

**Withdrawal of Proposal to Increase New York City  
Governmental Customer Fixed Costs Component and Request  
to Adopt Rulemaking**

**Exhibit 'B'**

**Customer Comments**

December 1, 2011

**VIA E-MAIL AND OVERNIGHT DELIVERY**

Ms. Karen Delince  
Corporate Secretary  
New York Power Authority  
123 Main Street, 11-P  
White Plains, New York 10601

Re: SAPA No. PAS-41-11-00029-P – Rates for the Sale of Power and Energy

Dear Ms. Delince:

Enclosed please find the Comments of the City of New York on the New York Power Authority's proposal to increase the Fixed Costs component of the production rates for NYC Governmental Customers and to change the production minimum billing provision of the NYC Governmental Customers' tariff effective January 2012. These comments are submitted in response to the notice published in the State Register on October 12, 2011.

If you have any questions regarding these comments, please feel free to contact me.

Sincerely,

COUCH WHITE, LLP



Adam T. Conway

ATC/glm

Enclosure

cc: Ms. Edna Wells Handy, Commissioner, DCAS (via email, w/encs.)  
Mr. Mitch Gipson, Chief of Staff, DCAS (via email, w/encs.)  
Ms. Ariella Maron, Deputy Commissioner, DCAS Energy Management (via email, w/encs.)  
Ms. Susan Cohen, Asst. Commissioner, DCAS Energy Management (via email, w/encs.)  
Mr. Sergej Mahnovski (via email, w/encs.)  
Mr. James Pasquale (via email, w/encs.)  
Ms. Helle Maide (via email, w/encs.)  
Amy Levine, Esq. (via email, w/encs.)

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

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**Rates for the Sale of Power and Energy**

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**SAPA No. PAS-41-11-00029-P**

**COMMENTS OF  
THE CITY OF NEW YORK**

**December 1, 2011**

**COUCH WHITE, LLP  
540 BROADWAY  
ALBANY, NEW YORK 12207  
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## **PRELIMINARY STATEMENT**

The City of New York (“City”) urges the Board of Trustees of the New York Power Authority (“NYPA”) to make some adjustments to the level of Fixed Costs to be included in the 2012 Cost-of-Service for the City and other New York City Governmental Customers (“NYC Customers”). Some of the proposed costs have not been adequately supported, and the supporting information provided for others indicates that they appear to be overstated or improperly imposed. The City respectfully requests that the Board of Trustees take the actions discussed herein, including reducing the Fixed Costs by at least \$8.2 million as identified on Exhibit 1, to ensure that the 2012 Cost-of-Service, and particularly the Fixed Costs, are just and reasonable.

The City also urges the Board of Trustees to review and consider changing the process by which the Fixed Costs are set. This year, the City did not receive details on the level of the Fixed Costs until two weeks before the expiration of the public comment period. To echo the comments made by the City at the recent public forum, this process involves a significant amount of costs to the City, and two weeks is not a sufficient period of time for the City to fully analyze and understand NYPA’s proposal. Indeed, for this reason, some of the comments presented herein are based on a lack of information, and the City can do no more than request that the Board of Trustees confirm the veracity and reasonableness of the costs at issue.

With respect to the proposal to revise the Production minimum bill provisions of NYPA’s Tariff,<sup>1</sup> the City notes that the tariff amendments are substantive in nature and not mere “technical changes.” The City requests that the Board of Trustees carefully review the revised Production minimum bill proposal to ensure that there is an actual need for a Production demand

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<sup>1</sup> New York Power Authority First Revised Electric Service Tariff for New York City Governmental Customers, Service Tariff No. 100, effective July 2011 Bill Period (“Tariff”).

minimum charge, and, to the extent such a charge is needed, that it is being implemented on a revenue neutral basis.

## **PROCEDURAL SETTING**

### **A. Fixed Costs**

On May 27, 2011, NYPA distributed its “*Preliminary Staff Report – New York City Governmental Customers Annual Planning and Pricing Process Analysis, Including Preliminary 2012 Cost-of-Service*” (“Preliminary Report”) to the City and other NYC Customers. On June 6, 2011, the City submitted discovery requests to NYPA related to the Preliminary Report. With respect to the questions seeking justification for the Fixed Cost items included therein, most of NYPA’s responses were, in pertinent part, as follows:

As explained over the past several years, the estimates in the Cost of Service are preliminary based upon conservative projections. Specifics will be available once the budget process is completed and the Trustees approve the budget.

As of the date of these comments, while the City did receive a revised 2012 Cost-of-Service that reflected somewhat reduced Fixed Costs from those presented in the Preliminary Report, it still has not received the supporting documentation on which certain of the Fixed Cost categories were based (primarily the items for which the above response was initially provided) that are still relevant to its understanding of the justification of the level of Fixed Costs.

On October 13, 2011, the City sent a letter to the Secretary of NYPA requesting “the complete text of the proposed rules and the scientific and statistical studies, reports and analyses that served as the basis for the proposed rule and any supporting data ... associated with the fixed cost changes.” NYPA responded to this request on the close of business on November

14, 2011, the same day it sent the revised 2012 Cost-of-Service, thereby providing the City only two weeks to review, analyze, and understand NYPA's proposal.

