (referred to herein generally as “Supplemental Commitments”).

At their meeting on January 25, 2022, the Trustees awarded a 2,930 kW EP allocation to LW1 for a term of ten years to support cannabis flower, edibles, oils and extracts manufacturing at new LW1 facilities at 310 Ship Canal Parkway, Buffalo (Erie County). LW1’s Supplemental Commitments include agreements to make a capital investment of at least $24,200,000 at its facilities that would receive the allocation, and employ at least 75 full-time, permanent employees at the facilities for the term of the allocation.

At their meeting on March 29, 2022, the Trustees awarded a 430 kW RP allocation to Worksport for a term of ten years to support manufacturing tonneau covers for trucks and vans that will occur at Worksport’s facilities at 2500 North America Drive, West Seneca, NY (Erie County). Worksport’s Supplemental Commitments include agreements to make a capital investment of at least $14,200,000 at the facilities that would receive the allocation, and employ at least 20 full-time, permanent employees at the facilities for the term of the allocation.

The following is a summary of some of the pertinent provisions of the Contracts and ST WNY-2 related to these allocations:

- The term of the EP/RP allocation is ten (10) years from commencement of electric service subject to termination/cancellation as provided for in the Contracts.

- Transmission and delivery service would be provided by the customer's local utility in accordance with the utility's Public Service Commission-approved delivery service tariff.

- The Contracts would provide for the direct billing of all production charges (i.e., demand and energy) as well as all New York Independent System Operator, Inc. charges, plus taxes or any other required assessments, as set forth in ST WNY-2, previously approved by the Trustees.

- The Contracts provide for the sale of additional allocations of WNY Hydropower to the customer in appropriate circumstances by incorporating new allocations into Schedule A of the Contracts. The Trustees approved this convention in the 2010 long-term extension contract for hydropower, which simplifies contract administration.

- The customer must perform an energy audit at the facility receiving the allocation. The customer would have the option to satisfy the audit requirement through either a traditional physical audit, or a virtual audit using the Authority’s New York Energy Manager which is expected to provide considerable savings for customers who select it.

- The Contracts provide for collection of a Zero Emission Credit Charge and a Renewable Energy Credit Charge to allow the Authority to recover costs it incurs
relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the load of the customer.

- The Authority would have the right to reduce or terminate the allocation if Supplemental Commitments are not met.

PUBLIC HEARING

In accordance with PAL § 1009, a public hearing via the Zoom platform was held on the proposed Contracts for CDS, LW1, and Worksport on May 9, 2022. A copy of the official transcript of the public hearing including any written submittals is attached as Exhibits “D”.

FISCAL INFORMATION

All the allocations are new allocations, and therefore their sale would result in additional revenues for the Authority.

RECOMMENDATION

The Senior Vice President - Clean Energy Solutions recommends that the Trustees approve the Contracts and authorize the transmittal of the Contracts to the Governor for her review and to seek her authorization for the Authority to execute the Contracts pursuant to PAL §1009.

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

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That the contracts for the sale of 4,210 kilowatts ("kW") of Replacement Power ("RP") to Chocolate Delivery Systems, Inc., 2,930 kW of Expansion Power to LW1 Operator, LLC, and 430 kW of RP to Worksport Ltd. (collectively, the “Contracts”), are in the public interest and hereby approved, and in accordance with Public Authorities Law § 1009 the Contracts should be submitted to the Governor for her review and to seek her authorization for the Authority to execute the Contracts, and copies of the Contracts along with the record of the public hearing thereon, be forwarded to the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee; and be it further

RESOLVED, That the Chairman and the Corporate Secretary be authorized and directed to execute such Contracts in the name of and on behalf of the Authority upon the Governor’s approval of the Contracts; and be it further

RESOLVED, That the Senior Vice President – Clean Energy Solutions, or his designee, be, and hereby is, authorized, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel, to negotiate and execute any and all documents necessary or desirable to implement the Contracts as set forth in the foregoing memorandum of the Interim President and Chief Executive Officer; and be it further

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

OF THE

STATE OF NEW YORK

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

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

Chocolate Delivery Systems, Inc.
The POWER AUTHORITY OF THE STATE OF NEW YORK ("Authority"), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law ("PAL"), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power ("Agreement") with Chocolate Delivery Systems, Inc. ("Customer") with offices and principal place of business at 1800 Elmwood Avenue, Buffalo, NY 14027. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission ("FERC") Project No. 2216, including hydropower known as Expansion Power ("EP") and Replacement Power ("RP") to qualified businesses in accordance with PAL § 1005(5) and (13);

WHEREAS, the Customer has applied for an allocation of EP and/or RP, or for an extension of an existing allocation of EP or RP, for use at facilities defined in this Agreement as the “Facility”;

WHEREAS, the Customer has offered to make specific commitments relating to, among other things, the creation and/or retention of jobs, capital investments, power usage and energy efficiency measures at the Facility;

WHEREAS, the Authority’s Board of Trustees approved an allocation of EP and/or RP to the Customer;

WHEREAS, the Parties have reached an agreement on the terms and conditions applicable for the sale of the EP and/or RP for a term provided in this Agreement;

WHEREAS, the Authority’s provision of Electric Service under this Agreement is an unbundled service separate from (i) the transmission of the allocation, and (ii) the delivery of the Allocation;

WHEREAS, electric service to be provided hereunder shall be subject to the rates and other terms and conditions contained in the Service Tariff No. WNY-2 as provided in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement; and

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement.

NOW, THEREFORE, in consideration of mutual covenants, terms, and conditions herein, and for other good and valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties do hereby mutually covenant and agree as follows:
ARTICLE I
DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Agreement, shall have the meanings as set forth below. When used with initial capitalization, whether singular or plural, terms defined in schedules or appendices to this Agreement shall have the meanings set forth in such schedules or appendices.

“Adverse Water Condition” means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.

“Agreement” means this Agreement, and unless otherwise indicated herein, includes all schedules, appendices and addenda thereto, as the same may be amended from time to time.

“Allocation” refers to the allocation(s) of EP and/or RP awarded to the Customer as specified in Schedule A.

“Alternative REC Compliance Program” has the meaning provided in Schedule E.

“Annual Capital Investment Commitment” has the meaning set forth in Schedule B.

“Annual CI Expenditures” has the meaning set forth in Schedule B.

“Base Employment Level” has the meaning set forth in Schedule B.

“Contract Demand” is as defined in Service Tariff No. WNY-2.

“Customer-Arranged Energy” means energy that the Customer procures from sources other than the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.

“Effective Date” means the date that this Agreement is fully executed by the Parties.

“Electric Service” is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

“Energy Services” has the meaning set forth in Article V of this Agreement.

“Expansion Power” (or “EP”) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Expansion Project” has the meaning set forth in Section IV.3.a of this Agreement.
“Expansion Project Capital Investment Commitment” has the meaning set forth in Schedule B.

“Facility” means the Customer’s facilities as described in Schedule A to this Agreement.

“Firm Power” is as defined in Service Tariff No. WNY-2.

“Firm Energy” is as defined in Service Tariff No. WNY-2.

“FERC” means the Federal Energy Regulatory Commission (or any successor organization).

“FERC License” means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project’s original license which became effective in 1957.

“Hydro Projects” is a collective reference to the Project and the Authority’s St. Lawrence-FDR Project, FERC Project No. 2000.

“International Joint Commission” or “IJC” refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the 1909 Boundary Waters Treaty and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.

“Load Reduction” has the meaning set forth in Section IX.6 of this Agreement.

“Load Serving Entity” (or “LSE”) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.

“Metering Arrangement” has the meaning set forth in Section II.8 of this Agreement.

“NYEM” means the New York Energy Manager, an energy management center owned and operated by the Authority.

“NYEM Agreement” means a written agreement between the Authority and the Customer providing for the Facility’s enrollment and Customer’s participation in NYEM.

“NYEM Participation” has the meaning specified in Schedule B of this Agreement.

“NYISO” means the New York Independent System Operator or any successor organization.

“NYISO Charges” has the meaning set forth in Section VII.3 of this Agreement.
“NYISO Tariffs” means the NYISO’s Open Access Transmission Tariff or the NYISO’s Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.

“Planned Hydropower Curtailment” means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.

“Physical Energy Audit” or “Audit” means a physical evaluation of the Facility in a manner approved by the Authority that includes at a minimum the following elements: (a) an assessment of the Facility’s energy use, cost and efficiency which produces an energy utilization index for the Facility (such as an Energy Use Intensity or Energy Performance Indicator); (b) a comparison of the Facility’s index to indices for similar buildings/facilities; (c) an analysis of low-cost/no-cost measures for improving energy efficiency; (d) a listing of potential capital improvements for improving energy consumption; and (e) an initial assessment of potential costs and savings from such measures and improvements.

“Project” means the Niagara Power Project, FERC Project No. 2216.

“Replacement Power” (or “RP”) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Reporting Year” means the yearly interval that the Authority uses for reporting, compliance and other purposes as specified in this Agreement. The Reporting Year for this Agreement is from January 1 through December 31, subject to change by the Authority without notice.

“Rolling Average” has the meaning set forth in Schedule B.

“Rules” are the applicable provisions of Authority’s rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.

“Service Information” has the meaning set forth in Section II.12 of this Agreement.

“Service Tariff No. WNY-2” means the Authority’s Service Tariff No. WNY-2, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.

“Schedule A” refers to the Schedule A entitled “Expansion Power and/or Replacement Power Allocations” which is attached to and made part of this Agreement.

“Schedule B” refers to the Schedule B entitled “Supplemental Expansion Power and/or Replacement Power Commitments” which is attached to and made part of this Agreement, including any appendices attached thereto.
“Schedule C” refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of this Agreement.

“Schedule D” refers to the Schedule D entitled “Zero Emission Credit Charge” which is attached to and made part of this Agreement.

“Schedule E” refers to the Schedule E entitled “Monthly Renewable Energy Credit Charge” which is attached to and made part of this Agreement.

“Substitute Energy” means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.

“Takedown” means the portion of the Allocation that Customer requests to be scheduled for a specific period as provided for in Schedule C, if applicable.

“Taxes” is as defined in Service Tariff No. WNY-2.

“Unforced Capacity” (or “UCAP”) means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

“Unplanned Hydropower Curtailment” means a temporary reduction in the amount of Firm Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

“Utility Tariff” means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

ARTICLE II
ELECTRIC SERVICE

1. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

2. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified in Schedule A.

3. The Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation specified in Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.

4. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-2.
5. The provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer. The Customer acknowledges and agrees that Customer’s local electric utility, not the Authority, shall be responsible for delivering the Allocation to the Facility specified in Schedule A in accordance with the applicable Utility Tariff(s).

6. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.

7. The Contract Demand may not exceed the Allocation.

8. The Customer’s Facility must be metered by the Customer’s local electric utility in a manner satisfactory to the Authority, or another metering arrangement satisfactory to the Authority must be provided (collectively, “Metering Arrangement”). A Metering Arrangement that is not satisfactory to the Authority shall be grounds, after notice to the Customer, for the Authority to modify, withhold, suspend, or terminate Electric Service to the Customer. If a Metering Arrangement is not made to conform to the Authority’s requirements within thirty (30) days of a determination that it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days’ prior written notice to the Customer. After commencement of Electric Service, the Customer shall notify the Authority in writing within thirty (30) days of any alteration to the Facility’s Metering Arrangement, and provide any information requested by the Authority (including Facility access) to enable the Authority to determine whether the Metering Arrangement remains satisfactory. If an altered Metering Arrangement is not made to conform to the Authority’s requirements within thirty (30) days of a determination it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days’ prior written notice to the Customer. The Authority may, in its discretion, waive any of the requirements provided for in this Section in whole or in part where in the Authority’s judgment, another mechanism satisfactory to the Authority can be implemented to enable the Authority to receive pertinent, timely and accurate information relating to the Customer’s energy consumption and demand and render bills to the Customer for all fees, assessments and charges that become due in accordance with this Agreement, Service Tariff No. WNY-2, and the Rules.

9. The Customer consents to the exchange of information between the Authority and the Customer’s local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of the Allocation to the Customer, the proper and efficient implementation of the EP and/or RP program, billing related to Electric Service, and/or the performance of such parties’ obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents that the Authority determines are necessary to effectuate such exchanges of information.
10. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer’s local electric utility providing for the delivery of the Allocation on terms and conditions that are acceptable to the Authority.

11. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, execute consents, and provide information (collectively, “Service Information”) that the Authority determines is necessary for the provision of Electric Service, the delivery of the Allocation, billing related to Electric Service, the effective administration of the EP and/or RP programs, and/or the performance of contracts or other arrangements between the Authority and the Customer’s local electric utility. The Customer’s failure to provide Service Information on a timely basis shall be grounds for the Authority in its discretion to modify, withhold, suspend, or terminate Electric Service to the Customer.

**ARTICLE III
RATES, TERMS AND CONDITIONS**

1. Electric Service shall be sold to the Customer in accordance with the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-2 and the Rules. The Authority agrees to waive the Minimum Monthly Charge set forth in Service Tariff No. WNY-2 for a period up to one (1) year upon written request from the Customer that is accompanied by information that demonstrates to the Authority’s satisfaction a short-term reduction or interruption of Facility operations due to events beyond the Customer’s control. The Customer shall provide such information that the Authority requests during the period of any such waiver to enable the Authority to periodically evaluate the ongoing need for such waiver.

2. If the Authority at any time during the term of this Agreement enters into an agreement with another customer for the sale of EP or RP at power and energy rates that are more advantageous to such customer than the power and energy rates provided in this Agreement and Service Tariff No. WNY-2, then the Customer, upon written request to the Authority, will be entitled to such more advantageous power and energy rates in the place of the power and energy rates provided in this Agreement and Service Tariff No. WNY-2 effective from the date of such written request, provided, however, that the foregoing provision shall not apply to:

a. any agreement for the sale of EP and/or RP with an Authority customer whose purchase of EP and/or RP is associated with an Authority service tariff other than Service Tariff No. WNY-2, including Authority Service Tariff No. WNY-1; or

b. any agreement for the sale of EP and/or RP with an Authority customer which is associated with such customer’s participation in an Alternative REC Compliance Program provided for in Schedule E of this Agreement.

3. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority’s competitive position with
respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority’s bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

4. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-2 and the Rules, the Customer shall be responsible for payment of the Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge provided for in Schedule D and Schedule E, respectively, of this Agreement.

ARTICLE IV
SUPPLEMENTAL COMMITMENTS

1. **Supplemental Commitments.** Schedule B sets forth the Customer’s “Supplemental Expansion Power and/or Replacement Power Commitments” (“Supplemental Commitments”). The Authority’s obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer’s timely compliance with the Supplemental Commitments described in Schedule B as further provided in this Agreement. The Customer’s Supplemental Commitments are in addition to all other commitments and obligations provided in this Agreement.

2. *Intentionally Left Blank*

3. **Special Provisions Relating to a New or Expanded Facility.**

   a. **Proposed New or Expanded Facility; Failure to Complete.**

   If Schedule B provides for the construction of a new facility or an expansion of an existing facility (collectively, “Expansion Project”), and the Customer fails to complete the Expansion Project by the date specified in Schedule B, the Authority may, in its discretion, (a) cancel the Allocation, or (b) if it believes that the Expansion Project will be completed in a reasonable time, agree with the Customer to extend the time for completion of the Expansion Project.

   b. **Proposed New or Expanded Facility: Partial Performance.**

   If the Expansion Project results in a completed Facility that is only partially operational, or is material different than the Expansion Project agreed to in Schedule B (as measured
by such factors as size, capital investment expenditures, capital improvements, employment levels, estimated energy demand and/or other criteria determined by the Authority to be relevant), the Authority may, in its discretion, on its own initiative or at the Customer’s request, make a permanent reduction to the Allocation and Contract Demand to an amount that the Authority determines to fairly correspond to the completed Facility.

c. Notice of Completion; Commencement of Electric Service.

(i) The Customer shall give the Authority not less than ninety (90) days' advance written notice of the anticipated date of completion of an Expansion Project. The Authority will inspect the Expansion Project for the purpose of verifying the status of the Expansion Project and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time subject to the other provisions of this Agreement based on applicable operating procedures of the Authority, Customer's local electric utility and NYISO.

(ii) In the event of an Expansion Project being completed in multiple phases, at the Customer’s request the Authority may, in its discretion, allow commencement of part of the Allocation upon completion of any such phase, provided the Authority will similarly inspect the Expansion Project for the purpose of verifying the status of the completed phase of the Expansion Project. Upon such verification by the Authority of any such completed phase, the Authority, in its discretion, will determine an amount of kW that fairly corresponds to the completed phase of the Expansion Project, taking into account relevant criteria such as any capital expenditures, increased employment levels, and/or increased electrical demand associated with the completed phase of the Expansion Project.

d. Other Rights and Remedies Unaffected.

Nothing in this Article is intended to limit the Authority’s rights and remedies provided for in the other provisions of this Agreement, including without limitation the provisions in Schedule B of this Agreement.

ARTICLE V
ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES

The Authority shall periodically communicate with the Customer for the purpose of informing the Customer about energy-related projects, programs and services (“Energy Services”) offered by the Authority that in the Authority’s view could provide value to the Customer and/or support the State’s Clean Energy Standard. The Customer shall review and respond to all such offers in good faith, provided, however, that, except as otherwise provided for in this Agreement, participation in any such Energy Services shall be at the Customer’s option, and subject to such terms and conditions agreed to by the Parties in one or more definitive agreements.
ARTICLE VI
SERVICE TARIFF; CONFLICTS

1. A copy of Service Tariff No. WNY-2 in effect upon the execution of this Agreement is attached to this Agreement as Exhibit 1, and will apply under this Agreement with the same force and effect as if fully set forth herein. The Customer consents to the application of Service Tariff WNY-2. Service Tariff No. WNY-2 is subject to revision by the Authority from time to time, and if revised, the revised provisions thereof will apply under this Agreement with the same force and effect as if set forth herein. The Authority shall provide the Customer with prior written notice of any revisions to Service Tariff No. WNY-2.

2. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-2 and the Rules, the provisions of Service Tariff No. WNY-2 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-2 or the Rules, the provisions of this Agreement shall govern.

ARTICLE VII
TRANSMISSION AND DELIVERY

1. The Customer shall be responsible for:

   a. complying with all requirements of its local electric utility (including any other interconnecting utilities) that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff;
   
   b. paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff, and if the Authority incurs any charges associated with such delivery service, reimbursing the Authority for all such charges; and
   
   c. obtaining any consents and agreements from any other person that are necessary for the delivery of the Allocation to the Facility, and complying with the requirements of any such person, provided that any such consents, agreements and requirements shall be subject to the Authority’s approval.

2. The Authority will use good faith efforts to provide the Customer with at least one year’s advance notice of the scheduled expiration of Historic Fixed Price Transmission Congestion Contracts. After issuance of any such notice, the Authority will make itself available at reasonable times to collaborate with the Customer and other EP and RP customers to discuss potential risk-hedging options that might be available following expiration of such contracts.

3. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority’s behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff (“NYISO Charges”), as set forth in Service
Tariff No. WNY-2 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related.

4. The Authority will consider opportunities to assist the Customer concerning actions, practices, or procedures of the Customer’s local electric utility identified by the Customer that could adversely impact the implementation and effectiveness of the EP and RP programs, provided that whether or not to take any action or adopt any position on any issue, including any adverse position, is within the Authority’s discretion and further subject to applicable laws, regulations and existing legal obligations.

ARTICLE VIII
BILLING AND BILLING METHODOLOGY

1. The billing methodology for the Allocation shall be determined on a “load factor sharing” basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer’s local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.

2. All other provisions with respect to billing are set forth in Service Tariff No. WNY-2 and the Rules.

3. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

ARTICLE IX
HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

1. The Customer shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Customer-Arranged Energy, for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment. The Customer shall make its election in accordance with the time period and other requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.

2. The Customer may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Customer intends such change to become effective. Such change shall be effective on the first day of January following the Authority’s receipt the Customer’s notice and shall remain in effect unless it is changed in accordance with the provisions of Section IX.1.

3. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Customer with advance notice of Planned Hydropower Curtailments that in the Authority’s judgment will impact Electric Service to the Customer no later than the tenth business day of the month.
prior to the month in which the Planned Hydropower Curtailment is expected to occur unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.

4. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.

5. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.

6. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a “Load Reduction”), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days’ advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer’s failure to provide such notice.

7. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.

8. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority’s judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond. The Authority will give the Customer notice of any Unplanned Hydropower Curtailments that the Authority believes are likely to exceed forty-eight (48) continuous hours in duration.

9. Notwithstanding the Customer’s election pursuant to Section IX.1, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments.

10. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless
otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.

11. The Customer shall be responsible for all costs associated with the Authority’s provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.

12. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.

ARTICLE X
EFFECTIVENESS, TERM AND TERMINATION

1. This Agreement shall become effective and legally binding on the Parties on the Effective Date.

2. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (a) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (b) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-2, or the Rules; or (c) expiration of the Allocation by its own term as specified in Schedule A.

3. The Customer may exercise a partial termination of the Allocation upon at least sixty (60) days’ prior written notice to the Authority. The Authority will effectuate the partial termination as soon as practicable after receipt of such notice taking account of the Authority’s internal procedures and requirements of the Customer’s local electric utility.

4. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-2, or the Rules.

ARTICLE XI
EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

1. The Customer may apply to the Authority for an extension of the term of the Allocation identified in Schedule A:

   a. during the thirty-six (36) month period immediately preceding the scheduled expiration of the Allocation;
b. pursuant to any other process that the Authority establishes; or

c. with the Authority’s written consent.

2. Upon proper application by the Customer, the Authority may in accordance with applicable law and Authority procedures award additional allocations of EP and/or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (a) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (b) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.

3. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for extension of the Allocation or additional allocations and consider the terms and conditions that should be applicable of any extension or additional allocations.

ARTICLE XII
NOTICES

1. Notices, consents, authorizations, approvals, instructions, waivers or other communications provided in this Agreement shall be in writing and transmitted to the Parties as follows:

To: The Authority

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

To: The Customer

Chocolate Delivery Systems, Inc.
1800 Elmwood Avenue
Buffalo, NY 14207
Email:
Facsimile:
Attention:

2. The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XII.1.

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

ARTICLE XIII
SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER

1. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto, provided that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party, which consent shall not be unreasonably withheld or conditioned. Notwithstanding the foregoing sentence, the Authority may require such approvals, and such consents and other agreements from the Customer and other parties, that the Authority determines are necessary in order to effectuate any such assignment.

2. The Customer may not transfer any portion of the Allocation to any other person, or a location different than the Facility, unless: (a) the Authority in its discretion authorizes the transfer Authority; (b) all other requirements applicable to a transfer, including board approvals, are satisfied; and (c) the transfer is effectuated in a form and subject to such terms and conditions approved by the Authority. Any purported transfer that does not comply with the foregoing requirements shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service or terminate the Allocation and/or this Agreement.

3. The Customer may not sell any portion of the Allocation to any other person. Any purported sale shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service, or terminate the Allocation and/or this Agreement.

ARTICLE XIV
MISCELLANEOUS

1. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a) and rulings by the IJC and without regard to conflicts of law provisions.

2. Venue

The Parties: (a) consent to the exclusive jurisdiction and venue of any state court within or
for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement; (b) agree to accept service of process; and (c) will not raise any argument of inconvenient forum.

3. **Previous Agreements; Modifications; and Interpretation**

   a. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of the Allocation and the subject matter of the Agreement, and supersedes all previous communications and agreements between the Parties, oral or written, with reference to the sale of the Allocation.

   b. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

   c. No provision shall be construed against a Party on the basis that such Party drafted such provision.

4. **Waiver**

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

5. **Severability and Voidability**

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

   **ARTICLE XV**

   **EXECUTION**

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

[SIGNATURES FOLLOW ON NEXT PAGE]
AGREED:

CHOCOLATE DELIVERY SYSTEMS, INC.

By: ______________________________________
Title: _____________________________________
Date: ______________________________________

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: ______________________________________
   John R. Koelmel, Chairman
Date: ______________________________________
## SCHEDULE A
### EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

<table>
<thead>
<tr>
<th>Type of Allocation</th>
<th>Allocation Amount (kW)</th>
<th>Facility and Address</th>
<th>Trustee Approval Date</th>
<th>Allocation Expiration Date</th>
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</thead>
<tbody>
<tr>
<td>RP</td>
<td>4,210 kW</td>
<td>1800 Elmwood Avenue Buffalo, New York 14207</td>
<td>March 29, 2022</td>
<td>Ten (10) years from the date of commencement of Electric Service</td>
</tr>
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</table>
SCHEDULE B
SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER
COMMITSMENTS

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments

   a. The Customer shall create and maintain the employment level set forth in the Appendix to this Schedule B (the “Base Employment Level”). Such Base Employment Level shall be the total number of full-time positions held by: (a) individuals who are employed by the Customer at Customer’s Facility identified in the Appendix to this Schedule, and (b) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, “Base Level Employees”). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

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

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

2. Capital Investment Commitments

   The Customer shall make the capital investments specified in the Appendix to this Schedule B.

3. Power Utilization

   For each month the Authority provides Electric Service to the Customer, the Customer shall utilize the entire Allocation, as represented by the Billing Demand (as such term is described in Service Tariff No. WNY-2), provided, however, that if only part of the Allocation is being utilized in accordance with Schedule C, the Customer shall utilize such partial amount of the Allocation.

4. Energy Efficiency and Conservation Program
a. The Customer shall implement an energy efficiency and conservation program at the Facility through either (a) enrollment of the Facility and participation in NYEM in accordance with a NYEM Agreement, or (b) one or more Physical Energy Audits of the Facility, or (c) a combination of such measures, in accordance with the provisions of this Article.

b. The Authority shall transmit to the Customer a NYEM Agreement and an election form. The Customer shall elect to either (a) enroll the Facility and participate in NYEM for a three-year term (“NYEM Participation”) in accordance with the NYEM Agreement, or (b) perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit within three (3) years of the Effective Date of this Agreement, at its own expense.

c. The Authority shall, on or before the expiration of the three-year term of the NYEM Agreement, transmit to the Customer a NYEM Agreement specifying the terms and conditions that would apply to NYEM participation for a second term, and an election form. The Customer shall elect either (a) NYEM Participation for a second term, or (b) to perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit during the calendar year that begins six years after the Effective Date of this Agreement, at its own expense.

d. The Authority may in its discretion waive the requirement for a Physical Energy Audit, or may agree to a limited energy audit of the Facility, where it determines that the Physical Energy Audit is unnecessary based on the age of the Facility, energy efficiency and conservation improvements made at the Facility, the length of the Allocation, or other considerations the Authority determines to be relevant.
ARTICLE II
RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer’s Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

2. Capital Investments

The Customer shall comply with the recordkeeping, recording and reporting requirements specified in the Appendix to this Schedule B.

3. Power Usage

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement.

4. Energy Efficiency and Conservation Program

Upon the Authority’s request, the Customer shall provide the Authority with (a) a copy of the results of any Physical Energy Audit performed at the Facility (or, at the Authority’s option, a report describing the results), performed pursuant to this Article; and (b) a description of any energy efficiency or conservation measures that the Customer has implemented at the Facility in response to any Physical Energy Audit or as a result of NYEM Participation.

5. Facility Access
Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer’s compliance with the Customer’s Supplemental Commitments specified in this Schedule B.

ARTICLE III
COMPLIANCE ACTION BY THE AUTHORITY

1. Employment

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in the Appendix to this Schedule B for the subject calendar year, the Authority may reduce the Contract Demand in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

2. Capital Investment Commitment

The Authority may reduce the Contract Demand as provided in the Appendix to this Schedule B if the Customer does not comply with the Capital Investment Commitment.

