

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

April 26, 1994

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Minutes of a Regular Meeting of the Power Authority of the State of New York held at the New York Office at 10:00 a.m.

Present: Linda P. Duch, Trustee
Hyman M. Miller, Trustee
Robert T. Waldbauer, Trustee

S. David Freeman	President and Chief Executive Officer
Robert G. Schoenberger	First Executive President and Chief Operating Officer
John F. English	Executive Vice President - System Operations
Robert A. Hiney	Executive Vice President - Marketing and Development
William A. Josiger	Acting Executive Vice President - Nuclear Generation
Robert L. Tscherne	Executive Vice President - Finance and Administration
Charles M. Pratt	Senior Vice President and General Counsel
Alvin I. Becker	Vice President and Chief Accounting Officer
Paul Borer	Vice President - Nuclear Engineering
Vincent Eckdahl	Vice President - Corporate Controller
Deborah L. Estrin	Vice President - Human Resources
John M. Hoff	Vice President - Procurement and Real Estate
Sally L. Irving	Vice President - Corporate Finance
John L. Lenney	Vice President - Public Affairs
Phillip J. Pellegrino	Vice President - Power Sales and Rates
Vincent J. Tobin	Vice President - Government & Public Policy Affairs
Michael F. Woods	Vice President - Industrial Economic Development
John F. Duffy	First Assistant General Counsel
Ronald W. Ciamaga	Resident Manager - St. Lawrence/FDR Power Project
Richard E. Kuntz	Resident Manager - Charles Poletti Power Project
James J. McCarthy	Resident Manager - Blenheim-Gilboa Power Project
John W. Blake	Director - Environmental Programs
Arthur M. Brennan	Director - Facility Planning and Budgets
Joseph J. Brennan	Director - Internal Affairs
Jules G. Franko	Director - Nuclear Operations
William Harrington	Director - Security, Safety and Fire Protection
Stephen P. Shoenholz	Director - Public Relations

Also present:

William J. Cahill

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Laura M. Badamo	Assistant Secretary - Legal Affairs
Vernadine E. Quan-Soon	Assistant Secretary - Corporate Affairs
Anne Wagner-Findeisen	Corporate Secretary

Acting Vice Chairman Waldbauer presided and Secretary Wagner-Findeisen kept the Minutes.

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1. Approval of the Minutes

The minutes of the Regular Meeting of April 26, 1994 were approved.

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2. **Report from the President and Chief Executive Officer**

The President submitted the following report:

President Freeman introduced Mr. William Cahill who has accepted the position of Chief Nuclear Officer at the Authority.

The President reported the amicable settlement of several labor arbitrations and discussed the status of negotiations with replacement power customers. He outlined the parameters of the 90-day restructuring and cost reduction evaluation currently being undertaken by staff, and indicated that a progress report will be presented to the Trustees at the next meeting. He further stated that the relicensing effort for St. Lawrence has been initiated by staff in appreciation of the fact, based on the experience of other utilities that significant lead time is essential to accomplish the many tasks needed for successful relicensing.

The President also introduced Ms. Deborah Estrin, the new Vice President of Human Resources.

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3. **Financial Reports for the Three Months Ended March 31, 1994**

The Executive Vice President - Finance and Administration submitted the following report:

In response to questions from Trustee Duch, President Freeman and Mr. Tscherne advised that the travel budget has been reduced by 25%. The President explained that overall, staff is expending less than the budget authorized by the Trustees. Trustee Duch indicated that the Trustees wish to be informed of any significant changes to current budget targets.

In response to questions from Trustee Miller, President Freeman affirmed that the approval of the Trustees would be sought for any agreement ultimately achieved with the replacement power customers.

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4. Allocation of Available Replacement Power

The President submitted the following report:

SUMMARY

"The Trustees are requested to approve allocations of available Replacement Power pursuant to the 1988 Replacement Power Settlement Agreement.

BACKGROUND

"The Niagara Redevelopment Act requires that the Authority contract to sell 445,000 kW of 'Replacement Power' to the Niagara Mohawk Power Corporation ('Niagara Mohawk') for resale generally to the industries which purchased power produced by Niagara Mohawk's Schoellkopf and Adams generating plants (collectively known as 'Project 16') in order to, as nearly as possible, restore low power costs to such industries and for the same general purposes for which Project 16 power was utilized. In 1961, Niagara Mohawk and the Authority entered into Contract NS-1, and all 445,000 kW of Replacement Power were allocated to industrial customers. However, by 1978, 111,250 kW, which had been relinquished by some of the original allottees, were not reallocated to industrial customers, and several commenced litigation seeking its reallocation (Airco, Inc., et al. v. Niagara Mohawk and Power Authority).

"In January 1982, the parties to the litigation executed the Replacement Power Settlement Agreement ('1982 Settlement Agreement') which reallocated the relinquished Replacement Power to industrial customers of Niagara Mohawk and set forth procedures to be followed and criteria to be considered in future reallocation of any available Replacement Power. In March 1982, several industries not party to the 1982 Settlement Agreement commenced an action against the Authority, Niagara Mohawk and other industrial customers seeking among other things to set aside the 1982 Settlement Agreement and redistribute the 111,250 kW exclusively to the initial allottees of Replacement Power (the 'Bethlehem Steel action').

"At their meeting of May 24, 1988, the Trustees approved a new settlement agreement ('1988 Settlement Agreement') between all the parties to the Bethlehem Steel action, except Bethlehem Steel, as well as all the then current allottees of Replacement Power who were not parties to the litigation. The 1988 Settlement Agreement was then approved by the State of New York Supreme Court. This Agreement provided for specific allocations to four companies and slightly modified some of the future allocation criteria set forth in the 1982 Settlement Agreement.

"The 1988 Settlement Agreement requires that future Replacement Power allocations be made on December 31, 1990 and each succeeding third year or any time 10,000 kW or more becomes available, but not more than once in any 18 month period. When power becomes available, Niagara Mohawk is required to notify the Authority and the existing Replacement Power recipients, and the Authority is then responsible for publicizing its availability.

"Since the last allocations of available Replacement Power were made in April 1991, 18,295 kW of power have become available. 1,495 kW were withdrawn from two companies which were not meeting their employment commitments. 7,650 kW were relinquished by 5 companies who did not undertake their proposed projects on a timely basis. 1,050 kW became available when two companies closed their facilities. One company voluntarily relinquished 8,100 kW of power it no longer needed.

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DISCUSSION

"In accordance with the terms of the 1988 Settlement Agreement, Niagara Mohawk notified the Authority and the existing Replacement Power recipients regarding the availability of this power on October 1, 1993. NYPA staff notified its Expansion Power and JAF industrial customers who could possibly expand in western New York and sent notices to western New York economic developers. Commencing October 14, 1993, advertisements were placed in two Canadian newspapers, three western New York publications, and the mid-western and eastern editions of the Wall Street Journal. Thirty-eight requests for applications were received. Of these, 19 facilities subsequently filed applications for approximately 53 MW.

"The 1988 Settlement Agreement provides that applications are to be evaluated on a competitive basis and must show at a minimum the following:

- 1) that applicant proposes to build new or expand existing industrial manufacturing facilities located within 30 miles of the Authority's Niagara Project Switchyard;
- 2) that applicant's proposed project will result in the creation of at least ten new jobs per MW at the facility at which the power is to be used or in related facilities which the applicant owns or operates in the State of New York; and
- 3) that applicant's proposed expansion will result in an economic benefit to the Niagara Frontier and the people of the State of New York.

"Authority staff, together with Niagara Mohawk, reviewed the applications and contacted the various applicants for more detailed information relevant to the selection process. Fifteen companies have been selected to be recommended to receive Replacement Power allocations.

"The available Replacement Power is recommended to be allocated among the 15 facilities as shown in Exhibit `4-A'. The table shows the amount of power requested by each company, the recommended allocation and the additional employment and capital investment which will be created by these projects. These applicants have agreed to proceed with their proposed projects with the amounts of power recommended. Also attached is a summary (Exhibit `4-B') of each of the applicants' proposals. If these proposed allocations are approved by the Authority's Trustees, Niagara Mohawk is prepared to allocate the power in accordance with Exhibit `4-A'. These projects will help to maintain and diversify the industrial base of western New York and will provide new opportunities of employment for the people of Niagara and Erie counties. They are projected to result in the creation of approximately 3,280 jobs at the facilities with an annual payroll, including benefits, of \$153 million and capital investment of \$195 million for buildings, machinery and equipment.

"Four facilities are not recommended for allocations. One company will instead utilize the unused portion of its existing allocation which was approved in 1991. Another company's power requirement was not large enough to take the minimum allocation amount. The other two companies could not commit to job growth over existing levels as called for in the Settlement Agreement.

RECOMMENDATION

"The Vice President - Industrial Economic Development recommends that the Trustees approve the allocations of Replacement Power as set forth herein.

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"The Senior Vice President - Power Contracts, the Senior Vice President and General Counsel, the Executive Vice President - Marketing and Development, the First Executive Vice President and Chief Operating Officer, and I concur in the recommendation."

Trustee Duch stated for the record, with regard to the proposed allocations, that she serves on the board of the Western New York Economic Development Corporation.

The following resolution, as recommended by the President, was unanimously adopted:

RESOLVED, That allocations of available Replacement Power as described in the foregoing report of the President be approved; and be it further

RESOLVED, That the Senior Vice President - Power Contracts or his designee be, and hereby is, authorized to execute any and all documents necessary or desirable to effectuate the above allocations.

5. Increased Fitzpatrick Power Reservations to New York City Public Utility Service and County of Westchester Public Utility Service Agency

The President submitted the following report:

SUMMARY

"The Trustees are requested to approve increased reservations of firm FitzPatrick power and related energy for the New York City Public Utility Service ('NYCPUS') and the County of Westchester Public Utility Service Agency ('COWPUSA') for ultimate allocation to and resale by those agencies for industrial economic development purposes. The Trustees are also requested to approve an allocation of industrial power to a business that COWPUSA is proposing to serve.

BACKGROUND

"The Authority has power supply contracts with NYCPUS and COWPUSA dated September 10, 1990 ('the Contracts'). Under the Contracts the Authority has reserved FitzPatrick power in the amounts of 33,150 kW and 3,690 kW for NYCPUS and COWPUSA, respectively, to be made available for resale by the agencies for industrial economic development purposes. This block of power is not Economic Development Power as established under Chapter 32 of the 1987 Laws of New York. Rather, this power is part of a 50,000 kW industrial development block made available to downstate municipal distribution agencies (including NYCPUS and COWPUSA) by the Authority in 1985. The agencies purchase the power under the Authority's Service Tariff No. 35 (Firm Nuclear Power Service - Industrial Economic Development). Individual allocations by the agencies must be approved by the Authority Trustees consistent with the Authority's regulations concerning allocations of power for industrial economic development (21 NYCRR Part 460).

"The power is delivered to ultimate customers of NYCPUS and COWPUSA by the Consolidated Edison Company of New York, Inc. ('Con Edison') under the terms of an October 23, 1987 agreement with NYCPUS and an April 24, 1987 agreement with COWPUSA. Con Edison has contracted with the two agencies to deliver to ultimate customers no more than 50 megawatts for NYCPUS and 10 megawatts for COWPUSA.