**B. Production Minimum Charge**

Last year, NYPA commenced a process to consider re-designing the production and delivery components of the rates it charges the City. Much of that process occurred during the first six months of 2011. In general, the process was reasonable, with the parties working collaboratively to understand and improve the proposed re-design. Indeed, as part of the process, NYPA provided several iterations of its cost of service studies and analyzed service class and customer-specific rate impacts based on different rate structures.

As part of the re-design, NYPA decided to implement a Production minimum charge in order to better collect its Fixed Costs. The Production minimum charge was discussed at NYPA's March 29, 2011 Board of Trustees meeting and approved at the June 28, 2011 Board of Trustees meeting. Throughout the time period in which this matter was discussed by the parties and considered by the Board of Trustees, the Production minimum charge was designed to be an alternative to the combined demand and energy charges. Indeed, at no time during the rate re-design process did NYPA or its consultants ever indicate that the Production minimum charge would apply only to demand charges.

At some point in time after the Board of Trustees approved the rate re-design, NYPA apparently decided to modify the nature of the minimum charge and apply it solely to demand charges. The City first learned of this change in late summer, in preparing for the electronic billing changes that would accompany the minimum charges. In response to the City's concerns that this change could result in an over-collection or a rate shift to demand from energy, NYPA has proposed to amend its Tariff to reflect this new construct. Although NYPA

describes the amendments as “technical corrections,” they constitute a substantively different type of Production minimum charge than had previously been approved.

**C. Proposed Rulemaking**

On September 27, 2011, the Board of Trustees adopted a resolution proposing to: (1) increase the Fixed Costs component of the 2012 Cost-of-Service by \$3.4 million or 2.1%; and (2) modify the Production minimum bill provisions of the Tariff. As required by the State Administrative Procedure Act (“SAPA”), on October 12, 2011, NYPA published notice of its proposed rulemaking in the New York State Register (“SAPA Notice”).

The City recently learned that NYPA may abandon the portion of the rulemaking which pertains to the Fixed Costs. The City nevertheless provides the following comments on the proposed Fixed Costs to the Board of Trustees because it believes that the level included in the 2012 Cost-of-Service, even if unchanged from 2011, is too high and should be reduced.

**DISCUSSION**

**POINT I**

**THE BOARD OF TRUSTEES SHOULD REDUCE  
THE LEVEL OF FIXED COSTS FOR 2012**

**A. THE LEVEL OF FIXED COSTS IS INCONSISTENT WITH THE BOARD  
OF TRUSTEES’ DIRECTIVE**

Because NYPA is not subject to regulatory oversight, it continues to be critically important for NYPA’s senior executives and Board of Trustees to carefully scrutinize the Fixed Costs NYPA seeks to recover from its customers. Given current economic conditions and the financial constraints confronting the City and other NYC Customers, it is equally important for NYPA to reduce its costs wherever and whenever possible.

To this end, the City was pleased to read NYPA's July 26, 2011 press release, in which NYPA announced a directive by the Board of Trustees to cut costs.<sup>2</sup> The press release stated that NYPA's goal is to match the 10% reduction in spending that Governor Cuomo mandated for State agencies as part of his 2011-2012 budget.<sup>3</sup> The City was also pleased to see that the Board of Trustees has taken action to achieve such cost reductions. For example, in a press release issued on November 15, 2011, NYPA reported that it reduced its overhead costs by \$3 million, which comprised part of its plan to achieve its goal of a 10% reduction in costs.<sup>4</sup> In contrast to this goal and the Board of Trustees' directives, the 2012 Cost-of-Service that the City received from NYPA on November 14 does not reflect absolute cost reductions in key categories (*i.e.*, cost reductions compared to 2011 levels); the fact that it includes reductions from the cost levels set forth in the Preliminary Report is inapposite because of NYPA's caveats that those cost levels lacked support and were likely to change.

According to the press releases, the categories of costs NYPA intended to reduce include salaries, consulting expenses, travel, and other overheads. The comparable Fixed Cost components to these categories are Operations and Maintenance ("O&M") and Shared Services expenses. Contrary to the information and plans described in the press releases, the latest 2012 Cost-of-Service indicated that O&M expenses are increasing by 1.2% and Shared Services expenses are increasing by 5.2%.

NYPA and the Board of Trustees should treat all of their customers similarly. Achievement of the Board of Trustees' goal of a 10% reduction in costs would mean a decrease of \$3.6 million in O&M expenses and \$3.0 million in Shared Services expenses. The City

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<sup>2</sup> <http://www.nypa.gov/Press/2011/110726b.html>

<sup>3</sup> <http://www.governor.ny.gov/press/020111transformationplan>

<sup>4</sup> <http://www.nypa.gov/Press/2011/111115a.html>

therefore requests that the Board of Trustees direct NYPA to reduce the above categories of Fixed Costs in a manner that is commensurate with the reductions recently achieved for NYPA's other customers and which shows progress towards the 10% goal.