3. Power Utilization Level

If the average of the Customer’s six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-2) for Expansion Power and/or Replacement Power is less than 90% of the Customer’s Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to in accordance with the procedures provide in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

4. Additional Compliance Action

In addition to the Authority’s other rights and remedies provided in this Agreement, Service Tariff WNY-2 and the Rules, the Authority may suspend Electric Service to the Customer if the Customer does not comply with any of the requirements in Section I.4 or Article II of this Schedule B.
5. **Notice of Intent to Reduce Contract Demand**

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to Sections III.1, III.2, or III.3 of this Schedule B, the Authority shall provide the Customer with at least thirty (30) days prior written notice of the proposed reduction, specifying the amount and reason for the reduction. Before implementing any reduction, the Authority may consider the Customer’s scheduled or unscheduled maintenance, Facility upgrade periods, and the business cycle. If, at the end of the thirty (30) day notice period, the Authority determines that a reduction is warranted, it shall provide the Customer with notice of such determination and provide the Customer with sixty (60) days to present a proposed plan with actionable milestones to cure the deficiency. The Authority shall respond to the Customer concerning the acceptability of any proposed plan that is provided in accordance with this Section III.5 within thirty (30) days of the Authority’s receipt of such proposed plan. It shall be within the Authority’s discretion whether or not to accept the Customer’s proposed plan, require a different plan, or implement the reduction of the Contract Demand.
APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 189 full-time, permanent employees ("Base Employment Level") at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. Annual Capital Investment Commitment (if applicable, as specified below)

   a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility ("Rolling Average") shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.

   b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.

   c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

2. Expansion Project–Capital Investment Commitment (if applicable, as specified below)

   a. The Customer shall make a minimum capital investment of $25,995,987 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:
<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>EXPENDITURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chocolate manufacturing system purchases</td>
<td>$ 24,554,467</td>
</tr>
<tr>
<td>Manufacturing and production equipment</td>
<td>$ 1,441,520</td>
</tr>
<tr>
<td><strong>Total Minimum Expansion Project Capital Investment Commitment:</strong></td>
<td><strong>$ 25,995,987</strong></td>
</tr>
</tbody>
</table>

Total Expansion Project Capital Investment Commitment:

b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than March 29, 2025 (i.e., within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.
SCHEDULE C
TAKEDOWN SCHEDULE
SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“AFFECTED LSEs” has the meaning provided in Section II.2 of this Schedule D.

“CES ORDER” means the Order issued by the PSC entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“EP and RP Programs ZEC Costs” has the meaning provided in Section II.4.b of this Schedule D.

“Government Action” has the meaning provided in Section II.8 of this Schedule D.

“Load Serving Entity” or “LSE” has the meaning provided in the CES Order.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“Zero Emission Credit” or “ZEC” has the meaning provided in the CES Order.

“Zero Emission Credit Charge” or “ZEC Charge” means the charge to the Customer established in this Schedule D.
“ZEC Purchase Obligation” has the meaning provided in Section II.2 of this Schedule D.

“ZEC Program Year” has the meaning provided in Section II.2 of this Schedule D.

II. ZEC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a ZEC Charge as provided in this Schedule D. The ZEC Charge shall be in addition to all other charges, fees and assessments provided for in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the ZEC Charge.

2. As provided in the CES Order, the Public Service Commission, as part of the CES and Tier 3 of the Renewable Energy Standard, imposed an obligation on Load Serving Entities that are subject to the CES Order (“Affected LSEs”) to purchase Zero Emission Credits from NYSERDA in an amount representing the Affected LSE’s proportional share of ZECs calculated on the basis of the amount of electric load the LSE serves in relation to the total electric load served by all Load Serving Entities in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes in the State (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).

3. The ZEC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of supporting the CES and Tier 3 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan. The Authority will comply with the CES and Tier 3 of the RES by applying a form of ZEC Purchase Obligation to the end-user load for which the Authority serves as a load serving entity, including the load that the Authority serves under the EP and RP power programs.

4. The ZEC Charge, which is intended to recover from the Customer costs that the Authority incurs for purchasing ZECs in quantities that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:

a. The cost of the total ZEC Purchase Obligation for all LSEs in the New York Control Area, including the Authority as a participating load serving entity, will be assessed pursuant to the methodology provided in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA based on the proportion of the forecasted total kilowatt-hours load served by
the Authority (i.e., total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The ZEC Purchase Obligations may be based on initial load forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.

b. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as load serving entity, including the EP and RP load that it serves (the “EP and RP Programs ZEC Costs”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for each ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of ZEC Purchase Obligations will be allocated to the EP and RP power programs based on the proportion of the actual annual kilowatt-hours load served under such programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

c. The Authority will allocate a portion of the EP and RP Programs ZEC Costs to the Customer as the ZEC Charge based on the proportion of the Customer’s actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP power programs (i.e., EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation referenced above will be passed through to the Customer based on the proportion of the Customer’s annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP power program by the Authority (EP and RP Programs level load). The ZEC Charge assessed to the Customer shall not include any costs resulting from the Authority’s inability to collect a ZEC Charge from any other Authority customer.

5. The Authority may, in its discretion, include the ZEC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the ZEC Charge pursuant to another Authority-established procedure.

6. The Authority may, in its discretion, modify the methodology used for determining the ZEC Charge and the procedures used to implement such ZEC Charge on a nondiscriminatory basis among affected EP and RP customers, upon consideration of such matters as Public Service Commission orders modifying or implementing the CES Order, guidance issued by the New York Department of Public Service, and other information that the Authority reasonably determines to be appropriate to the determination of such methodology. The Authority shall
provide Customer with reasonable notice of any modifications to the methodology or procedures used to determine and implement the ZEC Charge.

7. Nothing in this Schedule shall limit or otherwise affect the Authority’s right to charge or collect from the Customer any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

8. If the ZEC Purchase Obligation is modified or terminated by the Public Service Commission or other controlling governmental authority (collectively, “Government Action”), the Authority shall modify or terminate the ZEC Charge, and assess any additional charges or provide any credits to the Customer, to the extent that the Authority determines such actions to be appropriate based on such Government Action.
SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Alternative REC Compliance Program” has the meaning provided in Section III.1 of this Schedule E.

“Annual REC Percentage Target” has the meaning provided in Section II.2 of this Schedule E.

“CES Order” means the Order issued by the Public Service Commission entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“Clean Energy Standard” or “CES” means the Clean Energy Standard adopted by the State in the CES Order.

“Load Serving Entity” has the meaning provided in the CES Order.

“Mandatory Minimum Percentage Proportion” has the meaning provided in the CES Order.

“Monthly Renewable Energy Credit Charge” or “Monthly REC Charge” means the monthly charge to the Customer established in this Schedule E.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Credit” or “REC” refers to a qualifying renewable energy credit as described in the CES Order.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.
“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“REC Compliance Measures” mean: (1) the Authority’s procurement of RECs from NYSERDA in accordance with NYSERDA procedures and/or the CES Order; (2) the Authority’s procurement of RECs from available REC markets; (3) the Authority’s procurement of RECs from sources other than those identified in items (1) and (2) of this definition, including through a procurement process adopted by the Authority; and/or (4) any other measure that the PCS authorizes a Load Serving Entity to implement for the purpose of meeting the applicable Mandatory Minimum Percentage Proportion.

“Total Monthly EP-RP Load” has the meaning provided in Section II.3.b of this Schedule E.

“Total Monthly REC Costs” has the meaning provided in Section II.3.b of this Schedule E.

II. MONTHLY REC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a Monthly REC Charge as provided in this Schedule E. The Monthly REC Charge is in addition to all other charges, fees and assessments provided in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the Monthly REC Charge.

2. The Monthly REC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of complying with the CES and Tier 1 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan, pursuant to which the Authority will invest in new renewable generation resources to serve its EP and RP customers. Such investments will be made through the procurement of RECs through REC Compliance Measures in quantities that are intended to address the annual Mandatory Minimum Percentage Proportions as applied by the Authority to the total EP and RP load that the Authority will serve each calendar year (the “Annual REC Percentage Target”) for the purpose of ultimately meeting the RES.

3. The Monthly REC Charge, which is intended to recover from the Customer costs that the Authority incurs for implementing REC Compliance Measures that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:
a. The Authority shall have the right, for each calendar year to implement such REC Compliance Measures as it determines in its discretion to be appropriate for the purpose of meeting the Annual REC Percentage Target for the total EP and RP load that it will serve during such calendar year.

b. The Authority will, for each month of each calendar year, calculate the total costs (“Total Monthly REC Costs”) that the Authority has incurred or estimates that it will incur from implementing RES Compliance Measures for the purpose of meeting the Annual REC Percentage Target for the total EP and RP kilowatt-hour load for the month (“Total Monthly EP-RP Load”). The Total Monthly REC Costs may be calculated based on forecasts of the Total Monthly EP-RP Load that the Authority expects to serve for the month, or on a lagged basis based on the actual Total Monthly EP-RP Load that the Authority served for the month.

c. Each month, the Authority will assess to the Customer, as a Monthly REC Charge, which will represent the Customer’s share of the Total Monthly REC Costs assessed to the Total Monthly EP-RP Load. The Monthly REC Charge will be assessed as the proportion of the Customer’s total kilowatt-hours load served by the Authority for such month to the Total Monthly EP-RP Load served by the Authority for such month, provided, however, that:

i. the Monthly REC Charge to the Customer shall not include any costs associated with the Authority’s inability to collect the Monthly REC Charge from other Authority customers; and

ii. the effective per-MWh rate of the Monthly REC Charge to the Customer averaged over the REC Program Year to which the Annual REC Percentage Target applies shall not exceed the per-MWh rate of a Monthly REC Charge based on NYSERDA’s published REC price for the REC Program Year.

4. The Authority may, in its discretion, include the Monthly REC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the Monthly REC Charge pursuant to another Authority-established procedure.

5. The Authority will, at the conclusion of each calendar year in which it assesses a Monthly REC Charge, conduct a reconciliation process based on the actual costs that it incurred for REC Compliance Measures and actual load served for the year, compared with cost or load estimates or forecasts, if any, that the Authority used to calculate the Customer’s Monthly REC Charges during the year. The Authority will issue a credit, or an adjusted final charge for the year, as appropriate, based on the results of such reconciliation process. Any such final charge shall be payable within the time frame applicable to the Authority’s bills.
for Electric Service under this Agreement or pursuant to any other procedure established by the Authority pursuant to Section II.4 of this Schedule E.

6. Notwithstanding the provisions of Section II.3 of this Schedule E, if Electric Service for the Allocation is commenced after the Authority has implemented REC Compliance Measures for the year in which such Electric Service is commenced, and as a result the Customer’s load cannot be accounted for in such REC Compliance Measures, the Authority may in its discretion implement separate REC Compliance Measures in order to meet the Annual REC Percentage Target for Customer’s load for the year, and bill the Customer for the costs associated with such separate REC Compliance Measures.

7. Nothing in this Schedule shall limit or otherwise affect the Authority’s right to charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

III. ALTERNATIVE REC COMPLIANCE PROGRAM

1. Nothing in this Schedule E shall be construed as preventing the Parties from entering into other agreements for an alternative arrangement for the Authority to meet the Annual REC Percentage Target with respect to the Customer’s Allocation, including but not limited to Customer self-supply of RECs, alternative REC compliance programs and cost allocation mechanisms, in lieu of the Monthly REC Charge provided in this Schedule E (collectively, “Alternative REC Compliance Program”).

2. The Authority shall communicate at least biennially with the Customer concerning implementation of the RES Compliance Program and potential Alternative REC Compliance Programs, if any, that the Authority is offering or expects to offer.
POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY  12207

Schedule of Rates for Sale of Firm Power Service to Expansion Power and Replacement Power Customers
Located in Western New York

Service Tariff No. WNY-2
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## Schedule of Rates for Firm Power Service

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Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff issued by the NYISO

Agreement: An executed written agreement between the Authority and the Customer for the sale of Expansion Power and/or Replacement Power to the Customer.

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

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

Customer: A business entity that has received an allocation of Expansion Power and/or Replacement Power, and that purchases Expansion Power and/or Replacement Power, directly from the Authority.

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

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

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

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

Load Split Methodology or LSM: A type of billing methodology applicable to a Customer’s Allocation which determines how a Customer’s total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer’s other source of electricity supply, if any. LSM is usually provided for in an agreement between the Authority and the Customer’s local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer’s local electric utility. The load split methodology is often designated as “Load Factor Sharing” or “LFS”, “First through the Meter” or “FTM”, “First through the Meter Modified” or “FTM Modified”, or “Replacement Power 2” or “RP 2”.

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

Rate Year or RY: The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

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

Service Tariff: This Service Tariff No. WNY-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.
III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

The rates to be charged to the Customer by the Authority shall be as follows:

<table>
<thead>
<tr>
<th>Billing Period</th>
<th>Demand ($/kW)</th>
<th>Energy ($/MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January – June 2019</td>
<td>7.60</td>
<td>13.00</td>
</tr>
</tbody>
</table>

1. For RY 2019 (July 2019 through June 2020 Billing Periods), 50% of the Annual Adjustment Factor (“AAF”), as described in Section V, will be applied to the demand and energy rates stated in the table above.
2. For RY 2020 (July 2020 through June 2021 Billing Periods) and each Rate Year thereafter, the AAF will be applied to the then-effective base rates for demand and energy in accordance with Section V.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average $/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average $/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The Minimum Monthly Charge shall equal the product of the demand charge and the Contract Demand (as defined herein). Such Minimum Monthly Charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer’s Allocation.
E. Estimated Billing

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

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Load Split Methodology that is applicable to the Customer as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer’s Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer’s takedown (kW) amount.

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

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

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer’s Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the takedown (kW) amount at 100 percent load factor for that Billing Period.

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

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

The Authority’s discretion to render Estimated Bills is not intended and shall not be construed to limit the Authority’s rights under the Agreement.
F. **Adjustments to Charges**

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

G. **Billing Period**

The Billing Period is any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer’s facilities are located.

H. **Billing Demand**

Billing Demand shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

I. **Billing Energy**

Billing Energy shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

J. **Contract Demand**

The Contract Demand will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement.
IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority’s obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.

2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

C. Delivery

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

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the base rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.
E. **Billing Methodology**

Unless otherwise specified in the Agreement, the following provisions shall apply:

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing (“LFS”) in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.

2. Billing Demand – The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. Billing Demand may not exceed the amount of the Contract Demand.

3. Billing Energy – The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.

4. With regard to LFS methodology calculations:
   a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
   b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
   c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
      i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
      ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
   d. All demand values will be adjusted for losses.
F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Firm Energy during any Billing Period the higher of either (i) the sum of (a), (b) and (c) below, or (ii) the Minimum Monthly Charge (as defined herein):

   a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer’s Billing Demand (as defined in Section IV.E, above) for the Billing Period; and

   b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer’s Billing Energy (as defined in Section IV.E, above) for the Billing Period; and

   c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges

The Customer shall compensate the Authority for the following NYISO transmission and related charges (collectively, “NYISO Charges”) assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

   A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

   B. Marginal losses;

   C. The New York Power Authority Transmission Adjustment Charge ("NTAC");

   D. Congestion costs inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts as provided in Attachment K of the OATT;

   E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority’s responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO’s Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.
G. **Rendition and Payment of Bills**

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.

2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.

3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.

4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.

5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.

6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
H. Adjustment of Charges – Distribution Losses

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

I. Conflicts

In the event of any inconsistencies, conflicts, or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of the Agreement and this Service Tariff or the Rules, the provisions of the Agreement shall govern.
V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year (“Index Value for the Measuring Year”) will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1”). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of ±5.0% (“±5% Collar”). Amounts outside the ±5% Collar shall be referred to as the “Excess.”

   Index 1, “BLS Industrial Power Price” (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics (“BLS”) electronically on its internet site and consistent with its printed publication, “Producer Price Index Detailed Report”. For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

   Index 2, “EIA Average Industrial Power Price” (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT (“Selected States”) as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration (“EIA”); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

   Index 3, “BLS Industrial Commodities Price Less Fuel” (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, “Producer Price Index Detailed Report”. For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

   Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.

   Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.

   Step 3: Commencing RY 2014, modifications to the AAF will be subject to ±5% Collar, as described below.

      a) When the AAF falls outside the ±5% Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the ±5% Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year’s AAF, up to the ±5% Collar.
b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the ±5% Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. Subject to the provisions of Section III.A of this Service Tariff, the Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.

4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended to reflect, the Customer and the Authority may mutually select a substitute Index. The Customer and the Authority agree to mutually select substitute indices within 90 days, once one of them is notified by the other that the indices are no longer available or no longer reflect the relevant factors or changes which the indices were intended to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If the Customer and Authority are unable to reach agreement on substitute indices within the 90-day period, the Customer and the Authority agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI—Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available or reflective of their intended purpose and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.
B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

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<tbody>
<tr>
<td>January</td>
<td>171.2</td>
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<td>February</td>
<td>172.8</td>
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<td>March</td>
<td>171.6</td>
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<td>April</td>
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<td>May</td>
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<td>November</td>
<td>172.2</td>
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<td>December</td>
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Average 177.2 172.8

Ratio of MY/MY-1 1.03
## Index 2 – EIA Industrial Rate

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<tr>
<th>State</th>
<th>Revenues ($000s)</th>
<th>Sales (MWh)</th>
<th>Avg. Rate (cents/kWh)</th>
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<td>NY</td>
<td>2,001,588</td>
<td>26,379,314</td>
<td></td>
</tr>
<tr>
<td>OH</td>
<td>3,695,978</td>
<td>78,496,166</td>
<td></td>
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<tr>
<td>PA</td>
<td>3,682,192</td>
<td>63,413,968</td>
<td></td>
</tr>
<tr>
<td>RI</td>
<td>152,533</td>
<td>1,652,593</td>
<td></td>
</tr>
<tr>
<td>VT</td>
<td>155,903</td>
<td>2,173,679</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>13,434,511</td>
<td>215,442,827</td>
<td><strong>6.24</strong></td>
</tr>
</tbody>
</table>

| **Measuring Year -1 (2011)**                      |              |                          |                       |
| CT    | 579,153          | 6,678,462   |                       |
| MA    | 1,076,431        | 12,662,192  |                       |
| ME    | 310,521          | 4,626,886   |                       |
| NH    | 298,276          | 2,817,005   |                       |
| NJ    | 1,370,285        | 15,217,237  |                       |
| NY    | 1,891,501        | 24,928,452  |                       |
| OH    | 3,622,058        | 76,926,243  |                       |
| PA    | 3,571,726        | 61,511,549  |                       |
| RI    | 144,144          | 1,561,700   |                       |
| VT    | 152,785          | 2,130,205   |                       |
| **TOTAL** | 13,016,880      | 209,059,931 | **6.23**             |

**Ratio of MY/MY-1** | **1.00**
**Index 3 – Producer Price Index, Industrial Commodities Less Fuel**

<table>
<thead>
<tr>
<th>Measuring Year</th>
<th>Measuring Year -1</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>190.1</td>
</tr>
<tr>
<td>February</td>
<td>190.9</td>
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<tr>
<td>March</td>
<td>191.6</td>
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<td>April</td>
<td>192.8</td>
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<td>May</td>
<td>194.7</td>
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<td>June</td>
<td>195.2</td>
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<tr>
<td>July</td>
<td>195.5</td>
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<tr>
<td>August</td>
<td>196.0</td>
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<tr>
<td>September</td>
<td>196.1</td>
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<tr>
<td>October</td>
<td>196.2</td>
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<tr>
<td>November</td>
<td>196.6</td>
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<tr>
<td>December</td>
<td>196.7</td>
</tr>
<tr>
<td>Average</td>
<td>194.4</td>
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</tbody>
</table>

Ratio of MY/MY-1: **1.02**

**STEP 2**

Determine AAF by Summing the Weighted Indices

<table>
<thead>
<tr>
<th>Index</th>
<th>Ratio of MY to MY-1</th>
<th>Weight</th>
<th>Weighted Factors</th>
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<tbody>
<tr>
<td>PPI Industrial Power</td>
<td>1.03</td>
<td>0.35</td>
<td>0.361</td>
</tr>
<tr>
<td>EIA Industrial Rate</td>
<td>1.00</td>
<td>0.40</td>
<td>0.400</td>
</tr>
<tr>
<td>PPI Industrial Commodities less fuel</td>
<td>1.02</td>
<td>0.25</td>
<td>0.255</td>
</tr>
<tr>
<td>AAF</td>
<td></td>
<td></td>
<td><strong>1.016</strong></td>
</tr>
</tbody>
</table>

**STEP 3**

Apply Collar of ±5.0% to Determine the Maximum/Minimum AAF.

-5.0% < 1.6% < 5.0%; collar does not apply, assuming no cumulative excess.
### STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

<table>
<thead>
<tr>
<th></th>
<th>Demand $/kW-mo.</th>
<th>Energy $/MWh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Rate Year Base Rate</td>
<td>7.56</td>
<td>12.91</td>
</tr>
<tr>
<td>New Rate Year Base Rate</td>
<td>7.68</td>
<td>13.12</td>
</tr>
</tbody>
</table>
POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

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

LW1 Operator, LLC
The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with LW1 Operator, LLC (“Customer”) with offices and principal place of business at 310 Ship Canal Parkway, Buffalo, NY 14218. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, including hydropower known as Expansion Power (“EP”) and Replacement Power (“RP”) to qualified businesses in accordance with PAL § 1005(5) and (13);

WHEREAS, the Customer has applied for an allocation of EP and/or RP, or for an extension of an existing allocation of EP or RP, for use at facilities defined in this Agreement as the “Facility”;

WHEREAS, the Customer has offered to make specific commitments relating to, among other things, the creation and/or retention of jobs, capital investments, power usage and energy efficiency measures at the Facility;

WHEREAS, the Authority’s Board of Trustees approved an allocation of EP and/or RP to the Customer;

WHEREAS, the Parties have reached an agreement on the terms and conditions applicable for the sale of the EP and/or RP for a term provided in this Agreement;

WHEREAS, the Authority’s provision of Electric Service under this Agreement is an unbundled service separate from (i) the transmission of the allocation, and (ii) the delivery of the Allocation;

WHEREAS, electric service to be provided hereunder shall be subject to the rates and other terms and conditions contained in the Service Tariff No. WNY-2 as provided in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement; and

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement.

NOW, THEREFORE, in consideration of mutual covenants, terms, and conditions herein, and for other good and valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties do hereby mutually covenant and agree as follows:
ARTICLE I
DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Agreement, shall have the meanings as set forth below. When used with initial capitalization, whether singular or plural, terms defined in schedules or appendices to this Agreement shall have the meanings set forth in such schedules or appendices.

“Adverse Water Condition” means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.

“Agreement” means this Agreement, and unless otherwise indicated herein, includes all schedules, appendices and addenda thereto, as the same may be amended from time to time.

“Allocation” refers to the allocation(s) of EP and/or RP awarded to the Customer as specified in Schedule A.

“Alternative REC Compliance Program” has the meaning provided in Schedule E.

“Annual Capital Investment Commitment” has the meaning set forth in Schedule B.

“Annual CI Expenditures” has the meaning set forth in Schedule B.

“Base Employment Level” has the meaning set forth in Schedule B.

“Contract Demand” is as defined in Service Tariff No. WNY-2.

“Customer-Arranged Energy” means energy that the Customer procures from sources other than the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.

“Effective Date” means the date that this Agreement is fully executed by the Parties.

“Electric Service” is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

“Energy Services” has the meaning set forth in Article V of this Agreement.

“Expansion Power” (or “EP”) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Expansion Project” has the meaning set forth in Section IV.3.a of this Agreement.
“Expansion Project Capital Investment Commitment” has the meaning set forth in Schedule B.

“Facility” means the Customer’s facilities as described in Schedule A to this Agreement.

“Firm Power” is as defined in Service Tariff No. WNY-2.

“Firm Energy” is as defined in Service Tariff No. WNY-2.

“FERC” means the Federal Energy Regulatory Commission (or any successor organization).

“FERC License” means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project’s original license which became effective in 1957.

“Hydro Projects” is a collective reference to the Project and the Authority’s St. Lawrence-FDR Project, FERC Project No. 2000.

“International Joint Commission” or “IJC” refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the 1909 Boundary Waters Treaty and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.

“Load Reduction” has the meaning set forth in Section IX.6 of this Agreement.

“Load Serving Entity” (or “LSE”) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.

“Metering Arrangement” has the meaning set forth in Section II.8 of this Agreement.

“NYEM” means the New York Energy Manager, an energy management center owned and operated by the Authority.

“NYEM Agreement” means a written agreement between the Authority and the Customer providing for the Facility’s enrollment and Customer’s participation in NYEM.

“NYEM Participation” has the meaning specified in Schedule B of this Agreement.

“NYISO” means the New York Independent System Operator or any successor organization.

“NYISO Charges” has the meaning set forth in Section VII.3 of this Agreement.
“NYISO Tariffs” means the NYISO’s Open Access Transmission Tariff or the NYISO’s Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.

“Planned Hydropower Curtailment” means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.

“Physical Energy Audit” or “Audit” means a physical evaluation of the Facility in a manner approved by the Authority that includes at a minimum the following elements: (a) an assessment of the Facility’s energy use, cost and efficiency which produces an energy utilization index for the Facility (such as an Energy Use Intensity or Energy Performance Indicator); (b) a comparison of the Facility’s index to indices for similar buildings/facilities; (c) an analysis of low-cost/no-cost measures for improving energy efficiency; (d) a listing of potential capital improvements for improving energy consumption; and (e) an initial assessment of potential costs and savings from such measures and improvements.

“Project” means the Niagara Power Project, FERC Project No. 2216.

“Replacement Power” (or “RP”) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Reporting Year” means the yearly interval that the Authority uses for reporting, compliance and other purposes as specified in this Agreement. The Reporting Year for this Agreement is from January 1 through December 31, subject to change by the Authority without notice.

“Rolling Average” has the meaning set forth in Schedule B.

“Rules” are the applicable provisions of Authority’s rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.

“Service Information” has the meaning set forth in Section II.12 of this Agreement.

“Service Tariff No. WNY-2” means the Authority’s Service Tariff No. WNY-2, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.

“Schedule A” refers to the Schedule A entitled “Expansion Power and/or Replacement Power Allocations” which is attached to and made part of this Agreement.

“Schedule B” refers to the Schedule B entitled “Supplemental Expansion Power and/or Replacement Power Commitments” which is attached to and made part of this Agreement, including any appendices attached thereto.
“Schedule C” refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of this Agreement.

“Schedule D” refers to the Schedule D entitled “Zero Emission Credit Charge” which is attached to and made part of this Agreement.

“Schedule E” refers to the Schedule E entitled “Monthly Renewable Energy Credit Charge” which is attached to and made part of this Agreement.

“Substitute Energy” means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.

“Takedown” means the portion of the Allocation that Customer requests to be scheduled for a specific period as provided for in Schedule C, if applicable.

“Taxes” is as defined in Service Tariff No. WNY-2.

“Unforced Capacity” (or “UCAP”) means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

“Unplanned Hydropower Curtailment” means a temporary reduction in the amount of Firm Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

“Utility Tariff” means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

ARTICLE II
ELECTRIC SERVICE

1. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

2. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified in Schedule A.

3. The Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation specified in Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.

4. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-2.
5. The provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer. The Customer acknowledges and agrees that Customer’s local electric utility, not the Authority, shall be responsible for delivering the Allocation to the Facility specified in Schedule A in accordance with the applicable Utility Tariff(s).

6. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.

7. The Contract Demand may not exceed the Allocation.

8. The Customer’s Facility must be metered by the Customer’s local electric utility in a manner satisfactory to the Authority, or another metering arrangement satisfactory to the Authority must be provided (collectively, “Metering Arrangement”). A Metering Arrangement that is not satisfactory to the Authority shall be grounds, after notice to the Customer, for the Authority to modify, withhold, suspend, or terminate Electric Service to the Customer. If a Metering Arrangement is not made to conform to the Authority’s requirements within thirty (30) days of a determination that it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days’ prior written notice to the Customer. After commencement of Electric Service, the Customer shall notify the Authority in writing within thirty (30) days of any alteration to the Facility’s Metering Arrangement, and provide any information requested by the Authority (including Facility access) to enable the Authority to determine whether the Metering Arrangement remains satisfactory. If an altered Metering Arrangement is not made to conform to the Authority’s requirements within thirty (30) days of a determination it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days’ prior written notice to the Customer. The Authority may, in its discretion, waive any of the requirements provided for in this Section in whole or in part where in the Authority’s judgment, another mechanism satisfactory to the Authority can be implemented to enable the Authority to receive pertinent, timely and accurate information relating to the Customer’s energy consumption and demand and render bills to the Customer for all fees, assessments and charges that become due in accordance with this Agreement, Service Tariff No. WNY-2, and the Rules.

9. The Customer consents to the exchange of information between the Authority and the Customer’s local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of the Allocation to the Customer, the proper and efficient implementation of the EP and/or RP program, billing related to Electric Service, and/or the performance of such parties’ obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents that the Authority determines are necessary to effectuate such exchanges of information.
10. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer’s local electric utility providing for the delivery of the Allocation on terms and conditions that are acceptable to the Authority.

11. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, execute consents, and provide information (collectively, “Service Information”) that the Authority determines is necessary for the provision of Electric Service, the delivery of the Allocation, billing related to Electric Service, the effective administration of the EP and/or RP programs, and/or the performance of contracts or other arrangements between the Authority and the Customer’s local electric utility. The Customer’s failure to provide Service Information on a timely basis shall be grounds for the Authority in its discretion to modify, withhold, suspend, or terminate Electric Service to the Customer.