DISCUSSION

"Currently, 29,900 kW of NYCPUS's reservation has been allocated for resale to industrial customers approved by the Authority, while 3,400 kW of COWPUSA's reservation has been so allocated. The attached table (Exhibit '5-A') lists the individual allocations and associated job commitments. Both agencies have requested that their FitzPatrick power reservations be increased to the maximum amounts Con Edison has agreed to deliver.

"The Contracts include a provision entitled 'Other Classes of Power and Energy' under which the Authority may make additional amounts of power and energy available under Service Tariff No. 35.

"World Class Film Corp. ('World Class Film') is a privately held firm with facilities in Yonkers, as well as Flemington, New Jersey. The company produces extruded polyethylene film rolls, sheeting and bags. The process is energy intensive. In Yonkers, electricity represents more than 17 percent of production costs exclusive of raw materials. The industry average is about 12 percent. Economic development incentive rates are being offered for the New Jersey site, which is a 100,000 square foot plant offering ample space for relocation. When

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the present ownership acquired World Class Film in 1992, sales were doubled and electrical demand increased from 700 kW to 1,700 kW today. The company presently employs 105 people. World Class Film will spend approximately \$2.3 million on new extrusion and related equipment and increase its demand by about 500 kW. Employment will grow by at least 25 people.

"COWPUSA has requested 2,200 kW of FitzPatrick industrial power to serve World Class Film to secure the expansion project and continued operation of the entire Yonkers facility. To reduce energy consumption, the company has installed variable speed drive motors and high efficiency lighting and participated in Con Edison's DSM rebate program. The proposed 10-year allocation would save World Class Film approximately \$185,000 annually over Con Edison's standard rates. Following is a tabulation of pertinent information involving this allocation.

<u>Projected Investment</u>	<u>Allocation</u>	<u>Jobs</u>			<u>Ratio Jobs/MW</u>	<u>Estimated Savings</u>
		<u>New</u>	<u>Retained</u>	<u>Total</u>		
\$2.3 M	2200 kW	25	105	130	59	\$185,000

"The proposed allocation has been reviewed in accordance with Part 460 of the Authority's Rules and Regulations. The contract between World Class Film and COWPUSA will provide for reductions in the allocation in the event that employment or power usage levels are not maintained at specified levels. Reports regarding employment and affirmative action commitments will be submitted to the Authority by COWPUSA in accordance with the Authority's power supply contract with COWPUSA.

RECOMMENDATION

"The sale of power under the Contracts for industrial development purposes has contributed to the creation and retention of thousands of jobs in New York City and Westchester. Increasing the reservations as requested should serve to create or protect more jobs. Accordingly, the Senior Vice President - Power Contracts recommends that he be authorized to execute letter agreements with NYCPUS and COWPUSA increasing the reservations of FitzPatrick power for industrial development purposes - by 16,850 kW for NYCPUS and by 6,310 kW for COWPUSA.

"The Senior Vice President - Power Contracts also recommends that the Trustees approve an allocation of 2,200 kW of FitzPatrick industrial power to COWPUSA for resale to World Class Film. Such allocation would be provided from COWPUSA's increased reservation as recommended herein.

"The Senior Vice President and General Counsel, the Executive Vice President - Marketing and Development, the First Executive Vice President and Chief Operating Officer, and I concur in the recommendation."

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The following resolution, as recommended by the President, was unanimously adopted:

RESOLVED, That the Senior Vice President - Power Contracts be, and hereby is, authorized to execute letter agreements with New York City Public Utility Service and County of Westchester Public Utility Service Agency increasing by 16,850 kW and 6,310 kW, respectively, the reservations for those agencies of FitzPatrick power for industrial development purposes; and be it further

RESOLVED, That the County of Westchester Public Utility Service Agency's request for an allocation of 2,200 kW of FitzPatrick industrial development power for resale to World Class Film Corp. be, and hereby is, approved.

Exhibit `5-A'
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JAF INDUSTRIAL DEVELOPMENT ALLOCATIONS
NEW YORK CITY & WESTCHESTER CO. MDA's

<u>MDA</u>	<u>RESERVED</u> <u>(kW)</u>	<u>ALLOCATED</u> <u>(kW)</u>	<u>INDUSTRIAL</u> <u>CUSTOMER</u>	<u>ALLOCATION</u> <u>(kW)</u>	<u>JOBS</u> <u>COMMITTED</u>
New York	33,150	29,900			
			Brenner Paper Company	700	165
			Eagle Electric Manufacturer	500	1,300
			EDO Corporation	1,300	275
			Hunts Point Coop Market	5,100	2,400
			Morgan Guaranty Trust	12,500	4,300
			New York Envelope	2,100	650
			New York Post	2,300	711
			New York Times	4,500	3,000
			Pen-Tab Industries	900	245
Westchester	3,690	3,400			
			Excelsior Transparent Bag Mfg.	700	180
			Mearl Corporation	1,700	405
			Precision Valve Corp.	<u>1,000</u>	<u>254</u>
TOTAL				<u>33,300</u>	<u>13,885</u>

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6. New York City Public Utility Service - Allocation of FitzPatrick Power to Goldman, Sachs & Co.

The President submitted the following report:

SUMMARY

"The Trustees are requested to approve the sale of 4.5 MW of FitzPatrick Power to the New York City Public Utility Service ('NYCPUS') for resale to Goldman, Sachs & Co. ('Goldman Sachs').

BACKGROUND

"At its meeting of July 8, 1993, the Economic Development Power Allocation Board ('EDPAB') recommended an allocation of 3.5 MW of Economic Development Power ('EDP') to NYCPUS for resale to Goldman Sachs for job retention purposes. At a meeting of EDPAB on November 9, 1993, NYCPUS submitted an amended application on behalf of Goldman Sachs requesting an additional allocation of 1 MW for business expansion and job creation purposes. The application was reviewed and discussed favorably; however, there were insufficient votes to take action as required by Section 182 of the Economic Development Law on the amended application and it was tabled for consideration at a subsequent meeting.

"It is proposed that beginning May 1, 1994, the Authority sell 4.5 MW of FitzPatrick power to NYCPUS for resale to Goldman Sachs as follows: 3.5 MW of EDP would be allocated as recommended by EDPAB. An additional 1 MW would be allocated from a separate block of FitzPatrick industrial power reserved for NYCPUS under the contract between the Authority and NYCPUS. This allocation would be converted to EDP upon the recommendation of EDPAB.

DISCUSSION

"Goldman Sachs is a partnership providing investment banking and brokerage services. The firm is planning to upgrade and expand its operating and supporting service facilities. Space costs including electricity are significantly lower at several out-of-state locations that were examined by Goldman Sachs. Three New Jersey sites were offered with incentives for the firm. New York City proposed several incentives, including FitzPatrick Power, to retain Goldman Sachs' operations in New York with a commitment to maintain all the firm's jobs in New York.

"Goldman Sachs will reconstruct its trading facilities on four floors at 85 Broad Street at a cost that will exceed \$35 million. The firm also will reconstruct and occupy 170,000 square feet of space at One New York Plaza at a cost of more than \$16 million. Goldman Sachs would commit to increase its workforce by 300 jobs to a total of 4,800 citywide with the total allocation of 4.5 MW, resulting in a ratio of 1066 jobs per MW of power. The allocation of EDP would have a ten year term. Energy efficient lighting and space conditioning equipment will be utilized in the reconstruction. Additionally, a computerized energy management system will be installed at 85 Broad Street, which is totally occupied by the firm. The 10-year allocation would save Goldman Sachs approximately

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\$800,000 annually over Consolidated Edison's standard rates. NYCPUS strongly supports the proposed allocation of power.

<u>Projected Investment</u>	<u>Allocation</u>	<u>Jobs</u>			<u>Ratio</u>	<u>Estimated</u>	
		<u>Created</u>	<u>Retained</u>	<u>Total</u>		<u>Jobs/MW</u>	<u>Annual Savings</u>
\$35.0 M - 85 Broad St.	4.5 MW	300	4500	4,800	1,066	\$800,000	
\$16.4 M - 1 NY Plaza							

"The proposed allocation has been reviewed in accordance with Part 460 of the Authority's Rules and Regulations (Procedures for Allocation of Industrial Power and Enforcement of Contracts (21 NYCRR 460 (1988))). The contract between Goldman Sachs and NYCPUS (Exhibit `6-A') provides for reductions in the allocation in the event that employment or power usage levels are not maintained at specified levels. Reports regarding employment and affirmative action commitments will be submitted to the Authority by NYCPUS as provided by Part 460.4 of the Authority's Rules and Regulations and pursuant to the contract between the Authority and NYCPUS.

RECOMMENDATION

"The Vice President - Industrial Economic Development recommends that the Trustees approve the allocation of 4.5 MW of FitzPatrick Power to Goldman Sachs as described in the foregoing memorandum.

"The Senior Vice President - Power Contracts, the Senior Vice President and General Counsel, the Executive Vice President - Marketing and Development, the First Executive Vice President and Chief Operating Officer, and I concur in the recommendation."

The following resolution, as recommended by the President, was unanimously adopted:

RESOLVED, That the Authority hereby approves the allocation of 4.5 MW of FitzPatrick Power to Goldman, Sachs & Co., substantially in accordance with the terms described in the foregoing report of the President; and be it further

RESOLVED, That the Senior Vice President - Power Contracts or his designee be, and hereby is, authorized to execute any and all documents necessary or desirable to effectuate the above allocations.

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7. **High Efficiency Lighting Program (HELP) - Expenditure Authorizations and Extension of Repayment Periods**

The President submitted the following report:

SUMMARY

"The Trustees are requested to authorize additional expenditures of \$40 million and \$5 million to fund electricity saving measures for school district facilities and community colleges eligible for Public Schools HELP and for Long Island HELP, respectively. The Trustees are also requested to extend the maximum customer repayment period from seven to ten years for the Public Schools, Statewide, and Long Island HELP programs.

BACKGROUND

"Public Schools HELP is a turn-key approach to identifying, procuring, and implementing energy efficient capital improvements in public school district and community college facilities located outside of the Long Island Lighting Company ('LILCO') and Consolidated Edison Company of New York, Inc. ('Con Edison') service areas. There are more than 2,200 public school facilities and 34 public community colleges located throughout New York State that could benefit from this program.

"At their meeting of February 23, 1993, the Trustees authorized an initial expenditure of \$10 million to bring the benefits of HELP to these schools. In order to expedite Public Schools HELP work, the Trustees authorized the initial use of those implementation contractors utilized for SENY, Statewide, and Long Island HELP. Based on relatively high electricity costs, community colleges and eligible facilities in Orange and Rockland Counties were targeted first during 1993. In the second half of 1993, the program was expanded to include public schools throughout the State. Response to the Public Schools HELP has been extremely enthusiastic with almost 100 Cost Recovery Agreements signed to date. At this point, total project costs for participating school districts would exceed the initial program funding.

