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NYPA Public Hearing - 11/8/05
POWER AUTHORITY OF THE STATE OF NEW YORK

Public Hearing held before the Power
Authority of the State of New York, 501 Seventh
Avenue, Room 905, New York, New York, on Tuesday,
November 8, 2005, commencing at 10:31 a.m.

HUDSON REPORTING & VIDEO, INC.
124 WEST 30TH STREET
NEW YORK, NEW YORK 10001

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2 MS. GRAVES: Good morning
3 everyone. At this time I'd like to start this
4 public hearing. Welcome to everyone. My name
5 is Angela Graves. I'm the deputy secretary
6 with the New York Power Authority. On behalf
7 of the Authority, I'm pleased to open today's
8 public hearing pursuant to Section 1009 of the
9 Public Authorities Law. We will be conducting
10 today's public hearing concerning the terms of
11 the proposed contracts between the Authority
12 and seven neighboring states. The Authority
13 has complied with the notice and publication
14 requirements of Subdivision 1 of Section 1009
15 of the Public Authorities Law. Pursuant to
16 Subdivision 1 of Section 1009, notice of this
17 hearing was published in seven newspapers
18 throughout the state of New York. During the
19 30-day notice period, notice was published
20 weekly in the following papers: Albany
21 Times-Union; Binghamton Press; Buffalo News;
22 Jamestown Post-Journal; The Journal News,
23 Westchester; Plattsburgh Press-Republican and
24 the Utica Observer Dispatch on October 3rd,
25 10th, 17th, 24th and 31st, 2005.

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2 During the 30-day period, copies
3 of the proposed contracts have been available
4 for inspection at the White Plains and Albany
5 offices of the Authority.

6 Pursuant to Subdivision 1 of
7 Section 1009, notice of this hearing and copies
8 of the proposed contract were sent to the
9 legislative leaders as follows: Senate
10 Majority Leader Joseph Bruno, Assembly Speaker
11 Sheldon Silver, Senate Finance Committee
12 Chairman Owen Johnson, Assembly Ways and
13 Committee Chairman Herman Farrell, Senate
14 Minority Leader David Patterson and Assembly
15 Minority Leader Charles Nesbitt. Additionally,
16 pursuant to statute, notice of this hearing and
17 a copy of the proposed contract was submitted
18 to Governor George Pataki.

19 If you plan to make an oral
20 statement this morning and you have not filled
21 out a card at the sign-in desk, please do so
22 now. We ask that you give copies of the
23 written statement to the reporter and me either
24 before or after you deliver your remarks.
25 Although your written statement can be whatever

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2 length you like, we ask those presenting oral
3 statements to limit their remarks to ten
4 minutes. If your statement is summarizing a
5 written statement, both will appear in the
6 record.

7 The record of this hearing will
8 remain open until November 18th, 2005, for
9 submission of any additional comments or
10 statements. These should be addressed to the
11 deputy secretary and may be faxed to
12 914-681-6949 or e-mailed to
13 angela.graves@nypa.gov.

14 At this point I will turn the
15 microphone over -- well, no microphone -- over
16 to Ms. Caroline Garcia, the manager of
17 contracts and wholesale electric marketing of
18 the Authority, who will describe the terms of
19 the proposed contracts. Subsequently, we will
20 be calling upon speakers. Our order of
21 speakers will be first to call upon any elected
22 officials present and then proceed with the
23 remaining speakers thereafter.

24 Ms. Garcia.

25 MS. GARCIA: Thank you, Angela.

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2 Hello and good morning. My name is Caroline
3 Garcia and I am the manager of power contracts
4 and wholesale electric marketing for the New
5 York Power Authority. I will be speaking to
6 the details of the proposed contracts that are
7 the subject of this hearing.

8 The Niagara Redevelopment Act,
9 which authorized the Federal Power Commission
10 to issue a license to the Authority for the
11 Niagara Project requires the Authority to make
12 available at least 50 percent of the Niagara
13 Project's power to preference customers which
14 are public bodies and non-profit cooperatives.
15 The Act further requires the Authority to make
16 available a reasonable portion of such
17 preference power, but not more than 10 percent
18 of total Niagara Project power, to preference
19 customers in neighboring states. These
20 requirements were incorporated into the current
21 Niagara Project license which expires
22 August 31st, 2007.