ARTICLE III
RATES, TERMS AND CONDITIONS

1. Electric Service shall be sold to the Customer in accordance with the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-2 and the Rules. The Authority agrees to waive the Minimum Monthly Charge set forth in Service Tariff No. WNY-2 for a period up to one (1) year upon written request from the Customer that is accompanied by information that demonstrates to the Authority’s satisfaction a short-term reduction or interruption of Facility operations due to events beyond the Customer’s control. The Customer shall provide such information that the Authority requests during the period of any such waiver to enable the Authority to periodically evaluate the ongoing need for such waiver.

2. If the Authority at any time during the term of this Agreement enters into an agreement with another customer for the sale of EP or RP at power and energy rates that are more advantageous to such customer than the power and energy rates provided in this Agreement and Service Tariff No. WNY-2, then the Customer, upon written request to the Authority, will be entitled to such more advantageous power and energy rates in the place of the power and energy rates provided in this Agreement and Service Tariff No. WNY-2 effective from the date of such written request, provided, however, that the foregoing provision shall not apply to:

a. any agreement for the sale of EP and/or RP with an Authority customer whose purchase of EP and/or RP is associated with an Authority service tariff other than Service Tariff No. WNY-2, including Authority Service Tariff No. WNY-1; or

b. any agreement for the sale of EP and/or RP with an Authority customer which is associated with such customer’s participation in an Alternative REC Compliance Program provided for in Schedule E of this Agreement.

3. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority’s competitive position with
with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority’s bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

4. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-2 and the Rules, the Customer shall be responsible for payment of the Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge provided for in Schedule D and Schedule E, respectively, of this Agreement.

ARTICLE IV
SUPPLEMENTAL COMMITMENTS

1. Supplemental Commitments. Schedule B sets forth the Customer’s “Supplemental Expansion Power and/or Replacement Power Commitments” (“Supplemental Commitments”). The Authority’s obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer’s timely compliance with the Supplemental Commitments described in Schedule B as further provided in this Agreement. The Customer’s Supplemental Commitments are in addition to all other commitments and obligations provided in this Agreement.

2. [Intentionally Left Blank]


a. Proposed New or Expanded Facility; Failure to Complete.

If Schedule B provides for the construction of a new facility or an expansion of an existing facility (collectively, “Expansion Project”), and the Customer fails to complete the Expansion Project by the date specified in Schedule B, the Authority may, in its discretion, (a) cancel the Allocation, or (b) if it believes that the Expansion Project will be completed in a reasonable time, agree with the Customer to extend the time for completion of the Expansion Project.

b. Proposed New or Expanded Facility: Partial Performance.

If the Expansion Project results in a completed Facility that is only partially operational, or is material different than the Expansion Project agreed to in Schedule B (as measured
by such factors as size, capital investment expenditures, capital improvements, employment levels, estimated energy demand and/or other criteria determined by the Authority to be relevant), the Authority may, in its discretion, on its own initiative or at the Customer’s request, make a permanent reduction to the Allocation and Contract Demand to an amount that the Authority determines to fairly correspond to the completed Facility.

c. Notice of Completion; Commencement of Electric Service.

(i) The Customer shall give the Authority not less than ninety (90) days' advance written notice of the anticipated date of completion of an Expansion Project. The Authority will inspect the Expansion Project for the purpose of verifying the status of the Expansion Project and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time subject to the other provisions of this Agreement based on applicable operating procedures of the Authority, Customer’s local electric utility and NYISO.

(ii) In the event of an Expansion Project being completed in multiple phases, at the Customer’s request the Authority may, in its discretion, allow commencement of part of the Allocation upon completion of any such phase, provided the Authority will similarly inspect the Expansion Project for the purpose of verifying the status of the completed phase of the Expansion Project. Upon such verification by the Authority of any such completed phase, the Authority, in its discretion, will determine an amount of kW that fairly corresponds to the completed phase of the Expansion Project, taking into account relevant criteria such as any capital expenditures, increased employment levels, and/or increased electrical demand associated with the completed phase of the Expansion Project.

d. Other Rights and Remedies Unaffected.

Nothing in this Article is intended to limit the Authority’s rights and remedies provided for in the other provisions of this Agreement, including without limitation the provisions in Schedule B of this Agreement.

ARTICLE V
ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES

The Authority shall periodically communicate with the Customer for the purpose of informing the Customer about energy-related projects, programs and services (“Energy Services”) offered by the Authority that in the Authority’s view could provide value to the Customer and/or support the State’s Clean Energy Standard. The Customer shall review and respond to all such offers in good faith, provided, however, that, except as otherwise provided for in this Agreement, participation in any such Energy Services shall be at the Customer’s option, and subject to such terms and conditions agreed to by the Parties in one or more definitive agreements.
ARTICLE VI
SERVICE TARIFF; CONFLICTS

1. A copy of Service Tariff No. WNY-2 in effect upon the execution of this Agreement is attached to this Agreement as Exhibit 1, and will apply under this Agreement with the same force and effect as if fully set forth herein. The Customer consents to the application of Service Tariff WNY-2. Service Tariff No. WNY-2 is subject to revision by the Authority from time to time, and if revised, the revised provisions thereof will apply under this Agreement with the same force and effect as if set forth herein. The Authority shall provide the Customer with prior written notice of any revisions to Service Tariff No. WNY-2.

2. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No.WNY-2 and the Rules, the provisions of Service Tariff No. WNY-2 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-2 or the Rules, the provisions of this Agreement shall govern.

ARTICLE VII
TRANSMISSION AND DELIVERY

1. The Customer shall be responsible for:

   a. complying with all requirements of its local electric utility (including any other interconnecting utilities) that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff;

   b. paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff, and if the Authority incurs any charges associated with such delivery service, reimbursing the Authority for all such charges; and

   c. obtaining any consents and agreements from any other person that are necessary for the delivery of the Allocation to the Facility, and complying with the requirements of any such person, provided that any such consents, agreements and requirements shall be subject to the Authority’s approval.

2. The Authority will use good faith efforts to provide the Customer with at least one year’s advance notice of the scheduled expiration of Historic Fixed Price Transmission Congestion Contracts. After issuance of any such notice, the Authority will make itself available at reasonable times to collaborate with the Customer and other EP and RP customers to discuss potential risk-hedging options that might be available following expiration of such contracts.

3. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority’s behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff (“NYISO Charges”), as set forth in Service
Tariff No. WNY-2 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related.

4. The Authority will consider opportunities to assist the Customer concerning actions, practices, or procedures of the Customer’s local electric utility identified by the Customer that could adversely impact the implementation and effectiveness of the EP and RP programs, provided that whether or not to take any action or adopt any position on any issue, including any adverse position, is within the Authority’s discretion and further subject to applicable laws, regulations and existing legal obligations.

ARTICLE VIII
BILLING AND BILLING METHODOLOGY

1. The billing methodology for the Allocation shall be determined on a “load factor sharing” basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer’s local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.

2. All other provisions with respect to billing are set forth in Service Tariff No. WNY-2 and the Rules.

3. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

ARTICLE IX
HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

1. The Customer shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Customer-Arranged Energy, for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment. The Customer shall make its election in accordance with the time period and other requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.

2. The Customer may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Customer intends such change to become effective. Such change shall be effective on the first day of January following the Authority’s receipt the Customer’s notice and shall remain in effect unless it is changed in accordance with the provisions of Section IX.1.

3. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Customer with advance notice of Planned Hydropower Curtailments that in the Authority’s judgment will impact Electric Service to the Customer no later than the tenth business day of the month.
prior to the month in which the Planned Hydropower Curtailment is expected to occur unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.

4. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.

5. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.

6. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a “Load Reduction”), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days’ advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer’s failure to provide such notice.

7. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.

8. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority’s judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond. The Authority will give the Customer notice of any Unplanned Hydropower Curtailments that the Authority believes are likely to exceed forty-eight (48) continuous hours in duration.

9. Notwithstanding the Customer’s election pursuant to Section IX.1, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments.

10. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless
otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.

11. The Customer shall be responsible for all costs associated with the Authority’s provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.

12. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.

ARTICLE X
EFFECTIVENESS, TERM AND TERMINATION

1. This Agreement shall become effective and legally binding on the Parties on the Effective Date.

2. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (a) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (b) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-2, or the Rules; or (c) expiration of the Allocation by its own term as specified in Schedule A.

3. The Customer may exercise a partial termination of the Allocation upon at least sixty (60) days’ prior written notice to the Authority. The Authority will effectuate the partial termination as soon as practicable after receipt of such notice taking account of the Authority’s internal procedures and requirements of the Customer’s local electric utility.

4. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-2, or the Rules.

ARTICLE XI
EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

1. The Customer may apply to the Authority for an extension of the term of the Allocation identified in Schedule A:

   a. during the thirty-six (36) month period immediately preceding the scheduled expiration of the Allocation;
b. pursuant to any other process that the Authority establishes; or

c. with the Authority’s written consent.

2. Upon proper application by the Customer, the Authority may in accordance with applicable law and Authority procedures award additional allocations of EP and/or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (a) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (b) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.

3. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for extension of the Allocation or additional allocations and consider the terms and conditions that should be applicable to any extension or additional allocations.

ARTICLE XII
NOTICES

1. Notices, consents, authorizations, approvals, instructions, waivers or other communications provided in this Agreement shall be in writing and transmitted to the Parties as follows:

To: The Authority

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

To: The Customer

LW1 Operator, LLC
310 Ship Canal Parkway
Buffalo, NY 14218
Email: 
Facsimile: 
Attention:

2. The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XII.1.

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

ARTICLE XIII
SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER

1. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto, provided that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party, which consent shall not be unreasonably withheld or conditioned. Notwithstanding the foregoing sentence, the Authority may require such approvals, and such consents and other agreements from the Customer and other parties, that the Authority determines are necessary in order to effectuate any such assignment.

2. The Customer may not transfer any portion of the Allocation to any other person, or a location different than the Facility, unless: (a) the Authority in its discretion authorizes the transfer Authority; (b) all other requirements applicable to a transfer, including board approvals, are satisfied; and (c) the transfer is effectuated in a form and subject to such terms and conditions approved by the Authority. Any purported transfer that does not comply with the foregoing requirements shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service or terminate the Allocation and/or this Agreement.

3. The Customer may not sell any portion of the Allocation to any other person. Any purported sale shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service, or terminate the Allocation and/or this Agreement.

ARTICLE XIV
MISCELLANEOUS

1. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a) and rulings by the IJC and without regard to conflicts of law provisions.

2. Venue

The Parties: (a) consent to the exclusive jurisdiction and venue of any state court within or
for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement; (b) agree to accept service of process; and (c) will not raise any argument of inconvenient forum.

3. Previous Agreements; Modifications; and Interpretation

a. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of the Allocation and the subject matter of the Agreement, and supersedes all previous communications and agreements between the Parties, oral or written, with reference to the sale of the Allocation.

b. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

c. No provision shall be construed against a Party on the basis that such Party drafted such provision.

4. Waiver

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

5. Severability and Voidability

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

ARTICLE XV
EXECUTION

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

[SIGNATURES FOLLOW ON NEXT PAGE]
AGREED:

**LW1 OPERATOR, LLC**

By: 

Title: 

Date: 

AGREED:

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

By: 

John R. Koelmel, Chairman

Date: 
### SCHEDULE A
EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

<table>
<thead>
<tr>
<th>Type of Allocation</th>
<th>Allocation Amount (kW)</th>
<th>Facility and Address</th>
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<th>Allocation Expiration Date</th>
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<td>EP</td>
<td>2,930 kW</td>
<td>310 Ship Canal Parkway Buffalo, New York 14218</td>
<td>January 25, 2022</td>
<td>Ten (10) years from the date of commencement of Electric Service</td>
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SCHEDULE B
SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments

a. The Customer shall create and maintain the employment level set forth in the Appendix to this Schedule B (the “Base Employment Level”). Such Base Employment Level shall be the total number of full-time positions held by: (a) individuals who are employed by the Customer at Customer’s Facility identified in the Appendix to this Schedule, and (b) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, “Base Level Employees”). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

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

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

2. Capital Investment Commitments

The Customer shall make the capital investments specified in the Appendix to this Schedule B.

3. Power Utilization

For each month the Authority provides Electric Service to the Customer, the Customer shall utilize the entire Allocation, as represented by the Billing Demand (as such term is described in Service Tariff No. WNY-2), provided, however, that if only part of the Allocation is being utilized in accordance with Schedule C, the Customer shall utilize such partial amount of the Allocation.

4. Energy Efficiency and Conservation Program
a. The Customer shall implement an energy efficiency and conservation program at the Facility through either (a) enrollment of the Facility and participation in NYEM in accordance with a NYEM Agreement, or (b) one or more Physical Energy Audits of the Facility, or (c) a combination of such measures, in accordance with the provisions of this Article.

b. The Authority shall transmit to the Customer a NYEM Agreement and an election form. The Customer shall elect to either (a) enroll the Facility and participate in NYEM for a three-year term (“NYEM Participation”) in accordance with the NYEM Agreement, or (b) perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit within three (3) years of the Effective Date of this Agreement, at its own expense.

c. The Authority shall, on or before the expiration of the three-year term of the NYEM Agreement, transmit to the Customer a NYEM Agreement specifying the terms and conditions that would apply to NYEM participation for a second term, and an election form. The Customer shall elect either (a) NYEM Participation for a second term, or (b) to perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit during the calendar year that begins six years after the Effective Date of this Agreement, at its own expense.

d. The Authority may in its discretion waive the requirement for a Physical Energy Audit, or may agree to a limited energy audit of the Facility, where it determines that the Physical Energy Audit is unnecessary based on the age of the Facility, energy efficiency and conservation improvements made at the Facility, the length of the Allocation, or other considerations the Authority determines to be relevant.
ARTICLE II
RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer’s Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

2. Capital Investments

The Customer shall comply with the recordkeeping, recording and reporting requirements specified in the Appendix to this Schedule B.

3. Power Usage

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement.

4. Energy Efficiency and Conservation Program

Upon the Authority’s request, the Customer shall provide the Authority with (a) a copy of the results of any Physical Energy Audit performed at the Facility (or, at the Authority’s option, a report describing the results), performed pursuant to this Article; and (b) a description of any energy efficiency or conservation measures that the Customer has implemented at the Facility in response to any Physical Energy Audit or as a result of NYEM Participation.

5. Facility Access
Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer’s compliance with the Customer’s Supplemental Commitments specified in this Schedule B.

**ARTICLE III**

**COMPLIANCE ACTION BY THE AUTHORITY**

1. **Employment**

   If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in the Appendix to this Schedule B for the subject calendar year, the Authority may reduce the Contract Demand in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

2. **Capital Investment Commitment**

   The Authority may reduce the Contract Demand as provided in the Appendix to this Schedule B if the Customer does not comply with the Capital Investment Commitment.

3. **Power Utilization Level**

   If the average of the Customer’s six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-2) for Expansion Power and/or Replacement Power is less than 90% of the Customer’s Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to in accordance with the procedures provide in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

4. **Additional Compliance Action**

   In addition to the Authority’s other rights and remedies provided in this Agreement, Service Tariff WNY-2 and the Rules, the Authority may suspend Electric Service to the Customer if the Customer does not comply with any of the requirements in Section I.4 or Article II of this Schedule B.
5. **Notice of Intent to Reduce Contract Demand**

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to Sections III.1, III.2, or III.3 of this Schedule B, the Authority shall provide the Customer with at least thirty (30) days prior written notice of the proposed reduction, specifying the amount and reason for the reduction. Before implementing any reduction, the Authority may consider the Customer’s scheduled or unscheduled maintenance, Facility upgrade periods, and the business cycle. If, at the end of the thirty (30) day notice period, the Authority determines that a reduction is warranted, it shall provide the Customer with notice of such determination and provide the Customer with sixty (60) days to present a proposed plan with actionable milestones to cure the deficiency. The Authority shall respond to the Customer concerning the acceptability of any proposed plan that is provided in accordance with this Section III.5 within thirty (30) days of the Authority’s receipt of such proposed plan. It shall be within the Authority’s discretion whether or not to accept the Customer’s proposed plan, require a different plan, or implement the reduction of the Contract Demand.
APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 75 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. **Annual Capital Investment Commitment** (if applicable, as specified below)

   a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.

   b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.

   c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)

   a. The Customer shall make a minimum capital investment of $24,200,000 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:
<table>
<thead>
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<th>DESCRIPTION</th>
<th>EXPENDITURE</th>
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</thead>
<tbody>
<tr>
<td>Land acquisition and construction costs</td>
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<tr>
<td>Machinery and equipment purchases</td>
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<tr>
<td><strong>Total Minimum Expansion Project Capital Investment Commitment:</strong></td>
<td><strong>$24,200,000</strong></td>
</tr>
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</table>

Total Expansion Project Capital Investment Commitment:

b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than January 25, 2025 (i.e., within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.
SCHEDULE C
TAKEDOWN SCHEDULE
SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Affected LSEs” has the meaning provided in Section II.2 of this Schedule D.

“CES Order” means the Order issued by the PSC entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“EP and RP Programs ZEC Costs” has the meaning provided in Section II.4.b of this Schedule D.

“Government Action” has the meaning provided in Section II.8 of this Schedule D.

“Load Serving Entity” or “LSE” has the meaning provided in the CES Order.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“Zero Emission Credit” or “ZEC” has the meaning provided in the CES Order.

“Zero Emission Credit Charge” or “ZEC Charge” means the charge to the Customer established in this Schedule D.
“ZEC Purchase Obligation” has the meaning provided in Section II.2 of this Schedule D.

“ZEC Program Year” has the meaning provided in Section II.2 of this Schedule D.

II. ZEC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a ZEC Charge as provided in this Schedule D. The ZEC Charge shall be in addition to all other charges, fees and assessments provided for in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the ZEC Charge.

2. As provided in the CES Order, the Public Service Commission, as part of the CES and Tier 3 of the Renewable Energy Standard, imposed an obligation on Load Serving Entities that are subject to the CES Order (“Affected LSEs”) to purchase Zero Emission Credits from NYSERDA in an amount representing the Affected LSE’s proportional share of ZECs calculated on the basis of the amount of electric load the LSE serves in relation to the total electric load served by all Load Serving Entities in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes in the State (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).

3. The ZEC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of supporting the CES and Tier 3 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan. The Authority will comply with the CES and Tier 3 of the RES by applying a form of ZEC Purchase Obligation to the end-user load for which the Authority serves as a load serving entity, including the load that the Authority serves under the EP and RP power programs.

4. The ZEC Charge, which is intended to recover from the Customer costs that the Authority incurs for purchasing ZECs in quantities that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:

   a. The cost of the total ZEC Purchase Obligation for all LSEs in the New York Control Area, including the Authority as a participating load serving entity, will be assessed pursuant to the methodology provided in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA based on the proportion of the forecasted total kilowatt-hours load served by
the Authority (i.e., total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The ZEC Purchase Obligations may be based on initial load forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.

b. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as load serving entity, including the EP and RP load that it serves (the “EP and RP Programs ZEC Costs”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for each ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of ZEC Purchase Obligations will be allocated to the EP and RP power programs based on the proportion of the actual annual kilowatt-hours load served under such programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

c. The Authority will allocate a portion of the EP and RP Programs ZEC Costs to the Customer as the ZEC Charge based on the proportion of the Customer’s actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP power programs (i.e., EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation referenced above will be passed through to the Customer based on the proportion of the Customer’s annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP power program by the Authority (EP and RP Programs level load). The ZEC Charge assessed to the Customer shall not include any costs resulting from the Authority’s inability to collect a ZEC Charge from any other Authority customer.

5. The Authority may, in its discretion, include the ZEC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the ZEC Charge pursuant to another Authority-established procedure.

6. The Authority may, in its discretion, modify the methodology used for determining the ZEC Charge and the procedures used to implement such ZEC Charge on a nondiscriminatory basis among affected EP and RP customers, upon consideration of such matters as Public Service Commission orders modifying or implementing the CES Order, guidance issued by the New York Department of Public Service, and other information that the Authority reasonably determines to be appropriate to the determination of such methodology. The Authority shall
provide Customer with reasonable notice of any modifications to the methodology or procedures used to determine and implement the ZEC Charge.

7. Nothing in this Schedule shall limit or otherwise affect the Authority’s right to charge or collect from the Customer any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

8. If the ZEC Purchase Obligation is modified or terminated by the Public Service Commission or other controlling governmental authority (collectively, “Government Action”), the Authority shall modify or terminate the ZEC Charge, and assess any additional charges or provide any credits to the Customer, to the extent that the Authority determines such actions to be appropriate based on such Government Action.
I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Alternative REC Compliance Program” has the meaning provided in Section III.1 of this Schedule E.

“Annual REC Percentage Target” has the meaning provided in Section II.2 of this Schedule E.

“CES Order” means the Order issued by the Public Service Commission entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“Clean Energy Standard” or “CES” means the Clean Energy Standard adopted by the State in the CES Order.

“Load Serving Entity” has the meaning provided in the CES Order.

“Mandatory Minimum Percentage Proportion” has the meaning provided in the CES Order.

“Monthly Renewable Energy Credit Charge” or “Monthly REC Charge” means the monthly charge to the Customer established in this Schedule E.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Credit” or “REC” refers to a qualifying renewable energy credit as described in the CES Order.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.
“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“REC Compliance Measures” mean: (1) the Authority’s procurement of RECs from NYSERDA in accordance with NYSERDA procedures and/or the CES Order; (2) the Authority’s procurement of RECs from available REC markets; (3) the Authority’s procurement of RECs from sources other than those identified in items (1) and (2) of this definition, including through a procurement process adopted by the Authority; and/or (4) any other measure that the PCS authorizes a Load Serving Entity to implement for the purpose of meeting the applicable Mandatory Minimum Percentage Proportion.

“Total Monthly EP-RP Load” has the meaning provided in Section II.3.b of this Schedule E.

“Total Monthly REC Costs” has the meaning provided in Section II.3.b of this Schedule E.

II. MONTHLY REC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a Monthly REC Charge as provided in this Schedule E. The Monthly REC Charge is in addition to all other charges, fees and assessments provided in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the Monthly REC Charge.

2. The Monthly REC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of complying with the CES and Tier 1 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan, pursuant to which the Authority will invest in new renewable generation resources to serve its EP and RP customers. Such investments will be made through the procurement of RECs through REC Compliance Measures in quantities that are intended to address the annual Mandatory Minimum Percentage Proportions as applied by the Authority to the total EP and RP load that the Authority will serve each calendar year (the “Annual REC Percentage Target”) for the purpose of ultimately meeting the RES.

3. The Monthly REC Charge, which is intended to recover from the Customer costs that the Authority incurs for implementing REC Compliance Measures that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:
a. The Authority shall have the right, for each calendar year to implement such REC Compliance Measures as it determines in its discretion to be appropriate for the purpose of meeting the Annual REC Percentage Target for the total EP and RP load that it will serve during such calendar year.

b. The Authority will, for each month of each calendar year, calculate the total costs (“Total Monthly REC Costs”) that the Authority has incurred or estimates that it will incur from implementing RES Compliance Measures for the purpose of meeting the Annual REC Percentage Target for the total EP and RP kilowatt-hour load for the month (“Total Monthly EP-RP Load”). The Total Monthly REC Costs may be calculated based on forecasts of the Total Monthly EP-RP Load that the Authority expects to serve for the month, or on a lagged basis based on the actual Total Monthly EP-RP Load that the Authority served for the month.

c. Each month, the Authority will assess to the Customer, as a Monthly REC Charge, which will represent the Customer’s share of the Total Monthly REC Costs assessed to the Total Monthly EP-RP Load. The Monthly REC Charge will be assessed as the proportion of the Customer’s total kilowatt-hours load served by the Authority for such month to the Total Monthly EP-RP Load served by the Authority for such month, provided, however, that:

i. the Monthly REC Charge to the Customer shall not include any costs associated with the Authority’s inability to collect the Monthly REC Charge from other Authority customers; and

ii. the effective per-MWh rate of the Monthly REC Charge to the Customer averaged over the REC Program Year to which the Annual REC Percentage Target applies shall not exceed the per-MWh rate of a Monthly REC Charge based on NYSERDA’s published REC price for the REC Program Year.

4. The Authority may, in its discretion, include the Monthly REC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the Monthly REC Charge pursuant to another Authority-established procedure.

5. The Authority will, at the conclusion of each calendar year in which it assesses a Monthly REC Charge, conduct a reconciliation process based on the actual costs that it incurred for REC Compliance Measures and actual load served for the year, compared with cost or load estimates or forecasts, if any, that the Authority used to calculate the Customer’s Monthly REC Charges during the year. The Authority will issue a credit, or an adjusted final charge for the year, as appropriate, based on the results of such reconciliation process. Any such final charge shall be payable within the time frame applicable to the Authority’s bills.
for Electric Service under this Agreement or pursuant to any other procedure established by the Authority pursuant to Section II.4 of this Schedule E.

6. Notwithstanding the provisions of Section II.3 of this Schedule E, if Electric Service for the Allocation is commenced after the Authority has implemented REC Compliance Measures for the year in which such Electric Service is commenced, and as a result the Customer’s load cannot be accounted for in such REC Compliance Measures, the Authority may in its discretion implement separate REC Compliance Measures in order to meet the Annual REC Percentage Target for Customer’s load for the year, and bill the Customer for the costs associated with such separate REC Compliance Measures.

7. Nothing in this Schedule shall limit or otherwise affect the Authority’s right to charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

III. ALTERNATIVE REC COMPLIANCE PROGRAM

1. Nothing in this Schedule E shall be construed as preventing the Parties from entering into other agreements for an alternative arrangement for the Authority to meet the Annual REC Percentage Target with respect to the Customer’s Allocation, including but not limited to Customer self-supply of RECs, alternative REC compliance programs and cost allocation mechanisms, in lieu of the Monthly REC Charge provided in this Schedule E (collectively, “Alternative REC Compliance Program”).

2. The Authority shall communicate at least biennially with the Customer concerning implementation of the RES Compliance Program and potential Alternative REC Compliance Programs, if any, that the Authority is offering or expects to offer.
POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY  12207

Schedule of Rates for Sale of Firm Power Service to Expansion Power and Replacement Power Customers Located in Western New York

Service Tariff No. WNY-2
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Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff issued by the NYISO

Agreement: An executed written agreement between the Authority and the Customer for the sale of Expansion Power and/or Replacement Power to the Customer.

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

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

Customer: A business entity that has received an allocation of Expansion Power and/or Replacement Power, and that purchases Expansion Power and/or Replacement Power, directly from the Authority.

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

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

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

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

**Load Split Methodology** or **LSM:** A type of billing methodology applicable to a Customer’s Allocation which determines how a Customer’s total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer’s other source of electricity supply, if any. LSM is usually provided for in an agreement between the Authority and the Customer’s local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer’s local electric utility. The load split methodology is often designated as “Load Factor Sharing” or “LFS”, “First through the Meter” or “FTM”, “First through the Meter Modified” or “FTM Modified”, or “Replacement Power 2” or “RP 2”.

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

**Rate Year** or **RY:** The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

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

**Service Tariff:** This Service Tariff No. WNY-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.
III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

The rates to be charged to the Customer by the Authority shall be as follows:

<table>
<thead>
<tr>
<th>Billing Period</th>
<th>Demand ($/kW)</th>
<th>Energy ($/MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January – June 2019</td>
<td>7.60</td>
<td>13.00</td>
</tr>
</tbody>
</table>

1. For RY 2019 (July 2019 through June 2020 Billing Periods), 50% of the Annual Adjustment Factor (“AAF”), as described in Section V, will be applied to the demand and energy rates stated in the table above.

2. For RY 2020 (July 2020 through June 2021 Billing Periods) and each Rate Year thereafter, the AAF will be applied to the then-effective base rates for demand and energy in accordance with Section V.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average $/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average $/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The Minimum Monthly Charge shall equal the product of the demand charge and the Contract Demand (as defined herein). Such Minimum Monthly Charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer’s Allocation.
### E. Estimated Billing

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

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Load Split Methodology that is applicable to the Customer as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer’s Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer’s takedown (kW) amount.

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

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

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer’s Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the takedown (kW) amount at 100 percent load factor for that Billing Period.

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

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

The Authority’s discretion to render Estimated Bills is not intended and shall not be construed to limit the Authority’s rights under the Agreement.
F. Adjustments to Charges

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

G. Billing Period

The Billing Period is any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer’s facilities are located.

H. Billing Demand

Billing Demand shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

I. Billing Energy

Billing Energy shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

J. Contract Demand

The Contract Demand will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement.
IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority’s obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.