**B. THE TREND IN O&M EXPENSE LEVELS MUST CHANGE**

Last year, the City presented information to the Board of Trustees on the trend in the level of Fixed Costs over time. In analyzing this information, NYPA Staff expressed concerns with the nature of comparison conducted by the City. NYPA Staff also asserted that it is improper to compare changes in Fixed Costs over time; instead, they argued, the comparison should look at the total cost of the supply portfolio assuming that it contained no generating facilities and the total cost of the portfolio as it actually exists.<sup>5</sup>

If the purpose of the analysis were to determine the overall value of the generating assets operated by NYPA for the benefit of the City and other NYC Customers, the City might agree that the approach advocated by NYPA Staff is the correct approach. However, to understand how the actual costs charged to the City and other NYC Customers are changing over time, it is necessary to examine the level of those costs over time. NYPA Staff is correct that market conditions may influence certain aspects of those costs, but NYPA's own actions and cost controls have an equal, or perhaps greater, impact on the cost levels. Also, while NYPA asserted that it operates its generating assets only when it is economically beneficial to do so, the analysis it provided on November 15, 2011 does not support that assertion. Indeed, NYPA's own analysis indicates that it has operated its 500 MW combined cycle unit ("500 MW unit") since 2008 when it was not economically beneficial to do so (*i.e.*, the operation of the unit resulted in either a net loss or net zero revenues).

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<sup>5</sup> Minutes Of The Regular Meeting Of The Power Authority Of The State Of New York, dated January 25, 2011 ("January 25, 2011 Minutes"), p. 36.

In an attempt to address the prior concerns raised by NYPA Staff, the City has performed a different analysis this year. Instead of examining all Fixed Costs, the City has limited its analysis to O&M expenses. This approach removes the concern regarding the allocation of overheads and other shared services, as well as debt service amortizations. Instead, it compares only the costs of operating the generating facilities dedicated to serving the NYC Customers and shows how those costs have changed over time.<sup>6</sup>

The results show an increase in the average level of O&M expense, on a per unit basis as a function of generator output, from a 2006 level of \$5.93/MWh to a projected 2012 level of \$11.83/MWh. This represents an increase of nearly 100% since 2006. The increase from 2011 to 2012 is 16.7%.<sup>7</sup>

Accordingly, the City requests that the Board of Trustees examine ways to reduce or reverse the trend in O&M expenses, similar to the manner in which it is reducing costs for its other customers, as noted above. Exhibit 2 shows the full detailed results of the City's analysis.

**C. SOME OF THE PROPOSED PROJECTS FOR 2012 REQUIRE  
ADDITIONAL EXPLANATION AND JUSTIFICATION**

The information recently provided by NYPA in support of the 2012 Cost-of-Service gives rise to some questions regarding the projects NYPA intends to undertake. Because of the limited period the City has had this information, it has not been able to seek or obtain additional information regarding these projects. Accordingly, the City raises its concerns here and requests that the Board of Trustees confirm the reasonableness and propriety of the projects.

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<sup>6</sup> The costs and output from the Astoria Energy II facility are excluded from this analysis because they are treated separately by NYPA.

<sup>7</sup> Because the annual O&M expenses are associated with differing levels of production, reviewing them on a straight dollar basis could create a false impression as to their reasonableness. As the above analysis demonstrates, the lack of change between the level of O&M expenses in 2011 and 2012 does not provide a meaningful comparison.

NYPA recently revealed its plan to replace the roof of the 500 MW unit in 2015-2016, when the plant will only be 10 years old. The City does not understand why the roof requires replacement so soon. It therefore requests that the Board of Trustees examine this planned expenditure, including whether a claim can and should be made against the roofing contractor for inadequate installation.<sup>8</sup>

NYPA proposes to replace the major valves in the 500 MW unit over a three-year period to reduce maintenance, failures, and forced outages. It is not clear whether the superior valves were available when the unit was constructed, and if so, why they were not installed initially. As with the roof, the City requests that the Board of Trustees examine why valves that are less than 10 years old are already experiencing failures, and whether there is any recourse available against the valve manufacturer (or installer).

A third project involves the relocation of temporary trailers on the site. NYPA proposes to spend almost \$500,000 to relocate them. However, NYPA already has an Administration Building on the site, as well as a number of auxiliary buildings. The Administration Building was originally intended to house the employees responsible for operating, maintaining, and supporting the Charles A. Poletti Generating Station (“Poletti”), but Poletti will have been retired for almost two years as of January 1, 2012 and most of those workers have been reassigned to the 500 MW unit or other positions within NYPA. Moreover, NYPA has previously reported that it needs fewer people to operate, maintain, and support the 500 MW unit than it needed for Poletti. The City therefore requests that the Board of Trustees examine why NYPA cannot use the Administration Building to support the operation of the 500 MW unit, and why the trailers continue to be needed.