"At their meeting of February 27, 1992, the Trustees authorized an initial expenditure of \$35 million to fund electricity saving measures for school district facilities on Long Island. Long Island HELP has been a great success with participation greater than anticipated. Over ninety Cost Recovery Agreements, covering about three quarters of the eligible school districts have been finalized in Long Island HELP. Initial funding will not be adequate to complete the program.

"In the Authority's Statewide, Long Island, and Public Schools HELP programs, Investor Owned Utility ('IOU') rebates have been an integral component of the economics of HELP programs. Typically, their rebate programs have reduced project costs (and customer payback) by 20 percent to 25 percent. These rebates are being significantly reduced as a result of declining long run avoided costs, excess capacity reserves and concerns over related rate impacts.¹

¹ The average reduction in rebates through 1994 has been 50 percent.

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DISCUSSION

"In order to expeditiously meet the current Public Schools HELP demands, an additional \$40 million is needed to provide installation services over the next three years. Public Schools HELP will be a long term program, continuing over the next five to seven years at a total cost of approximately \$75 million. There are more than 450 school districts eligible to participate.

"It is proposed that the Authority continue its arrangement for installation of conservation measures in schools through the use of implementation contractors. Staff is planning on issuing a request for proposals in late May 1994, to bid the implementation contract work if the additional funding authorization is approved by the Trustees. It has been several years since the work has been bid, and a competitive solicitation would identify whether any other competent vendors can provide the requisite services. Contract awards will be submitted to the Trustees for approval following the competitive solicitation.

"The reduction in utility rebates will preclude many school districts from undertaking beneficial energy conservation projects. In fact, at pre-existing rebate levels, staff has encountered difficulty in maintaining positive cash flow for certain school district projects due to the relatively short operating hours in school buildings which result in extended payback periods for participants. While utility rates have been increasing, it has not been enough to offset poor cash flow.

"A viable means of avoiding lost opportunities is to extend the customer repayment period for HELP work to ten years where warranted. This will allow otherwise cost effective projects to be unaffected by declining IOU rebates and will permit a targeted ten percent of the savings to be shared with participants during the repayment period. The ten year repayment period will be offered only where required and is not expected to occur for more than three or four projects in ten that are implemented. Inducements (such as lower interest rates) will be offered in return for a shorter repayment period by the customers. Similarly, projects in the Statewide HELP program are also being affected by reduced rebate levels and ten year financing will be offered in that program, subject to the same screening criteria indicated for schools.

"Finally, it is requested that additional funds in the amount of \$5 million be approved for the Long Island schools program in order to complete planned installations. This action will provide adequate funding to conclude Long Island HELP by year end 1995, with no further funding increases anticipated.

FISCAL INFORMATION

"Public Schools HELP expenditures will be provided from the Energy Conservation Effectuation and Construction Fund through total funding of \$50 million. The total Long Island HELP funding will increase to \$40 million. These costs will be recovered over a period not to exceed ten years from the date each project is completed, together with the cost of advancing funds, from each of the participating customers.

RECOMMENDATION

"The Vice President - Power Sales and Rates recommends that the Trustees authorize the proposed funding increases for Public Schools and Long Island HELP, consistent with the foregoing and the attached resolution. It is also recommended that the Trustees authorize an increase in the maximum term of financing provided for the various HELP programs from seven years to ten years.

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"The Senior Vice President and General Counsel, the Executive Vice President - Finance and Administration, the Executive Vice President - Marketing and Development, the First Executive Vice President and Chief Operating officer, and I concur in the recommendation."

In response to questions from Trustee Miller, Mr. Pellegrino stated that to date all repayments to the Authority have been timely made.

The following resolution, as recommended by the President, was unanimously adopted:

RESOLVED, That the maximum repayment period for Statewide, Long Island and Public Schools HELP energy conservation financing be extended to ten years; and be it further

RESOLVED, That expenditures are hereby approved as recommended in the foregoing report of the President, in the amounts and for the purposes listed below:

<u>Energy Conservation Effectuation and Construction Fund</u>	<u>Total Expenditure Authorization</u>
Public Schools HELP	\$50,000,000
Long Island HELP	\$40,000,000

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**8. Southeast New York (SENY) Public Customers
Power Contracts - Approval of Transfer of Service**

The President submitted the following report:

SUMMARY

"The Trustees are requested to authorize transfers of service pursuant to Section 454.10 of the Authority's Rules and Regulations for Power Service (21 NYCRR 454.10) with respect to eligible SENY public customers.

BACKGROUND

"In accordance with the provisions of Section 1005 of the Public Authorities Law, the Authority provides firm power service to public corporations in New York City and Westchester County. These customers include, among others, the Metropolitan Transportation Authority, the Port Authority of New York and New Jersey, the City of New York, New York State and various towns, villages and school districts located in Westchester County. The initial contracts with SENY governmental customers were entered into in the 1970s. The only new contracts since then were with the New York Convention Center Operating Corporation and Roosevelt Island Operating Corporation, respectively.

"However, the Authority has extended service to other public corporations located in Westchester County which, while eligible to contract independently with the Authority, receive service under the terms of another public corporation's contract. For example, the Authority has contracts with towns and villages under which service is provided to school districts in addition to municipal accounts. In such cases, the municipality pays the Authority's bill and is reimbursed by the school district.

"This practice has been encouraged by the Authority in order to minimize administrative costs and to avoid the need to engage in the lengthy and expensive process of entering into a new contract under the Public Authorities Law. However, staff has been informed periodically by some customers that they would like to be relieved of the responsibility for other independent public accounts, and that likewise, some entities served under another entity's contract would prefer to have their own contract for power service. Accordingly, staff surveyed the affected entities to ascertain the level of interest in having separate contracts for power service. The 25 entities noted in Exhibit '8-A' are those which have responded to date, expressing a desire for a separate contract.

DISCUSSION

"Section 454.10 of the Authority's Rules and Regulations provides that, subject to the Authority's written approval, a voluntary transfer, in this case an assignment, of the right to electric service of an existing Authority customer can be made to another eligible customer.

"When the right to receive electric service is obtained by voluntary transfer, section 454.10 requires that the entity acquiring the right become subject to the Authority's Rules and Regulations and the applicable sales tariff or other contractual arrangements between the Authority and the original customer.

"A transfer of service pursuant to section 454.10 will allow the Authority to deal directly with the affected new

customers regarding electric service, and remove the administrative burden from the existing customers which act as

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liaison with the Authority, especially with regard to billing matters. The Town of Greenburgh, as an example, will realize a significant benefit from this action as it will be relieved of administering the billing for 11 school and fire districts.

"The proposed transfer of service will enhance customer service to the Authority's existing customers and enable the Authority to deal more expediently with the proposed transferees regarding contract matters and in marketing Authority programs including the High Efficiency Lighting Program ('HELP').

RECOMMENDATION

"The Vice President - Power Sales and Rates recommends that he be authorized to execute Transfers of Service agreements pursuant to section 454.10 of the Authority's Rules and Regulations with respect to eligible SENY public customers commencing with the 25 entities described above.

"The Senior Vice President and General Counsel, the Executive Vice President - Marketing and Development, the First Executive Vice President and Chief Operating Officer, and I concur in the recommendation."

The following resolution, as recommended by the President, was unanimously adopted:

RESOLVED, That the Authority authorizes the Vice President - Power Sales and Rates to execute Transfer of Service agreements with eligible SENY public customers pursuant to section 454.10 of the Authority's Rules and Regulations (21 NYCRR 454.10); and be it further

RESOLVED, That the Vice President - Power Sales and Rates be, and hereby is, authorized to execute Transfers of Service between the Authority, the transferees and the customers shown in Exhibit "8-A", such that the transfers be accomplished in accordance with section 454.10 of the Authority's Rules and Regulations for Power Service.

9. Forward Supply Agreements for the Escrows Created by the Series 'N', 'U' and 'V' Refundings

The President submitted the following report:

SUMMARY

"The Trustees are requested to authorize a bid solicitation for Forward Supply Agreements relating to its Series 'N', Series 'U', and Series 'V' escrow funds, and authorize the President and Chief Executive Officer, First Executive Vice President and Chief Operating Office, Executive Vice President - Finance and Administration, Vice President - Corporate Finance, or Treasurer to enter into one or more of such Forward Supply Agreements, on behalf of the Authority, with the winning bidder of such solicitation, with each such Agreement being substantially in the form attached hereto as Exhibit '9-A', provided that the effectuation of a particular Agreement shall be contingent upon such Agreement resulting in at least a certain minimum premium being paid to the Authority.

BACKGROUND

"Refunding escrows established with proceeds from the sale of Series N, U and V Bonds contain Treasury securities that mature prior to the date the proceeds are actually needed in the escrow to meet the interest and principal payments due on the refunded bonds. The escrow agreements permit the Trustee (at the direction of the Authority) to reinvest these monies until the date needed and pay the earnings to the Authority provided that the investment does not violate yield or total earnings limitations contained in the arbitrage certificates.

"A Forward Supply Agreement, also referred to as a 'Float Contract', allows the Authority to transfer future interest rate risk in its refunding escrows to a third party. The Authority can receive cash today for the inefficiencies in its refunding escrows. These inefficiencies arise because existing securities in the escrow mature on dates prior to the dates on which their proceeds are actually spent on debt service on the refunded bonds. The Authority could wait until those securities mature and then invest them at the then-prevailing short-term interest rates. A Forward Supply Agreement, however, would allow the Authority to avoid that reinvestment risk and lock in cash up-front for the present value of the future reinvestment income.

DISCUSSION

"Under current market conditions the Authority could enter into Forward Supply Agreements for the three series and receive an aggregate lump sum payment under the three agreements of approximately \$5 million. This money would then be invested at current interest rates and would earn an estimated \$1.4 million in additional income over the life of the escrows as opposed to reinvesting escrow proceeds as they come due. Most of the benefit will be realized in the first six years and is equivalent to \$200,000 annually for such period.

"In summary, the Forward Supply Agreements would transfer interest rate risk to the provider, allow the Authority to earn a greater return on its money, eliminate the inefficiencies in the escrow account and reduce the administrative burden and legal costs associated with the reinvestment of escrow securities.

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"A Forward Supply Agreement was used successfully in the issuance of the Series CC bonds to produce additional savings. With the Trustees' approval of a similar transaction for the existing Series N, U and V escrows, staff intends to solicit competitive bids in accordance with the Authority's Investment Guidelines from ten providers, four of whom are minority bankers. The Authority would not enter into a Forward Supply Agreement for an escrow fund unless: (a) for the Series N escrow fund, a premium of at least \$3 million is obtained from the transaction; (b) for the Series U escrow fund, a premium of at least \$1.7 million is obtained from the transaction; and (c) for the Series V escrow fund, a premium of at least \$400,000 is obtained from the transaction.

RECOMMENDATION

"The Vice President - Corporate Finance recommends that the Trustees approve the solicitation of bids for Forward Supply Agreements relating to the Series N, U, and V escrow funds, and authorize the President and Chief Executive Officer, First Executive Vice President and Chief Operating Officer, Executive Vice President - Finance and Administration, Vice President - Corporate Finance, or Treasurer to enter into one or more Forward Supply Agreements with the winning bidder under the solicitation, with each such Agreement being substantially in the form attached hereto as Exhibit `9-A', provided that the effectuation of a particular Agreement shall be contingent upon such Agreement resulting in at least the specified minimum premium being paid to the Authority.