2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

C. Delivery

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

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the base rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.
E. **Billing Methodology**

Unless otherwise specified in the Agreement, the following provisions shall apply:

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing (“LFS”) in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.

2. Billing Demand – The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. Billing Demand may not exceed the amount of the Contract Demand.

3. Billing Energy – The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.

4. With regard to LFS methodology calculations:
   a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
   b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
   c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
      i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
      ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
   d. All demand values will be adjusted for losses.
F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

   The Customer shall pay the Authority for Firm Power and Firm Energy during any Billing Period the higher of either (i) the sum of (a), (b) and (c) below, or (ii) the Minimum Monthly Charge (as defined herein):

   a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer’s Billing Demand (as defined in Section IV.E, above) for the Billing Period; and

   b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer’s Billing Energy (as defined in Section IV.E, above) for the Billing Period; and

   c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

   The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges

   The Customer shall compensate the Authority for the following NYISO transmission and related charges (collectively, “NYISO Charges”) assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

   A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

   B. Marginal losses;

   C. The New York Power Authority Transmission Adjustment Charge ("NTAC");

   D. Congestion costs inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts as provided in Attachment K of the OATT;

   E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority’s responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO’s Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.
G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.

2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.

3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.

4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.

5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.

6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
H. Adjustment of Charges – Distribution Losses

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

I. Conflicts

In the event of any inconsistencies, conflicts, or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of the Agreement and this Service Tariff or the Rules, the provisions of the Agreement shall govern.
V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year (“Index Value for the Measuring Year”) will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1”). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of ±5.0% (“±5% Collar”). Amounts outside the ±5% Collar shall be referred to as the “Excess.”

   Index 1, “BLS Industrial Power Price” (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics (“BLS”) electronically on its internet site and consistent with its printed publication, “Producer Price Index Detailed Report”. For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

   Index 2, “EIA Average Industrial Power Price” (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT (“Selected States”) as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration (“EIA”); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

   Index 3, “BLS Industrial Commodities Price Less Fuel” (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, “Producer Price Index Detailed Report”. For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

   Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.

   Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.

   Step 3: Commencing RY 2014, modifications to the AAF will be subject to ±5% Collar, as described below.

       a) When the AAF falls outside the ±5% Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the ±5% Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year’s AAF, up to the ±5% Collar.
b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the ±5% Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. Subject to the provisions of Section III.A of this Service Tariff, the Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.

4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended to reflect, the Customer and the Authority may mutually select a substitute Index. The Customer and the Authority agree to mutually select substitute indices within 90 days, once one of them is notified by the other that the indices are no longer available or no longer reflect the relevant factors or changes which the indices were intended to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If the Customer and Authority are unable to reach agreement on substitute indices within the 90-day period, the Customer and the Authority agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available or reflective of their intended purpose and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.
B. **Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):**

**STEP 1**

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

<table>
<thead>
<tr>
<th>Measuring Year</th>
<th>Measuring Year - 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>171.2</td>
</tr>
<tr>
<td>February</td>
<td>172.8</td>
</tr>
<tr>
<td>March</td>
<td>171.6</td>
</tr>
<tr>
<td>April</td>
<td>173.8</td>
</tr>
<tr>
<td>May</td>
<td>175.1</td>
</tr>
<tr>
<td>June</td>
<td>185.7</td>
</tr>
<tr>
<td>July</td>
<td>186.4</td>
</tr>
<tr>
<td>August</td>
<td>184.7</td>
</tr>
<tr>
<td>September</td>
<td>185.5</td>
</tr>
<tr>
<td>October</td>
<td>175.5</td>
</tr>
<tr>
<td>November</td>
<td>172.2</td>
</tr>
<tr>
<td>December</td>
<td>171.8</td>
</tr>
</tbody>
</table>

**Average**  
177.2 172.8

**Ratio of MY/MY-1**  
1.03
### Index 2 – EIA Industrial Rate

<table>
<thead>
<tr>
<th>State</th>
<th>Revenues ($000s)</th>
<th>Sales (MWh)</th>
<th>Avg. Rate (cents/kWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Measuring Year (2012)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CT</td>
<td>590,972</td>
<td>6,814,757</td>
<td></td>
</tr>
<tr>
<td>MA</td>
<td>1,109,723</td>
<td>13,053,806</td>
<td></td>
</tr>
<tr>
<td>ME</td>
<td>328,594</td>
<td>4,896,176</td>
<td></td>
</tr>
<tr>
<td>NH</td>
<td>304,363</td>
<td>2,874,495</td>
<td></td>
</tr>
<tr>
<td>NJ</td>
<td>1,412,665</td>
<td>15,687,873</td>
<td></td>
</tr>
<tr>
<td>NY</td>
<td>2,001,588</td>
<td>26,379,314</td>
<td></td>
</tr>
<tr>
<td>OH</td>
<td>3,695,978</td>
<td>78,496,166</td>
<td></td>
</tr>
<tr>
<td>PA</td>
<td>3,682,192</td>
<td>63,413,968</td>
<td></td>
</tr>
<tr>
<td>RI</td>
<td>152,533</td>
<td>1,652,593</td>
<td></td>
</tr>
<tr>
<td>VT</td>
<td>155,903</td>
<td>2,173,679</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>13,434,511</strong></td>
<td><strong>215,442,827</strong></td>
<td><strong>6.24</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>State</th>
<th>Revenues ($000s)</th>
<th>Sales (MWh)</th>
<th>Avg. Rate (cents/kWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Measuring Year -1 (2011)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CT</td>
<td>579,154</td>
<td>6,678,462</td>
<td></td>
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<tr>
<td>MA</td>
<td>1,076,431</td>
<td>12,662,192</td>
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<tr>
<td>ME</td>
<td>310,521</td>
<td>4,626,886</td>
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<tr>
<td>NH</td>
<td>298,276</td>
<td>2,817,005</td>
<td></td>
</tr>
<tr>
<td>NJ</td>
<td>1,370,285</td>
<td>15,217,237</td>
<td></td>
</tr>
<tr>
<td>NY</td>
<td>1,891,501</td>
<td>24,928,452</td>
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</tr>
<tr>
<td>OH</td>
<td>3,622,058</td>
<td>76,926,243</td>
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<tr>
<td>PA</td>
<td>3,571,726</td>
<td>61,511,549</td>
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</tr>
<tr>
<td>RI</td>
<td>144,144</td>
<td>1,561,700</td>
<td></td>
</tr>
<tr>
<td>VT</td>
<td>152,785</td>
<td>2,130,205</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>13,016,880</strong></td>
<td><strong>209,059,931</strong></td>
<td><strong>6.23</strong></td>
</tr>
</tbody>
</table>

**Ratio of MY/MY-1**

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.00</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Index 3 – Producer Price Index, Industrial Commodities Less Fuel

<table>
<thead>
<tr>
<th>Measuring Year</th>
<th>Measuring Year -1</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>190.1</td>
</tr>
<tr>
<td>February</td>
<td>190.9</td>
</tr>
<tr>
<td>March</td>
<td>191.6</td>
</tr>
<tr>
<td>April</td>
<td>192.8</td>
</tr>
<tr>
<td>May</td>
<td>194.7</td>
</tr>
<tr>
<td>June</td>
<td>195.2</td>
</tr>
<tr>
<td>July</td>
<td>195.5</td>
</tr>
<tr>
<td>August</td>
<td>196.0</td>
</tr>
<tr>
<td>September</td>
<td>196.1</td>
</tr>
<tr>
<td>October</td>
<td>196.2</td>
</tr>
<tr>
<td>November</td>
<td>196.6</td>
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<tr>
<td>December</td>
<td>196.7</td>
</tr>
<tr>
<td>Average</td>
<td>194.4</td>
</tr>
</tbody>
</table>

Ratio of MY/MY-1: 1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<table>
<thead>
<tr>
<th>Index</th>
<th>Ratio of MY to MY-1</th>
<th>Weight</th>
<th>Weighted Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>PPI Industrial Power</td>
<td>1.03</td>
<td>0.35</td>
<td>0.361</td>
</tr>
<tr>
<td>EIA Industrial Rate</td>
<td>1.00</td>
<td>0.40</td>
<td>0.400</td>
</tr>
<tr>
<td>PPI Industrial Commodities less fuel</td>
<td>1.02</td>
<td>0.25</td>
<td>0.255</td>
</tr>
<tr>
<td>AAF</td>
<td></td>
<td></td>
<td>1.016</td>
</tr>
</tbody>
</table>

STEP 3

Apply Collar of ±5.0% to Determine the Maximum/Minimum AAF.

-5.0% < 1.6% < 5.0%; collar does not apply, assuming no cumulative excess.
### STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

<table>
<thead>
<tr>
<th></th>
<th>Demand $/kW-mo.</th>
<th>Energy $/MWh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Rate Year Base Rate</td>
<td>7.56</td>
<td>12.91</td>
</tr>
<tr>
<td>New Rate Year Base Rate</td>
<td>7.68</td>
<td>13.12</td>
</tr>
</tbody>
</table>
POWER AUTHORITY
OF THE
STATE OF NEW YORK
30 South Pearl Street
10th Floor
Albany, New York 12207-3425

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

Worksport Ltd.
The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Worksport Ltd. (“Customer”) with offices and principal place of business at 2500 North America Drive, West Seneca, NY 14224. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, including hydropower known as Expansion Power (“EP”) and Replacement Power (“RP”) to qualified businesses in accordance with PAL § 1005(5) and (13);

WHEREAS, the Customer has applied for an allocation of EP and/or RP, or for an extension of an existing allocation of EP or RP, for use at facilities defined in this Agreement as the “Facility”;

WHEREAS, the Customer has offered to make specific commitments relating to, among other things, the creation and/or retention of jobs, capital investments, power usage and energy efficiency measures at the Facility;

WHEREAS, the Authority’s Board of Trustees approved an allocation of EP and/or RP to the Customer;

WHEREAS, the Parties have reached an agreement on the terms and conditions applicable for the sale of the EP and/or RP for a term provided in this Agreement;

WHEREAS, the Authority’s provision of Electric Service under this Agreement is an unbundled service separate from (i) the transmission of the allocation, and (ii) the delivery of the Allocation;

WHEREAS, electric service to be provided hereunder shall be subject to the rates and other terms and conditions contained in the Service Tariff No. WNY-2 as provided in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement; and

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement.

NOW, THEREFORE, in consideration of mutual covenants, terms, and conditions herein, and for other good and valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties do hereby mutually covenant and agree as follows:
ARTICLE I
DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Agreement, shall have the meanings as set forth below. When used with initial capitalization, whether singular or plural, terms defined in schedules or appendices to this Agreement shall have the meanings set forth in such schedules or appendices.

“Adverse Water Condition” means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.

“Agreement” means this Agreement, and unless otherwise indicated herein, includes all schedules, appendices and addenda thereto, as the same may be amended from time to time.

“Allocation” refers to the allocation(s) of EP and/or RP awarded to the Customer as specified in Schedule A.

“Alternative REC Compliance Program” has the meaning provided in Schedule E.

“Annual Capital Investment Commitment” has the meaning set forth in Schedule B.

“Annual CI Expenditures” has the meaning set forth in Schedule B.

“Base Employment Level” has the meaning set forth in Schedule B.

“Contract Demand” is as defined in Service Tariff No. WNY-2.

“Customer-Arranged Energy” means energy that the Customer procures from sources other than the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.

“Effective Date” means the date that this Agreement is fully executed by the Parties.

“Electric Service” is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

“Energy Services” has the meaning set forth in Article V of this Agreement.

“Expansion Power” (or “EP”) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Expansion Project” has the meaning set forth in Section IV.3.a of this Agreement.
“Expansion Project Capital Investment Commitment” has the meaning set forth in Schedule B.

“Facility” means the Customer’s facilities as described in Schedule A to this Agreement.

“Firm Power” is as defined in Service Tariff No. WNY-2.

“Firm Energy” is as defined in Service Tariff No. WNY-2.

“FERC” means the Federal Energy Regulatory Commission (or any successor organization).

“FERC License” means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project’s original license which became effective in 1957.

“Hydro Projects” is a collective reference to the Project and the Authority’s St. Lawrence-FDR Project, FERC Project No. 2000.

“International Joint Commission” or “IJC” refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the 1909 Boundary Waters Treaty and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.

“Load Reduction” has the meaning set forth in Section IX.6 of this Agreement.

“Load Serving Entity” (or “LSE”) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.

“Metering Arrangement” has the meaning set forth in Section II.8 of this Agreement.

“NYEM” means the New York Energy Manager, an energy management center owned and operated by the Authority.

“NYEM Agreement” means a written agreement between the Authority and the Customer providing for the Facility’s enrollment and Customer’s participation in NYEM.

“NYEM Participation” has the meaning specified in Schedule B of this Agreement.

“NYISO” means the New York Independent System Operator or any successor organization.

“NYISO Charges” has the meaning set forth in Section VII.3 of this Agreement.
“NYISO Tariffs” means the NYISO’s Open Access Transmission Tariff or the NYISO’s Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.

“Planned Hydropower Curtailment” means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.

“Physical Energy Audit” or “Audit” means a physical evaluation of the Facility in a manner approved by the Authority that includes at a minimum the following elements: (a) an assessment of the Facility’s energy use, cost and efficiency which produces an energy utilization index for the Facility (such as an Energy Use Intensity or Energy Performance Indicator); (b) a comparison of the Facility’s index to indices for similar buildings/facilities; (c) an analysis of low-cost/no-cost measures for improving energy efficiency; (d) a listing of potential capital improvements for improving energy consumption; and (e) an initial assessment of potential costs and savings from such measures and improvements.

“Project” means the Niagara Power Project, FERC Project No. 2216.

“Replacement Power” (or “RP”) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Reporting Year” means the yearly interval that the Authority uses for reporting, compliance and other purposes as specified in this Agreement. The Reporting Year for this Agreement is from January 1 through December 31, subject to change by the Authority without notice.

“Rolling Average” has the meaning set forth in Schedule B.

“Rules” are the applicable provisions of Authority’s rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.

“Service Information” has the meaning set forth in Section II.12 of this Agreement.

“Service Tariff No. WNY-2” means the Authority’s Service Tariff No. WNY-2, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.

“Schedule A” refers to the Schedule A entitled “Expansion Power and/or Replacement Power Allocations” which is attached to and made part of this Agreement.

“Schedule B” refers to the Schedule B entitled “Supplemental Expansion Power and/or Replacement Power Commitments” which is attached to and made part of this Agreement, including any appendices attached thereto.
“Schedule C” refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of this Agreement.

“Schedule D” refers to the Schedule D entitled “Zero Emission Credit Charge” which is attached to and made part of this Agreement.

“Schedule E” refers to the Schedule E entitled “Monthly Renewable Energy Credit Charge” which is attached to and made part of this Agreement.

“Substitute Energy” means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.

“Takedown” means the portion of the Allocation that Customer requests to be scheduled for a specific period as provided for in Schedule C, if applicable.

“Taxes” is as defined in Service Tariff No. WNY-2.

“Unforced Capacity” (or “UCAP”) means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

“Unplanned Hydropower Curtailment” means a temporary reduction in the amount of Firm Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

“Utility Tariff” means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

ARTICLE II
ELECTRIC SERVICE

1. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

2. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified in Schedule A.

3. The Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation specified in Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.

4. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-2.
5. The provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer. The Customer acknowledges and agrees that Customer’s local electric utility, not the Authority, shall be responsible for delivering the Allocation to the Facility specified in Schedule A in accordance with the applicable Utility Tariff(s).

6. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.

7. The Contract Demand may not exceed the Allocation.

8. The Customer’s Facility must be metered by the Customer’s local electric utility in a manner satisfactory to the Authority, or another metering arrangement satisfactory to the Authority must be provided (collectively, “Metering Arrangement”). A Metering Arrangement that is not satisfactory to the Authority shall be grounds, after notice to the Customer, for the Authority to modify, withhold, suspend, or terminate Electric Service to the Customer. If a Metering Arrangement is not made to conform to the Authority’s requirements within thirty (30) days of a determination that it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days’ prior written notice to the Customer. After commencement of Electric Service, the Customer shall notify the Authority in writing within thirty (30) days of any alteration to the Facility’s Metering Arrangement, and provide any information requested by the Authority (including Facility access) to enable the Authority to determine whether the Metering Arrangement remains satisfactory. If an altered Metering Arrangement is not made to conform to the Authority’s requirements within thirty (30) days of a determination it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days’ prior written notice to the Customer. The Authority may, in its discretion, waive any of the requirements provided for in this Section in whole or in part where in the Authority’s judgment, another mechanism satisfactory to the Authority can be implemented to enable the Authority to receive pertinent, timely and accurate information relating to the Customer’s energy consumption and demand and render bills to the Customer for all fees, assessments and charges that become due in accordance with this Agreement, Service Tariff No. WNY-2, and the Rules.

9. The Customer consents to the exchange of information between the Authority and the Customer’s local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of the Allocation to the Customer, the proper and efficient implementation of the EP and/or RP program, billing related to Electric Service, and/or the performance of such parties’ obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents that the Authority determines are necessary to effectuate such exchanges of information.
10. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer’s local electric utility providing for the delivery of the Allocation on terms and conditions that are acceptable to the Authority.

11. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, execute consents, and provide information (collectively, “Service Information”) that the Authority determines is necessary for the provision of Electric Service, the delivery of the Allocation, billing related to Electric Service, the effective administration of the EP and/or RP programs, and/or the performance of contracts or other arrangements between the Authority and the Customer’s local electric utility. The Customer’s failure to provide Service Information on a timely basis shall be grounds for the Authority in its discretion to modify, withhold, suspend, or terminate Electric Service to the Customer.

ARTICLE III
RATES, TERMS AND CONDITIONS

1. Electric Service shall be sold to the Customer in accordance with the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-2 and the Rules. The Authority agrees to waive the Minimum Monthly Charge set forth in Service Tariff No. WNY-2 for a period up to one (1) year upon written request from the Customer that is accompanied by information that demonstrates to the Authority’s satisfaction a short-term reduction or interruption of Facility operations due to events beyond the Customer’s control. The Customer shall provide such information that the Authority requests during the period of any such waiver to enable the Authority to periodically evaluate the ongoing need for such waiver.

2. If the Authority at any time during the term of this Agreement enters into an agreement with another customer for the sale of EP or RP at power and energy rates that are more advantageous to such customer than the power and energy rates provided in this Agreement and Service Tariff No. WNY-2, then the Customer, upon written request to the Authority, will be entitled to such more advantageous power and energy rates in the place of the power and energy rates provided in this Agreement and Service Tariff No. WNY-2 effective from the date of such written request, provided, however, that the foregoing provision shall not apply to:

a. any agreement for the sale of EP and/or RP with an Authority customer whose purchase of EP and/or RP is associated with an Authority service tariff other than Service Tariff No. WNY-2, including Authority Service Tariff No. WNY-1; or

b. any agreement for the sale of EP and/or RP with an Authority customer which is associated with such customer’s participation in an Alternative REC Compliance Program provided for in Schedule E of this Agreement.

3. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority’s competitive position with
respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority’s bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

4. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-2 and the Rules, the Customer shall be responsible for payment of the Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge provided for in Schedule D and Schedule E, respectively, of this Agreement.

ARTICLE IV
SUPPLEMENTAL COMMITMENTS

1. Supplemental Commitments. Schedule B sets forth the Customer’s “Supplemental Expansion Power and/or Replacement Power Commitments” (“Supplemental Commitments”). The Authority’s obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer’s timely compliance with the Supplemental Commitments described in Schedule B as further provided in this Agreement. The Customer’s Supplemental Commitments are in addition to all other commitments and obligations provided in this Agreement.

2. [Intentionally Left Blank]


a. Proposed New or Expanded Facility; Failure to Complete.

If Schedule B provides for the construction of a new facility or an expansion of an existing facility (collectively, “Expansion Project”), and the Customer fails to complete the Expansion Project by the date specified in Schedule B, the Authority may, in its discretion, (a) cancel the Allocation, or (b) if it believes that the Expansion Project will be completed in a reasonable time, agree with the Customer to extend the time for completion of the Expansion Project.

b. Proposed New or Expanded Facility: Partial Performance.

If the Expansion Project results in a completed Facility that is only partially operational, or is material different than the Expansion Project agreed to in Schedule B (as measured...
by such factors as size, capital investment expenditures, capital improvements, employment levels, estimated energy demand and/or other criteria determined by the Authority to be relevant), the Authority may, in its discretion, on its own initiative or at the Customer’s request, make a permanent reduction to the Allocation and Contract Demand to an amount that the Authority determines to fairly correspond to the completed Facility.

c. Notice of Completion; Commencement of Electric Service.

(i) The Customer shall give the Authority not less than ninety (90) days' advance written notice of the anticipated date of completion of an Expansion Project. The Authority will inspect the Expansion Project for the purpose of verifying the status of the Expansion Project and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time subject to the other provisions of this Agreement based on applicable operating procedures of the Authority, Customer's local electric utility and NYISO.

(ii) In the event of an Expansion Project being completed in multiple phases, at the Customer’s request the Authority may, in its discretion, allow commencement of part of the Allocation upon completion of any such phase, provided the Authority will similarly inspect the Expansion Project for the purpose of verifying the status of the completed phase of the Expansion Project. Upon such verification by the Authority of any such completed phase, the Authority, in its discretion, will determine an amount of kW that fairly corresponds to the completed phase of the Expansion Project, taking into account relevant criteria such as any capital expenditures, increased employment levels, and/or increased electrical demand associated with the completed phase of the Expansion Project.

d. Other Rights and Remedies Unaffected.

Nothing in this Article is intended to limit the Authority’s rights and remedies provided for in the other provisions of this Agreement, including without limitation the provisions in Schedule B of this Agreement.

**ARTICLE V**

**ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES**

The Authority shall periodically communicate with the Customer for the purpose of informing the Customer about energy-related projects, programs and services (“Energy Services”) offered by the Authority that in the Authority’s view could provide value to the Customer and/or support the State’s Clean Energy Standard. The Customer shall review and respond to all such offers in good faith, provided, however, that, except as otherwise provided for in this Agreement, participation in any such Energy Services shall be at the Customer’s option, and subject to such terms and conditions agreed to by the Parties in one or more definitive agreements.
ARTICLE V
SERVICE TARIFF; CONFLICTS

1. A copy of Service Tariff No. WNY-2 in effect upon the execution of this Agreement is attached to this Agreement as Exhibit 1, and will apply under this Agreement with the same force and effect as if fully set forth herein. The Customer consents to the application of Service Tariff WNY-2. Service Tariff No. WNY-2 is subject to revision by the Authority from time to time, and if revised, the revised provisions thereof will apply under this Agreement with the same force and effect as if set forth herein. The Authority shall provide the Customer with prior written notice of any revisions to Service Tariff No. WNY-2.

2. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-2 and the Rules, the provisions of Service Tariff No. WNY-2 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-2 or the Rules, the provisions of this Agreement shall govern.

ARTICLE VII
TRANSMISSION AND DELIVERY

1. The Customer shall be responsible for:

   a. complying with all requirements of its local electric utility (including any other interconnecting utilities) that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff;

   b. paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff, and if the Authority incurs any charges associated with such delivery service, reimbursing the Authority for all such charges; and

   c. obtaining any consents and agreements from any other person that are necessary for the delivery of the Allocation to the Facility, and complying with the requirements of any such person, provided that any such consents, agreements and requirements shall be subject to the Authority’s approval.

2. The Authority will use good faith efforts to provide the Customer with at least one year’s advance notice of the scheduled expiration of Historic Fixed Price Transmission Congestion Contracts. After issuance of any such notice, the Authority will make itself available at reasonable times to collaborate with the Customer and other EP and RP customers to discuss potential risk-hedging options that might be available following expiration of such contracts.

3. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority’s behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff (“NYISO Charges”), as set forth in Service...
Tariff No. WNY-2 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related.

4. The Authority will consider opportunities to assist the Customer concerning actions, practices, or procedures of the Customer’s local electric utility identified by the Customer that could adversely impact the implementation and effectiveness of the EP and RP programs, provided that whether or not to take any action or adopt any position on any issue, including any adverse position, is within the Authority’s discretion and further subject to applicable laws, regulations and existing legal obligations.

**ARTICLE VIII**

**BILLING AND BILLING METHODOLOGY**

1. The billing methodology for the Allocation shall be determined on a “load factor sharing” basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer’s local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.

2. All other provisions with respect to billing are set forth in Service Tariff No. WNY-2 and the Rules.

3. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

**ARTICLE IX**

**HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY**

1. The Customer shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Customer-Arranged Energy, for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment. The Customer shall make its election in accordance with the time period and other requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.

2. The Customer may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Customer intends such change to become effective. Such change shall be effective on the first day of January following the Authority’s receipt the Customer’s notice and shall remain in effect unless it is changed in accordance with the provisions of Section IX.1.

3. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Customer with advance notice of Planned Hydropower Curtailments that in the Authority’s judgment will impact Electric Service to the Customer no later than the tenth business day of the month.
prior to the month in which the Planned Hydropower Curtailment is expected to occur unless
the Authority is unable to provide such notice due to the circumstances that impede such
notice, in which case the Authority will provide such advance notice that is practicable under
the circumstances.

4. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall
provide Substitute Energy to the Customer during all Planned Hydropower Curtailments.
Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced
from markets administered by the NYISO. The Authority may require the Customer to enter
into one or more separate agreements to facilitate the provision of Substitute Energy to the
Customer.

5. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no
responsibility to provide the Customer with Substitute Energy during any Planned
Hydropower Curtailment, and the Customer shall be responsible for the procurement,
scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.

6. The Customer shall have the right to reduce its load in response to a Planned Hydropower
Curtailment (a “Load Reduction”), provided, however, that the Customer shall, on an
Authority form, provide the Authority with no less than seven (7) days’ advance notice of the
time period(s) during when the Load Reduction will occur, the estimated amount of the Load
Reduction (demand and energy), and all other information required by such form. The
Authority will confirm whether the notice provides the required information and proposed
Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs
that the Authority incurs as a result of the Customer’s failure to provide such notice.

7. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast,
the Authority shall have the right in its discretion to implement Unplanned Hydropower
Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-
discriminatory basis as to all Authority customers that are served by the Project.

8. The Authority will provide the Customer with notice of Unplanned Hydropower
Curtailments that in the Authority’s judgment will impact Electric Service to the Customer
within five (5) business days after the first occurrence of an Unplanned Hydropower
Curtailment that occurs within a month, and thereafter will provide the Customer with
reasonable notice under the circumstances of the potential for any other Unplanned
Hydropower Curtailments that are expected to occur within such month or beyond. The
Authority will give the Customer notice of any Unplanned Hydropower Curtailments that the
Authority believes are likely to exceed forty-eight (48) continuous hours in duration.

9. Notwithstanding the Customer’s election pursuant to Section IX.1, the Authority shall
provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments.

10. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned
Hydropower Curtailment, the Customer shall pay the Authority directly during the billing
month: (1) the difference between the market cost of the Substitute Energy and the charge for
firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the
Authority incurs in connection with the provision of such Substitute Energy. Unless
otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.

11. The Customer shall be responsible for all costs associated with the Authority’s provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.

12. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.

ARTICLE X
EFFECTIVENESS, TERM AND TERMINATION

1. This Agreement shall become effective and legally binding on the Parties on the Effective Date.

2. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (a) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (b) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-2, or the Rules; or (c) expiration of the Allocation by its own term as specified in Schedule A.

3. The Customer may exercise a partial termination of the Allocation upon at least sixty (60) days’ prior written notice to the Authority. The Authority will effectuate the partial termination as soon as practicable after receipt of such notice taking account of the Authority’s internal procedures and requirements of the Customer’s local electric utility.

4. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-2, or the Rules.

ARTICLE XI
EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

1. The Customer may apply to the Authority for an extension of the term of the Allocation identified in Schedule A:

   a. during the thirty-six (36) month period immediately preceding the scheduled expiration of the Allocation;
b. pursuant to any other process that the Authority establishes; or

c. with the Authority’s written consent.

2. Upon proper application by the Customer, the Authority may in accordance with applicable law and Authority procedures award additional allocations of EP and/or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (a) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (b) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.

3. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for extension of the Allocation or additional allocations and consider the terms and conditions that should be applicable of any extension or additional allocations.

ARTICLE XII
NOTICES

1. Notices, consents, authorizations, approvals, instructions, waivers or other communications provided in this Agreement shall be in writing and transmitted to the Parties as follows:

To: The Authority

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

To: The Customer

Worksport Ltd.
2500 North America Drive
West Seneca, NY 14224
Email: 
Facsimile: 
Attention: 

2. The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XII.1.

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

ARTICLE XIII
SUCCESSORS AND ASSIGNED; RESALE OF HYDROPOWER

1. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto, provided that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party, which consent shall not be unreasonably withheld or conditioned. Notwithstanding the foregoing sentence, the Authority may require such approvals, and such consents and other agreements from the Customer and other parties, that the Authority determines are necessary in order to effectuate any such assignment.