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<sup>8</sup> The information provided also indicates that the roof has already experienced a series of leaks, and that NYPA is budgeting for repairs of additional leaks in 2012.

In its November 15 press release, Trustee John Dyson observed that NYPA and the Board of Trustees are “sharpening [] our collective pencils to make sure that every dollar is spent wisely and that we get the most out of our resources.” The City urges the Board of Trustees to follow a similar path and sharpen their pencils again when they review the 2012 Cost-of-Service. At a minimum, the Board of Trustees should ensure that the aforementioned projects are justified and the expenditures are appropriate.

**D. THERE ARE QUESTIONS SURROUNDING CERTAIN POLETTI-RELATED COSTS**

Since at least 2006, and presumably for years before then, some portion of the rates paid by the City and other NYC Customers to NYPA were placed into an asset retirement fund for Poletti. As noted above, Poletti will have been retired for almost two years as of January 1, 2012. Therefore, any expenses associated with the retirement and dismantlement of Poletti should come from that retirement fund. The City raised this issue with NYPA last year, but the Staff Analysis contained in the January 25, 2011 Minutes does not contain any response to the City’s assertion. The City requests that the Board of Trustees explain why expenses related to Poletti are not recovered from the asset retirement fund.

The City’s second concern with the Poletti-related costs pertains to NYPA’s expenditures related to the decommissioning and dismantlement of the power plant. NYPA reported that it planned to spend almost \$11 million in 2011, and an unspecified amount in 2012 on decommissioning projects and preparatory work for the dismantlement of Poletti. The City asked NYPA for a copy of its plan for the decommissioning and dismantlement of Poletti to understand the scope of work, time frame, and expected cost. In response, NYPA stated that it does not have a plan and no final decisions regarding the work have been made.

The absence of a Poletti retirement plan raises questions regarding cost-effectiveness of the expenditures to date, and whether there could be savings associated with a more comprehensive, coordinated approach. Consistent with the cost control efforts discussed earlier, the Board of Trustees should carefully scrutinize the deconstruction plan for Poletti to ensure that its cost is minimized to the extent possible.

**E. THE COSTS RELATED TO THE 500 MW UNIT SHOULD BE ADJUSTED**

The City objects to three of the capital costs and one expense item related to the 500 MW unit included in the 2012 Cost-of-Service.

1. Oil Inventory Carrying Cost

This cost is not a Fixed Cost and should be removed. Section II.B.1.b of the Long Term Agreement defines “variable costs” as including “the expected cost of fuel ... incurred by NYPA to serve the NYC Governmental Customers.” In response to a similar objection raised by the City last year, NYPA Staff responded that “the Authority seeks only to recover the lost opportunity costs related to investing in these assets on the Customers’ behalf since the funding for these items comes from the Authority’s operating reserves.”<sup>9</sup>

This response does not address the City’s objection, nor does it provide any basis to classify this cost as a Fixed Cost. The above-quoted language from the Long Term Agreement is clear that the cost of fuel is a Variable Cost, not a Fixed Cost. The carrying charge on the oil inventory is part of the cost of the fuel; it is not a separate and distinct expense. Additionally, it is not an expense included in any of the cost categories shown on Attachment B to the Long Term Agreement. Section II.B.1.a of the Long Term Agreement further proves that

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<sup>9</sup> January 25, 2011 Minutes, p. 37.

this cost is not a Fixed Cost; it provides “[a]dditions to the cost categories shown in Attachment B, such as other costs *not included within the Variable Costs* below, ... [emphasis added].”

2. 500 MW 7A & 7B Turbine Repair

This cost is identical to a cost NYPA included in the 2011 Cost-of-Service. The City questioned that cost, asking for “an updated accounting of the total financial impact (excluding hedges) associated with the 500 MW CCU 7A & 7B turbine repair. In doing so, please include the total cost of the repair and the total insurance reimbursement....”<sup>10</sup> NYPA’s response to that request was “[s]ee footnote to ‘O&M Reserve’ tab.”<sup>11</sup> The explanation provided in that footnote was:

The O&M Reserve was drawn down to provide funding relating to the 500 MW CCU 2008 outage. The outage cost NYPA some \$6 million not covered under the LTSA with the Wood Group. An additional [*sic*] \$1 million was spent to support other 500 MW CCU emerging work. The \$7 million in outage related costs was offset by insurance settlement of \$4.7 million. The actual 2008 O&M costs for the Small Hydro projects came in approximately \$1 million over the COS primarily associated with the FERC mandated structure repairs. Poletti actuals came in \$0.3 million above the COS. In total NYPA actual O&M costs totaled \$8.3 million above the amount provided in the COS. Applying the \$2.2 million in the reserve NYPA spent \$6.1 million above the amount recovered through rates.

As can be seen from the foregoing, the City’s request was broadly stated. In response, though, NYPA never made any mention of any capital cost aspect of the repair.

Based on the foregoing information for the 2011 Cost-of-Service, the City could not understand why NYPA included \$1.0 million as a capital cost for the 500 MW unit turbine

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<sup>10</sup> 2011 Cost-of-Service, Information Request NYC-12e.