23 The Authority is selling
24 188 megawatts of firm and 40 megawatts of
25 peaking capacity and associated energy to the

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2 seven neighboring states: Connecticut,
3 Massachusetts, New Jersey, Ohio, Pennsylvania
4 Rhode Island and Vermont. To the extent that
5 it is available, the Authority also offers up
6 to 10 percent of non-firm energy from Niagara to
7 the neighboring states. The current contracts
8 with the neighboring states will expire with
9 the end of the current Niagara Project license.

10 On August 18th, 2005, the
11 Authority filed its application for a new
12 license for the Niagara Project with the Federal
13 Energy Regulatory Commission. As part of a
14 settlement agreement, the Authority agreed to
15 continue to sell 188 megawatts of firm and 40
16 megawatts of peaking capacity and associated
17 energy and 10 percent of non-firm energy from
18 the Niagara Project to all seven neighboring
19 state customers as required by FERC rulings
20 under the Niagara Redevelopment Act. In turn,
21 all seven neighboring states agreed to support
22 the Authority's entire offer of settlement,
23 including our request for a 50-year license.
24 The proposed new license for the project will
25 contain articles implementing the NRA's

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2 requirements concerning neighboring state
3 sales.

4 The proposed contracts with the
5 neighboring states implement the requirements
6 of the proposed Niagara Project license and
7 represent the minimum sales to neighboring
8 states required under existing FERC rulings.
9 They contain detailed principles governing the
10 establishment of cost-based rates over the
11 contract term.

12 The proposed contracts have a
13 term that commences on the later of the
14 effective date of the new FERC license or the
15 date of the contracts' execution and runs
16 through September 1st, 2025, the same as the
17 current Niagara contracts with the municipal and
18 rural electric cooperative customers. New
19 contracts would be required for service beyond
20 September 1, 2025. If a license is not granted
21 to the Authority, the contracts would be of no
22 force and effect. If the new license is not
23 issued by September 1st, 2007, the new
24 contracts, if approved by the governor, would
25 take effect only on a month-to-month basis

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2 until a new license is issued.

3 Staff believes that the proposed
4 contracts with the neighboring states meet the
5 needs of the bargaining agents of these states
6 for long-term contracts while securing support
7 of our re-licensing efforts. We appreciate the
8 efforts of the neighboring states' bargaining
9 agents in expeditiously concluding negotiations
10 on these proposed contracts. For these
11 reasons, staff recommends that the proposed
12 Niagara Project contracts with the neighboring
13 states be approved.

14 This concludes my statement.
15 I'll turn the discussion back to Ms. Graves.

16 MS. GRAVES: Thanks, Ms. Garcia.
17 We'll now turn the floor over to Mr. James
18 Jablonski.

19 MR. JABLONSKI: Thank you and
20 good morning. My name is Jim Jablonski. I
21 serve as the executive director of the Public
22 Power Association of New Jersey. The PPANJ is
23 also the bargaining agent for the State of New
24 Jersey as appointed by the governor in terms of
25 all of the purchases of power and energy from

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2 the hydro allocations from New York State to
3 New Jersey.

4 The State of New Jersey is this
5 morning most pleased to provide very brief
6 comments on the proposed agreements between the
7 Authority and seven states for the sale of
8 power and energy from the Niagara Power Project.
9 I had the privilege to serve as chairman of the
10 group of neighboring states that were involved
11 in the negotiations and will be parties to the
12 proposed agreements once approved. Each state
13 participated fully in those negotiations that
14 produced the agreements that are subject to
15 this hearing.

16 The State of New Jersey supports
17 the proposed contract for itself and the
18 remaining states. And, I would add, Hans
19 Mertens from the State of Vermont, who could
20 not be with us today, also asked me to state
21 that the State of Vermont supports the
22 contracts as well.