2. The Customer may not transfer any portion of the Allocation to any other person, or a location different than the Facility, unless: (a) the Authority in its discretion authorizes the transfer Authority; (b) all other requirements applicable to a transfer, including board approvals, are satisfied; and (c) the transfer is effectuated in a form and subject to such terms and conditions approved by the Authority. Any purported transfer that does not comply with the foregoing requirements shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service or terminate the Allocation and/or this Agreement.

3. The Customer may not sell any portion of the Allocation to any other person. Any purported sale shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service, or terminate the Allocation and/or this Agreement.

ARTICLE XIV
MISCELLANEOUS

1. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a) and rulings by the IJC and without regard to conflicts of law provisions.

2. Venue

The Parties: (a) consent to the exclusive jurisdiction and venue of any state court within or
for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement; (b) agree to accept service of process; and (c) will not raise any argument of inconvenient forum.

3. **Previous Agreements; Modifications; and Interpretation**

   a. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of the Allocation and the subject matter of the Agreement, and supersedes all previous communications and agreements between the Parties, oral or written, with reference to the sale of the Allocation.

   b. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

   c. No provision shall be construed against a Party on the basis that such Party drafted such provision.

4. **Waiver**

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

5. **Severability and Voidability**

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

**ARTICLE XV
EXECUTION**

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

[SIGNATURES FOLLOW ON NEXT PAGE]
AGREED:

WORKSPORT LTD.

By: ________________________________
Title: ________________________________
Date: ________________________________

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: ________________________________
   John R. Koelmel, Chairman
Date: ________________________________
## SCHEDULE A
EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

<table>
<thead>
<tr>
<th>Type of Allocation</th>
<th>Allocation Amount (kW)</th>
<th>Facility and Address</th>
<th>Trustee Approval Date</th>
<th>Allocation Expiration Date</th>
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<td>RP</td>
<td>430 kW</td>
<td>2500 North America Drive West Seneca, New York 14224</td>
<td>March 29, 2022</td>
<td>Ten (10) years from the date of commencement of Electric Service</td>
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</tbody>
</table>
SCHEDULE B
SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments

a. The Customer shall create and maintain the employment level set forth in the Appendix to this Schedule B (the “Base Employment Level”). Such Base Employment Level shall be the total number of full-time positions held by: (a) individuals who are employed by the Customer at Customer’s Facility identified in the Appendix to this Schedule, and (b) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, “Base Level Employees”). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

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

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

2. Capital Investment Commitments

The Customer shall make the capital investments specified in the Appendix to this Schedule B.

3. Power Utilization

For each month the Authority provides Electric Service to the Customer, the Customer shall utilize the entire Allocation, as represented by the Billing Demand (as such term is described in Service Tariff No. WNY-2), provided, however, that if only part of the Allocation is being utilized in accordance with Schedule C, the Customer shall utilize such partial amount of the Allocation.

4. Energy Efficiency and Conservation Program
a. The Customer shall implement an energy efficiency and conservation program at the Facility through either (a) enrollment of the Facility and participation in NYEM in accordance with a NYEM Agreement, or (b) one or more Physical Energy Audits of the Facility, or (c) a combination of such measures, in accordance with the provisions of this Article.

b. The Authority shall transmit to the Customer a NYEM Agreement and an election form. The Customer shall elect to either (a) enroll the Facility and participate in NYEM for a three-year term ("NYEM Participation") in accordance with the NYEM Agreement, or (b) perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit within three (3) years of the Effective Date of this Agreement, at its own expense.

c. The Authority shall, on or before the expiration of the three-year term of the NYEM Agreement, transmit to the Customer a NYEM Agreement specifying the terms and conditions that would apply to NYEM participation for a second term, and an election form. The Customer shall elect either (a) NYEM Participation for a second term, or (b) to perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit during the calendar year that begins six years after of the Effective Date of this Agreement, at its own expense.

d. The Authority may in its discretion waive the requirement for a Physical Energy Audit, or may agree to a limited energy audit of the Facility, where it determines that the Physical Energy Audit is unnecessary based on the age of the Facility, energy efficiency and conservation improvements made at the Facility, the length of the Allocation, or other considerations the Authority determines to be relevant.
ARTICLE II
RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer’s Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

2. Capital Investments

The Customer shall comply with the recordkeeping, recording and reporting requirements specified in the Appendix to this Schedule B.

3. Power Usage

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement.

4. Energy Efficiency and Conservation Program

Upon the Authority’s request, the Customer shall provide the Authority with (a) a copy of the results of any Physical Energy Audit performed at the Facility (or, at the Authority’s option, a report describing the results), performed pursuant to this Article; and (b) a description of any energy efficiency or conservation measures that the Customer has implemented at the Facility in response to any Physical Energy Audit or as a result of NYEM Participation.

5. Facility Access
Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer’s compliance with the Customer’s Supplemental Commitments specified in this Schedule B.

ARTICLE III
COMPLIANCE ACTION BY THE AUTHORITY

1. Employment

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in the Appendix to this Schedule B for the subject calendar year, the Authority may reduce the Contract Demand in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

2. Capital Investment Commitment

The Authority may reduce the Contract Demand as provided in the Appendix to this Schedule B if the Customer does not comply with the Capital Investment Commitment.

3. Power Utilization Level

If the average of the Customer’s six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-2) for Expansion Power and/or Replacement Power is less than 90% of the Customer’s Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to in accordance with the procedures provide in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

4. Additional Compliance Action

In addition to the Authority’s other rights and remedies provided in this Agreement, Service Tariff WNY-2 and the Rules, the Authority may suspend Electric Service to the Customer if the Customer does not comply with any of the requirements in Section I.4 or Article II of this Schedule B.
5. **Notice of Intent to Reduce Contract Demand**

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to Sections III.1, III.2, or III.3 of this Schedule B, the Authority shall provide the Customer with at least thirty (30) days prior written notice of the proposed reduction, specifying the amount and reason for the reduction. Before implementing any reduction, the Authority may consider the Customer’s scheduled or unscheduled maintenance, Facility upgrade periods, and the business cycle. If, at the end of the thirty (30) day notice period, the Authority determines that a reduction is warranted, it shall provide the Customer with notice of such determination and provide the Customer with sixty (60) days to present a proposed plan with actionable milestones to cure the deficiency. The Authority shall respond to the Customer concerning the acceptability of any proposed plan that is provided in accordance with this Section III.5 within thirty (30) days of the Authority’s receipt of such proposed plan. It shall be within the Authority’s discretion whether or not to accept the Customer’s proposed plan, require a different plan, or implement the reduction of the Contract Demand.
APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 20 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. **Annual Capital Investment Commitment** (if applicable, as specified below)

   a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than \textbf{N/A} (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.

   b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.

   c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)

   a. The Customer shall make a minimum capital investment of $14,200,000 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:
<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>EXPENDITURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase of new facility</td>
<td>$8,125,000</td>
</tr>
<tr>
<td>Machinery and equipment purchases</td>
<td>$4,775,000</td>
</tr>
<tr>
<td>Facility renovations</td>
<td>$1,300,000</td>
</tr>
<tr>
<td><strong>Total Minimum Expansion Project Capital Investment Commitment:</strong></td>
<td><strong>$14,200,000</strong></td>
</tr>
</tbody>
</table>

Total Expansion Project Capital Investment Commitment:

b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than March 29, 2025 \((i.e., \text{within three (3) years of the date of the Authority’s award of the Allocation})\). Upon request of the Customer, such date may be extended in the discretion of the Authority.
SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Affected LSEs” has the meaning provided in Section II.2 of this Schedule D.

“CES Order” means the Order issued by the PSC entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“EP and RP Programs ZEC Costs” has the meaning provided in Section II.4.b of this Schedule D.

“Government Action” has the meaning provided in Section II.8 of this Schedule D.

“Load Serving Entity” or “LSE” has the meaning provided in the CES Order.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“Zero Emission Credit” or “ZEC” has the meaning provided in the CES Order.

“Zero Emission Credit Charge” or “ZEC Charge” means the charge to the Customer established in this Schedule D.
“ZEC Purchase Obligation” has the meaning provided in Section II.2 of this Schedule D.

“ZEC Program Year” has the meaning provided in Section II.2 of this Schedule D.

II. ZEC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a ZEC Charge as provided in this Schedule D. The ZEC Charge shall be in addition to all other charges, fees and assessments provided for in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the ZEC Charge.

2. As provided in the CES Order, the Public Service Commission, as part of the CES and Tier 3 of the Renewable Energy Standard, imposed an obligation on Load Serving Entities that are subject to the CES Order (“Affected LSEs”) to purchase Zero Emission Credits from NYSERDA in an amount representing the Affected LSE’s proportional share of ZECs calculated on the basis of the amount of electric load the LSE serves in relation to the total electric load served by all Load Serving Entities in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes in the State (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).

3. The ZEC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of supporting the CES and Tier 3 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan. The Authority will comply with the CES and Tier 3 of the RES by applying a form of ZEC Purchase Obligation to the end-user load for which the Authority serves as a load serving entity, including the load that the Authority serves under the EP and RP power programs.

4. The ZEC Charge, which is intended to recover from the Customer costs that the Authority incurs for purchasing ZECs in quantities that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:

a. The cost of the total ZEC Purchase Obligation for all LSEs in the New York Control Area, including the Authority as a participating load serving entity, will be assessed pursuant to the methodology provided in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA based on the proportion of the forecasted total kilowatt-hours load served by
the Authority (i.e., total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The ZEC Purchase Obligations may be based on initial load forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.

b. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as load serving entity, including the EP and RP load that it serves (the “EP and RP Programs ZEC Costs”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for each ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of ZEC Purchase Obligations will be allocated to the EP and RP power programs based on the proportion of the actual annual kilowatt-hours load served under such programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

c. The Authority will allocate a portion of the EP and RP Programs ZEC Costs to the Customer as the ZEC Charge based on the proportion of the Customer’s actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP power programs (i.e., EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation referenced above will be passed through to the Customer based on the proportion of the Customer’s annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP power program by the Authority (EP and RP Programs level load). The ZEC Charge assessed to the Customer shall not include any costs resulting from the Authority’s inability to collect a ZEC Charge from any other Authority customer.

5. The Authority may, in its discretion, include the ZEC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the ZEC Charge pursuant to another Authority-established procedure.

6. The Authority may, in its discretion, modify the methodology used for determining the ZEC Charge and the procedures used to implement such ZEC Charge on a nondiscriminatory basis among affected EP and RP customers, upon consideration of such matters as Public Service Commission orders modifying or implementing the CES Order, guidance issued by the New York Department of Public Service, and other information that the Authority reasonably determines to be appropriate to the determination of such methodology. The Authority shall
provide Customer with reasonable notice of any modifications to the methodology or procedures used to determine and implement the ZEC Charge.

7. Nothing in this Schedule shall limit or otherwise affect the Authority’s right to charge or collect from the Customer any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

8. If the ZEC Purchase Obligation is modified or terminated by the Public Service Commission or other controlling governmental authority (collectively, “Government Action”), the Authority shall modify or terminate the ZEC Charge, and assess any additional charges or provide any credits to the Customer, to the extent that the Authority determines such actions to be appropriate based on such Government Action.
SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Alternative REC Compliance Program” has the meaning provided in Section III.1 of this Schedule E.

“Annual REC Percentage Target” has the meaning provided in Section II.2 of this Schedule E.

“CES Order” means the Order issued by the Public Service Commission entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“Clean Energy Standard” or “CES” means the Clean Energy Standard adopted by the State in the CES Order.

“Load Serving Entity” has the meaning provided in the CES Order.

“Mandatory Minimum Percentage Proportion” has the meaning provided in the CES Order.

“Monthly Renewable Energy Credit Charge” or “Monthly REC Charge” means the monthly charge to the Customer established in this Schedule E.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Credit” or “REC” refers to a qualifying renewable energy credit as described in the CES Order.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.
“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“REC Compliance Measures” mean: (1) the Authority’s procurement of RECs from NYSERDA in accordance with NYSERDA procedures and/or the CES Order; (2) the Authority’s procurement of RECs from available REC markets; (3) the Authority’s procurement of RECs from sources other than those identified in items (1) and (2) of this definition, including through a procurement process adopted by the Authority; and/or (4) any other measure that the PCS authorizes a Load Serving Entity to implement for the purpose of meeting the applicable Mandatory Minimum Percentage Proportion.

“Total Monthly EP-RP Load” has the meaning provided in Section II.3.b of this Schedule E

“Total Monthly REC Costs” has the meaning provided in Section II.3.b of this Schedule E.

II. MONTHLY REC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a Monthly REC Charge as provided in this Schedule E. The Monthly REC Charge is in addition to all other charges, fees and assessments provided in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the Monthly REC Charge.

2. The Monthly REC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of complying with the CES and Tier 1 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan, pursuant to which the Authority will invest in new renewable generation resources to serve its EP and RP customers. Such investments will be made through the procurement of RECs through REC Compliance Measures in quantities that are intended to address the annual Mandatory Minimum Percentage Proportions as applied by the Authority to the total EP and RP load that the Authority will serve each calendar year (the “Annual REC Percentage Target”) for the purpose of ultimately meeting the RES.

3. The Monthly REC Charge, which is intended to recover from the Customer costs that the Authority incurs for implementing REC Compliance Measures that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:
a. The Authority shall have the right, for each calendar year to implement such REC Compliance Measures as it determines in its discretion to be appropriate for the purpose of meeting the Annual REC Percentage Target for the total EP and RP load that it will serve during such calendar year.

b. The Authority will, for each month of each calendar year, calculate the total costs ("Total Monthly REC Costs") that the Authority has incurred or estimates that it will incur from implementing RES Compliance Measures for the purpose of meeting the Annual REC Percentage Target for the total EP and RP kilowatt-hour load for the month ("Total Monthly EP-RP Load"). The Total Monthly REC Costs may be calculated based on forecasts of the Total Monthly EP-RP Load that the Authority expects to serve for the month, or on a lagged basis based on the actual Total Monthly EP-RP Load that the Authority served for the month.

c. Each month, the Authority will assess to the Customer, as a Monthly REC Charge, which will represent the Customer’s share of the Total Monthly REC Costs assessed to the Total Monthly EP-RP Load. The Monthly REC Charge will be assessed as the proportion of the Customer’s total kilowatt-hours load served by the Authority for such month to the Total Monthly EP-RP Load served by the Authority for such month, provided, however, that:

i. the Monthly REC Charge to the Customer shall not include any costs associated with the Authority’s inability to collect the Monthly REC Charge from other Authority customers; and

ii. the effective per-MWh rate of the Monthly REC Charge to the Customer averaged over the REC Program Year to which the Annual REC Percentage Target applies shall not exceed the per-MWh rate of a Monthly REC Charge based on NYSERDA’s published REC price for the REC Program Year.

4. The Authority may, in its discretion, include the Monthly REC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the Monthly REC Charge pursuant to another Authority-established procedure.

5. The Authority will, at the conclusion of each calendar year in which it assesses a Monthly REC Charge, conduct a reconciliation process based on the actual costs that it incurred for REC Compliance Measures and actual load served for the year, compared with cost or load estimates or forecasts, if any, that the Authority used to calculate the Customer’s Monthly REC Charges during the year. The Authority will issue a credit, or an adjusted final charge for the year, as appropriate, based on the results of such reconciliation process. Any such final charge shall be payable within the time frame applicable to the Authority’s bills
for Electric Service under this Agreement or pursuant to any other procedure established by the Authority pursuant to Section II.4 of this Schedule E.

6. Notwithstanding the provisions of Section II.3 of this Schedule E, if Electric Service for the Allocation is commenced after the Authority has implemented REC Compliance Measures for the year in which such Electric Service is commenced, and as a result the Customer’s load cannot be accounted for in such REC Compliance Measures, the Authority may in its discretion implement separate REC Compliance Measures in order to meet the Annual REC Percentage Target for Customer’s load for the year, and bill the Customer for the costs associated with such separate REC Compliance Measures.

7. Nothing in this Schedule shall limit or otherwise affect the Authority’s right to charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

III. ALTERNATIVE REC COMPLIANCE PROGRAM

1. Nothing in this Schedule E shall be construed as preventing the Parties from entering into other agreements for an alternative arrangement for the Authority to meet the Annual REC Percentage Target with respect to the Customer’s Allocation, including but not limited to Customer self-supply of RECs, alternative REC compliance programs and cost allocation mechanisms, in lieu of the Monthly REC Charge provided in this Schedule E (collectively, “Alternative REC Compliance Program”).

2. The Authority shall communicate at least biennially with the Customer concerning implementation of the RES Compliance Program and potential Alternative REC Compliance Programs, if any, that the Authority is offering or expects to offer.
POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY  12207

Schedule of Rates for Sale of Firm Power Service to Expansion Power and Replacement Power Customers Located in Western New York

Service Tariff No. WNY-2
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Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff issued by the NYISO

**Agreement**: An executed written agreement between the Authority and the Customer for the sale of Expansion Power and/or Replacement Power to the Customer.

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

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

**Customer**: A business entity that has received an allocation of Expansion Power and/or Replacement Power, and that purchases Expansion Power and/or Replacement Power, directly from the Authority.

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

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

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

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

**Load Split Methodology** or **LSM:** A type of billing methodology applicable to a Customer’s Allocation which determines how a Customer’s total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer’s other source of electricity supply, if any. LSM is usually provided for in an agreement between the Authority and the Customer’s local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer’s local electric utility. The load split methodology is often designated as “Load Factor Sharing” or “LFS”, “First through the Meter” or “FTM”, “First through the Meter Modified” or “FTM Modified”, or “Replacement Power 2” or “RP 2”.

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

**Rate Year** or **RY:** The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

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

**Service Tariff:** This Service Tariff No. WNY-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.
III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

The rates to be charged to the Customer by the Authority shall be as follows:

<table>
<thead>
<tr>
<th>Billing Period</th>
<th>Demand ($/kW)</th>
<th>Energy ($/MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January – June 2019</td>
<td>7.60</td>
<td>13.00</td>
</tr>
</tbody>
</table>

1. For RY 2019 (July 2019 through June 2020 Billing Periods), 50% of the Annual Adjustment Factor (“AAF”), as described in Section V, will be applied to the demand and energy rates stated in the table above.

2. For RY 2020 (July 2020 through June 2021 Billing Periods) and each Rate Year thereafter, the AAF will be applied to the then-effective base rates for demand and energy in accordance with Section V.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average $/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average $/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The Minimum Monthly Charge shall equal the product of the demand charge and the Contract Demand (as defined herein). Such Minimum Monthly Charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer’s Allocation.
E. **Estimated Billing**

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

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Load Split Methodology that is applicable to the Customer as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer’s Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer’s takedown (kW) amount.

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

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

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer’s Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the takedown (kW) amount at 100 percent load factor for that Billing Period.

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

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

The Authority’s discretion to render Estimated Bills is not intended and shall not be construed to limit the Authority’s rights under the Agreement.
F. **Adjustments to Charges**

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

G. **Billing Period**

The Billing Period is any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer’s facilities are located.

H. **Billing Demand**

Billing Demand shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

I. **Billing Energy**

Billing Energy shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

J. **Contract Demand**

The Contract Demand will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement.
IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority’s obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.

2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

C. Delivery

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

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the base rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.
E. Billing Methodology

Unless otherwise specified in the Agreement, the following provisions shall apply:

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing (“LFS”) in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.

2. Billing Demand – The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. Billing Demand may not exceed the amount of the Contract Demand.

3. Billing Energy – The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.

4. With regard to LFS methodology calculations:
   a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
   b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
   c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
      i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
      ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
   d. All demand values will be adjusted for losses.
F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Firm Energy during any Billing Period the higher of either (i) the sum of (a), (b) and (c) below, or (ii) the Minimum Monthly Charge (as defined herein):

a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer’s Billing Demand (as defined in Section IV.E, above) for the Billing Period; and

b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer’s Billing Energy (as defined in Section IV.E, above) for the Billing Period; and

c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges

The Customer shall compensate the Authority for the following NYISO transmission and related charges (collectively, “NYISO Charges”) assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

B. Marginal losses;

C. The New York Power Authority Transmission Adjustment Charge ("NTAC");

D. Congestion costs inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts as provided in Attachment K of the OATT;

E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority’s responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO’s Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

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

4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.
G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.

2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.

3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.

4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.

5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.

6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
H. **Adjustment of Charges – Distribution Losses**

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

I. **Conflicts**

In the event of any inconsistencies, conflicts, or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of the Agreement and this Service Tariff or the Rules, the provisions of the Agreement shall govern.
V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year (“Index Value for the Measuring Year”) will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1”). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of ±5.0% (“±5% Collar”). Amounts outside the ±5% Collar shall be referred to as the “Excess.”

   Index 1, “BLS Industrial Power Price” (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics (“BLS”) electronically on its internet site and consistent with its printed publication, “Producer Price Index Detailed Report”. For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

   Index 2, “EIA Average Industrial Power Price” (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT (“Selected States”) as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration (“EIA”); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

   Index 3, “BLS Industrial Commodities Price Less Fuel” (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, “Producer Price Index Detailed Report”. For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

   Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.

   Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.

   Step 3: Commencing RY 2014, modifications to the AAF will be subject to ±5% Collar, as described below.

      a) When the AAF falls outside the ±5% Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the ±5% Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year’s AAF, up to the ±5% Collar.
b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the ±5% Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. Subject to the provisions of Section III.A of this Service Tariff, the Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.

4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended to reflect, the Customer and the Authority may mutually select a substitute Index. The Customer and the Authority agree to mutually select substitute indices within 90 days, once one of them is notified by the other that the indices are no longer available or no longer reflect the relevant factors or changes which the indices were intended to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If the Customer and Authority are unable to reach agreement on substitute indices within the 90-day period, the Customer and the Authority agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available or reflective of their intended purpose and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.
B. **Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):**

**STEP 1**

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- **Index 1 - Producer Price Index, Industrial Power**

<table>
<thead>
<tr>
<th>Measuring Year</th>
<th>Measuring Year - 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>171.2</td>
</tr>
<tr>
<td>February</td>
<td>172.8</td>
</tr>
<tr>
<td>March</td>
<td>171.6</td>
</tr>
<tr>
<td>April</td>
<td>173.8</td>
</tr>
<tr>
<td>May</td>
<td>175.1</td>
</tr>
<tr>
<td>June</td>
<td>185.7</td>
</tr>
<tr>
<td>July</td>
<td>186.4</td>
</tr>
<tr>
<td>August</td>
<td>184.7</td>
</tr>
<tr>
<td>September</td>
<td>185.5</td>
</tr>
<tr>
<td>October</td>
<td>175.5</td>
</tr>
<tr>
<td>November</td>
<td>172.2</td>
</tr>
<tr>
<td>December</td>
<td>171.8</td>
</tr>
</tbody>
</table>

**Average:**

- 177.2
- 172.8

**Ratio of MY/MY-1:**

1.03
Index 2 – EIA Industrial Rate

<table>
<thead>
<tr>
<th>State</th>
<th>Revenues ($000s)</th>
<th>Sales (MWh)</th>
<th>Avg. Rate (cents/kWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CT</td>
<td>590,972</td>
<td>6,814,757</td>
<td></td>
</tr>
<tr>
<td>MA</td>
<td>1,109,723</td>
<td>13,053,806</td>
<td></td>
</tr>
<tr>
<td>ME</td>
<td>328,594</td>
<td>4,896,176</td>
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</tr>
<tr>
<td>NH</td>
<td>304,363</td>
<td>2,874,495</td>
<td></td>
</tr>
<tr>
<td>NJ</td>
<td>1,412,665</td>
<td>15,687,873</td>
<td></td>
</tr>
<tr>
<td>NY</td>
<td>2,001,588</td>
<td>26,379,314</td>
<td></td>
</tr>
<tr>
<td>OH</td>
<td>3,695,978</td>
<td>78,496,166</td>
<td></td>
</tr>
<tr>
<td>PA</td>
<td>3,682,192</td>
<td>63,413,968</td>
<td></td>
</tr>
<tr>
<td>RI</td>
<td>152,533</td>
<td>1,652,593</td>
<td></td>
</tr>
<tr>
<td>VT</td>
<td>155,903</td>
<td>2,173,679</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>13,434,511</td>
<td>215,442,827</td>
<td>6.24</td>
</tr>
</tbody>
</table>

Measuring Year -1 (2011)

<table>
<thead>
<tr>
<th>State</th>
<th>Revenues ($000s)</th>
<th>Sales (MWh)</th>
<th>Avg. Rate (cents/kWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CT</td>
<td>579,153</td>
<td>6,678,462</td>
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<tr>
<td>MA</td>
<td>1,076,431</td>
<td>12,662,192</td>
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<tr>
<td>ME</td>
<td>310,521</td>
<td>4,626,886</td>
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<tr>
<td>NH</td>
<td>298,276</td>
<td>2,817,005</td>
<td></td>
</tr>
<tr>
<td>NJ</td>
<td>1,370,285</td>
<td>15,217,237</td>
<td></td>
</tr>
<tr>
<td>NY</td>
<td>1,891,501</td>
<td>24,928,452</td>
<td></td>
</tr>
<tr>
<td>OH</td>
<td>3,622,058</td>
<td>76,926,243</td>
<td></td>
</tr>
<tr>
<td>PA</td>
<td>3,571,726</td>
<td>61,511,549</td>
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</tr>
<tr>
<td>RI</td>
<td>144,144</td>
<td>1,561,700</td>
<td></td>
</tr>
<tr>
<td>VT</td>
<td>152,785</td>
<td>2,130,205</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>13,016,880</td>
<td>209,059,931</td>
<td>6.23</td>
</tr>
</tbody>
</table>

Ratio of MY/MY-1 | 1.00
- **Index 3 – Producer Price Index, Industrial Commodities Less Fuel**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>190.1</td>
<td>187.2</td>
</tr>
<tr>
<td>February</td>
<td>190.9</td>
<td>188.0</td>
</tr>
<tr>
<td>March</td>
<td>191.6</td>
<td>188.7</td>
</tr>
<tr>
<td>April</td>
<td>192.8</td>
<td>189.9</td>
</tr>
<tr>
<td>May</td>
<td>194.7</td>
<td>191.8</td>
</tr>
<tr>
<td>June</td>
<td>195.2</td>
<td>192.3</td>
</tr>
<tr>
<td>July</td>
<td>195.5</td>
<td>192.3</td>
</tr>
<tr>
<td>August</td>
<td>196.0</td>
<td>193.1</td>
</tr>
<tr>
<td>September</td>
<td>196.1</td>
<td>193.2</td>
</tr>
<tr>
<td>October</td>
<td>196.2</td>
<td>193.8</td>
</tr>
<tr>
<td>November</td>
<td>196.6</td>
<td>193.7</td>
</tr>
<tr>
<td>December</td>
<td>196.7</td>
<td>194.0</td>
</tr>
</tbody>
</table>

Average: 194.4, 191.5

Ratio of MY/MY-1: **1.02**

**STEP 2**

Determine AAF by Summing the Weighted Indices

<table>
<thead>
<tr>
<th>Index</th>
<th>Ratio of MY to MY-1</th>
<th>Weight</th>
<th>Weighted Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>PPI Industrial Power</td>
<td>1.03</td>
<td>0.35</td>
<td>0.361</td>
</tr>
<tr>
<td>EIA Industrial Rate</td>
<td>1.00</td>
<td>0.40</td>
<td>0.400</td>
</tr>
<tr>
<td>PPI Industrial Commodities less fuel</td>
<td>1.02</td>
<td>0.25</td>
<td><strong>0.255</strong></td>
</tr>
</tbody>
</table>

AAF: **1.016**

**STEP 3**

Apply Collar of ±5.0% to Determine the Maximum/Minimum AAF.