<sup>11</sup> 2011 Cost-of-Service, NYPA Response to NYC-12e.

repair. Therefore, the City objected to the inclusion of that cost. In response to the City's objection, NYPA Staff claimed that the \$1.0 million "represents the amortization of recovering the \$15.5 million capital portion of the repair cost..."<sup>12</sup>

This year, the Preliminary Report contains the exact same language as the 2011 Preliminary Report, as cited above. Additionally, the 2012 O&M Reserve worksheet provided by NYPA contains the exact same footnote as in the 2011 O&M Reserve worksheet provided last year, also as cited above. The City has not been given any information regarding the claimed \$15.5 million capital cost, and there is no mention of it in any of the information NYPA has provided.

For all of the foregoing reasons, the City has not been able to confirm the veracity of the annual amortization of the alleged, underlying \$15.5 million capital expenditure. Unless and until NYPA is able to provide documentation regarding the capital expenditure related to the turbine repair, this amortization cost should be removed.

### 3. GE Litigation Expenses

Last year, the City and the Metropolitan Transportation Authority requested supporting documentation regarding this item. In response, NYPA stated that it had commenced litigation against General Electric and five subcontractors related to the design, engineering, and construction of the 500 MW unit. The case was settled within approximately a year, with NYPA incurring \$2.6 million in legal fees and costs that it now seeks to recover from the City and other NYC Customers. However, NYPA asserted that the City and other NYC Customers were prohibited from knowing the terms or value of the settlement or the amount of time and effort spent by NYPA's outside counsel on this case.

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<sup>12</sup> January 25, 2011 Minutes, p. 38.

The City explained that because of the dearth of information, it was impossible to determine the validity or magnitude of NYPA's claims and General Electric's counterclaims, the reasonableness of the settlement, or whether the legal fees and costs were reasonable and prudently incurred.<sup>13</sup>

In response to the City's objection to this cost, NYPA Staff provided the following one-sentence explanation:

It is staff's position that both of these agreements were necessary to protect the Customers' best interests and the Authority cannot subject itself to legal action by violating these confidentiality agreements.<sup>14</sup>

Neither NYPA Staff nor the Board of Trustees ever responded to the City's contention that the level of legal fees was unreasonable. This year, NYPA has not provided any additional information to justify these expenses. The City continues to contend that the GE litigation fees should be removed or reduced because they have not been justified to the City or other NYC Customers. Accordingly, the amortized expense level should be removed, or at least reduced by 50%, to \$200,000.

**F. THE CITY IS NOT LIABLE FOR NYPA'S HUDSON TRANSMISSION PROJECT-RELATED EXPENSES**

Last year, the City objected to the inclusion of expenses related to the Hudson Transmission Project ("HTP") as not properly recoverable via the Fixed Cost component of the

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<sup>13</sup> NYPA refused to provide the billing rates for its outside counsel, although it never claimed that piece of information was subject to any confidentiality agreement. Inasmuch as the case was settled within a year, the City asserted that the legal fees appeared to be excessive, equating to approximately 3,460 to 5,200 hours of work (based on an assumed hourly rate of \$500 to \$750).

<sup>14</sup> January 25, 2011 Minutes, p. 39. According to the discussion of this issue, NYPA entered into two confidentiality agreements, one with General Electric and one with one or more unidentified parties.

Cost-of-Service. Because NYPA's renewed interest in the HTP in 2009 was separate from any request for proposals issued pursuant Section XI of the Long Term Agreement, the City asserted that it was not responsible for NYPA's HTP-related expenses.

NYPA Staff disagreed with the City's position, in part because of the absence of any agreed-upon understanding that the City would not be responsible for such costs. Although the City did not agree with NYPA's rationale last year, that rationale clearly does not apply today. While there is not a binding agreement between NYPA and the City, there does exist a non-binding term sheet which represents the understanding between NYPA and the City regarding a number of issues associated with the HTP, including the allocation of the costs NYPA has incurred to date. Under the term sheet, the City is not responsible for NYPA's costs related to the HTP, other than RFP costs which have already been recovered. Given this change in the facts and circumstances surrounding the HTP, the HTP-related expenses should be removed from the Cost-of-Service.

## **POINT II**

### **THE PROPOSED CHANGES TO THE PRODUCTION MINIMUM CHARGES ARE NOT PROPERLY SUPPORTED AND SHOULD NOT BE ADOPTED**

#### **A. THE RULEMAKING CONTAINS UNSUPPORTED MATERIAL CHANGES TO THE PRODUCTION MINIMUM BILLING PROVISION**

The SAPA Notice states that the NYPA is proposing "technical corrections to the production minimum billing provision of the Customers' tariff to become effective January 2012." However, the full text of the proposed tariff amendments demonstrates that the changes to the Production minimum billing provisions are material, substantive changes.

