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POWER AUTHORITY  
OF THE  
STATE OF NEW YORK

30 South Pearl Street  
Albany, New York

AGREEMENT FOR THE SALE  
OF NIAGARA PROJECT POWER AND ENERGY  
TO NEIGHBORING STATES

Service Tariff No. NS-1 - Firm Hydroelectric Power and Energy  
Service Tariff No. NS-2 – Firm Peaking Hydroelectric Power and Energy  
Service Tariff No. NS-3 - Non-Firm Hydroelectric Energy Service

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[Date]

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

**30 South Pearl Street**

**Albany, New York 12207**

**AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY**

\_\_\_\_\_, which is the bargaining agent for the [Commonwealth] State of \_\_\_\_\_, hereby enters into this Agreement with the Power Authority of the State of New York (hereinafter called the “Parties”), for electric service as follows:

**I. Definitions**

- a. **Agreement** means this Agreement.
- b. **Authority** is the Power Authority of the State of New York.
- c. **Contract Demand** will be the amounts set forth in Section II or such other amount as may be determined in accordance with the provisions of this Agreement.
- d. **Customer** is the bargaining agent identified above.
- e. **Electric Service** is any type of output, including, but not limited to Power and Energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.
- f. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- g. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which new license will become effective after expiration of the Project’s original license issued on January 30, 1958.
- h. **Firm Hydroelectric Power and Energy** are firm power and associated energy from the Authority’s Niagara Power Project, intended to be available at all times except for limitations provided in this Agreement, the Rules, applicable Service Tariff or in other contract documents.
- i. **Firm Hydroelectric Peaking Power and Energy** are firm Power and Energy from the Authority’s Niagara Power Project, intended for use primarily in Customer's peak load periods and limited as to the Energy to be supplied as set forth in this Agreement, the Rules, an applicable Service Tariff or in other contract documents.

- j. **Non-firm Hydroelectric Energy** is all Energy from the Authority's Niagara Power Project that is in addition to the Energy associated with Firm Hydroelectric Power and Energy and Firm Peaking Hydroelectric Power and Energy, that is available from time to time, and that is subject to interruption for extended periods because of decreased water flow or other system conditions.
- k. **Neighboring State Customers** means Customer and all other neighboring state bargaining agents that receive service from the Niagara Power Project.
- l. **NRA** means the federal Niagara Redevelopment Act (18 USC §§836, 836a)
- m. **NYISO** means the New York Independent System Operator or any successor organization.
- n. **Project** means the Niagara Power Project, FERC Project 2216.
- o. **Project Power and Energy** means Firm Hydroelectric Power and Energy, Firm Peaking Hydroelectric Power and Energy, Non-firm Hydroelectric Energy, and such additional services as may be sold to Customer at any time during the term of this Agreement produced by the Project; as set forth in Article II (d) below, this shall not be construed as limiting Customer's right to claim entitlement to other Project products and services under the terms of the NRA and the FERC License.
- p. **Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Relicensing Settlement Agreement addressing allocation of Niagara Project Power and Energy to the Neighboring States dated \_\_\_\_.
- q. **Rules** are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).
- r. **Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.

## II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License, in the amounts set forth below:

Firm Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NS-1 - \_\_\_\_\_ KiloWatts (Contract Demand)

Firm Peaking Hydroelectric Power and Energy Service pursuant to

Service Tariff No. NS-2 - \_\_\_\_\_ KiloWatts (Contract Demand)

Non-Firm Hydroelectric Energy Service pursuant to  
Service Tariff No. NS-3 - As available

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction, provided that in the event of such a modification, the aggregate percentage of the Project Power and Energy allocated to Neighboring State Customers shall be ten percent (10%) of all Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. In the event the capability of the Project is modified, the Authority shall conduct a study to determine the effect of such capability change on the amount of Project Power and Energy.

Separately and additionally, when the Authority conducts a discrete program of changes or upgrades to the Project, such as a program of upgrades to the Project's generating units, including the current Niagara Upgrade Project, the study referred to in the foregoing sentence shall be conducted at the completion of such program. If additional quantities of Project Power and Energy are produced from the Project as a result of such capability changes or upgrades, the aggregate percentage of such additional quantities of Project Power and Energy to be offered to Neighboring State Customers shall be such that the total amount of each category of Project Power and Energy offered to Neighboring State Customers shall be ten percent (10%) of each category of Project Power and Energy, as modified, or such other percentage as may be established in accordance with Article III below. Customer's share of any additional quantities of Project Power and Energy, which it has no obligation to purchase, shall be based on its proportional share of the allocation among the Neighboring State Customers of Project Power and Energy, as applicable.

- c. Except as otherwise provided in Article III below, ten percent (10%) of all Project Non-Firm Hydroelectric Energy shall be made available pursuant to Service Tariff No. NS-3 to Neighboring State Customers on a cumulative basis effective on the commencement of service under this Agreement. Non-Firm Hydroelectric Energy from the Project shall be offered to all Neighboring State Customers in proportion to their respective firm power allocations (i.e., based on the Project capacity existing as of the effective date of this Agreement as it may be subsequently modified pursuant to Article II b). More specifically, the Customer's Non-Firm Hydroelectric Energy allocation from the Project will be equal to the Customer's Contract Demand for Firm Hydroelectric Power and Energy (in kW) divided by the sum of the Neighboring State Customers' Contract Demands for Firm Hydroelectric Power and Energy (in kW) times the total Project Non-Firm Hydroelectric Energy available to all Neighboring State Customers). To the extent that there is a balance of Project Energy owed to either the Customer or the

Authority on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Non-Firm Hydroelectric Energy, that balance shall be carried over and maintained as the balance as of the effective date of service under this Agreement. The Authority shall make available periodically, but at least semi-annually, a tabulation showing cumulative comparisons between total actual Non-Firm Hydroelectric Energy sales to each Neighboring State Customer and the amount of Energy the Authority has contracted to make available. The Authority shall provide backup documentation for said tabulations at the request of Customer.