23 As you know and we've all
24 discussed over the years, the allocations of
25 cost-based power and energy from your Niagara

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2 Power Project have represented significant
3 savings to electric utility customers in each
4 one of our states for 20 years and in
5 Pennsylvania and Ohio for much longer. The
6 savings are more relevant and more important
7 than ever in today's volatile electric utility
8 marketplace. The cost-based rates that are
9 guaranteed under these agreements result in
10 millions of dollars in annual savings for
11 electric utility customers throughout the
12 region and we all look forward to extending
13 those benefits under the agreements now pending
14 before the Authority.

15 We'd like to take time to
16 acknowledge the efforts of the Authority's
17 staff in this process. As they always have,
18 staff represented well and protected the
19 interests of the Authority and the people of
20 the state of New York, but they also continue
21 to recognize and honor the long-standing
22 relationship that each of our states has
23 enjoyed with the Authority and the importance
24 of your hydropower projects throughout the
25 region, both Niagara and St. Lawrence.

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2 The State of New Jersey thanks
3 the Authority for the opportunity to speak
4 today, for the negotiating process, and urges
5 approval of the agreements.

6 MS. GRAVES: Thank you, Mr.
7 Jablonski. We'll now call on Mr. David Straus.

8 MR. STRAUS: For the record, I'm
9 David Straus, an attorney with Thompson Coburn
10 in Washington D.C., here representing the City
11 of Cleveland, Ohio, which is the designated
12 bargaining agent for the State of Ohio, and the
13 Connecticut Municipal Electric Energy
14 Cooperative, which is the designated bargaining
15 agent for the State of Connecticut.

16 We submitted a very brief
17 statement, three pages, big type. I hope
18 everyone will read it. I'm not going to read
19 it to you. I'll just very briefly summarize
20 what's a brief statement.

21 I guess Bruce McKinnon and I are
22 the only ones that go back to 1978, when we
23 appeared before the trustees headed by Fred
24 Clark in those days and later with John Dyson,
25 and they were battles and we lost them at the

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2 beginning and we won them at the end. And
3 times have changed. There's now peaceful
4 coexistence between the Power Authority and the
5 neighboring states and that's a good thing.
6 Therefore, we fully support the contracts that
7 are before the trustees at this time.

8 The single most important
9 provision in those contracts is the requirement
10 that 10 percent of the Project's capacity and
11 energy be sold to neighboring states. That is
12 required. It's not controversial. That issue
13 is not on the table before the trustees. The
14 FERC ruled that, quote, Congress intended the
15 full 10 percent of the Project power to be
16 exported to the neighboring states if
17 economically feasible.

18 We did agree. The neighboring
19 states made a very large concession to the
20 Power Authority in these contracts, which is
21 that the Power Authority is free under the
22 contract to seek a reduction in the
23 out-of-state allocation if it can convince the
24 Federal Energy Regulatory Commission or
25 presumably Congress that such a reduction is

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2 appropriate. As I said, that's a big
3 concession by the out-of-state customers, to
4 allow the Power Authority to begin again the
5 battle of how much power should go out of
6 state. We hope it doesn't do it, but if it
7 does, we're ready to join in that battle.

8 Another important provision for
9 the Power Authority is Section 10 of the
10 contract, which assures the Power Authority
11 that we will not challenge its present costing
12 methods and rates, and assures the Power
13 Authority that it will always, under these
14 contracts, be able to collect from out-of-state
15 customers the amounts -- rates similar to those
16 it collects from in-state customers.

17 As I said, there's been a great
18 deal of cooperation that has led to these
19 contracts, including the agreement by six of
20 the seven neighboring states to reduce their
21 St. Lawrence allocation by 50 percent during
22 the last round of contract negotiations, again,
23 a very difficult concession by the neighboring
24 states, but one we made because our legal
25 rights to an allocation from St. Lawrence in

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2 any particular quantity were ambiguous, as
3 compared with the Niagara Project, where they're
4 unambiguous.