"The Senior Vice President and General Counsel, the Executive Vice President - Finance and Administration, the First Executive Vice President and Chief Operating Officer, and I concur in the recommendation."

The following resolution, as recommended by the President, was unanimously adopted:

BE IT RESOLVED by the Trustees of the Power Authority of the State of New York, that the Authority hereby authorizes the Vice President - Corporate Finance (1) to solicit bids for Forward Supply Agreements relating to the Series N, U, and V escrow funds, with such bid solicitation having such terms and conditions as the Vice President - Corporate Finance deem necessary or desirable, and (2) to select the winning bidder of such solicitation and select one or more of the escrow funds for which the Authority will enter into Forward Supply Agreements, with such selections being based on the individual premiums being offered for the Forward Supply Agreements and the yield and total earnings limitations applicable to the escrow funds, provided, however, that in no event shall a Forward Supply Agreement be entered into: (a) for the Series N escrow fund unless a premium of at least \$3 million is obtained from the transaction; (b) for the Series U escrow fund unless a premium of at least \$1.7 million is obtained from the transaction; and (c) for the Series V escrow fund unless a premium of at least \$400,000 is obtained from the transaction; and be it further

RESOLVED, That the President and Chief Executive Officer, Executive Vice President - Finance and Administration, Vice President - Corporate Finance, and Treasurer are, and each hereby is, authorized to enter into one or more Forward Supply Agreements, on behalf of the Authority, with the winning bidder of such solicitation, with each such Agreement being substantially in the form attached hereto as Exhibit "9-A", with such amendments, insertions, deletions, and supplements as shall be approved as necessary or desirable by the officer executing each such Agreement, such approval to be evidenced conclusively by such execution; and be it further

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RESOLVED, That the President and Chief Executive Officer, Executive Vice President - Finance and Administration, Vice President - Corporate Finance, and Treasurer are, and each hereby is, authorized to execute such amendments to each of the Forward Supply Agreements as the President and Chief Executive Officer, Executive Vice President - Finance and Administration, Vice President - Corporate Finance, or Treasurer deems necessary or desirable; and to do and perform or cause to be done and performed in the name and on behalf of the Authority, all other acts, to execute and deliver or cause to be executed and delivered all other notices, requests, demands, directions, consents, approvals, orders, applications, agreements, certificates, supplements, and further assurances or other communications of any kind under the corporate seal of the Authority or otherwise as he, she or they may deem necessary, advisable or appropriate to effect the intent of the foregoing resolutions or to comply with the requirements of each of the Forward Supply Agreements.

10. 1993 Annual Report of Procurement Contracts and Annual Review of Open Procurement Contracts

The President submitted the following report:

SUMMARY

"The Trustees are requested to approve the 1993 Annual Report of Procurement Contracts (Exhibit `10-A-1') and the amended Guidelines for Procurement Contracts (Exhibit `10-A-2'), and to review open service contracts exceeding a year detailed in the Annual Report (Exhibit `10-A-3').

BACKGROUND

"Section 2879 of the Public Authorities Law governing the administration and award of procurement contracts equal to or greater than \$5,000, as amended by the Laws of 1988, requires the Authority to annually prepare and approve a report on such contracts. The annual report must include a copy of the Authority's current procurement guidelines, details concerning any changes to the Guidelines during the year and particular information concerning procurement contracts. The following additional information for each procurement contract included in the report must be identified: a description of duties performed by the contractor; the date of the contract and its duration; the total amount of the contract; the amount spent on the contract during the reporting period and for the term of the contract to date; the method of awarding the contract (e.g., competitive bidding, competitive search, or sole source); the location, either New York State or `foreign' (non - New York State), where the service was substantially performed or where the goods were substantially manufactured, produced or assembled; the status of the contract; and reasons why any such contract was not noticed in the Contract Reporter.

"Section 2879 also requires public authorities to adopt comprehensive guidelines detailing the Authority's operative policy and instructions concerning the use, awarding, monitoring and reporting of procurement contracts. It also requires authorities to review and approve such guidelines annually.

"The Authority's current guidelines were approved by the Trustees at their meeting of October 31, 1989, were implemented as of January 1, 1990, and have been amended by the Trustees each year since their initial adoption.

"Finally, Section 2879 requires an annual review by the Trustees of open service contracts exceeding one year. Those long term service contracts exceeding a year and awarded after January 1, 1990 are included in the Annual Report. Open service contracts awarded prior to January 1, 1990 are listed in Exhibit `10-A-3'.

DISCUSSION

"The 1993 Annual Report of Procurement Contracts is attached for review and approval by the Trustees (Exhibit `10-A-1'). This report reflects activity for all procurement contracts equal to or greater than \$5,000, as identified by the Authority's PARIS system, that were open, closed, or awarded in 1993, including contracts awarded in 1990 through 1992 that were completed in 1993, or were extended into 1994. All additional information required by the amended law is included. The Trustees are requested to approve the attached Report pursuant to Section 2879 prior to submittal thereof to the Division of the Budget; the Department of Audit and Control; the Department of Economic Development; the Senate Finance Committee; and the Assembly Ways and Means Committee.

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"A copy of the revised Guidelines for Procurement Contracts, effective May 1, 1994 (Exhibit `10-A-2'), is attached to the Report. The revised Guidelines reflect a 1993 amendment to the Omnibus Procurement Act of 1992, requiring the Authority to notify the Commissioner of Economic Development of the award of a procurement contract for `services,' in an amount greater than or equal to 1 million dollars, to a non-New York state business enterprise. (Previously, such notification applied only to the purchase of `goods'), and a new section providing guidance for issuance of change orders. All open services contracts exceeding a year are included in the Annual Report or in Exhibit `10-A-3'.

RECOMMENDATION

"The Vice President - Procurement and Real Estate, recommends that the Trustees approve the 1993 Annual Report of Procurement Contracts, the revised Guidelines for Procurement Contracts, and review the open procurement contracts.

"The Senior Vice President and General Counsel, the Executive Vice President - Finance and Administration, the First Executive Vice President and Chief Operating Officer, and I concur in the recommendation."

In response to questions from Trustee Duch, Mr. Hoff explained that the Authority's procurement credit card program costs between \$2 and \$2.50 per transaction, and saves nearly \$150 on a per transaction basis because it obviates the need for processing of purchase orders and related paperwork. Mr. Hoff further explained that the maximum amount is \$2,500 per purchase, and each corporate user is limited to a certain category and number of expenditures. Each card generates a monthly report which is reviewed and monitored by supervisory staff.

The following resolution, as recommended by the President, was unanimously adopted:

RESOLVED, That pursuant to Section 2879 of the Public Authorities law and the Authority's Procurement Guidelines, the Annual Report of Procurement Contracts as listed in Exhibit "10-A-1" and the revised Guidelines for the use, awarding, monitoring and reporting of Procurement Contracts (Exhibit "10-A-2") be, and hereby are, approved; and be it further

RESOLVED, That open service contracts exceeding a year be, and hereby are, reviewed.

**NEW YORK POWER AUTHORITY
ANNUAL REPORT OF PROCUREMENT CONTRACTS**

EXECUTIVE SUMMARY

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

In 1993, the Authority provided 24 percent of all electricity used in New York State. The Authority supplied a total of almost 38.5 billion kWh of electricity from its eleven generating facilities and from Canadian imports. Seven percent of this energy was produced from oil and natural gas.

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

PROCUREMENT GUIDELINES

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

A copy of the Authority's current Guidelines for Procurement contracts governing solicitations and evaluation of proposals for Procurement Contracts is attached hereto. These Guidelines, approved by the Authority's Trustees, were implemented as of January 1, 1990, and were amended on May 30, 1990; April 30, 1991; April 28, 1992; April 27, 1993; and April 26, 1994. The 1994 amendments are indicated by underscoring the phrase 'or services' on page 8 of Exhibit `10-A-2' and the inclusion of a new paragraph VIII on page 10 of the same Exhibit. This new paragraph provides guidance for the issuance of Change Orders.

ACCOMPLISHMENTS

1993 was an extremely active year from a procurement standpoint. A significant portion of this activity was for the purchase of goods and services in support of the Authority's nuclear operations, as well as the construction of the Flynn Power Plant, in Holtsville, Long Island, scheduled for completion in May, 1994. A major program to streamline the procurement process and to reduce paper work was also initiated. This involved the initiation of a pilot program to utilize procurement credit cards to make small dollar procurements up to \$2500. Each cardholder has a pre-assigned transaction and monthly dollar limit, which cannot be exceeded without prior approval of headquarters procurement. In 1993, approximately 4000 transactions were made using the credit card system which saved a similar number of formal purchase orders from being processed. Utilization of credit cards for small value procurements eliminates the need for formal requisitions, purchase orders, invoices, vouchers and checks. Instead, each cardholder maintains a simple log of such activity and receives a monthly statement from the bank for review and approval.

Another facet of this streamlining effort has been to focus on additional opportunities for placement of multi-year blanket orders for goods and services. This effort, which will continue in 1994 and 1995, should result in improved discounts and better delivery terms, and help reduce the total number of small dollar purchase orders.

Minority/Women-Owned Business Enterprise (M/WBE) Program

A major objective last year, as it has been in the past, was to improve our utilization of M/WBE firms providing goods and services in support of the Authority operations. As noted in Attachment I, the Authority awarded over \$29,000,000 for goods and services in 1993 to M/WBE firms. This included both direct procurements of office supplies, computer equipment, No. 6 residual fuel oil and natural gas on the spot market, and construction work.

The Authority includes subcontracting goals to M/WBE firms in non-construction procurements over \$25,000 and construction procurements over \$100,000. This was a major focus for our Holtsville, High Efficiency Lighting Program (HELP) and our other facilities, and resulted in major subcontracts to M/WBE firms for civil work, electrical work including installation of ballasts and fixtures, and construction management.

The Authority's annual Vendor Fair, co-sponsored with the National Minority Business Council, was held in June 1993 and was attended by approximately 200 M/WBE entrepreneurs. This was an opportunity for these firms to meet with procurement personnel at the various

Authority facilities as well as with representatives of our major vendors. A similar vendor fair will be held in 1994.

The Authority has also focused on increasing opportunities for M/WBE firms to participate in investment banking activities, including treasury bill investments, as well as participation in a major bond refunding in 1993.

ANNUAL REPORT - 1993 PROCUREMENT CONTRACTS

The Annual Report includes specific details of procurements of \$5,000 or greater, awarded since January 1, 1990 and which had activity in 1993. There were 3,129 such contracts with an estimated value exceeding \$1,300,000,000, and total expenditures in 1993 exceeding \$367,000,000. This included over \$78,000,000 for purchase of fossil fuels, and over \$11,000,000 for NYPA contracts in support of Shoreham decommissioning, the latter reimbursed to the Authority by the Long Island Power Authority (LIPA). Approximately 53% of the contracts having activity in 1993 were closed out last year.