The "Production minimum bill" provisions are set forth in Section VI.B of the Tariff. As noted above, the convention used by NYPA throughout the Tariff is that capitalized

terms have the meanings defined therein. As used in Section VI.B, “Production” is such a term, which Section II of the Tariff defines as “[a]uthority supply of power and energy, excluding Delivery Service and Third-Party Supplier power and energy.” Thus, according to the plain language of the Tariff, “Production” includes demand and energy, so a “Production minimum charge,” if it applies, must be the alternative to all demand and energy charges.

This interpretation of the Tariff is consistent with NYPA’s prior presentations of this matter to the Board of Trustees. According to the Minutes from the Board’s March 29, 2011 meeting, NYPA described the term Production as “*i.e.*, demand and energy.”<sup>15</sup> Similarly, Exhibit 3-A attached to those Minutes states that “[a]dditional features of the production rate redesign Recommended Plan are: ... Implementation of minimum billing charges in 2010.”<sup>16</sup> These descriptions of the minimum charges indicate that they are comprehensive in scope, and NYPA’s comment to the Board of Trustees that its proposal “has widespread support among the Customers”<sup>17</sup> was accurate only if the Production minimum charges include all Production-related costs.<sup>18</sup>

On September 8, 2011, NYPA provided information to the City regarding its plans to implement the Production minimum charges, which indicated that NYPA intended to apply the minimum charges solely to demand. The narrative presentation implied that any revenue over-collection might possibly flow back to customers later through the reconciliation mechanism for Variable Costs, or result in a transfer of rates from demand to energy. The City

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<sup>15</sup> Minutes Of The Annual Meeting of The Power Authority Of The State of New York, dated March 29, 2011 (“March 29 Minutes”), p. 47.

<sup>16</sup> *Id.* at Exhibit 3-A, p. 2.

<sup>17</sup> *Id.* at p. 48.

<sup>18</sup> During the rate re-design process, none of the iterations of the cost of service studies and service class and customer impacts performed by NYPA and its consultants examined a Production demand-only minimum charge.

raised concerns about NYPA's reinterpretation of Section VI.B in a letter to NYPA dated September 14, 2011. Instead of addressing the City's concerns, NYPA re-wrote Section VI.B to be consistent with NYPA's new application of the Production minimum charge. If the re-written Production minimum charge is approved by the Board of Trustees, this charge will be different from the Production minimum charge that was authorized by the Board of Trustees as part of the rate re-design process approved in June 2011.

**B. NYPA HAS NOT DEMONSTRATED A NEED TO COLLECT MINIMUM CHARGES**

In its presentation to the Board of Trustees on September 27, 2011, NYPA Staff stated that the purpose for implementing a Production minimum charge is to “achieve a more appropriate recovery of the Fixed Costs component through the customer production demand charges that will lower the estimated revenue shortfall and rate increase for 2012.”<sup>19</sup> If NYPA believed that its Production rates, and particularly its Production minimum charges, needed to be modified to better collect Fixed Costs, it should have addressed this concern through the rate re-design process. It did not do so. While NYPA may change its Tariff, it is well-established that it must provide a rationale for doing so.<sup>20</sup>

Further, the documentation provided by NYPA on November 3 and 14, 2011 does not show a material shortfall or justify the need for a Production minimum charge. The documentation provided by NYPA on November 3, 2011 compared NYPA's preliminary revenue forecast for 2012 both with and without the minimum charges. Without the minimum charge, the analysis showed that NYPA would over-collect its Cost-of-Service by \$0.7 million. With the minimum charge, NYPA would over-collect its Cost-of-Service by \$10.0 million. The

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<sup>19</sup> Minutes of the Regular Meeting of the Power Authority of the State of New York, dated September 27, 2011, p. 25.

<sup>20</sup> See, e.g., *Matter of Charles A. Field Delivery Serv. v. Roberts*, 66 N.Y.2d 516 (1985).

documentation provided on November 14, 2011, which used historical information, showed that NYPA's shortfall was approximately \$9 million, or about one percent of its total revenues, and that inclusion of the minimum charges would produce an overcollection of \$4.5 million. Taken collectively, this information does not demonstrate a compelling or immediate need for the Production minimum charge.

**C. NYPA HAS NOT VERIFIED THAT ITS NEW CONSTRUCT WILL BE REVENUE NEUTRAL**

The information that NYPA provided to the City on September 8, 2011 included a table suggesting a \$10 million overcollection (for all NYC Customers) with the implementation of a Production demand-only minimum charge. However, as noted above, NYPA has maintained that the Production minimum charge, as well as the Production demand-only minimum charge, would be revenue neutral. NYPA did not provide billing determinants (units and rates) in its November 3, 2011 data response to the City, but it did eventually provide an example using hypothetical 2011 rates showing revenue neutrality. Because NYPA has not provided preliminary 2012 rates or any calculation showing the effect of implementing the minimum charge on those 2012 rates, the City remains concerned that the 2012 rate design may not be revenue neutral.