5 The battles of the past we hope
6 remain in the past. Cleveland and Connecticut
7 both much prefer negotiation and friendly
8 resolution to the litigation, although, as I
9 said, we remain willing to litigate. We know
10 that the trustees and the Power Authority and
11 the governor may be under political pressures
12 not to sell this 10 percent of the power out of
13 state, but they should be reminded, if they
14 need to be, that in the past when the Power
15 Authority has tried to depart from federal law,
16 the Federal Energy Regulatory Commission and
17 the courts of appeal said no. These political
18 pressures in the past led the Authority into
19 litigation it could not and did not win. We
20 expect that the Power Authority will now be
21 complying with the Niagara Redevelopment Act and
22 avoiding that type of litigation.

23 Thank you.

24 MS. GRAVES: Thank you,
25 Mr. Straus. I'll turn the floor over to

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2 Mr. Bruce Erickson.

3 MR. ERICKSON: My name is Bruce
4 Erickson. I'm a staff engineer from Allegheny
5 Electric Cooperative speaking for Dick Osborne
6 today. I'd like to thank the Power Authority
7 for the opportunity to present a statement at
8 this hearing today.

9 Allegheny Electric Cooperative,
10 Incorporated, the bargaining agent for the
11 Commonwealth of Pennsylvania, supports the New
12 York Power Authority's intent to execute new
13 power supply agreements for the sale of Niagara
14 Project power to the neighboring states.
15 Allegheny agrees that New York State law shall
16 govern the agreements to the extent that such
17 laws are not inconsistent with the Niagara
18 Redevelopment Act, the Niagara Project FERC
19 license, and the settlement agreement with
20 NYPA, dated August 5th, 2005.

21 Allegheny agrees that the
22 neighboring states shall not receive less than
23 10 percent of all categories, including but not
24 limited to, firm, peaking and non-firm electric
25 power and energy generated at NYPA's Niagara

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2 power project. Allegheny shall also have the
3 right to a proportionate share of additional
4 products that NYPA offers for sale to the
5 neighboring states.

6 Allegheny will accept on behalf
7 of the Commonwealth of Pennsylvania, a pro rata
8 apportionment of the aggregate neighboring
9 state Niagara hydropower allocations based on
10 the number of consumers served by the entities
11 in Pennsylvania that qualify for and are ready,
12 willing and able to receive such power as of
13 December 31, 2005. The start date of such
14 contract shall be September 1st, 2007 and shall
15 continue in effect for an initial term of 18
16 years. Allegheny shall designate a scheduling
17 agent for the scheduling of NYPA hydropower in
18 Pennsylvania under the provisions of Service
19 Tariffs NS-1, 2, and 3. With NYPA acting as
20 its transmission agent under the New York ISO
21 Open Access Tariff, Allegheny intends to
22 contract through NYPA for transmission service
23 within New York state to deliver the
24 Pennsylvania allocation to the New
25 York/Pennsylvania border.

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2 MS. GRAVES: Thank you,
3 Mr. Erickson. That's all the cards I have, so if
4 we have no further speakers. Mr. McKinnon.

5 MR. McKINNON: My name is
6 Mr. McKinnon. In the absence of other
7 individuals from Massachusetts, I didn't want
8 the record to go by without us having an
9 opportunity to once again indicate that we are
10 in support of the power contracts and that we
11 urge that the Authority and the governor
12 approve the power contracts for Massachusetts
13 and the six other neighboring states.

14 I made this very brief, because
15 I was expecting someone else from Massachusetts
16 to be the spokesperson. Thank you.

17 MS. GRAVES: Thank you,
18 Mr. McKinnon.

19 Now, if there are no further
20 statements or speakers, we will close the hearing.
21 I again thank you all for coming.

22 (Time noted: 10:48 a.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)

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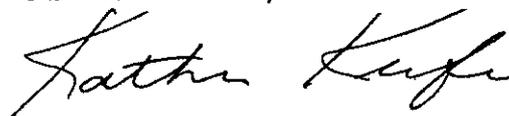
COUNTY OF NEW YORK)

I, KATHLEEN A. KEEFE, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify:

I reported the proceedings in the within entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of November, 2005.



 KATHLEEN A. KEEFE

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