As noted in Attachment II, approximately 2% of these contracts were for construction work, over 58% were for the purchase of equipment and commodities, over 11% were for consulting contracts (e.g., engineering, design, specialized analysis), with the remaining 28% for other services, such as technician work and contracted personnel. It should also be noted that while approximately 45% of the 1993 non-fuel contracts exceeded \$25,000, the total value of those contracts were approximately 95% of the total non-fuel expenditures.

Attachment III indicates that based upon the total value of the contracts included in the Annual Report, approximately 86% of the total dollars expended were for contracts which were competitively bid. In terms of the numbers of contracts processed (Attachment IV), approximately 62% were competitively bid and 38% were sole source awards. Major reasons for the sole source awards included the purchase of spare parts and services from original equipment manufactures, and to procure services on an emergency basis and from proprietary sources in support of our nuclear operations. It should be noted that the number of emergency procurements did decline significantly in 1993 and represented only 9% of the total non-fuel dollars expended for contracts \$5,000 and greater.

Attachment V provides a breakdown of total expenditures in 1993 by the Authority's various facilities and Fuels

Procurement group for those contracts covered by the Report.

11. Amendments to the Defense and Indemnification Policy and Related Amendment to the By-Laws

The President submitted the following report:

SUMMARY

"The Trustees are requested to approve amendments to the Authority's policy for the defense and indemnification of Authority Trustees and employees, to continue the conferral of the defense and indemnification benefits of Section 18 of the New York Public Officers Law ('POL') upon its Trustees and employees, and to approve an amendment to the by-laws of the Authority to provide that the benefits of the Authority's defense and indemnification policy and its conferral of the benefits of POL § 18 shall constitute a contract between the Authority and its Trustees and employees.

BACKGROUND

"In 1978 the Authority adopted a defense and indemnification policy ('D & I' Policy) for its Trustees modeled substantially on the provisions of POL § 17 which was enacted in 1978 to apply primarily to officers and employees of New York State. The Authority's policy was amended in 1980 to extend its coverage to employees as well as Trustees, and was further amended in 1984 to take into account (1) the enactment of POL § 18 which established a statutory defense and indemnification program which public entities, including public authorities, could provide to their officers and employees, (2) the enactment of POL § 19 which provided for the payment of defense expenses of State employees in criminal actions, (3) the provisions of the State Not-for-Profit Corporation Law ('NF/CL') which established standards for the defense and indemnification of directors and officers of not-for-profit corporations, and (4) the mounting exposure to liability of governmental officers and employees under the federal civil rights laws, the Atomic Energy Act, federal and state environmental laws, and other statutes. At the time of adoption of the amended D & I policy, the benefits of POL § 18 were also conferred on the Authority's Trustees and employees as supplementary to the Authority's policy.

DISCUSSION

"Since the enactment of POL §§ 17 - 19, the courts have interpreted various provisions of these statutes and have established that the State and those public employers which elect to provide the benefits of POL § 18 for their employees have a duty to provide a defense in civil actions so long as a complaint alleges that the offending act or omission was incurred within the scope of the defendant's employment. Based on other court decisions, it is clear that even if no such 'scope' allegation is made, the Authority could not deny a defense in a civil action unless a determination was made that its Trustee or employee was acting outside the scope of his or her employment based on facts that are so clear-cut that reasonable minds could reach no other conclusion.

"Moreover, since the adoption of the Authority's D & I Policy in 1984, the Not-for-Profit Corporation Law was amended to liberalize in some respects the availability of indemnification for corporate directors and officers while establishing a requirement for the repayment of advanced defense expenses where the person receiving such advances is determined not to be entitled to indemnification under the applicable standards.

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"Given the intervening judicial construction of the POL and the changes to the NFPCL, it is advisable to amend the Authority's D & I Policy to reflect their impact and to conform the procedural provisions of the Authority's policy more closely with those of § 18 to eliminate any possible confusion. The amended policy, *inter alia*, would (i) confirm the Authority's duty to provide a defense in civil proceedings, including the advancement of defense expenses to independent counsel where appropriate, (ii) provide for the repayment by a Trustee or employee of defense expenses in criminal proceedings where the standards for indemnification have not been met, (iii) provide for the full Board rather than the Chairman to make any required standard of conduct findings for indemnification purposes and (iv) further provide for independent counsel to make such findings if the Trustees are named as parties in a suit. A companion resolution of the Trustees would provide for the continued conferral of the benefits of POL § 18 on Authority Trustees and employees.

"To provide assurance to the Authority's Trustees and employees that the benefits of the Authority's policy and those of POL § 18 would be available when required, the Authority's by-laws would also be amended to provide that the Authority would as a matter of contract with each Trustee or employee provide such benefits with respect to any act or omission which occurred during the period when they were in effect.

RECOMMENDATION

"The First Assistant General Counsel recommends that the Trustees (1) amend the Authority's policy entitled 'Defense and Indemnification of Trustees and Employees of the Authority in the form appended hereto, (2) agree to continue to confer the benefits of POL § 18 upon the Trustees and employees of the Authority and to be held liable for the related costs, and (3) amend the Authority's by-laws to assure that the benefits of the Authority's policy and of POL § 18 would be provided to Trustees and employees as a matter of contract between them and the Authority.

"The Senior Vice President and General Counsel, the First Executive Vice President and Chief Operating Officer, and I concur in the recommendation."

In response to questions from Trustee Duch, Mr. Duffy explained that the policy covers acts or omissions occurring during the period of a Trustees' service, and specifically applies to former Trustees as well as incumbent Trustees.

The following resolution, as recommended by the President, was unanimously adopted:

RESOLUTION ESTABLISHING DEFENSE AND INDEMNIFICATION POLICY

WHEREAS, The Authority has, by resolution of September 13, 1978, as amended on April 22, 1980 and on November 27, 1984, adopted a policy for the defense and indemnification of the Trustees and employees of the Authority in actions and proceedings arising out of alleged acts or omissions occurring within the scope of his or her employment or duties on behalf of the Authority; and

WHEREAS, it is appropriate for the Authority to amend such policy to conform its procedural provisions more closely to the statutory models and to take into account amendments

and judicial interpretations of state indemnification statutes since 1984, in accordance with the accompanying report of the President;

NOW THEREFORE BE IT RESOLVED, That the Authority adopts the following policy:

Defense and Indemnification of Trustees and Employees of the Authority

1. Definitions

(a) As used herein, the term `Trustee' shall include a former as well as present Trustee of the Authority, his or her estate or judicially appointed personal representative.

(b) As used herein, the term `Employee' shall include a former as well as present officer or employee of the Authority, his or her estate or judicially appointed personal representative, but shall not include an independent contractor.

(c) As used herein the term `POL § 18' shall mean section 18 of the New York Public Officers Law.

(d) As used herein, the phrase `standard of conduct set forth in section 3 hereof' shall mean the standard of conduct set forth in clause (3) of the proviso in the first sentence of paragraph (a) of section 3 hereof.

2. Defense

(a) Upon compliance by the Trustee or Employee with the provisions of paragraph (b) of section 4 hereof, the Authority shall provide for the defense of the Trustee or Employee in any civil or criminal action or proceeding in any municipal, state, federal or other court or administrative forum, including any appearance before a grand jury, arising out of any alleged act or omission which occurred or allegedly occurred while the Trustee or Employee was acting within the scope of his or her employment or duties on behalf of the Authority. This duty to provide for a defense shall not arise where such action or proceeding is brought by or at the behest of the Authority or, in the case of any criminal action or proceeding, where in the opinion of the General Counsel or other counsel designated by the Authority such defense would be adverse to the best interests of the Authority.

(b) Subject to the conditions set forth in paragraph (a) of this section, the Trustee or Employee shall be entitled to be represented by private counsel of his or her choice in any civil, criminal or administrative action or proceeding, including a grand jury appearance, whenever the General Counsel or other counsel designated by the Authority determines that a conflict of interest exists or whenever a court, as provided by POL § 18, determines in any civil action or proceeding that a conflict of interest exists and that the Trustee or Employee is entitled to be represented by counsel of his or her choice; provided, however, that the General Counsel or other counsel designated by the Authority may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such Trustees or Employees be represented by the same counsel. Reasonable attorney's fees and litigation expenses shall be paid by the Authority to such private counsel during the pendency of such action or proceeding with the approval of the Board of Trustees.

(c) Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees in a civil action or proceeding shall be resolved by the court as provided in POL § 18. All expenses incurred or

advanced by the Authority in providing for the defense of a criminal action or proceeding shall be reimbursed by the Trustee or Employee to whom the defense is provided if such Trustee or Employee is ultimately found not to have met the standard of conduct set forth in section 3 hereof, and an undertaking from such Trustee or Employee to reimburse the Authority for its expenses in such event shall be given prior to their incurrence or advancement by the Authority.

(d) Where the Trustee or Employee delivers process and a written request for a defense to the Authority under paragraph (b) of section 4 hereof, the Authority shall take the necessary steps on behalf of the Trustee or Employee to avoid entry of a default judgment or administrative determination pending resolution of any question pertaining to the obligation to provide for a defense.

3. Indemnification

(a) To the extent its Trustees and Employees are not fully indemnified and saved harmless by reason of the obligations the Authority has assumed pursuant to the provisions of POL § 18, the Authority shall indemnify and save harmless its Trustees and Employees in the full amount of any judgment, fine, penalty or pecuniary administrative determination obtained or assessed against such Trustees or Employees in any municipal, state, federal or other court or administrative forum or in the amount of any settlement of such matter or a claim, provided: (1) that the act or omission from which such judgment, fine, penalty, pecuniary administrative determination or settlement arose occurred while the Trustee or Employee was acting within the scope of his or her employment or duties on behalf of the Authority; (2) that in the case of a settlement the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of the settlement by the Board of Trustees of the Authority; and (3) that such indemnification is authorized as provided in paragraph (b) of this section upon a finding that such Trustee or Employee acted in good faith, for a purpose which he or she reasonably believed to be in or, in the case of service for any other public entity by virtue of membership in or employment with the Authority, or service at the request of or with the approval of the Authority for any employee benefit plan or for any other public or private enterprise, not opposed to, the best interests of the Authority and, in criminal actions or proceedings, in addition had no reasonable cause to believe that his or her conduct was unlawful. Notwithstanding a failure to find that a Trustee or Employee is entitled to be indemnified and saved harmless as provided in this paragraph, a Trustee or Employee who has been successful, on the merits or otherwise, in the defense of a civil or criminal action or proceeding in any municipal, state, federal or other court or administrative forum, including a grand jury appearance, involving any act or omission occurring within the scope of his or her employment or duties on behalf of the Authority, shall be entitled to be indemnified for his or her reasonable expenses, including attorneys' fees, incurred in connection therewith.

(b) In any case where full indemnification is not available under POL § 18, indemnification shall be made by the Authority hereunder only if authorized in a specific case:

(1) by the Board of Trustees acting by a quorum consisting of Trustees who are not parties to the action or proceeding upon a finding that the cited Trustee or Employee has met the standard of conduct set forth in section 3 hereof, or

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(2) if a quorum under subparagraph (1) is not obtainable or, even if obtainable, a quorum of disinterested Trustees so directs, by the Board of Trustees upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the standard of conduct set forth in section 3 hereof has been met by such Trustee or Employee.