-5.0% < 1.6% < 5.0%; collar does not apply, assuming no cumulative excess.
### STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

<table>
<thead>
<tr>
<th></th>
<th>Demand $/kW-mo.</th>
<th>Energy $/MWh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Rate Year Base Rate</td>
<td>7.56</td>
<td>12.91</td>
</tr>
<tr>
<td>New Rate Year Base Rate</td>
<td>7.68</td>
<td>13.12</td>
</tr>
</tbody>
</table>
NEW YORK POWER AUTHORITY PUBLIC HEARING

(Via video teleconference)

DATE: May 9, 2022

TIME: 2:02 p.m. – 6:00 p.m.
(Based on Time Zone from Letter)
APPEARANCES

COUNCIL MEMBERS:

Karen Delince, Corporate Secretary, New York Power Authority
APPEARED VIA VIDEO TELECONFERENCE

Richard Smith, Senior Director of Economic Development, New York Power Authority
APPEARED VIA VIDEO TELECONFERENCE

Lorna Johnson, Senior Associate Corporate Secretary, New York Power Authority
APPEARED VIA VIDEO TELECONFERENCE

Joseph Rivera, Manager, New York Power Authority
APPEARED VIA VIDEO TELECONFERENCE

Glenn Martinez, Senior Network Analyst, New York Power Authority
APPEARED VIA VIDEO TELECONFERENCE

Michele Stockwell, Project Coordinator, New York Power Authority
APPEARED VIA VIDEO TELECONFERENCE

ALSO PRESENT:
Ludy Aristilde, Intern Court Reporter
Appeared via video teleconference
# INDEX OF PROCEEDINGS

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<th>Page</th>
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<tr>
<td>Certificate of Transcriptionist</td>
<td>18</td>
</tr>
</tbody>
</table>
INDEX OF EXHIBITS

EXHIBITS FOR IDENTIFICATION

(No Exhibits Marked.)
PROCEDINGS

Remote NEW YORK POWER AUTHORITY PUBLIC HEARING

before CHRISTINA MCCOY, CER No. 1082.
(Proceedings commenced at 2:02 p.m.)

MS. DELINCE: Good afternoon. This is a public hearing required by law and authorized by the New York Power Authority's Board of Trustees on the proposed Customer Contracts for the sale of hydropower to LW1 Operator, LLC, Chocolate Delivery Systems, Inc., and Worksport Ltd., and on the recommencement and Contract Extension for the sale of hydropower to Niagara Mohawk Power Corporation d/b/a National Grid.

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

New York State Public Authorities Law, Section 1009, sets forth procedures for executing certain contracts negotiated by the Authority.

First, prior to the hearing, it requires that notice of the hearing be provided.

Therefore, a notice was sent to: The Governor, the Senate's President Pro Temp, the Senate Minority Leader, The Senate Finance Committee Chair, the Assembly Speaker, the Assembly Minority Leader,
and the Assembly Ways and Means Committee Chair.

In addition, notices appeared once a week, for the four weeks leading up to the hearing, in the following newspapers: Niagara Gazette, Buffalo News, Buffalo Business First, Lewiston Porter Sentinel, Albany Times-Union, and the Dunkirk Observer.

The public was also given access to the proposed contracts on the Authority's website during the 30-day period prior to today's hearing.

After the hearing, the public will be given access to the hearing transcript, once it is completed, at www.nypa.gov.

The next step in the process set forth in section 1009 will be for the NYPA Trustees to reconsider the proposed contracts in light of public comments.

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

If you plan to make an oral statement at this hearing, please write your name and affiliation in the chat function.

Also, if you have a written statement, you can mail or e-mail it to the Corporate Secretary.

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

The record of the hearing will remain open for additional comments through close of business, Tuesday, May 10, 2022.

Additional comments should be mailed, faxed, or emailed to the Corporate Secretary at: 123 Main Street, 9-B, White Plains, NY 10601; or (914) 390-8040; or secretarys.office@nypa.gov.

At this point, I would like to introduce Richard Smith, the Authority's Director of Economic Development, who will provide additional details on the proposed Customer Contracts. Thank you.

Mr. Smith?

MR. SMITH: Thank you, Ms. Delince. Good afternoon. My name is Richard Smith, and I am the Senior Director of Economic Development within NYPAs Clean Energy Solutions department. I am here today to present a summary of three proposed contracts for LW1 Operator, LLC, Chocolate Delivery Systems, Inc.,
Worksport Ltd., and on the Recommencement and Contract Extension for the sale of hydropower to Niagara Mohawk Power Corporation d/b/a National Grid.  

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

At their January 25, 2022, meeting, the NYPA Trustees approved a 2,930 kilowatt allocation of EP to LW1 Operator, LLC ("LW1") for a term of ten years, based on commitments to create at least 75 new full-time jobs and make a capital investment of at least $24.2 million at the facility that will use the EP allocation.  

LW1 represents the first applicant
considered under the Diversity, Equity, and Inclusion ("DEI") Evaluation and Incentive Plan approved by the NYPA Trustees on December 7, 2021. The plan allows for the consideration of positive DEI impacts when evaluating power allocations. LW1's proposed project site meets the qualifying criteria as a disadvantaged community in New York State. In addition, the company plans to hire Minority and/or Women Owned Business Enterprises to complete the project's construction requirements.

The Company is in the cannabis production business. LW1 proposes to establish a new manufacturing facility in Buffalo to produce raw cannabis flower, oils, edibles, and extracts. The capital investment will be for land acquisition, construction costs, and machinery and equipment purchases. The 2,930 kilowatt allocation will help support the manufacturing of cannabis products. LW1's project will support economic development and growth of the region.
At their March 29, 2022, meeting, the NYPA Trustees approved a 4,210 kilowatt allocation of RP to Chocolate Delivery Systems ("CDS") for a term of ten years, based on commitments to create at least 91 new full-time jobs over a base of 98 current full-time jobs and make a capital investment of at least $25.9 million at the facility that will use the RP allocation.

The Company manufactures chocolate and confectionary products, offering customized chocolate chips, chunks, bars and chocolate varieties and providing private label manufacturing at its facility in Buffalo. CDS proposes to expand chocolate manufacturing at its current facility to reduce reliance on external suppliers. The capital investment will be for a chocolate manufacturing system, machinery and equipment purchases. The 4,210 kilowatt allocation will help support the manufacturing of chocolate products. CDS’s project will support economic development and growth of the region, which incorporates a positive Diversity,
At their March 29, 2022 meeting, the NYPA Trustees approved a 430 kilowatt allocation of RP to Worksport Ltd. ("Worksport") for a term of ten years, based on commitments to create at least 20 new full-time jobs and make a capital investment of at least $14.2 million at the facility that will use the RP allocation.

The Company is a Canadian manufacturer of tonneau covers for trucks and vans and will expand into the United States with a manufacturing facility in West Seneca. Worksport would manufacture tonneau covers with integrated solar panels at the new facility, which would allow customers to charge electric vehicles or store electricity in mobile power stations. The capital investment will be for buying and renovating a facility and for machinery and equipment purchases. The 430 kilowatt allocation will help support the manufacturing of integrated solar panels in tonneau covers. Worksport's project will
support economic development and growth in the region, which incorporates a positive Green Jobs impact.

The following is a summary of pertinent provisions in the proposed contracts:

The contracts provide for the direct billing of all hydropower supply charges and all New York Independent System Operator, Inc. ("NYISO") charges and taxes.

The contracts include customer agreed-upon commitments with respect to employment, capital investment and power utilization.

Under the contracts, the Authority may reduce or terminate the allocations if employment, power utilization or capital investment commitments are not met.

Relatedly, the contracts include an annual job reporting requirement and a job compliance threshold of 90 percent. Should the company's average annual employment fall below the compliance threshold of 90 percent of the employment commitment, the Authority may reduce the amount of the allocations.

The contracts provide for the companies to perform an energy audit at their facilities at least
once within 5 years, helping to ensure that customers use the hydropower efficiently.

To address non-payment risk that could result from the direct billing arrangement, the contracts include commercially reasonable provisions concerning the Authority's ability to charge late payment fees and to require deposits in the event of the customer's failure to make payment for any two monthly bills. These contract provisions are consistent with other Authority direct sale contracts, including the Recharge New York sales contracts.

The contracts provide for collection of a Zero Emission Credit charge and a Renewable Energy Credit charge to allow the Authority to recover costs it would incur relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the customer's load.

The contracts will address the allocations along with the Authority's Service Tariff WNY-2 which specifies rates and other terms applicable to other EP and RP allocations.

Transmission and delivery service for the allocations will be provided by National Grid or
Lastly, in accordance with a hydropower contract signed with National Grid in 1990 and subsequent contract extensions ("1990 Hydro Contract"), National Grid has purchased both firm power and firm peaking power from the St. Lawrence/FDR and Niagara Power Projects. National Grid purchased such power at NYPA's cost-based hydropower rate. The benefits of the power have been passed on to National Grid's residential and small farm customers (also referred to as their domestic and rural consumers), without markup, through the electric service provided by National Grid under its retail tariff.

Chapter 60, (Part CC), of the Laws of 2011 created the Recharge New York Power Program ("RNY Program"). This law authorized the Authority to redeploy the firm hydropower previously allocated to National Grid, New York State Electric and Gas Corporation ("NYSEG"), and Rochester Gas and Electric
Corporation ("RGE") (collectively, the "Utilities") for use in the RNY Program. See PAL § 1005(13-a).

Effective August 1, 2011, NYPA withdrew the firm power allocations from the Utilities in accordance with Part CC and terminated the firm power allocations of 189 megawatts for National Grid, 167 megawatts for NYSEG and 99 megawatts for RGE.

However, NYPA continued to sell the firm peaking power to the Utilities, including National Grid which was allocated 175 megawatts.

In 2020, National Grid decided not to extend its peaking power allocation and term of the 1990 Hydro Contract, while NYSEG and RGE extended their allocations and contracts.

In 2022, National Grid reassessed its energy supply portfolio, and requested to recommence the purchase of 175 megawatts of peaking power under the 1990 Hydro Power Contract framework through December 31, 2023.

At their meeting on March 29, 2022, the Trustees approved recommencement of the sale of the
15 175 megawatts allocation of firm peaking power to
16 National Grid through December 31, 2023. The sale of
17 this allocation would enable National Grid's domestic
18 and rural customers to enjoy the benefits of the firm
19 peaking power.
20 In summary, under the Contract, NYPA would
21 have the right to terminate the Contract upon thirty
22 days' notice to National Grid and National Grid would
23 have the right to terminate the Contract upon thirty
24 days' notice to NYPA after December 31, 2022. The
25 allocation would expire on December 31, 2023.

15

1 Additionally, in contemplation of approval
2 of the Contract, the Authority would execute the
3 Contract and commence the sale of the firm peaking
4 hydropower after NYPA's Trustees approve the final
5 proposed Contract, on a month-to-month basis, pending
6 completion of the PAL §1009 process.
7 As Ms. Delince stated earlier, the Authority
8 will accept your comments on the proposed contracts
9 until the close of business on Tuesday, May 10, 2022.
I will now turn the hearing back to Ms. Delince.

MS. DELINCE: Thank you, Mr. Smith.

Since, we have no one signed up to speak at this Hearing at this time, we will recess and reconvene as speakers arrive. Thank you.

(Recess taken from 2:19 p.m. to 5:58 p.m.)

MS. JOHNSON: Christina, I would -- Karen, our -- let's see. We are mailing to the members on the 16th, so I'm going to ask Christina if she can expedite it for the 13th.

THE REPORTER: Okay.

MS. DELINCE: All right. So are we ready to close?

MS. JOHNSON: Yes.

MS. DELINCE: All right. It is now 6:00 p.m. as previously stated, the record of the hearing will remain open for additional comments through close of business, Tuesday, May 10, 2022.

The May 9, 2022, Public Hearing on the proposed customer contracts for the sale of Customer
Contracts for the sale of hydropower to LW1 Operator, LLC, Chocolate Delivery Systems, Inc., and Worksport Ltd., and on the recommencement and Contract Extension for the sale of hydropower to Niagara Mohawk Power Corporation d/b/a National Grid is now officially closed.

Thank you and good night.

(Proceedings concluded at 6:00 p.m.)
CERTIFICATE OF REPORTER

STATE OF NEW YORK   )
COUNTY OF NEW YORK  )

I, CHRISTINA MCCOY, CER No. 1082, do hereby certify that I was authorized to and did electronically report the foregoing remote NEW YORK POWER AUTHORITY PUBLIC HEARING proceedings; and that the foregoing is a true and accurate electronic recording of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the proceeding, nor am I financially interested.

DATED this 12th day of May 2022.

CHRISTINA MCCOY, CER No. 1082
CERTIFICATE OF TRANSCRIPTIONIST

I, JEANNE MURIE, do hereby certify that I transcribed the electronic recording produced by CHRISTINA MCCOY, CER No. 1082 of the foregoing remote NEW YORK POWER AUTHORITY PUBLIC HEARING proceedings; and that the foregoing transcript is a true transcript of said electronic recording.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with these proceedings, nor am I financially interested.

DATED this 12th day of May 2022.

JEANNE MURIE
Memorandum

Date: May 24, 2022

To: THE TRUSTEES and CANAL CORPORATION BOARD OF DIRECTORS

From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Procurement (Services) and Other Contracts – Business Units and Facilities – Awards, Extensions and/or Additional Funding

SUMMARY

The Trustees and Board of Directors (“Board”) are requested to approve, as applicable, the award and funding of the multiyear procurement (services) contracts in support of projects and programs for the Authority’s and Canal Corporation’s Business Units/Departments and Facilities. Detailed explanations of the recommended awards and extensions, including the nature of such services, the basis for the new awards if other than to the lowest-priced, lowest total cost of ownership or “best valued” bidders and the intended duration of such contracts, or the reasons for the extension and the projected expiration dates, are set forth in the discussion below.

BACKGROUND

Section 2879 of the Public Authorities Law and the Authority’s and Canal Corporation’s Guidelines for Procurement Contracts require Authority Trustee and Canal Board approval for procurement contracts involving services to be rendered for a period more than one year.

The Authority’s and Canal Corporation’s Expenditure Authorization Procedures (“EAPs”) require Trustee and Board approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts more than $10 million, as well as personal services contracts more than $10 million if low bidder or best value, or $1 million if sole-source, single-source, or other non-competitive awards.

The Authority’s and Canal Corporation’s EAPs also require Trustee and Board approval when the cumulative change order value of a personal services contract exceeds $500,000, or when the cumulative change order value of a non-personal services, construction, equipment purchase, or non-procurement contract exceeds the greater of $6 million or 25% of the originally approved contract amount not to exceed $6 million.

DISCUSSION

Awards

The Trustees and Board are requested to approve the award and funding of the multiyear procurement (services) contracts, as applicable, where the EAPs require approval based upon contract value or the terms of the contracts will be more than one year. Except as noted, these contracts contain provisions allowing the Authority and Canal Corporation to terminate the services for the Authority’s and Canal Corporation’s convenience, without liability other than paying for acceptable services rendered to the effective date of termination. Approval is also requested for funding all contracts. Except as noted, these contract awards do not obligate the Authority and Canal Corporation to a specific level of personnel resources or expenditures.
The issuance of multiyear contracts is recommended from both cost and efficiency standpoints. In many cases, reduced prices are negotiated for these long-term contracts. Since these services are typically required on a continuous basis, it is more efficient to award long-term contracts than to rebid these services annually.

Extensions

Although the firms identified have provided effective services, the issues or projects requiring these services have not been resolved or completed and the need exists for continuing these contracts. Trustee and Board approval is required, as applicable, because the terms of these contracts will exceed one year including the extension, the term of extension of these contracts will exceed one year and/or because the cumulative change-order limits will exceed the levels authorized by the EAPs in forthcoming change orders. The subject contracts contain provisions allowing the Authority and Canal Corporation to terminate the services at the Authority’s and Canal Corporation convenience, without liability other than paying for acceptable services rendered to the effective date of termination. These contract extensions do not obligate the Authority and Canal Corporation to a specific level of personnel resources or expenditures.

Extension of the contracts identified is requested for one or more of the following reasons: (1) additional time is required to complete the current contractual work scope or additional services related to the original work scope; (2) to accommodate an Authority and Canal Corporation or external regulatory agency schedule change that has delayed, reprioritized or otherwise suspended required services; (3) the original consultant is uniquely qualified to perform services and/or continue its presence and rebidding would not be practical or (4) the contractor provides proprietary technology or specialized equipment, at reasonable negotiated rates, that the Authority and Canal Corporation needs to continue until a permanent system is put in place.

The following is a detailed summary of each recommended contract award and extension.

Authority Contract Awards in Support of Business Units/Departments and Facilities:

**Business Services – Risk & Resilience**

The proposed personal services contract with Marsh USA, Inc. ("Marsh"), (Q22-7289JGM) would provide Captive Insurance Management services. The Authority is seeking to form a pure captive insurance company (hereinafter referred to as the “Captive”) to be used as a risk financing vehicle for the Authority. The Captive will maximize the flexibility and effectiveness of the insurance programs by reducing costs; stabilizing budgets and cash flow; establishing long-term relationships with risk financing partners; establishing appropriate risk retention levels using state of the art analytical techniques; establishing appropriate limits; providing insurance for uninsurable or hard to insure risks; and providing a vehicle for effective tactical and strategic use of insurance and risk financing and transfer. The Request for Quotations was advertised on the New York State Contract Reporter website and posted on the Procurement page of the Authority’s website. Eleven firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Three proposals were received electronically via Ariba and were evaluated. Staff recommends the award of contract to Marsh which is technically and commercially qualified and meets the bid requirements based on “best value”, which optimizes quality, cost and efficiency among all qualified offerors. This contract is for a term of five years and an amount of $800,000.

**Business Services – Strategy**

The proposed non-personal services contract with Schichtel's Nursery, Inc. ("SNI"), (Q22-7285CC) would provide TreePower Program services. The Authority’s TreePower Program began in 1992 as an energy efficiency program that helped customers plant trees to provide wind breaks and shading in an effort to reduce building energy use. Following the Climate Leadership and Community Protection Act (CLCPA) in 2019, the Sustainability Department recognized the critical role of the TreePower Program in enabling the Authority and its customers to meet CLCPA goals. TreePower 2.0 expands tree planting locations to recognize the additional
value trees have in increasing biodiversity and removing carbon and other pollutants from the air. The expanded program has also extended eligibility to additional customers, further enabling the Authority and its customers to meet sustainability and climate goals. The Request for Quotations was advertised on the New York State Contract Reporter website and posted on the Procurement page of the Authority’s website. Eight firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. One proposal was received electronically via Ariba and was evaluated. Staff recommends the award of contract to SNI which is technically and commercially qualified and meets the bid requirements based on “best value”, which optimizes quality, cost and efficiency among all qualified offerors. This contract is for a term of five years and an amount of $500,000. SNI is a Small Business Enterprise.

**Human Resources & Administration – Total Rewards & HRIS**

The proposed non-personal services contract with Edenred North America, Inc. dba Edenred Benefits LLC (“Edenred”), (Q22-7296JW) would provide Transit and Commuter Benefit services. The Authority offers Transit benefits to eligible employees who elect the benefit in lieu of parking privileges at the White Plains Office or other Authority facilities. The Authority provides these employees with a subsidy of $50.00 per month toward the purchase of transit vouchers or debit cards that may be used to pay for train, bus or carpool fares. In addition, employees can contribute pre-tax and post-tax employee contributions to the Transit program. The Request for Quotations was advertised on the New York State Contract Reporter website and posted on the Procurement page of the Authority’s website. Nine firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. One proposal was received electronically via Ariba and was evaluated. Staff recommends the award of contract to Edenred which is technically and commercially qualified and meets the bid requirements based on “best value”, which optimizes quality, cost and efficiency among all qualified offerors. This contract is for a term of five years and an amount of $50,000.

**Operations – Power Supply**

The proposed non-personal services contract with Samsara, Inc. (“Samsara”), (C21-2737KV) would provide GPS Telematics services for Fleet services. The Authority has a mixed fleet of light and heavy-duty vehicles, road maintenance equipment, trailers and specialized equipment which total to 1,085 units. A cloud-based, turn-key solution for data collection and gathering of GPS information from these units is desired in order to guide the Authority on how to better utilize its existing resources. The Request for Quotations was advertised on the New York State Contract Reporter website and posted on the Procurement page of the Authority’s website. Twenty-one firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Sixteen proposals were received electronically via Ariba and were evaluated. Staff recommends the award of contract to Samsara which is technically and commercially qualified and meets the bid requirements based on “best value”, which optimizes quality, cost and efficiency among all qualified offerors. This contract is for a term of three years and an amount of $279,720.

**Operations – Project Delivery**

The proposed personal services contract with Doble Engineering Company (“DEC”), (Q22-7281CC) would provide Oil Testing and Site services. The Authority requires the following services on a continuous basis: diagnostic test equipment rental, oil testing, design review, equipment software updates and witness of factory acceptance testing (FAT) of Transformers/Shunt reactors. These services are provided by a third party, typically the Original Equipment Manufacturer (OEM), and are necessary to safely support the Authority’s system-wide operations. The Request for Quotations was advertised on the New York State Contract Reporter website and posted on the Procurement page of the Authority’s website. Four firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. One proposal was received electronically via Ariba and was evaluated. Staff recommends the award of contract to DEC which is technically and commercially qualified and meets the bid requirements based on “best value”, which optimizes quality, cost and efficiency among all qualified offerors. This contract is for a term of five years and an amount of $3 million.
Canal Corporation Contract Awards in Support of Business Units/Departments and Facilities:

**Operations – Power Supply**

The proposed non-personal services contracts with Laubacker Enterprises, Inc. (“Laubacker”), and Mohawk Valley Materials, Inc. (“MVM”) would provide Woody Debris Waste Removal services. As a result of spring snow melt as well as heavy rainfall, woody debris and various other waste items are collected by the NYS Canal Corporation regularly to ensure boater safety. The debris is collected and stockpiled at eleven various locations along the Canal system which would require removal multiple times each year. Currently no contract is in place for the management of woody debris and it has not been removed for over a year, resulting in an initial costly removal and thereafter regular maintenance. Laubacker would provide these services for Sections 7-Pittsford and 8-Albion/Lockport and MVM would provide services for Sections 1-6 (1-Fort Edward, 2-Waterford, 3-Fonda, 4-Utica, 5-Syracuse, and 6-Lyons). The Request for Quotations was advertised on the New York State Contract Reporter website and posted on the Procurement page of the Authority’s website. Thirty firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Two proposals were received electronically via Ariba and were evaluated. Staff recommends the award of contracts to Laubacker and MVM which are technically and commercially qualified and meet the bid requirements based on “best value”, which optimizes quality, cost and efficiency among all qualified offerors. These contracts are for a term of five years and an aggregate amount of $1 million. MVM is a NYS certified Women-owned Business Enterprise. Laubacker is a Service-Disabled Veteran-Owned Small Business. Laubacker and MVM are Small Business Enterprises.

**Authority Extensions and/or Additional Funding Requests:**

**Legal Affairs – Power Transmission and Regulatory**

In June 2021, the Authority issued a one-year single source personal services contract with Fasken Martineau Dumoulin LLP (“FMD”) (4500332695) in the amount of $200,200 to provide for the continuation of as required legal counsel services to the Authority on Canadian Law. The Authority needed to retain Canadian counsel specifically for the Quebec region regarding electric supply Cost of Services, export pricing trends to New England and NY, and related Quebec regulatory matters. This was the result of the Authority’s work on cross-border transactional work. Staff requests a two-year extension ending June 20, 2024 for Canadian legal counsel in support related to the T-4 Transmission Line project or other initiatives as required. No additional funding is being requested at this time.

**Operations – Commercial Operations**

In March 2019, the Authority issued a five-year personal services contracts with AECOM USA, Inc. (“AECOM”) (4600003639), Burns & McDonnell Consultants, Inc. dba Burns & McDonnell Consultants PC (“Burns & McDonnell”) (4600003640), SNC, Ltd. (“SNC”) (4600003644), Tetra Tech, Inc. (“Tetra”) (4600003642), TRC Engineers, Inc. (“TRC”) (4600003643) and WSP USA, Inc. (fka The Louis Berger Group) (“WSP”) (4600003641) in the aggregate amount of $9.5 million for Project Development and Licensing services. In the Accelerated Renewable Energy Growth & Community Benefits Act, New York State has outlined an expansive transmission development plan, with NYPA playing a key role. NYPA’s Vision 2030 is a strategic plan to grow and lead electric transmission line development in New York. The Contracts are used to directly support these initiatives and help NYPA implement its strategic vision. Staff requests additional funds in the aggregate amount of $7.5 million. TRC is a Small Business Enterprise.

In May 2017, the Authority issued five-year personal services contract to GridPoint, Inc. (“GridPoint”) (4600003299) in the amount of $20 million for on-going projects and support the advancement of New York Energy Manager (“NYEM”) program objectives Services. NYEM continues
to process new metering data from a variety of customers and is currently working on high profile customer projects (SUNY, HHC, City of Albany, etc.) that will require GridPoint’s services for the next four years. Currently, the Authority has internal and external users who rely on existing GridPoint data feeds for building and energy data and customers who subscribe to receive strategic energy advisory service monthly reports from NYEM that rely on GridPoint installed meter data. Staff requests a four year extension through May 2026. No additional funding is being requested at this time.

**Operations – Power Supply**

In May 2020, the Authority issued a one-year personal services contract to Courtney Danielle Patterson (“Patterson”) (4500320339) in the amount of $99,000 to provide a full-time Licensed Practical Nurses (“LPN”) position at the St. Lawrence facility to support COVID-19 mitigation efforts and provide answers to any other general health questions, take vitals for staff as needed (temperature); provide health assessments – evaluate and identify any underlying condition by screening employees for abnormalities; provide information/teaching/answer questions – impart information to employees; assist in the implementation of onsite COVID-19 testing, and support onsite COVID-19 vaccinations. On December 9, 2020, a change order was issued and approved by the Vice President of Strategic Supply Management per the Authority’s Guidelines for Procurement Contracts and Expenditure Authorization Procedures to increase the value of the contract by an additional $99,000 to maintain the nursing staff onsite to meet the needs of the changing pandemic climate. On May 25, 2021, the Trustee’s approved an extension and additional funding request in the amount of $150,000 through May 29, 2022. Staff requests an additional one-year extension through May 29, 2023 for the continued nursing support at the St. Lawrence site for COVID-19. No additional funding is being requested at this time.

**Operations – Power Supply**

In May 2020, the Authority issued a one-year personal services contract to Jessalyn Rose Clary (“Clary”) (4500320326) in the amount of $99,000 to provide a full-time LPN position at the St. Lawrence facility to support COVID-19 mitigation efforts and provide answers to any other general health questions, take vitals for staff as needed (temperature); provide health assessments – evaluate and identify any underlying condition by screening employees for abnormalities; provide information/teaching/answer questions – impart information to employees; assist in the implementation of onsite COVID-19 testing, and support onsite COVID-19 vaccinations. On December 9, 2020, a change order was issued and approved by the Vice President of Strategic Supply Management per the Authority’s Guidelines for Procurement Contracts and Expenditure Authorization Procedures to increase the value of the contract by an additional $99,000 to maintain the nursing staff onsite to meet the needs of the changing pandemic climate. On February 3, 2021, a second change was issued to increase the rate of pay to Clary for the additional administrative job responsibilities to include scheduling of all nursing staff, organization and management of onsite COVID-19 testing, security coordination with onsite nursing support, inventory/supply management for nursing staff (COVID-19 Tests, gloves, face masks, etc.) and coordination of communication with Human Resources/Contract Tracing Team. On May 25, 2021, the Trustee’s approved an extension and additional funding request in the amount of $150,000 through May 29, 2022. Staff requests an additional one-year extension through May 29, 2023 for the continued onsite nursing support at the St. Lawrence site for COVID-19, and additional funding of $60,000.

**Operations – Project Delivery**

In June 2018, the Authority issued a three-year personal services contract with CHA Consulting, Inc. (“CHA”) (4500298463) in the amount of $210,200 to provide engineering and design services for the Water Ball Replacement Project at the St. Lawrence-FDR Power Project. Several change orders were issued to increase funding due to the changing pandemic climate. The total value of the contract is currently $342,400. Staff requests a one-year extension ending June 12, 2023 to allow construction support and as-built preparation to continue through the completion of CPR1346 Water Ball Replacement. No additional funding is being requested at this time.
Canal Corporation Extensions and/or Additional Funding Requests:

N/A

FISCAL INFORMATION

Funds required to support contract services for various Business Units/Departments and Facilities have been included in the 2022 Approved Operating or Capital Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years. Payment will be made from the Operating or Capital Fund, as applicable.

Funds required to support contract services for capital projects have been included as part of the approved capital expenditures for those projects and will be disbursed from the Capital Fund in accordance with the project’s Capital Expenditure Authorization Request, as applicable.

RECOMMENDATION

The Senior Vice President – Operations Support Services and Chief Engineer; the Senior Vice President – Project Delivery; the Senior Vice President – Power Supply; the Senior Vice President – Chief Strategy Officer; the Vice President – Strategic Supply Management; the Vice President – Project and Construction Management; the Vice President – New York Energy Manager; the Vice President – Total Rewards and HRIS; the Vice President – Chief Risk and Resilience Officer; Regional Manager of St. Lawrence; recommend that the Trustees and Board approve the award of multiyear procurement (services) and other contracts to the companies and the extension and/or funding of the procurement (services) contracts for the purposes and in the amounts discussed within the item and/or listed in the respective exhibits.