NYPA maintains that the rate calculations will be finalized during the rate setting process to occur once the 2012 Cost-of-Service is finalized in December 2011. However, the rate setting process is part of the Cost-of-Service process, not a separate and distinct process. The Board of Trustees should require NYPA Staff to produce a worksheet showing the 2012 rates and confirming that the implementation of any Production minimum charges will be revenue neutral. That worksheet should be provided to the City immediately, as well.

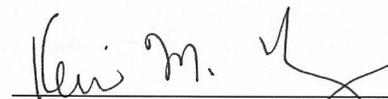
For the foregoing reasons, the City urges the Board of Trustees to reject the proposed tariff amendments that would convert the Production minimum charge to a “Demand” minimum charge and to reconsider the need to institute any Production minimum charges at this time. In the event the Board of Trustees determines that it is appropriate to institute such charges, the City requests that the Board ensure that they are implemented on a revenue neutral basis.

### CONCLUSION

The City respectfully requests that the NYPA Board of Trustees adjust the level of Fixed Costs and address the proposed modifications to the Production minimum charges in accordance with the discussion and recommendations set forth herein.

Dated: December 1, 2011  
Albany, New York

Respectfully submitted,



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# **EXHIBIT 1**

## New York Power Authority 2012 NYC Govt. Customers Fixed Costs

Line	Description	NYPA Projected				NYC Adjusted				Total Reduction		
		Poletti	500 MW	Small Hydro	Other	Total	Poletti	500 MW	Small Hydro		Other	Total
<b>O&amp;M Expense (Figure 2)</b>												
1	Total Site Payroll	\$ -	\$ 11.1	\$ 3.1	\$ -	\$ 14.2	\$ -	\$ 11.1	\$ 3.1	\$ -	\$ 14.2	
2	Direct Purchases	-	1.2	0.2	-	1.4	-	1.2	0.2	-	1.4	
3	Store Issues	-	0.5	0.1	-	0.6	-	0.5	0.1	-	0.6	
4	Fees & Dues	-	0.2	0.0	-	0.2	-	0.2	0.0	-	0.2	
5	Office & Station Expense	-	0.6	0.2	-	0.8	-	0.6	0.2	-	0.8	
6	Contracted Services	-	7.3	0.6	-	7.9	-	7.3	0.6	-	7.9	
7	Consultants	-	0.5	0.6	-	1.0	-	0.5	0.6	-	1.0	
8	Other Expenses	-	-	-	-	-	-	-	-	-	-	
9	Amortized LT Service Agreement	-	6.7	-	-	6.7	-	6.7	-	-	6.7	
10	Total	\$ -	\$ 28.2	\$ 4.6	\$ -	\$ 32.8	\$ -	\$ 28.2	\$ 4.6	\$ -	\$ 32.8	
11	Reduction to reach 90% of 2011 Level											\$ (3.6)
12	<b>Adjusted O&amp;M Expense Level</b>	2011 Level = \$32.4 million - 10% Red. = \$29.2 million									\$ 29.2	\$ (3.6)
<b>Shared Services Expense (Figure 3)</b>												
13	Allocation to Headquarters	\$ -	\$ 9.9	\$ 2.1	\$ -	\$ 12.1	\$ -	\$ 9.9	\$ 2.1	\$ -	\$ 12.1	
14	Research & Development	-	1.0	0.2	-	1.2	-	1.0	0.2	-	1.2	
15	Allocation to Capital	-	(1.1)	(0.2)	-	(1.4)	-	(1.1)	(0.2)	-	(1.4)	
16	Headquarters Direct Support	-	-	-	9.0	9.0	-	-	-	9.0	9.0	
17	Total	\$ -	\$ 9.8	\$ 2.1	\$ 9.0	\$ 20.9	\$ -	\$ 9.8	\$ 2.1	\$ 9.0	\$ 20.9	
18	Reduction to reach 90% of 2011 Level											\$ (3.0)
19	<b>Adjusted Shared Services Expense Level</b>	2011 Level = \$19.9 million - 10% Red. = \$17.9 million									\$ 17.9	\$ (3.0)
<b>Capital Cost (Figure 4)</b>												
20	Fixed Debt	\$ 3.7	\$ 43.6	\$ 0.1	\$ -	\$ 47.5	\$ 3.7	\$ 43.6	\$ 0.1	\$ -	\$ 47.5	
21	Variable Debt	-	21.5	5.6	-	27.1	-	21.5	5.6	-	27.1	