(c) The termination of any civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such Trustee or Employee did not meet the standard of conduct set forth in section 3 hereof.

(d) For the purpose of this section, the Authority shall be deemed to have requested a person to serve an employee benefit plan or to have approved such service where the performance by such person of his or her duties to the Authority also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to any applicable law shall be considered fines; and action taken or omitted by a person with respect to an employee benefit plan in the performance of such person's duties for a purpose reasonably believed by such person to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the Authority.

4. Procedures

(a) Upon entry of a final judgment or assessment of a fine, penalty or pecuniary administrative determination against a Trustee or Employee or upon the settlement of the matter or claim, the Trustee or Employee shall cause a copy of such judgment, fine, penalty, determination or settlement to be served personally or by certified or registered mail within thirty days of the date of entry, issuance or settlement, upon the President; and if not inconsistent with the provisions hereof, such judgment or settlement shall be paid by the Authority.

(b) The duty to defend or indemnify and save harmless prescribed by this section shall be conditioned upon (i) delivery to the President or General Counsel by the Trustee or Employee of a written request to provide for his or her defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten days after he or she is served with such document, and (ii) the full cooperation of the Trustee or Employee in the defense of such action or proceeding and in defense of any action or proceeding against the Authority based upon the same act or omission, and in the prosecution of any appeal.

5. Application and Construction of Policy Provisions

(a) The benefits hereof shall inure only to the Trustees or Employees of the Authority as defined herein and shall not enlarge or diminish the rights of any other party.

(b) The provisions hereof shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

(c) The provisions hereof shall apply to all actions and proceedings pending upon the date of adoption of this policy or thereafter instituted.

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(d) The provisions hereof shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon the Authority or any Trustee or Employee of the Authority, or any right to defense and/or indemnification provided for any Trustee or Employee, in accordance with, or by reason of, any provision of state or federal statutory or common law.

(e) The benefits conferred upon the Trustees and Employees of the Authority by resolution adopted November 27, 1984, as amended on April 26, 1994, entitled 'Supplemental Defense and Indemnification of Trustees and Employees of the Authority,' shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any right to defense and/or indemnification provided for any Trustee or Employee in accordance with, or by reason of, the provisions hereof.

(f) If any provision hereof or the application thereof be held invalid in whole or in part by any court of competent jurisdiction, such holding of invalidity shall in no way affect or impair any other provision hereof or the application thereof.

**RESOLUTION CONFERRING THE BENEFITS OF SECTION 18
OF THE NEW YORK PUBLIC OFFICERS LAW ON THE
TRUSTEES AND EMPLOYEES OF THE AUTHORITY**

WHEREAS, The Authority has, by resolution of September 13, 1978, as amended on April 22, 1980 and on November 27, 1984, adopted a policy for the defense and indemnification of Trustees and Employees of the Authority in actions and proceedings arising out of alleged acts or omissions while a Trustee or Employee was acting within the scope of his or her employment or duties on behalf of the Authority; and

WHEREAS, The Authority has, by resolution adopted on the date hereof, further amended such policy; and

WHEREAS, The Authority has by resolution adopted on November 27, 1984 conferred the benefits of Section 18 of the New York Public Officers Law upon the Trustees and Employees of the Authority and agreed to be held liable for the costs incurred therefor, which benefits are to supplement, and be available in addition to, the protection conferred by the Authority in the policy entitled 'Defense and Indemnification of Trustees and Employees of the Authority,' as amended, in accordance with the accompanying report of the President;

NOW THEREFORE BE IT RESOLVED, That the resolution of the Authority adopted on November 27, 1984 conferring the benefits of Section 18 of the New York Public Officers Law upon the Trustees and Employees of the authority, and agreeing to be held liable for the costs incurred therefor, is amended to read as follows:

April 26, 1994

**Supplemental Defense and
Indemnification of Trustees and
Employees of the Authority**

1. Pursuant to subdivisions 2 and 12 of Section 18 of the New York Public Officers Law, enacted by Chapter 277 of the Laws of 1981, as amended, the Authority hereby agrees to confer the benefits of Section 18 upon the employees of the Authority (as such term is defined therein) and to be held liable for the costs incurred therefor, subject to the conditions set forth in the following paragraphs hereof.

2. The benefits accorded to employees under Section 18 of the Public Officers Law by paragraph 1 hereof shall supplement, and be available in addition to, the defense and indemnification protection conferred by the Authority in its resolution entitled 'Defense and Indemnification of Trustees and Employees of the Authority,' adopted on September 13, 1978, as amended on April 22, 1980, on November 27, 1984 and on April 26, 1994.

3. The benefits accorded to employees under Section 18 of the Public Officers Law by paragraph 1 hereof shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any right to defense and/or indemnification provided for any Trustee or Employee in accordance with, or by reason of, the resolutions referred to in paragraph 2 hereof.

April 26, 1994

AMENDMENT TO BY-LAWS

RESOLVED, That the By-laws of the Power Authority of the State of New York, as adopted December 18, 1984 and last amended February 22, 1994, pursuant to Section 1004 of Title 1 of Article 5 of the Public Authorities Law, as amended, be further amended pursuant to said statute by adding to Article X thereof a new Section, to be Section 3 thereof, to read as follows:

Section 3. Defense and Indemnification of Trustees and Employees.

The provisions of the Defense and Indemnification Policy (' Policy') of the Authority as amended and adopted on April 26, 1994, and the provisions of the resolution as amended and adopted by the Authority on April 26, 1994 conferring the benefits of Section 18 of the New York Public Officers Law (' POL § 18') on the Authority's Trustees and Employees and agreeing to be held liable for the costs thereof, shall constitute a contract between the Authority and each of its Trustees and Employees, as such persons are defined in the Policy, and the Authority agrees that the benefits thereof shall be made available to each Trustee or Employee with respect to any act or omission which has occurred or may in the future occur during the period such Policy and the resolution conferring the benefits of POL § 18 are in effect, and no amendment to such Policy or such resolution which modifies the provisions thereof shall take effect with respect to any act or omission of a Trustee or Employee which occurred prior to the effective date of such amendment unless the effect of such amendment is to increase the defense and indemnification protection afforded to such Trustee or Employee prior to such effective date;

AND BE IT FURTHER RESOLVED, That the aforesaid amendment to the By-laws shall remain in effect notwithstanding the reversion of the By-laws in effect immediately prior to the date hereof to the version in effect immediately prior to February 22, 1994 by virtue of the requirements of the Resolution amending the By-laws adopted by the Authority on February 22, 1994.

April 26, 1994

**12. Sound Cable Project - Acquisition of Map No. WNR-63 -
City of New Rochelle - Davenport Park**

The President submitted the following report:

SUMMARY

"The Trustees are requested to authorize the acquisition of a permanent easement for electrical transmission and fiber optic cable facilities as set forth in Exhibit `12-A'.

BACKGROUND

"At their meeting of May 28, 1987, the Trustees authorized the Executive Vice President - Marketing and Development to execute an agreement with the Long Island Lighting Company (`LILCO') under which the Authority would design, license, construct, own and operate the Sound Cable Project (`SCP'), a 345 kV underground/underwater transmission line extending approximately 26 miles from Consolidated Edison Company of New York, Inc. (`Con Edison's') Sprain Brook Substation in Westchester County under Long Island Sound to LILCO's East Garden City Substation in Nassau County.

"On May 18, 1988, the Public Service Commission (`PSC') granted the Authority a Certificate of Environmental Compatibility and Public Need for the Sound Cable Project.

"At their meeting of December 18, 1990, the Trustees approved the acquisition of Map No. WNR-26 through Davenport Park. Map No. WNR-26 is an easement eight feet in width which is of sufficient width to include the four cables and the fiber optics.

DISCUSSION

"On September 23, 1993, the Authority discovered problems with the fiber optics in the splicing pit located at Davenport Park. On October 19, 1993, the Authority obtained permission from the New Rochelle City Manager and Corporate Counsel to excavate in Davenport Park. During the excavations a leak was discovered emanating from the fiberglass enclosure which contains the coolant surrounding one of the cables. Large scale excavation was required to do the environmental cleanup and repair. The additional excavation revealed that cable nos. 1 and 4 were outside the easement area shown on the original acquisition Map No. WNR-26. The additional easement area to be acquired, as shown and described on Map No. WNR-63, is of sufficient width to include cables no. 1 and no. 4, while providing additional work area should it be required in the future. The area to be acquired (0.026 acres) is de minimis.

FISCAL INFORMATION

"Payment will be made from the Sound Cable Construction Fund.

RECOMMENDATION

"The Project Manager, the Director - Real Estate, and the Vice President - Project Management - System Operations recommend that the Trustees approve the acquisition by purchase, eminent domain, or transfer of

jurisdiction, of the easements shown and described in Exhibit `12-A'.

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"The Vice President - Procurement and Real Estate, the Senior Vice President and General Counsel, the Executive Vice President - Finance and Administration, the First Executive Vice President and Chief Operating Officer, and I concur in the recommendation."

The following resolution, as recommended by the President, was unanimously adopted:

RESOLVED, That pursuant to the provisions of Article 5, Title 1 of the Public Authorities Law, the Authority hereby finds it necessary to acquire the real property shown and described on the Power Authority of the State of New York Sound Cable Project Map WNR-63 and hereby finds and determines that such real property is required for a public use and hereby determines that such property is reasonably necessary for the maintenance and operation of the Sound Cable Project; and be it further

RESOLVED, That in the opinion of the Authority the acquisition of the real property shown and described on Power Authority of the State of New York, Sound Cable Project Map WNR-63 is de minimis in nature so that the public interest will not be prejudiced without a public hearing by the acquisition of such real property; and be it further

RESOLVED, That the President, the Executive Vice President - System Operations, or the Project Manager - Sound Cable Project of the Authority be, and hereby is, authorized to execute on behalf of the Authority such agreements on terms and conditions substantially in accord with the foregoing report of the President, as necessary or desirable for the acquisition of such real property; and be it further

RESOLVED, That the President, the Senior Vice President and General Counsel, or the Director - Real Estate of the Authority be, and hereby is, authorized on behalf of the Authority to execute any and all other agreements, papers, or instruments which may be deemed necessary or advisable to carry out the foregoing.

13. 1994 Procurement of Computer Equipment - Expenditure Authorization

The President submitted the following report:

SUMMARY

"The Trustees are requested to authorize funding in the amount of \$1,910,000 for the purpose of acquiring computer hardware and network equipment in 1994.

BACKGROUND

"In 1991, the MIS Division was made responsible for the purchase of hardware and network equipment for the Headquarters departments and the two nuclear sites. For 1994, MIS devised an overall plan and solicited each group's requirements. These requirements were matched to the plan and reviewed with the respective groups. This resulted in an adjusted plan which was reviewed and concurred with by the Authority's Capital Review Committee.