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

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and Canal Corporation, the award and funding of the multiyear procurement services contracts referenced hereto, are hereby approved for the period of time indicated, in the amounts and for the purposes listed therein, as set forth in the memorandum of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and Canal Corporation, the contracts referenced hereto, are hereby approved and extended for the period of time indicated, in the amounts and for the purposes listed therein, as set forth in the memorandum of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority and Canal Corporation are, and each of them hereby is, authorized on behalf of the Authority and Canal Corporation to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President General Counsel.
Date: May 24, 2022

To: THE TRUSTEES

From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Long-term Operations Agreement for the Discover Niagara Shuttle Service

SUMMARY

The Trustees are requested at their May 24, 2022, meeting to approve a two-year operations agreement and funding in the amount of $500,000 with Niagara Falls National Heritage Area, Inc. ("NFNHAI") to operate the Discover Niagara Shuttle Service.

The shuttle service is connecting visitors to multiple destinations along the Niagara River/Niagara Gorge corridor, including but not limited to the Authority’s Power Vista, Fort Niagara, Village of Lewiston, Niagara University, Devil’s Hole State Park, Whirlpool State Park, Niagara Falls Train Station/Underground Railroad Interpretive Center, Aquarium of Niagara, and Niagara Falls State Park. With the new bed tax revenue, last summer the service expanded to other areas in the county including Canal attractions in Lockport, NY. This two-year agreement will ensure continued operation of this shuttle service.

BACKGROUND

Niagara Falls is a globally recognized tourist destination, attracting millions of visitors each year, and in addition to the waterfalls, includes several sites related to recreational, historic, cultural, educational, and technological resources along the Niagara River/Niagara Gorge corridor from Youngstown, NY to Niagara Falls, NY.

A number of studies have noted the importance of a reliable and efficient tourist-oriented people mover system to enable visitors to best explore the full pallet of resources along the Niagara River/Niagara Gorge corridor, most recently in the approved management plan for the federally designated Niagara Falls National Heritage Area.

Land use along the Niagara River/Niagara Gorge corridor does not include any dense concentrations of population or employment centers that would warrant conventional daily transit service, therefore significant areas in the Niagara River/Niagara Gorge corridor are not serviced by public bus routes -- particularly during summer weekend periods when tourism demands peak -- and conventional funding criteria for expanding public bus routes does not support the addition of a tourist-oriented people mover system.

The Authority completed a major expansion and upgrade of the visitor and interpretative functions of its Power Vista facility at the Niagara Power Project in Lewiston, NY. The expansion and upgrade contemplated a shuttle service connection to and from Niagara Falls State Park, the most-visited individual attraction along the Niagara River/Niagara Gorge corridor.
The Trustees were requested and approved $500,000 in funding for a two-year shuttle service program in 2015, 2017 and 2020. Now, NFNHAI, New York State Parks and the Authority are working with various public, institutional, and private attraction and hospitality partners in defining an economically sustainable, long-term business model for a high-quality, affordable shuttle service along the Niagara River/Niagara Gorge corridor that will enhance the visitor experience by connecting visitors to heritage site destinations, extending the length of stay and increasing heritage tourism. Continued operational funding from the Authority is critical to the effort.

In accordance with the Section 2879 of the Public Authorities Law and the Authority’s Guidelines for Procurement Contracts and Expenditure Authorization Procedures, this non-personal services contract is subject to Trustee approval.

DISCUSSION

In June of 2016, the new Power Vista visitor center opened to rave reviews and attendance increased as the Niagara Visitor Center became one of the “must do” tourist attractions in the region.

After two years of reduced travel caused by Covid disruptions, the Niagara region is ready to service pent up demand. In 2022, a fifth vehicle will be added to the route reducing wait times and new stops will be added in the Niagara Falls State Park. Passenger counting equipment will be installed in the entire fleet. Pre-Covid studies showed that 15% of the visitors riding the Discover Niagara Shuttle decided to extend their stay and visit the attractions in Niagara County because of the shuttle. Of the shuttle riders surveyed, 36.5% said they used the shuttle to visit the Power Vista.

FISCAL INFORMATION

Payment associated with this contract will be made from the Authority’s Operating Fund. NYPA will pay the NFNHAI $250,000 per year in two installments.

The total for the agreement is $500,000.00

RECOMMENDATION

The Vice President – Public and Regulatory Affairs and the Vice President – Strategic Supply Management, recommend that the Trustees approve the contract with Niagara Falls National Heritage Area, Inc. to operate the Discover Niagara Shuttle Service.

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

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That pursuant to the Authority’s Guidelines for Procurement Contracts and Expenditure Authorization Procedures, a two-year contract for the operations of shuttle service and support expenditures up to the amount of $500,000 are hereby approved for the Niagara Falls National Heritage Area’s Discover Niagara Shuttle, as recommended in the foregoing report of the Interim President and Chief Executive Officer; and it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.
Date: May 24, 2022

To: THE TRUSTEES

From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Disposition of Excess Fiber Capacity under Public Authorities Law §1005(29) and Initial Pilot Program under New York State ConnectALL Initiative

SUMMARY

The Trustees are requested to authorize the disposition of fiber optic communications capacity by the Authority pursuant to newly enacted legislation under Public Authorities Law by allowing the Authority, as deemed feasible and advisable by the Trustees, to enter into lease agreements with other state instrumentalities and municipal entities for the use of excess capacity in the Authority’s fiber optic communications infrastructure in order to provide affordable, high-speed broadband in unserved and underserved communities in the state.

The State, through funding from the Economic State Development Corporation (“ESD”), has committed grant funding to the Authority in the amount of $10 million for a pilot program to implement the State’s ConnectALL initiative (described below). It is anticipated that the full amount of the monies committed by ESD will be transferred to the Authority in fiscal year 2022. Accordingly, the Trustees are requested to authorize the expenditure of up to $10 million to support a pilot project under the New York State ConnectALL Initiative, with the understanding that the Authority’s expenditures for the pilot program will be reimbursed by the grant funding committed by ESD.

BACKGROUND

Earlier this year, Governor Kathy Hochul announced as part of the enacted New York State 2022 budget a $1 billion ConnectALL initiative to deliver affordable broadband to millions of New Yorkers and transform the state’s digital infrastructure through public and private investments to connect New Yorkers in rural and urban areas statewide to broadband. The ConnectALL initiative includes a number of grant programs, one of which is to leverage existing State fiber assets by providing funding to plan, engineer, and construct accessible broadband infrastructure in unserved and underserved communities in the state.

Among other things, the enacted budget amends the Public Authorities Law, Section 1005, by adding a new subsection 29 that authorizes the Authority to lease excess capacity in its fiber optic network, which runs along Authority owned and operated transmission lines, to state instrumentalities or municipal entities in order to provide affordable high-speed broadband in unserved and underserved communities in the state. The use of the Authority’s fiber infrastructure is expected to reduce the cost of broadband deployment in communities of need, increasing broadband access and lowering the cost of broadband service for New Yorkers in these regions.
Through the State’s grant funding coupled with the expanded authority under Public Authorities Law Section 1005(29), the Authority is in a position to create strategic collaboration opportunities to identify most cost-effective solutions to implement broadband services in several rural unserved and/or underserved areas, by utilizing NYPA’s fiber infrastructure.

DISCUSSION

As part of the Authority’s effort to execute this pilot, the Authority has developed strategic collaboration opportunities with the State and public authorities, local development corporations, non-profit organization and Minority and Women owned Business Enterprises (“M&WBE”) to identify the most cost-effective solution to implement affordable broadband services to several unserved and/or underserved premises in rural areas and disadvantaged communities in Upstate New York by utilizing the Authority’s fiber infrastructure.

Based on the initial assessment and due diligence, the Authority has identified four distinct deployment areas to provide affordable broadband access to over two thousand (2000) homes and businesses in Central NY, Northern NY, and Western NY.

The initial deployment areas are as follows:

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<td>Tioga</td>
<td>Nichols</td>
<td>Southern Tier Network (STN)</td>
<td>Local Development Corporation</td>
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The Authority is developing agreements with each of the above-referenced collaborative partners to plan, engineer, and construct the requisite pathways to allow the necessary connections to the Authority’s fiber optic infrastructure in the most cost effective manner using the grant funds committed by ESD.

FISCAL INFORMATION

Payment associated with these projects will be made first from the Authority’s Capital Fund until the Grant funding from the New York State is received.

RECOMMENDATION

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

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That pursuant to the recently enacted Public Authorities Law Section 1005(29), the disposition of fiber optic communications capacity that entails entering into lease agreements with other state instrumentalities and municipal entities for the use of excess capacity in the Authority’s fiber optic communications infrastructure to provide affordable, high-speed broadband in unserved and underserved communities in the state is deemed feasible and advisable, and is hereby authorized; and be it further

RESOLVED, That the expenditure of up to $10 million to support a pilot project under the New York State ConnectALL Initiative, with the understanding that the Authority’s expenditures for the pilot project will be reimbursed by the grant funding committed by the Economic State Development Corporation (“ESD”) is hereby authorized; and be it further

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

i. Governance Committee Recommendations for Approval:

1. Procurement and Related Reports for New York Power Authority and Canal Corporation Resolution


5. Annual Review and Approval of Certain Policies for New York Power Authority and Canal Corporation Resolution
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      ii. Replacement Power Allocations Resolution

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      iv. Transfer of Recharge New York Power Resolution

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Minutes of the Joint Meeting of the New York Power Authority’s Trustees and Canal Corporation’s Board of Directors held via video conference at approximately 8:15 a.m.

**Members of the Board present were:**

John R. Koelmel, Chairman  
Eugene L. Nicandri, Vice Chairman  
Tracy McKibben  
Michael A.L. Balboni  
Dennis T. Trainor  
Bethaida Gonzalez  
Anthony J. Picente, Jr. – excused

Justin Driscoll  Interim President and Chief Executive Officer  
Philip Toia  President – NYPA Development  
Lori Alesio  Interim Executive Vice President and General Counsel  
Adam Barsky  Executive Vice President and Chief Financial Officer  
Joseph Kessler  Executive Vice President and Chief Operating Officer  
Kristine Pizzo  Executive Vice President and Chief Human Resource & Administrative Officer  
Sarah Salati  Executive Vice President and Chief Commercial Officer  
Daniella Piper  Regional Manager and CTO  
Yves Noel  Senior Vice President and Chief Strategy Officer  
Robert Piascik  Senior Vice President – Chief Information & Technology Officer  
Patricia Lombardi  Senior Vice President Project Delivery  
Keith Hayes  Senior Vice President – Clean Energy Solutions  
Andrew Boulais  Vice President and Construction Management  
Jospeh Gryzlo  Vice President and Chief Ethics & Compliance Officer  
Shirley Marine  Vice President Enterprise Shared Services  
John Canale  Vice President – Strategic Supply Management  
Eric Meyers  Vice President – Chief Information Security Officer  
Steve Kalashian  Vice President – HR and Organizational Development  
Victor Costanza  Senior Director – Cyber Security & Deputy CISO  
Hossein Hooshay  Director- Agile Lab  
Carley Hume  Chief of Staff – President’s Office  
Lorna Johnson  Senior Associate Corporate Secretary  
Sheila Quatrocci  Associate Corporate Secretary  
Michele Stockwell  Project Coordinator, Corporate Secretary

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

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

1. Adoption of the March 29, 2022 Proposed Meeting Agenda

On motion made by Trustee Balboni and seconded by Trustee McKibben, the members adopted the meeting Agenda.

Conflicts of Interest

Chairman Koelmel and members Nicandri, McKibben, Trainor and Gonzalez declared no conflicts of interest based on the list of entities previously provided for their review.

2. DISCUSSION AGENDA:

a. Strategic Initiatives

i. Interim President and Chief Executive Officer’s Report

Interim President and Chief Executive Officer Justin E. Driscoll said that with more than a full year into the execution of the Authority’s VISION2030 Strategy, he wanted to discuss how that vision drives progress and decision-making at the Authority, not just strategically, but on a day-to-day basis. He said the members are often provided examples of how the Authority is executing on its strategy, including how the Next Generation Niagara initiatives are preserving the value of the Authority’s hydropower and the Clean Path New York Transmission Project is driving the Authority’s goal to be a leader in transmission across the state, a key component of the VISION2030 Strategy.

He continued that the executive presentations from Senior Management will provide information on the VISION2030 Strategy and how it informs the day-to-day, decisions that the organization makes to execute on the Strategy. Joseph Kessler will report on the White Plains Digital Engineering Laboratory; Sarah Salati will report on the Customer Energy Solutions efforts; and Adam Barsky will report on the organization’s financial strength and how it underpins everything that the Authority does as an organization. He added that NYPA just received an A-plus grade from the State on its M/WBE execution for fiscal year 2020-2021.

The Authority is, however, not without challenges. Cybersecurity is a key component, particularly given today’s cyber environment. He said that the cyber team at NYPA is vigilant, communicating and sharing information, working with its federal partners, and the Authority is as well-positioned as any organization could be in that space.

As it relates to Supply Chain issues, costs are going up, impacting some of the Authority’s projects. On a Team and Talent basis, the Authority continues to work hard to compete for talent in this environment.

In the face of these challenges, the Authority looks to the VISION2030 Strategy, as decisions are made in the day-to-day operation of the enterprise, for a thriving resilient New York State powered by clean energy which is the Authority’s roadmap and mission.
February VISION2030 Scorecard
As of the first quarter of 2022, the Authority has met or exceeded the targets if its VISION2030 Scorecard. These metrics provide a glimpse of how the day-to-day focus is driving the organization and realizing the VISION2030 Strategy. For example, Commercial Availability is at 97.7 year-to-date versus the 95 percent target, and Greenhouse Gas Saved is above the target which was driven by a substantial project completed ahead of schedule for the Department of Corrections, and also a Streetlight Project in the Village of Homer which were completed ahead of schedule.

AGILe Laboratory Partnership
The Advanced Grid Innovation Laboratory for Energy (AGILe), a key component of the Authority’s Digitization Strategy, is a state-of-the-art collection of technologies, devices, and systems to support various studies on planning and operation of the power Grid. In 2017, the members authorized $40 million for this initiative. To date, $7 million has been expended toward the project. It has taken approximately three years to load the grid modeling into the Lab, which allows for the solving of grid-related challenges.

As the Authority moves forward toward realizing Governor Hochul’s clean energy vision, the increased complexity of the grid and huge increases in renewable energy coming online will require more granular studies of what happens to the grid as these resources are added. The Authority is working with NYSERDA and the Department of Energy examining how offshore wind will impact the grid and modeling that impact through the Lab. The Authority is now able to model the grid from 765kV down to 37.5kV in the Agile Lab.

Recently, the Authority used the Dragos Platform to simulate an attack on the grid without having to take the system offline or have any operational outages to simulate that activity through the Lab. The Dragos attack simulation was performed around the Authority’s Niagara Next Generation OT Operations; this simulation will also be performed at the St. Lawrence and Blenheim-Gilboa Power Projects. The Authority plans to share the outcomes with its industry partners.

In closing, Interim President Justin E. Driscoll said that he is excited in terms of executing the Authority’s Strategic Vision and thanked the Trustees for their leadership and guidance.

b. Chief Operations Officer’s Report

Mr. Joseph Kessler, Executive Vice President and Chief Operating Officer, said that, to date, the Operations department is meeting its targets, including the traditional metrics around safety and reliability.

In terms of the overall VISION2030 Strategy, at the quarterly staff meetings with Operations staff they discussed how the goals align with preserving the value of hydropower and expanding transmission as it relates to the Foundational Pillars around DEI, ESG, Digitalization and Resilience. To that end, Operations is working on organizational changes, aligning staff to achieving those goals. For example, they recently joined Production Cost & Analysis, System Planning and Energy Economics, which generally correlated with each other, as one group and received positive feedback for this realignment. To that end, the group will work collectively on projects that have economic impacts or that impacts NYPAs’s system. Other areas of Operations that will effect some changes include Project Delivery to build capacity in the organization and diverse ways of delivering projects for the VISION2030 Strategy.

With regards to Decarbonization, Resilience and Diversity of fuels and of energy sources Operations is diligent in ensuring that the Authority is resilient in delivery to its customers.

As it relates to Hydrogen, the Authority is part of a proposal with NYSERDA and ESD for federal funding for Hydrogen projects in the Hub. NYPAs recognizes that the conventional technologies it has are
scaling up to meet its goals and will continue in its efforts in discovering other solutions for hydrogen in the future.

**Digital Engineering Lab**
In line with the VISION2030 Strategy, NYPA’s Digital Engineering Lab on the 12th Floor in the White Plains Office combines multiple Engineering Labs and expertise from various groups into one collaborative space. It also provides for enhanced testing, greater performance, and troubleshooting.

**NYS Department of Environmental Conservation (DEC) – Field Office**
NYPA recently completed a new, approximately 3,400 sq. ft. facility located in Louisville, New York, which replaces the previously leased space for the New York State DEC. DEC personnel moved into the new space earlier this year. The wildlife team at that facility manages the Wilson Hill Refuge, which is adjacent to the building, along with the migratory bird management of that area. The Wilson Hill Refuge is on Authority property that is part of the STL/FDR Power Project boundary line. The site also has access to public boat launching. This community project was executed through the Design-Build Delivery model with construction completed in late 2021.

Vice Chair Nicandri added that this project not only helps the DEC, but it enables the Authority to fulfill its obligations under its license to maintain and foster the area enclosed in the project boundaries.

**c. Chief Commercial Officer’s Report**

Ms. Sarah Salati, Executive Vice President and Chief Commercial Officer, said that when she joined NYPA, the Authority was very focused on the customer and introduced the Customer Satisfaction metrics to hear from the customers, in an unbiased way, how the Authority was doing. Product development was also introduced to ensure that the Authority was taking the insights from its customers and delivering services that the customers needed and wanted.

She continued that when VISION2030 was issued, Commercial Operations developed two key strategies, Behind-the-Meter and Commercial Electricity Supply which took into account uncontrollable variables in the market and developed high, medium and low scenarios for the growth of the group’s specific business lines. This is revisited on an annual basis because what was an assumption in terms of achievable targets one year, may change in the next. Therefore, the group must be very focused on the dynamics of the market. As Chief Commercial Officer, she is focused on ensuring that the group develop and execute commercial strategies to meet the Authority’s VISION2030 Strategy which is to remain competitive in the wholesale energy markets in the contracting and bidding of the Authority’s assets, and in other Energy Services products in order to also remain a leader in the state as well as in the nation. To that end, the Commercial Operations team is specifically focused on three initiatives within the VISION2030 Strategy.

First, Preserving and Enhancing Hydropower to ensure that the Authority remains competitive from a cost-structure standpoint, both direct and indirect, in the market, with ongoing long-term contracts; that the Authority is also being recognized for the value of its hydro attributes, relative to the fact that NYPA represents 60 percent of the renewable baseline, to get to an emission-free grid in 2040; and that the Authority continues to advance the commercial structuring and incorporate the new renewable assets that are coming into the market as well as maintain the customer contracts, because the value in the market is migrating to the customer, and who owns the customer contract, which the Authority has to retain.

The second area of focus is responsibly transitioning off fossil fuels by 2035. Commercial Operations continues to bid and contract the Authority’s In-City assets to reliably provide for the capacity to ensure that the lights stay on while still continuing to support analysis to identify ways to incorporate
renewables, storage and other technologies, as well as hydrogen, to evolve the Authority’s assets and to support the decarbonization of the fossil fuel units.

Third, decarbonizing the customer in the state and evolving the Authority’s products and services to be able to ensure that it is providing its customers with the adequate knowledge and expertise so that they can cost-effectively reach the sustainability outcomes that the Authority is looking to achieve.

Electricity Supply
The Authority had a strong start to the year, January, in particularly, with more than $40 million above target, which was predominantly due to the colder weather. Also, with regard to the management of the generating assets in the city, about a quarter of the outcome was the result of the Authority’s owning firm transportation rights across the gas pipelines, enabling the Authority to get the spread between delivery in Pennsylvania and selling in New York.

The Authority is consistently optimizing its bidding, ensuring that it takes advantage of the real-time market and is anticipating results ongoing above the target through the end of the year. The Authority is not subject to the same constraints in terms of energy supply that other parts of the world are and will continue to monitor the prices in the market.

Economic development
The Authority had one of the highest allocations for economic development in 2021. On the Agenda today, the members, will be requested to approve allocations eliciting 2,100 jobs, over $620 million in capital investments, over 1,000 green jobs, and over 240 DEI jobs. This includes new metrics as part of the overall methodology to support the creation of green jobs as part of the CLCPA, as well as recognizing MWBE/SDVOB and companies that are operating and providing jobs in disadvantaged communities.

Customer Business Lines – 2022 Targets

Clean Energy Solutions
Commercial Operations is focused on continuing to provide EBIDA-positive margins from all its customer business lines which comes from an ongoing strong portfolio year-over-year in its energy efficiency and DER advisory services.

eMobility
Commercial Operations is learning from experience in the first full year of implementation of 60 DCFC Charging Ports in 2021 to a target of 80 Charging Ports to be implemented this year. Contracts signed with customers went from $55 million in 2021 to $9 million this year. This is due to contracts signed last year with the MTA and other larger transit authorities.

Clean Energy Solutions: Energy Efficiency & Resiliency
The Authority’s Energy Efficiency program has been ongoing since the 1990s with more than $3.5 billion of energy efficiency projects implemented. Fundamentally, this has bottom-line energy savings for the Authority’s customers, and also is reducing the number of renewable energy that it has to build on the supply side to help in its goal for an emissions-free grid by 2040 in the most cost-effective way possible.

Executive Order 88
NYP was asked by the Governor to administer and manage the program under Executive Order 88. The Authority was tasked to work with all of the state agencies in order to reduce their energy usage intensity, that is energy usage over square footage. At the end of 2020, more than 20% of this goal was achieved.
The Authority met the goals for committed as well as implemented projects as part of that program. The Authority undertook audits at the different facilities, presented the options to the customers, and then worked in collaboration with them on the projects they chose to pursue, going forward. The results included both implemented and committed projects because for some of the larger sites there is usually a three-year implementation period between scoping and implementation and final commercial operation date. The Authority will continue with its efforts to meet the CLCPA goals.

Build Smart NY 2025
Build Smart NY 2025 includes additional goals for energy reduction and consumption. Of the Authority’s energy efficiency portfolio, more than 50% of it is working towards supporting agencies in reducing energy consumption.

e-mobility: EVolve NY and Customer Charging Infrastructure

2022 Focus
EVolve New York was launched with the goal for NYPA to be a true market animator and leader in a space where it would step in where the private sector was not yet ready to because of the economics of implementing public-facing fast chargers. NYPA is supporting and addressing range anxiety, enabling drivers that come into New York state to drive north to south or east to west without being afraid of not being able to charge their vehicles. To this end, NYPA attempted to identify locations based on a number of criteria, but primarily to address range anxiety and ensuring that adequate charging stations were available across all of the major corridors.

Ms. Salati reported on the comments from the recent OSC Audit and said that the Authority agrees that there is a lot more to be done with regard to this initiative based on the fact that 40% of the greenhouse gas emissions from New York State comes from the transport industry; therefore, the Authority will continue to work on the reduction with the EVolve initiative and with its customers to support the transition to electrification of medium and light-duty vehicles, and the work that it is doing with both transit agencies and the local schools with their bus system, the Authority’s point of focus. The Authority is also working very closely with other agencies and authorities to identify ways to accelerate, on a very holistic basis, other work that it is doing in the electrification of the transport industry.

New York Energy Manager, DER Advisory and Grid Flexibility
Distributed Energy Resource (DER) advisory service is in a scaling mode going from about 10-20 MW of DERs solar and storage to approximately 300 MW. The next area of focus is aggregating assets, evolving the Authority’s products and services, integrating solar storage or behind-the-meter and ensuring that customers may receive revenues from the market as distribution and NYISO wholesale markets evolve bringing in advanced dynamic demand-side management.

The other area of focus is around building on success of all advisory services and recognizing that the Authority is an energy expert and is meant to be shepherding its customers, who may not be as sophisticated, or where their core competency is not in energy, and ensuring that the Authority is helping them make the adequate trade-off decisions in the evolution of an integrated offering.

Community and Customer Impacts
The Authority is focused on community and customer impacts and recently received an A-plus rating on its M/WBE program from the state. Commercial Operations is looking at developing metrics around the amount of investment that it is undertaking in disadvantaged communities and continuing to support the DEI metrics that it has incorporated into its hydropower allocation program.

The effects of the COVID-19 pandemic continues and NYPA remains a critical partner with Health and Hospital Corporations in supporting emergency services with ongoing projects to ensure that they have
ongoing energy operations with the use of innovative technologies such as refrigerants that have less impact on greenhouse gases, as well as breaking regeneration systems in elevators to reduce the demand on energy.

Ms. Salati ended that the Commercial Operations team continues to look at driving commercial strategies to support and preserve the Authority’s hydropower, to transition off the Authority’s fossil fuels reliably and ultimately to decarbonize its customers and the state, and thanked the Board for recognizing the value of the customers and how important it is for the Authority to remain competitive in providing both energy supply and other products and services.

Mr. Yves Noel added that in terms of VISION2030 and hydropower in the future, a critical base for the future of renewables and the Authority’s ability to decarbonize, a strategic priority was set up with four tactics focused on preserving the value of hydropower, ensuring that the Authority’s assets are maintained, and that the Authority is looking at the future and how it is going to maintain these assets. Second, there is a market-sensing function that is currently being undertaken by the Strategy team, learning what is happening in the environment and adapting and adding outcomes to the discussion on the VISION2030 Strategy. In addition, every month the team holds discussions with the tactics leads on what they are doing and how they are performing against the Strategy. He ended that the members will be provided with more details in this regard at a later date.

d. Chief Financial Officer’s Report

Mr. Adam Barsky, Executive Vice President and Chief Financial Officer, said that as previously reported, for the first two months of the year the Authority operated ahead of the budget target. Energy prices, and the cold temperatures in the months of January and February, contributed to some of these results. However, in terms of the budget forecast, looking at the different prices going forward, it is expected that this will revert towards the budget. Capacity prices elevated for the rest of the state and yet was underperforming for the budget forecast for downstate but will normalize over the course of the year. However, the Authority is expected to perform ahead of the budget between now and the end of the year.

- Margins – Generation - revenues ahead of Budget Plan
- Margins – Transmission - revenues ahead of Budget Plan
- Margins – Non-Utility - revenues slightly below Budget Plan

VISION2030 – Bond Sale

Mr. Barsky provided an update on the bond sale supporting the Authority’s VISION2030 Strategy. He said that one of the Authority’s key priorities is to become a leader in transmission and its ability to accomplish this goal, because it is very capital intensive, in a way that does not hurt the Authority’s credit rating and impact its ability to perform its other projects. To that end, the Authority created a brand-new credit, the Green Transmission Bond Revenue Credit, which has been highly rated, an AA category. The Authority has started a very aggressive marketing strategy with potential investors for this bond sale, for example, the team was in Boston meeting with some of the largest Mutual Fund firms; attending the J.P. Morgan Investor Conference; an Internet Virtual Roadshow; and advertising to retail investors. In addition, he will continue to monitor the market throughout the week in order to lock in a price, unless there is a major event or disruption in the market.

The two projects that will be financed are the Central-East Energy Connect and the Smart Path Projects. Other future projects are also being projected. The members will be apprised of the progress throughout the week.
VISION2030 – Resilience Issues

Mr. Barsky provided an update on VISION2030 Resilience. He said that the risk assessment for low probability and high impact-type events is ongoing and the plans to mitigate those events will be provided to the members at a later date.

In addition, a key component of the risk strategy from a financial insurance standpoint is the Authority’s efforts to get authorization from the State to create NYPA’s own Captive Insurance company. This will allow the Authority to purchase insurance for things that it cannot get insurance for now. The Authority would immediately be available to the federal terrorism backstop facility, which is over several billion dollars of support and backstop the Authority would not be otherwise able to access. As it relates to catastrophic events such as related to hydropower, the Authority would be able to protect against a huge, unexpected drop in hydro flow, and other major events that could happen to NYPA that it would not be able to access the reinsurance market, the Lloyd's market oversees. This program has been successful for other authorities around the state such as the MTA and Port Authority.

Mr. Barsky thanked Interim President Justin Driscoll for his leadership with the Chamber, expressing how important this was to NYPA and explaining a complicated topic to laymen, and also the team of Vincent Esposito, Joseph Leary and the Legislative staff. The Authority’s Bill has passed both the Assembly and the Senate; the Governor is expected to sign this Bill.

i. Erie Canal Harbor Development Corporate Payment Acceleration

Mr. Adam Barsky, Executive Vice President and Chief Financial Officer, provided highlights of staff’s recommendation to the members.