22	Bond Deferral	11.6	-	1.9	-	13.5	11.6	-	1.9	-	13.5	
23	Greene County Overhead Debt	-	-	-	0.4	0.4	-	-	-	0.4	0.4	
24	Arthur Kill Overhead Debt	-	-	-	0.0	0.0	-	-	-	0.0	0.0	
25	White Plains Office HQ	-	-	-	-	-	-	-	-	-	-	
26	Project Studies Debt	-	-	-	0.1	0.1	-	-	-	0.1	0.1	
27	Y2K (Year 2000 Project)	-	-	-	0.1	0.1	-	-	-	0.1	0.1	
28	Small Hydro Interest Rate SWAP Exp.	-	-	0.5	-	0.5	-	-	0.5	-	0.5	
29	500 MW Inv. Carrying Cost	-	0.2	-	-	0.2	-	0.2	-	-	0.2	
30	Oil Inventory Carrying Cost	-	0.1	-	-	0.1	-	-	-	-	-	
31	NYMEX Margin Carrying Cost	-	-	-	-	-	-	-	-	-	-	
32	Poletti M&S Inv. Write Off - 7 Year Amort.	1.3	-	-	-	1.3	1.3	-	-	-	1.3	
33	Capital Additions	-	-	-	0.5	0.5	-	-	-	0.5	0.5	
34	Minor Capital Additions	-	-	-	0.3	0.3	-	-	-	0.3	0.3	
35	Spare Transformer	-	-	-	0.3	0.3	-	-	-	0.3	0.3	
36	500 MW 7A & 7B Turbine Repair	-	1.0	-	-	1.0	-	-	-	-	-	
37	Total	\$ 16.7	\$ 66.4	\$ 8.2	\$ 1.7	\$ 93.0	\$ 16.7	\$ 65.3	\$ 8.2	\$ 1.7	\$ 91.9	\$ (1.1)
<b>Other Expenses</b>												
38	Demand Side Management	\$ -	\$ -	\$ -	\$ 0.4	\$ 0.4	\$ -	\$ -	\$ -	\$ 0.4	\$ 0.4	
39	2008 IRP Study	-	-	-	-	-	-	-	-	-	-	
40	Govt. Customer Load Research Study	-	-	-	-	-	-	-	-	-	-	
41	CRA Risk Audit Report	-	-	-	-	-	-	-	-	-	-	
42	RFP#5 Actual Expense	-	-	-	0.0	0.0	-	-	-	0.0	0.0	
43	Govt. Cust. Load Research Study	-	-	-	0.3	0.3	-	-	-	0.3	0.3	
44	Rate Design Study	-	-	-	0.6	0.6	-	-	-	0.6	0.6	
45	GE Litigation - 500 MW (7-Year Write off)	-	0.4	-	-	0.4	-	0.2	-	-	0.2	
46	2008 500 MW UCAP	-	-	-	-	-	-	-	-	-	-	
47	Hudson Transmission Project	-	-	-	0.3	0.3	-	-	-	-	-	
48	Other Post Employ. Benefits (OPEB)	-	-	-	3.6	3.6	-	-	-	3.6	3.6	
49	Asset Retirement Charge	3.9	3.8	-	-	7.7	3.9	3.8	-	-	7.7	
50	Special Studies Expense	-	-	-	-	-	-	-	-	-	-	
51	Keep Cool Program	-	-	-	-	-	-	-	-	-	-	
52	Fish Studies	-	-	-	-	-	-	-	-	-	-	
53	NYS Cost Recovery Fee	-	-	-	-	-	-	-	-	-	-	
54	Total	\$ 3.9	\$ 4.2	\$ -	\$ 5.2	\$ 13.3	\$ 3.9	\$ 4.0	\$ -	\$ 4.9	\$ 12.8	\$ (0.5)
55	Investment & Other Income (Credits)	\$ -	\$ -	\$ -	\$ (0.0)	\$ (0.0)	\$ -	\$ -	\$ -	\$ (0.0)	\$ (0.0)	\$ -
56	Total Fixed Cost Adjustments											\$ (8.2)
57	<b>TOTAL FIXED COSTS</b>					\$ 159.9					\$ 151.7	
58	Projected Poletti Generation (MWh)					-					-	
59	Projected 500 MW Sales (MWh)					2,626,176					2,626,176	
60	Projected Small Hydro Sales (MWh)					147,223					147,223	
61	<b>PROJECTED SALES (MWh)</b>					2,773,399					2,773,399	
62	<b>PER UNIT COSTS</b>					\$ 57.66					\$ 54.69	

## **EXHIBIT 2**

## New York Power Authority

### Identification of Historical/Current Per Unit O&M Fixed Cost Levels

Line	Description	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Actual 2010	Actual 2011 <sup>1</sup>	Projected 2012
1	Total O&M Fixed Costs	\$ 29.9	\$ 31.9	\$ 39.8	\$ 42.2	\$ 31.9	\$ 32.4	\$ 32.8
2	Actual/Projected Sales of Generating Units (MWh)	5,043,336	5,256,891	4,910,569	4,520,248	3,145,404	3,199,115	2,773,399
3	Per Unit Fixed Costs (\$/MWh)	\$ 5.93	\$ 6.06	\$ 8.10	\$ 9.34	\$ 10.15	\$ 10.14	\$ 11.83
4	Per Unit % Change - year-over-year		2.2%	33.6%	15.3%	8.7%	-0.2%	16.7%
5	Per Unit % Change Cumulative		2.2%	36.6%	57.6%	71.3%	71.0%	99.6%

Notes:

<sup>1</sup> Actual through June 2011 and projection for remaining six months. Based on information from NYPA's July 2011 Monthly COS Report.