"In 1991, the President authorized expenditures for computer equipment totaling \$225,000 to purchase necessary hardware in Nuclear Generation for the implementation of the new network. This authorization was included in the 1992 request for additional funding.

"At their meeting of January 27, 1992, the Trustees authorized capital expenditures of \$5,835,000 of which \$3,627,000 was allocated to the expansion of the corporate network and upgrades to minicomputer systems.

"At their meeting of December 15, 1992, the Trustees authorized a further \$3,000,000 in capital expenditures to expand the Authority's computer infrastructure (i.e., the networks and minicomputer systems) and to continue to bring technology to the workplace via desktop computers, printers, and the like.

"The result of this investment has been the creation of a standardized network and hardware complement designed to assure that all computerized systems can be reliably delivered to the appropriate staff.

DISCUSSION

"The 1994 estimates provide for the purchase of equipment in three categories:

1. Replacements

"This category represents the purchase of equipment needed to replace outmoded equipment. In general, this consists of desktop units ('PCs'), printers and computer terminals at the James A. FitzPatrick Nuclear Power Plant ('JAF'). The Authority has a significant number of these items still in service which were purchased over a ten year period before the creation of the MIS Division and its responsibilities. This equipment is no longer capable of being used with the new technologies and must be replaced.

"This category represents 37 percent of the request, providing for the replacement of 200 desktop units, 100 computer terminals, and 42 printers.

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2. System Requirements

"This category consists of a variety of equipment needed to enhance and strengthen the infrastructure and accounts for 59 percent of the request:

- **Networks** - disaster recovery equipment for the White Plains and New York Office networks, and equipment to improve the reliability and maintainability of these networks.
- **Wide Area Network** - equipment to complete implementation of an Authority-wide Wide Area Network, connecting all site and headquarter locations.
- **Mini Computer Systems** - equipment upgrades required to minicomputers in White Plains needed to provide disaster recovery capability for critical Nuclear Generation site systems.
- **J. A. FitzPatrick** - equipment in support of the plant process computer, minicomputer systems and site network management.
- **Indian Point 3** - network equipment for additional staff being transferred to the site, minicomputer system upgrades to meet additional workload and equipment in support of the plant process computer.

3. Miscellaneous

"This category consists of a variety of minor equipment items and represents 4 percent of the request. The majority of this category is made up of laptop computers required at JAF in support of the Emergency Preparedness Plan ('EPlan').

"The MIS Division anticipates that further investment in the infrastructure will continue through 1995 and beyond, but at a reduced level of spending. The majority of the spending in the future is expected to be for replacements and upgrades of existing equipment.

FISCAL INFORMATION

"Funds for this purpose in 1994 will be paid from the Operating Fund. Funding for future years will be requested on an annual basis, normally at the Trustees' December meeting.

RECOMMENDATION

"The Vice President - Management Information Services recommends that the Trustees authorize capital expenditures in the amount of \$1,910,000 for the purchase of computer hardware and network equipment in 1994.

"The Vice President - Corporate Controller, the Vice President - Appraisal & Compliance Services, the Senior Vice President and General Counsel, the Executive Vice President - Finance and Administration, the Executive Vice President - Nuclear Generation, the Executive Vice President - Marketing and Development, the Executive Vice President - System Operations, the First Executive Vice President and Chief Operating Officer, and I concur in this recommendation."

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In response to questions from Trustee Duch, Mr. Neely explained that the decrease of \$900,000 in the authorization sought represents primarily a deferral of planned purchases. Mr. Schoenberger added that the results of the current restructuring and cost cutting effort will serve to indicate the size and nature of future expenditures, if any.

The following resolution, as recommended by the President, was unanimously adopted:

RESOLVED, That expenditures are hereby authorized in accordance with the Authority's Expenditure Authorization Procedures, as recommended in the foregoing report of the President, in the amount and for the purpose listed below:

<u>Capital</u>		<u>Expenditure Approval</u>
Purchase of computer hardware and network equipment		
Current Authorization Request		\$ 1,910,000
Previously Authorized	1991	225,000
	01/27/92	5,835,000
	12/15/92	<u>3,000,000</u>
TOTAL AMOUNT AUTHORIZED		<u>\$10,970,000</u>

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14. Procurement (Services) Contract - Law Department - Extension

The President submitted the following report:

SUMMARY

"The Trustees are requested to approve the extension of a consultant services contract for one law firm. The contract is identified below and described in detail in attached Exhibit `14-A'.

BACKGROUND

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

DISCUSSION

"The contract for which extension is requested is with Nims, Howes, Collison, Hansen, & Lackert. It is appropriate that the contract be extended as some of the work in question will not be completed for some time. The contract was awarded in accordance with the Authority's Expenditure Authorization Procedures. While requesting that this contract be extended, a competitive search will be conducted for future work matters.

FISCAL INFORMATION

"Payment for services covered by this contract rendered in 1994 will be made from the 1994 Approved O&M Budget. Funds required for subsequent years will be included in the budget submittal for those years.

RECOMMENDATION

"The Senior Vice President and General Counsel recommends that the Trustees approve the extension of the service contract listed in the attached Exhibit `14-A' for the time periods indicated.

"The Vice President - Corporate Controller, the Vice President - Procurement and Real Estate, the Executive Vice President - Finance and Administration, the First Executive Vice President and Chief Operating Officer, and I concur in the recommendation."

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The following resolution, as recommended by the President, was unanimously adopted:

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the contract listed in attached Exhibit "14-A" is hereby approved and extended, for the purpose indicated, and for the period of time listed below:

<u>O & M</u>	<u>Projected Closing Date</u>	<u>Contract Approval</u>
1) Legal Services		
Nims, Howes, Collison, Hansen & Lackert	05/20/96	To be made by staff pursuant to Expenditure Authorization Procedures

DESCRIPTION OF CONTRACT

For many years Robert Isner, Esq. provided legal services to the Authority in patent and trademark matters and to support its Patent Policy (CP 3-11) under which the Authority encourages employee inventions. Mr. Isner died in 1993, and the Authority decided then to continue with the firm with which Mr. Isner associated himself in 1993. To date, six United States patents have been issued to Authority inventors. This area of law is specialized and requires patent expertise which is possessed by those who practice full time in this area of law.

The firm is currently working with Patent Committee to revise the current Patent Policy to provide patent ownership benefits to the Authority.

**Exhibit `14-A`
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PROCUREMENT (SERVICES) CONTRACT

Provider: Nims, Howes, Collison, Hansen & Lackert
Contract No.: S93-49118
Dept./Division: Law Department/General Counsel
Contract Description: Patent Matters

Basis of Award: Bid
Competitive Search
Sole Source X

<u>Effective Date of Original Contract or Change Order</u>	<u>Date of Trustee Approval</u>	<u>Projected Closing Date</u>	<u>Amount Authorized or Committed</u>
O.C 05/21/93		05/21/94	\$ 5,000
C.O. #1 01/26/94			\$10,000

Total Amount Authorized or Committed: \$15,000

Total Amount Expended to Date: \$10,739

Projected additional commitments through 05/20/96 to be made by staff pursuant to Expenditure Authorization Procedures from authorized Capital and O&M Budget \$10,000

15. Enron Gas Contract Restructuring

The President submitted the following report:

SUMMARY

"The Trustees are requested to authorize the President and Chief Executive Officer, or the Executive Vice President - Marketing and Development to execute an amendment to the Gas Bank Sales Agreement dated October 24, 1990 between the Authority and Enron Gas Marketing, Inc. ('the Enron Gas contract') which would: restructure the gas pricing formulas in the contract; alter certain physical delivery arrangements; and extend the term of the agreement by four months to April 30, 2014.

BACKGROUND

"At their meeting of May 1990, the Trustees authorized the Chairman to enter into a contract to purchase up to 33,779 Dth/day of natural gas from Enron. The contract was negotiated to provide a firm, long term natural gas supply in support of the Authority's bid to construct new generating capacity for the Long Island Lighting Company ('LILCO'), and in the event that the Authority did not win the LILCO bidding competition, to provide a firm, long term natural gas supply for the Poletti Project. The contract with Enron was negotiated and consummated on October 24, 1990. Subsequently, the Authority was awarded a contract to build a 150 MW combined cycle generating plant at Holtsville, New York, the Richard M. Flynn Power Plant ('Flynn Plant'). The plant is currently in the final stages of construction. Gas began flowing under the contract January 1, 1991.

"The term of the Enron gas contract is from January 1, 1991 through December 31, 2013. The Maximum Delivery Quantity under the contract is 33,779 Dth/day with a 90 percent take-or-pay requirement. Gas pricing varies over the term as follows:

January 1, 1991 through December 31, 2000 - \$3.53/Dth;

January 1, 2001 through December 31, 2005 - \$2.05/Dth times the percentage change in LILCO's average cost of gas from the twelve month period ending May 1990 as compared with the twelve month period ending two months before the month in which the gas is taken; and

January 1, 2006 through December 31, 2013 - 110 percent of the average of the closing prices for Natural Gas Futures for the next month on the New York Mercantile Exchange for the 30 trading days preceding the month the gas is taken.

Current Conditions

"Since 1990, natural gas prices have not risen to the extent projected in 1990, and the pricing provisions of the Enron contract for the period through 2005 are not expected to be competitive in today's market (see Figure 1). When combined with the current surplus of generating capacity in the New York market and the resulting low wholesale energy prices, the cost of energy from the Flynn Plant when burning Enron gas will not be as competitive as expected when the bid was submitted in 1990. Low dispatch levels on Enron gas are expected, ranging from about

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14 percent in 1994, to 47 percent in 2000. Between 2001 and 2005, projected dispatch levels on Enron gas are higher, in the 70 percent-80 percent range. From 2006 on, the plant is expected to run on Enron gas whenever it is available, reflecting a gas price of only 10 percent above spot prices, coupled with the plant's excellent heat rate.

"Gas not burned at the Flynn Plant must be utilized elsewhere by the Authority. There are several options available: it can be burned at Poletti at a discounted price; it can be sold on the spot market; or it can be turned back to Enron (at a price of \$0.25/Dth less than the spot market price). Whichever method is used, the Authority will not recoup the full cost of the Enron gas given current market conditions.

"Table 1 shows the projected quantity of excess gas that must be utilized elsewhere each year for the 1994 through 2005 period, and the annual value of the difference between the projected spot price and the Enron gas price for that quantity. This difference will be offset by a provision in the Capacity Supply Agreement with LILCO that permits LILCO to burn its gas in the Flynn Plant when the plant does not dispatch on the Enron gas, with LILCO paying to the Authority one half its savings resulting from this option. Table 1 also shows the estimated benefits to the Authority from this arrangement. While these shared savings are significant, they are insufficient to offset the difference between the Enron gas price and projected spot market prices for gas not burned at the Flynn Plant and hence not paid for by LILCO. Between 1994 and 2005, the net difference is expected to be about \$29 million (NPV at 7 percent).