On motion made by member Tracy McKibben and seconded by member Michael Balboni, the following resolution, as recommended by the Interim President and Chief Executive Officer was unanimously adopted.

RESOLVED, That the Authority hereby authorizes a modification of the Authority’s payment schedule under the Niagara Relicensing Settlement Agreement to an equivalent (in present-value terms) accelerated lump-sum payment of $27,098,818 to the Erie Canal Harbor Development Corporation for the purpose of facilitating additional financial support for the Canalside Development Project on the terms and conditions and for the purposes set forth in the Report of the Interim President and Chief Executive Officer; and be it further

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

Chair Tracy McKibben provided the following report:

“The Finance and Risk Committee met on March 18, 2022, adopted the minutes of the January 12, 2022 meeting, received one (1) staff report, and considered and recommended the following resolutions which are now before the Trustees/Directors for adoption.”

i. **Finance & Risk Committee Recommendations for Approval:**

*On motion made by member Michael Balboni and seconded by member Dennis Trainor, the following resolutions, as recommended by the Interim President and Chief Executive officer, were unanimously adopted. Member Eugene Nicandri agreed, with reservations expressed at the March 18 Finance & Risk Committee meeting as it relates to item #9 – Contributions of Funds to the State Treasury.*

1. **Amendment and Restatement of the 2020 Revolving Credit and Note Purchase Agreement**

   RESOLVED, that the Finance and Risk Committee recommends that the Trustees approve the Amended and Restated 2022 Revolving Credit Agreement and Amended and Restated 2022 Note Purchase Agreement and as discussed in the Report of the Interim President and Chief Executive Officer; with such amendments, supplements, changes, insertions and omissions thereto as may be approved by the Chairman or the Interim President and Chief Executive Officer, which amendments, supplements, insertions and omissions shall be deemed to be part of such resolution as approved and adopted hereby; and be it further

   RESOLVED, that the Finance and Risk Committee recommends that the Trustees affirm that the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer, the Interim Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolution, subject to approval as to the form thereof by the Interim Executive Vice President and General Counsel.

2. **Release of Funds in Support of the New York State Canal Corporation**

   RESOLVED, That the Finance and Risk Committee hereby recommends that the Trustees authorize the release of an additional up to $21.3 million in funding to the Canal Corporation to support operations of the Canal Corporation in calendar year 2022, as discussed in the Report of the Interim President and Chief Executive Officer; and be it further

   RESOLVED, That the Finance and Risk Committee recommends that the Trustees affirm the amounts presently set aside as reserves in the Operating Fund are adequate for the purposes specified in Section 503.2 of the Authority’s Bond Resolution, that the amount of up to $21.3 million in funding as described in the Report of the Interim President and Chief Executive Officer is not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue
Obligations, as amended and supplemented, and that the release of such amount is feasible and advisable; and be it further

RESOLVED, That Finance and Risk Committee recommends that the Trustees affirm that as a condition to making the payments specified in the Report of the Interim President and Chief Executive Officer, on the day of such payments, the Executive Vice President and Chief Financial Officer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That the Finance and Risk Committee recommends that the Trustees affirm that the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer, the Interim Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolution, subject to approval as to the form thereof by the Interim Executive Vice President and General Counsel.

3. High Voltage Circuit Breakers – On-Call Contract Awards

RESOLVED, That the Finance and Risk Committee recommends that the Trustees approve, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, the award of two, ten-year equipment contracts to Hitachi Energy USA, Inc. of Raleigh, North Carolina, and Siemens Energy Inc. of Orlando, Florida in the aggregate amount of $50,000,000, as recommended in the Report of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of the projects.

<table>
<thead>
<tr>
<th>Contractors</th>
<th>Contract Approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hitachi Energy USA, Inc. Raleigh, NC</td>
<td>$50,000,000</td>
</tr>
<tr>
<td>Siemens Energy, Inc. Orlando, FL</td>
<td></td>
</tr>
<tr>
<td>RFP # S21-0772LH</td>
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</table>

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

RESOLVED, That the Finance and Risk Committee recommends that the Trustees approve, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, the award of two, ten-year equipment contracts to Hitachi Energy USA, Inc. of Cary, North Carolina, and Royal SMIT Transformers BV of Nijmegen, Netherlands in the aggregate amount of $110,000,000, as recommended in the Report of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use Capital or Operating Funds, which may include proceeds of debt issuances, to finance the costs of the projects.

<table>
<thead>
<tr>
<th>Contractors</th>
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</thead>
<tbody>
<tr>
<td>Hitachi Energy USA, Inc. Cary, NC</td>
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</tr>
<tr>
<td>Royal SMIT Transformers BV. Nijmegen, Netherlands</td>
<td></td>
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</tbody>
</table>

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

5. St. Lawrence Power Project - Robert Moses Power Dam Autotransformer Replacement – Capital Expenditure Authorization Request

RESOLVED, That the Finance and Risk Committee recommends that the Trustees, pursuant to the Authority’s Capital Planning and Budgeting Procedures, approve capital expenditures in the amount of $13,044,000 for the Replacement of the Robert Moses Power Dam Autotransformer 1 Project, in accordance with, and as recommended in the Report of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of this project.

<table>
<thead>
<tr>
<th>Capital</th>
<th>Expenditure Authorization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Replacement of St. Lawrence RMPD Autotransformer 1</td>
<td>$13,044,000</td>
</tr>
</tbody>
</table>

AND BE IT FURTHER RESOLVED, That the Finance and Risk Committee recommends that the Trustees approve, pursuant to the Guidelines for Procurement
Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, the award of two, ten-year equipment contracts to Hitachi Energy USA, Inc. of Cary, North Carolina, and Royal SMIT Transformers BV of Nijmegen, Netherlands in the aggregate amount of $110,000,000, as recommended in the Report of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use Capital or Operating Funds, which may include proceeds of debt issuances, to finance the costs of the projects.

<table>
<thead>
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<th>Contractors</th>
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<tr>
<td>Hitachi Energy USA, Inc.</td>
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<tr>
<td>Royal SMIT Transformers BV</td>
<td></td>
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<tr>
<td>Nijmegen, Netherlands</td>
<td></td>
</tr>
<tr>
<td>RFP # Q21-7227AP</td>
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</tbody>
</table>

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


RESOLVED, That the Finance and Risk Committee recommends that the Trustees authorize the Interim President and Chief Executive Officer, the Chief Operating Officer, and officers designated by the Interim President and Chief Executive Officer to execute agreements and other documents between the Authority, and the following firms:

- BKSK Architects LLP “BKSK”, New York, NY
- Cooper Robertson; New York, NY
- Interboro Partners LLC “Interboro”, Brooklyn, NY (WBE)
- OSD Outside LLC “OSD”, Brooklyn, NY
- SBP Engineering PC “SBP”, New York, NY
- Starr Whitehouse Landscape Architects and Planners “Starr Whitehouse”, New York, NY
- SHoP Architects LLP “SHoP”, New York, NY
- Studio V Design & Planning “Studio V”, New York, NY (MBE/WBE)
- Wallace Roberts & Todd, LLC “WRT”, Philadelphia, PA
- Claire Weisz Architects (dba WXY Architecture + Urban Design) “WXY”, New York, NY (WBE)

Such agreements having such terms and conditions as the executing officer may approve, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel, to facilitate the performance of Design Services in
support of the Reimagine the Canals Program in alignment with the Authority's VISION2030 Strategy; and be it further

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

7. Disconnect Switches – On-Call Contract – Request for Waiver to Article 22 “STEEL COMPONENTS”

RESOLVED, That the Finance and Risk Committee recommends that the Trustees approve waiver of the Authority's Agreement Article 22 "STEEL COMPONENTS" that the purchasing of steel be produced or made in whole or substantial part in the United States or its territories or possessions, in compliance with Public Authorities Law §2603-a for manual and motor-operated disconnect switches, as recommended in the Report of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use Capital or Operating Funds, which may include proceeds of debt issuances, to finance the costs of the projects.

Contractor

GE Grid Solutions, LLC
Atlanta, GA

RFP # Q21-7238JM

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

8. Overhead Conductor and Overhead Ground Wire – On-Call Contract Award

RESOLVED, That the Finance and Risk Committee recommends that the Trustees approve, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, the award of a ten-year equipment contract to Midal Cables, Ltd. of Askar, Bahrain in the amount of $20,000,000, as recommended in the Report of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of the projects.
AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

9. Contribution of Funds to the State Treasury

RESOLVED, That the Finance and Risk Committee recommends that the Trustees hereby authorize the release of funds from the Operating Fund to the State’s general fund in the amount of $17.5 million as authorized by Section 17 of Part JJJ of Chapter 59 of the Laws of 2021 as discussed in the Report of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the $17.5 million to the State’s general fund described in the report is not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented and that such release is deemed feasible and advisable; and be it further

RESOLVED, That as a condition to making the payments specified in the report, on the day of such payments, the Executive Vice President and Chief Financial Officer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer, the Interim Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolution, subject to approval as to the form thereof by the Interim Executive Vice President and General Counsel.

f. Audit Committee Report

Chair Eugene Nicandri provided the following report:

“The Audit Committee met on Friday, March 18, 2022, and adopted the minutes of the December 8, 2021 Audit Committee meeting. The committee received a report from staff on, and approved and adopted, the New York Power Authority and Canal Corporation’s 2022 Environmental Health and Safety Compliance Plan. The Committee also received a report on the
Authority’s Year-End 2021 Consolidated Financial Report and recommended the following resolution which is now before the Trustees/Directors for adoption."

On motion made by member Bethaida Gonzalez and seconded by member Tracy McKibben, the following resolution, as recommended by the Interim President and Chief Executive officer, was unanimously adopted.

i. **2021 Financial Reports Pursuant to Section 2800 of the Public Authorities Law and Regulations of the Office of the State Comptroller**

WHEREAS, pursuant to Section 2800(1) of the Public Authorities Law, the Authority is required to annually submit to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller and the Authorities Budget Office, within 90 days after the end of its fiscal year, a complete and detailed report or reports setting forth information regarding, among other things, certain financial information; and

WHEREAS, pursuant to Section 2800(3), financial information submitted under Section 2800 shall be approved by the Authority’s Board of Trustees and shall be certified in writing by the Chief Executive Officer and the Chief Financial Officer of the Authority that based on the officer's knowledge the information provided therein (a) is accurate, correct and does not contain any untrue statement of material fact; (b) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made and (c) fairly presents in all material respects the financial condition and results of operations of the Authority as of, and for, the periods presented in the financial statements; and

WHEREAS, on the date hereof, the Interim Chief Executive Officer and Chief Financial Officer have so certified as to the financial information contained within the reports for the fiscal year ending December 31, 2021;

NOW THEREFORE BE IT RESOLVED, That pursuant to Section 2800 of the Public Authorities Law, the financial reports are adopted and the Corporate Secretary be, and hereby is, authorized to submit to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller, and the Authorities Budget Office the financial report for the year ending 2021 in accordance with the report of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to 2 NYCRR Part 203, the report of actual vs. budgeted results for the year 2021 is approved in accordance with the report of the Interim President and Chief Executive Officer; and the Corporate Secretary is authorized to post the report on the Authority’s website; and be it further

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

Chair Dennis Trainor provided the following report:

“The Governance Committee met this morning, March 29, 2022, adopted minutes, received three (3) staff reports and adopted the following resolutions which are now before the Trustees for adoption.”

i. Governance Committee Recommendations for Approval

On motion made by member Michael Balboni and seconded by member Tracy McKibben, the following resolutions, as recommended by the Interim President and Chief Executive officer, were unanimously adopted.

1. Procurement and Related Reports for New York Power Authority and Canal Corporation

RESOLVED, that the Procurement and Related Reports for New York Power Authority and Canal Corporation as described and discussed during the Governance Committee meeting held on March 29, 2022, is approved; and be it further

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


RESOLVED, That the Annual Report of Procurement Contracts, Guidelines for Procurement Contracts and Annual Review of Open Procurement Service Contracts as described and discussed during the Governance Committee meeting held on March 29, 2022, is approved; and be it further

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


RESOLVED, That pursuant to Section 2879 of the Public Authorities Law, the Authority’s and Canal Corporation’s Guidelines for the Disposal of Personal Property, and the Authority’s and Canal Corporation’s Expenditure Authorization Procedures, as amended, be, and hereby are, approved; and be it further
RESOLVED, That the open service contracts exceeding one year be, and hereby are, reviewed and approved; and be it further

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

4. Annual Review and Approval of Guidelines and Procedures for the Disposal of Real Property, Acquisition of Real Property, Annual Reports for the Disposal and Acquisition of Real Property, and Expenditure Authorization Procedures

RESOLVED, That the Annual Review and Approval of Guidelines for the Disposal of Personal Property and Expenditure Authorization Procedures for New York Power Authority and Canal Corporation as described and discussed during the Governance Committee meeting held on March 29, 2022, is approved; and be it further

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

5. Annual Review and Approval of Certain Policies for New York Power Authority and Canal Corporation

RESOLVED, that pursuant to Section 2824 of the Public Authorities Law and Section 2 of Article II of the Authority’s and Canal Corporation’s By-laws the below-listed policies of the Authority and Canal Corporation are hereby approved.

<table>
<thead>
<tr>
<th>NYPA Policy Name</th>
<th>Policy Number</th>
<th>Revision Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anti-Retaliation Policy (Whistleblower)</td>
<td>CP 1-7</td>
<td>09/25/2021</td>
</tr>
<tr>
<td>Code of Conduct</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contingent Worker Engagement Policy</td>
<td>CP 4-6</td>
<td>06/19/2021</td>
</tr>
<tr>
<td>Education Assistance Program</td>
<td>EP 3.6</td>
<td>10/20/2021</td>
</tr>
<tr>
<td>EEO Complaint Procedure</td>
<td></td>
<td>09/20/2021</td>
</tr>
<tr>
<td>Family and Medical Leave Act FMLA</td>
<td>EP 3.3</td>
<td>10/20/2021</td>
</tr>
</tbody>
</table>
AND BE IT FURTHER RESOLVED, that the Interim President and Chief Executive Officer is authorized to modify the foregoing policies, as necessary, except in the event that any powers, duties or obligations of the Trustees and Board of Directors would be affected by such modification; and be it further

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

6. 2021 NYPA and Canal Corporation Annual Board Evaluation Pursuant to Sections 2800 and 2824 of the Public Authorities Law and Guidance of the Authorities Budget Office

WHEREAS, pursuant to Sections 2800(1)(a)(15) and 2800(2)(a)(15) and Section 2824(7) of the Public Authorities Law and Guidance of the Authorities Budget Office, the Authority and Canal Board is required to annually submit a summary of the Board Evaluation to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller and the Authorities Budget Office, within 90 days after the end of its fiscal year; and

WHEREAS, the Governance Committee recommends the adoption of the 2021 Annual Board Evaluation Summary to the Authority's Board of Trustees and the Canal Corporation’s Board of Directors as required by Section C (2) of the Governance Committee Charter;

NOW THEREFORE BE IT RESOLVED, That pursuant to Sections 2800(1)(a)(15) and 2800(2)(a)(15) and Section 2824(7) of the Public Authorities Law and Guidance of the Authorities Budget Office, the 2021 Annual Board Evaluation Summary
is hereby adopted and the Corporate Secretary is hereby authorized to submit to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller, and the Authorities Budget the adopted 2021 summary; and be it further

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

7. **Annual Review and Approval of Guidelines for the Investment of Funds and 2021 Annual Report on Investment of Authority Funds**

RESOLVED, That the Annual Review and Approval of Guidelines for the Investment of Funds and 2021 Annual Report on Investment of Authority Funds as described and discussed during the Governance committee held on March 29, 2022, is approved: and be it further

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

3. **CONSENT AGENDA:**

On motion made by Member Dennis Trainor and seconded by Member Tracey McKibben, the Consent Agenda and the following resolutions as recommended by the Interim President and Chief Executive officer, were unanimously adopted:

a. **Commercial Operations**

   i. **Recharge New York Power- New, Extended and Modified Allocations**

      RESOLVED, That the Trustees hereby accept the recommendations of the Economic Development Power Allocation Board (“EDPAB”) and approve the extension of each of the existing 14 Recharge New York (“RNY”) Power allocations previously awarded to the customers listed in the manner described in the Report of the Interim President and Chief Executive Officer (“Report”) for a term of 7 years, to commence on (1) the expiration of the term of the allocation, or (2) in the Authority’s discretion, commencing on a date to be agreed upon by the Authority and the customer for a term not to exceed 7 years (collectively, the “Extended Term”), subject to the following conditions:
(a) The sale of the allocations as extended hereunder shall be made pursuant to the contract form approved by the Board on March 26, 2019, and Authority Service Tariff RNY-1; and

(b) In order to receive an extension of its allocation, the customer agrees to provide the supplemental commitments for jobs, capital investment and power utilization that are the same or determined by the Authority to be substantially similar to those contained in the Report (subject to adjustments described above) for the Extended Term, through the incorporation of such supplemental commitments in the final contract that is executed by the parties, and RNY Power customers who do not have an ongoing project/expansion capital investment commitment shall meet a minimum capital investment commitment which may be satisfied through capital expenditures made over a five-year period; and be it further

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the modifications/adjustments to the RNY Power allocations, extensions, and/or related supplemental commitments described in the Report for the reasons indicated in the Report; and be it further

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the new RNY Power allocations for retention purposes to the applicants listed in the Report in the amounts indicated therein for the reasons indicated in the Report; and be it further

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the new RNY Power allocations for expansion purposes to the applicants listed in the Report in the amounts indicated therein for the reasons indicated in the Report; and be it further

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the new RNY Power allocations for retention and/or expansion purposes to the small businesses and/or not-for-profit applicants listed in the Report in the amounts indicated therein for the reasons indicated in the Report; and be it further

RESOLVED, That the Chief Commercial Officer – Commercial Operations, or such official’s designee, hereby is authorized on behalf of the Authority to provide for final terms and conditions that will be applicable to the foregoing allocations and/or projects, including without limitation progress milestones and provisions for the expiration of any allocation in the event that such milestones are not met; and be it further

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

RESOLVED, That an allocation of 4,210 kilowatts of Replacement Power (“RP”) be awarded to Chocolate Delivery Systems, Inc. for a term of 10 years as detailed in the Report of the Interim President and Chief Executive Officer (“Report”), be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That an allocation of 410 kilowatts of RP be awarded to RubberForm Recycled Products, LLC for a term of 10 years as detailed in the Report, be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That an allocation of 430 kilowatts of RP be awarded to Worksport Ltd. for a term of 10 years as detailed in the Report, be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing pursuant to Public Authorities Law (“PAL”) §1009 on the terms of the proposed form of the direct sale contract with Chocolate Delivery Systems, Inc. and Worksport Ltd. for the sale of the RP allocations (the “Contract”), the current forms of which are included in the Report; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit a copy of the proposed Contract to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee pursuant to PAL §1009; and be it further

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

iii. **Recommencement and Extension of Hydropower Contract with National Grid for the Benefit of Rural and Domestic Consumers and Notice of Public Hearing**

RESOLVED, That a recommencement and extension of a 175 megawatts allocation of firm peaking power for Niagara Mohawk Power Corporation d/b/a National Grid through December 31, 2023 is hereby approved; and be it further

RESOLVED, That the “2022 Agreement to Recommence Service Under the 1990 Service Agreement, As Amended” attached to the Report of the Interim President and Chief Executive Officer (the “2022 Agreement”), is hereby approved; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit copies of the proposed 2022 Agreement to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the
Senate and the Chairman of the Senate Finance Committee pursuant to Public Authorities Law ("PAL") §1009; and be it further

RESOLVED, That the Corporate Secretary be and hereby is authorized to convene a public hearing on the proposed 2022 Agreement in accordance with the procedures set forth in PAL §1009; and be it further

RESOLVED, That the Senior Vice President – Clean Energy Solutions or his designee be, and hereby is, authorized, subject to approval of the form thereof by the Interim Executive Vice President and General Counsel, to negotiate and execute any and all documents necessary or desirable to implement the final 2022 Agreement on a month-to-month basis, if necessary, pending gubernatorial approval of the 2022 Agreement as set forth in the Report of the Interim President and Chief Executive Officer; and be it further

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

iv. Transfer of RNY Power

RESOLVED, That the transfer of a 3,476 kilowatt ("kW") Recharge New York ("RNY") Power allocation, including the supplemental increase under Authority’s Temporary Power Assistance program, awarded to DB USA Core Corporation, for use at its facility located at 60 Wall Street, New York, New York for use at the company’s new headquarters located at 1 Columbus Avenue, New York, New York, as described in the Report of the Interim President and Chief Executive Officer ("Report") be, and hereby is, approved subject to (i) such terms and conditions as are set forth in the foregoing Memorandum, and (ii) such terms and conditions as are required by the New York Power Authority ("Authority") in contract documents prepared by the Authority in order to effectuate the transfers; and be it further

RESOLVED, That the transfer of the 10,000 kW RNY Power allocation awarded to Huron Real Estate Associates, LLC for use at its facility located at 1701 North Street, Endicott, New York, to Phoenix Endicott Industrial Investors, LLC for use at the same facilities, as described in the Report be, and hereby is, approved subject to (i) such terms and conditions as are set forth in the Report, and (ii) such terms and conditions as are contained in contract documents prepared by the Authority to effectuate the transfer; and be it further

RESOLVED, That the transfer of a 130 kW RNY Power allocation awarded to Producto Corporation, for use at its facility at 2980 Turner Road, Endicott, New York, to Juniper Ring Acquisitions, LLC for use at the same facility, as described in the foregoing Memorandum be, and hereby is, approved subject to (i) such terms and conditions as are set forth in the Report, and (ii) such terms and conditions as are contained in contract documents prepared by the Authority to effectuate the transfer; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements,
b. Financial Operations

i. Release of Funds in Support of the Western New York Power Proceeds Allocation Act

RESOLVED, That the Trustees hereby authorize the release of up to $2.0 million from the Operating Fund to the Western New York Economic Development Fund (“WNYEDF”), to the extent such amount of net earnings is generated for the period from January 1, 2022 through December 31, 2022, as authorized by Chapter 58 of the Laws of 2012 and as discussed in the foregoing memorandum of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the amount of up to $2.0 million to be released to the WNYEDF for the purposes authorized by Chapter 58 described in the foregoing resolution is (a) affirmed by the Trustees to be feasible and advisable and (b) not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That as a condition to making the releases specified in the foregoing resolutions, on the day of such payment the Executive Vice President and Chief Financial Officer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer, the Interim Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolutions, subject to approval as to the form thereof by the Interim Executive Vice President and General Counsel.

ii. Release of Funds in Support of the Northern New York Power Proceeds Allocation Act

RESOLVED, That the Trustees hereby authorize the release of up to $1.0 million from the Operating Fund to the Northern New York Economic Development Fund (“NNYEDF”), to the extent such amount of net earnings is generated for the period from January 1, 2021 through December 31, 2022, as authorized by Chapter 545 of the Laws of 2014 (“Chapter 545”) and as discussed in the Report of the Interim President and Chief Executive Officer; and be it further
RESOLVED, That the amount of up to $1.0 million to be released to the NNYEDF for the purposes authorized by Chapter 545 described in the foregoing resolution is (a) affirmed by the Trustees to be feasible and advisable and (b) not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That as a condition to making the releases specified in the foregoing resolutions, on the day of such payment the Executive Vice President and Chief Financial Officer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Interim Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolutions, subject to approval as to the form thereof by the Interim Executive Vice President and General Counsel.

c. Procurement (Services) Contracts

i. Procurement (Services) and Other Contracts – Business Units and Facilities – Awards, Extensions, and/or Additional Funding

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and Canal Corporation, the award and funding of the multiyear procurement services contracts set forth in the Report of the Interim President and Chief Executive Officer are hereby approved for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the Report; and be it further

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and Canal Corporation, the contracts listed in the Report of the Interim President and Chief Executive Officer are hereby approved and extended for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the Report; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority and Canal Corporation are, and each of them hereby is, authorized on behalf of the Authority and Canal Corporation to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President General Counsel.
ii. Procurement (Services) Contract - Estimating Services On-Call Contract

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award and funding of the five-year contract to the firms listed below in the aggregate not-to-exceed amount of $5,000,000, is hereby authorized for estimating services support of the NYPA project portfolio, and as recommended in the Report of the Interim President and Chief Executive Officer;

<table>
<thead>
<tr>
<th>Contractors</th>
<th>Contract Amount</th>
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<tr>
<td>AECOM USA Inc.</td>
<td>$5,000,000</td>
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<tr>
<td>Burns &amp; McDonnell Consultants, Inc.</td>
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<tr>
<td>d/b/a Burns &amp; McDonnell Consultants, P.C.</td>
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<tr>
<td>CHA Consulting, Inc.</td>
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<tr>
<td>Jingoli Power, LLC</td>
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<td>Tetra Tech, Inc.</td>
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<td>Toll International LLC</td>
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<td>Trophy Point, LLC</td>
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<tr>
<td>WSP, Inc. (Parsons Brinckerhoff Inc.)</td>
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</tbody>
</table>

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

d. Real Estate

i. Clean Path NY Project – Acquisition of 40 Acres of Real Property, Town of Delhi, County of Delaware

RESOLVED, That the Interim President and Chief Executive Officer and the Vice President – Enterprise Shared Services be, and hereby are, authorized to acquire, by purchase or eminent domain, a fee interest in approximately 50.92 acres of real property, presently owned by The Linda S. Brodeur Revocable Trust, located in the Town of Delhi, Delaware County, on substantially the terms set forth herein, subject to approval of documents by the Interim Executive Vice President and General Counsel or her designee; and be it further

RESOLVED, That the Vice President – Enterprise Shared Services, or designee, is hereby authorized to execute any and all other agreements, papers, or instruments on behalf of the Authority that may be deemed necessary or desirable to carry out the foregoing, subject to the approval by the Interim Executive Vice President and General Counsel; and be it further
RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

ii. **Smart Path Connect Project – Acquisition of 33 acres of Real Property, Town of Chateauguay, County of Franklin**

RESOLVED, That the Interim President and Chief Executive Officer and the Vice President – Enterprise Shared Services be, and hereby are, authorized to acquire, by purchase or eminent domain, a fee interest in approximately 33 acres of real property, presently owned by Bilow Realty Holdings, LLC, located in the Town of Chateauguay, Franklin County, on substantially the terms set forth herein, subject to approval of documents by the Interim Executive Vice President and General Counsel or her designee; and be it further

RESOLVED, That the Vice President – Enterprise Shared Services, or designee, is hereby authorized to execute any and all agreements, papers, or instruments on behalf of the Authority that may be deemed necessary or desirable to carry out the foregoing, subject to the approval by the Interim Executive Vice President and General Counsel; and be it further

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

e. **Governance Matters**

i. **Approval of Minutes:**

1. **Minutes of the Joint Meeting of the New York Power Authority’s Trustee and Canal corporation’s Board of Directors held on March 29, 2022**

   On motion made and seconded the Minutes of the Joint Meeting of the New York Power Authority’s Board of Trustees and Canal Corporation’s Board of Directors held on December 7, 2021 were unanimously adopted.
4. Motion to Conduct an Executive Session

“Mr. Chairman, I move that the NYPA and Canal Boards conduct an executive session to discuss the financial and credit history of a particular corporation, pursuant to §105 of the Public Officers Law.”

On motion made by Trustee Trainor and seconded by Trustee McKibben, the members held an Executive Session.

5. Motion to Resume Open Session

Mr. Chairman, I move to resume the meeting in Open Session.” On motion by Trustee Balboni and seconded by Trustee McKibben, the meeting resumed in Open Session.

Chairman Koelmel said that no votes were taken during the Executive Session.

6. Next meeting

The regular joint meeting of the New York Power Authority’s Board of Trustees and the Canal Corporation’s Board of Directors will be held on May 24, 2022 unless otherwise designated by the Chairman with the concurrence of the Trustees.

Closing

On motion made by Trustee Balboni and seconded by Trustee McKibben, the meeting was adjourned at approximately 12:20 pm.

Karen Delince
Karen Delince
Corporate Secretary
4. **Motion to Conduct an Executive Session**

I move that we conduct an executive session to discuss the financial and credit history of a particular corporation (pursuant to §105 of the Public Officers Law).
May 24, 2022

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

I move to resume the meeting in Open Session.
May 24, 2022

6. **Next Meeting**

The next joint meeting of the New York Power Authority’s Board of Trustees and the Canal Corporation’s Board of Directors will be held on July 26, 2022, unless otherwise designated by the Chairman with the concurrence of the members.