The Proposed Price Restructuring

"Staff has worked with Enron to examine how the Enron gas contract pricing could be restructured to reduce the difference between the cost of the Enron gas and projected spot market prices. The focus of these discussions was the 1994 through 2005 period when dispatch of the plant on Enron gas is expected to be low. After examination of several alternatives, including an out-right buy-out of the Enron gas contract between 1994 and 2005 (rejected as too expensive by senior management), staff has determined that an amendment to the Enron gas contract restructuring the pricing formulas as follows would best accomplish this purpose:

April 1, 1994 through December 31, 2002 - a floor price of \$2.78/Dth increasing at 3.5 percent each January 1st, or the spot price of gas based on the average of closing prices for Natural Gas Futures for the next month on the New York Mercantile Exchange for the last three trading days of the month (the 'NYMEX Spot Price'), whichever is higher, plus a 10 percent demand charge to be paid on the 90 percent take-or-pay quantity; and

January 1, 2003 through December 31, 2005 - The NYMEX Spot Price, plus a demand charge of 10 percent to be paid on the 90 percent take-or-pay quantity.

"Figure 2 compares projections of the gas prices under the current Enron contract terms, with the pricing resulting from the restructuring assuming the floor price is \$2.78/Dth and the spot price of gas is \$2.25, increasing at about 4.4 percent per year. As shown, the restructured pricing results in a lower gas price in the early years, a higher price between 2000 and 2002, and a lower price from 2003 through 2005.

"Table 2 shows the overall effects of this changed pricing stream on the economics of the gas contract assuming that the restructured pricing is passed on to LILCO. Overall, net losses on the fuel contract are reduced from the expected \$29 million noted above, to \$24 million, an improvement of \$5.8 million (NPV at 7 percent). In the near term, there will be significant improvements in cash flow resulting from the restructured pricing.

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"In implementing a restructuring, the Authority would accept the risk that actual gas prices will be higher or lower than those forecasted.

If spot gas prices were to rise faster, at 10 percent per year, instead of the 4.4 percent as forecast, the benefit of the restructuring would be \$4.7 million (NPV at 7 percent).

If spot gas prices were to start lower, at \$2.00 Dth, and rise at only 2.2 percent per year, the benefit of the restructuring would be about \$3.2 million (NPV at 7 percent).

In a scenario where the market undergoes a severe price dislocation, with spot gas prices rising at 10 percent per year through 2000, reaching \$4.00/Dth, and then dropping to \$2.88/Dth with no increase thereafter, the benefit of the restructured contract would be about \$0.6 million.

"Based on this analysis, the restructured pricing meets the goal of the negotiations outlined above. For most years, it should reduce the spread between spot prices and the actual cost of gas, reducing losses associated with use of gas not burned at the Flynn Plant. This benefit will be particularly noticeable in the early years when, for instance, savings would amount to about \$14,000 a day. The restructuring would offer LILCO a more attractive price for the Enron gas at the Flynn Plant. Finally, the Authority's risk is contained, with improved financial results for a range of scenarios.

Other Changes to the Enron Contract

"There would be no change in the contract's Maximum Delivery Quantity of 33,779 Dth/day, or the take-or-pay obligation on 90 percent of the Maximum Delivery Quantity. However, staff has also negotiated other amendments to the Enron Gas contract, some of which improve the delivery terms of the agreement and add additional value to the price restructuring. Because these improvements deal with the physical aspects of the contract, most of them can only be offered by Enron. The principal terms of these amendments are as follows:

The term of the contract would be extended by four months to April 30, 2014 to coincide with the term of the Capacity Supply Agreement with LILCO.

In addition to the pricing changes described above, during the period from January 1, 2006 through April 30, 2014, the Commodity Charge for any gas taken would be the NYMEX Spot Price described above, plus a demand charge of 10 percent to be paid on the 90 percent take-or-pay quantity.

The quantity of gas to be taken under the contract would be determined on a monthly basis, with a uniform daily take. However, it would still be possible to adjust daily quantities.

If the 90 percent take-or-pay obligation on a monthly pre-scheduled basis is not met, the deficiency would be 'cashed out' at the difference between the floor price and the NYMEX Spot Price. If the spot price of gas is higher than the floor price, there would be no charge. Gas not taken on a daily basis below the pre-scheduled quantity would be 'cashed out' based on a spot price differential, but with a \$0.12/Dth penalty. The current contract provides for a \$0.25 penalty for any gas not taken below the take-or-pay quantity.

Enron would provide a daily Swing Service to allow increases or decreases in scheduled amounts on 24-hours notice. This service will enable the Authority to meet its obligations under the Gas Transportation Agreement

with LILCO to provide Peaking gas to LILCO on 24-hours notice, as well as assist in meeting the dispatch requirements of the Flynn Plant. The cost of the gas would be the spot price plus \$0.12/Dth. This represents

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a significant improvement over the current contract, which requires 48-hour notice to change the delivery schedule. In addition, similar swing services are offered by pipeline companies at a cost of about \$1 million per year for the demand charge.

The provision of the existing contract granting Enron rights to unused transportation capacity has been deleted.

The proposed amendment contains early termination and liquidated damages provisions, which apply both to the Authority and Enron. These provisions permit the Authority or Enron to terminate the contract upon the occurrence of a 'triggering event', which includes events of default, an acceleration of substantial debt upon default, and, unless satisfactory collateral is provided through a letter of credit or prepayment, a significant diminution in the credit rating of a party's senior securities. Upon such termination, the party not causing the triggering event could obtain liquidated damages as measured by the present value of the economic loss suffered by such party in securing a replacement contract.

The Authority's obligation to prepay an entire month's bill on the first of the month would be eliminated. Payment would be due 20 days after the end of the month. The value of the delay in payment to the Authority is about \$2.3 million NPV.

The definition of force majeure has been expanded to include the forced outage of either the Poletti or Flynn plants when the other is out of service for scheduled maintenance, due to a reserve shutdown, or due to an indefinite or permanent closing. Should a force majeure event last more than three days after the day of its occurrence, the Authority would be relieved of its obligations to take-or-pay for gas.

LILCO Considerations

"Paragraph 12 of Article IV of the Capacity Supply Agreement between the Authority and LILCO contains a provision concerning renegotiation of the gas price for the fixed price period through December 31, 2000. This language was incorporated in the Capacity Supply Agreement specifically in the event that the \$3.53 price became unattractive. The paragraph includes a provision stating: 'The Authority further agrees not to accept any changes in the fixed gas price for such period without LILCO's prior consent.' (CSA, Article IV, Paragraph 12)

"Accordingly, staff offered LILCO the opportunity to benefit from the restructured pricing arrangement with Enron by changing the gas pricing terms of the Capacity Supply Agreement, in return for LILCO's consent to changes in the Enron gas contract for the fixed gas price period. LILCO provided its consent by Letter Agreement dated April 25, 1994 and has until June 27, 1994 to determine whether it wants to accept the restructured pricing.

Contingent Approval of the Amendment

"On April 5, 1994, an amendment to the Enron Gas contract was executed by the Executive Vice President - Marketing and Development embodying the modifications discussed above, with the effectiveness of such amendment being contingent upon Trustee approval by reason of a separate Letter Agreement, also executed on that date.

"This permitted the price restructuring to begin taking effect on April 1, 1994, instead of May 1, 1994 and provided an additional savings of \$430,000. Should the Trustees not approve the amended contract, then the terms of the current contract would be reinstated.

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FISCAL INFORMATION

"The Finance Division has analyzed the impacts of the restructured contract on the overall finances of the Flynn Plant, taking into consideration all projected costs and revenues in addition to the Enron gas contract. This analysis indicated that compared with the current Enron contract, the restructuring will improve net revenues from the Flynn Plant over the life of the Capacity Supply Agreement by about \$6 million. In addition, net revenues from the plant for the next three years will improve by about \$8 million.

RECOMMENDATION

"The Executive Vice President - Marketing and Development and the First Executive Vice President and Chief Operating Officer recommend that (1) the Trustees ratify the amendment executed by the Executive Vice President - Marketing and Development (copy attached as Exhibit `15-A' hereto) and authorize the President and Chief Executive Officer or the Executive Vice President - Marketing and Development to execute the Revised and Restated Gas Bank Sales Agreement incorporating such amendments (copy attached as Exhibit `B' hereto); (2) the Trustees ratify the Letter Agreement dated April 25, 1994 with the Long Island Lighting Company (copy attached as Exhibit `C' hereto); and (3) authorize the President and Chief Executive Officer and Executive Vice President - Marketing and Development to execute an amendment to the Capacity Supply Agreement with the Long Island Lighting Company should it elect to adopt the gas price modifications set forth in the Amended and Restated Gas Bank Sales Agreement.

"The Senior Vice President and General Counsel, and I concur in the recommendation"

In response to questions from Trustee Miller, Mr. Hiney explained that the basic format of a take-or-pay contract will remain, and that staff's practice has been to take the minimum contract amount because under current market conditions, it has been more advantageous to purchase on the spot market.

The following resolution, as recommended by the President, was unanimously adopted:

BE IT RESOLVED, That the First Amendment to Gas Bank Sales Agreement executed by the Executive Vice President - Marketing and Development, a copy of which is attached hereto as Exhibit "15-A", is ratified, and the President and Chief Executive Officer and Executive Vice President - Marketing and Development are, and each hereby is, authorized to execute a Revised and Restated Gas Bank Sales Agreement, in substantially the form attached hereto as Exhibit "15-B", with such additions, deletions or modifications as the President and Chief Executive Officer or the Executive Vice President - Marketing and Development deems necessary or advisable and as are consistent with the foregoing report of the President; and be it further

RESOLVED, The Letter Agreement, dated April 25, 1994 with the Long Island Lighting Company, executed by the Executive Vice President - Marketing and Development, a copy of which is attached hereto as Exhibit "15-C", is hereby approved and ratified; and be it further

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RESOLVED, That the President and Chief Executive Officer and Executive Vice President - Marketing and Development are and each hereby is, authorized to execute an agreement amending the Capacity Supply Agreement between the Authority and the Long Island Lighting Company, having such terms and conditions as are necessary to implement the gas price modifications set forth in the Revised and Restated Gas Bank Sales Agreement, should Long Island Lighting Company elect under the terms of the above-referenced Letter Agreement to be subject to such modifications.

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Closing Remarks of Acting Chairman Waldbauer and Trustee Miller

Trustee Miller expressed his thanks to Messrs. Cunningham and Tobin for many years of dedicated service and wished them success in their future endeavors. Acting Chairman Waldbauer suggested, and Trustees Miller and Duch concurred, that the Trustees' appreciation be memorialized.

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16. Next Meeting

The next Regular meeting of the Trustees will be held on **Tuesday, May 24, 1994**, in **at the White Plains Office at 10:00 a.m.**, unless otherwise designated by the Acting Chairman with the concurrence of the Trustees.

Motion to Conduct Executive Session

"Mr. Chairman, I move that the Authority conduct an executive session in connection with matters concerning the employment history of particular persons and matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of particular persons." On motion duly made and seconded, an execution session was held.

Motion to Resume Meeting in Open Session

"Mr. Chairman, I move that the Authority resume the meeting in open session." On motion duly made and seconded, the meeting resumed in open session.

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Closing

On motion made and seconded, the meeting was closed at 1:30 p.m.

Anne Wagner-Findeisen
Corporate Secretary

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