- d. Neither the identification of the Electric Service to be provided under this Article or other provisions of this Agreement shall be construed as limiting either Customer's or the Authority's rights under the NRA or the FERC License with respect to whether there are now or will be in the future additional products or services ("Additional Products") from the Project that are required to be offered to Customer. Nothing in this Agreement shall preclude Customer from requesting a ruling from FERC or taking any other action to require the Authority to provide Additional Products from the Project to Customer.

### **III. Modification of Neighboring State Allocations**

Nothing in this Agreement shall preclude the Authority from requesting a ruling from FERC, no earlier than two years after the initiation of service pursuant to this Agreement, and on at least 30 days written notice to the Neighboring State Customers that the aggregate amount of Project Power and Energy sold hereunder to Neighboring State Customers as a group, and the portion thereof sold to Customer hereunder may, under the terms of the NRA and the FERC License, be reduced to less than ten percent (10%), but in no event shall such aggregate amount be less than seven and one-half percent (7.5%) of each class of Project Power and Energy. Nothing in this Agreement shall preclude Customer from opposing any such request by the Authority. In addition, any such reduction shall be only as allowed by a final, non-appealable FERC order and shall be prospective only from the date that is the first day of a month that is at least 90 days following the date upon which such order becomes final and non-appealable. Nothing in this Article or this Agreement shall be construed as an admission by the Authority or Customer as to the amount of Project Power and Energy required to be sold to the Neighboring State Customers under the NRA and the FERC License. Upon the issuance of written notice by the Authority of its intent to seek such a ruling from FERC, Customer may prospectively, from the date of such notice, by written notice to the Authority elect not to be bound by the terms of Article X below, concerning Rates.

### **IV. Rules, Regulations and Service Tariffs**

The Rules, Service Tariff No. NS-1, Service Tariff No. NS-2 and Service Tariff No. NS-3, as now in effect and/or such superseding tariffs or other tariffs as the Authority

may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

## **V. Resale of Project Power and Energy**

In reselling and distributing Project Power and Energy purchased from Authority, Customer shall: 1) do so pursuant to the appropriate laws of the State or Commonwealth in which Customer operates, 2) do so without profit other than reasonable compensation for administrative and service costs, 3) resell such Project Power and Energy only to the distributing entities designated in Appendix A of the Application for Electric Service filed by Customer with Authority and maintained on a current basis, and which are “public bodies or nonprofit cooperatives” under the NRA (“Distributing Entities”), 4) to the extent it is capable of doing so, not permit such Distributing Entities to sell such Project Power and Energy for resale except as designated in Appendix A of the Application for Electric Service, 5) to the extent it is capable of doing so, require such Distributing Entities to resell the Project Power and Energy without profit except for administrative and services costs of the Customer and reasonable compensation (as allowed by the regulatory agencies authorized by law to regulate the rates and practices of the Distributing Entities) for use of facilities and for services furnished in the transmission and distribution of such power, and 6) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section §1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License.

Customer shall keep its books, accounts and records pertaining to the purchase, delivery and sale of Authority Power and Energy according to procedures reasonably deemed necessary by Authority to ensure compliance with applicable statutes, licenses, the Rules and shall require its Distributing Entities to do likewise. It shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require its Distributing Entities as identified in Appendix A to the Agreement to do likewise.

## **VI. Determination of Monthly Energy Allocations and Distributing Entities**

Energy allocations for a given month shall be determined based on the monthly load factors set forth in Appendix A for such month. Except in the case of a substantial

reallocation within a state, the monthly load factor, and resulting Energy allocation, shall not be adjusted for the term set forth in Article XVI of this Agreement. Appendix A, attached hereto contains, inter alia, the monthly load factor that determines the monthly Energy allocation and a list of all Distributing Entities on whose behalf Customer has contracted for Project Power and Energy.

Customer may at any time, on written notice to the Authority, modify its Appendix A to redistribute its then existing allocation among Distributing Entities in its state. The quantities of Project Power and Energy referred to herein are established by the Authority as part of an allocation of Project Power and Energy to New York's Neighboring State Customers in order to fulfill statutory and/or license obligations.

If the Authority determines that Customer, or any Distributing Entity is engaged in resale of Project Power and Energy in a manner inconsistent with this Agreement, Authority may require Customer to cease the resale of Project Power and Energy to such Distributing Entity.

## **VII. Transmission and Delivery of Power and Energy**

Customer understands that delivery of Project Power and Energy to the New York State border ("Border") will be made over transmission facilities under the control of the NYISO. At the request of and upon the approval of Customer, the Authority shall arrange for the transmission of the Project Power and Energy supplied hereunder to the Border consistent with Customer's request and the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO. The Authority shall provide Customer with a copy of the Authority's transmission agreement or any other agreement with the NYISO related to such arrangements. It is the Customer's responsibility to compensate the Authority for all net costs, including any applicable NYISO related charges (net of credits) associated with transmission to the Border pursuant to the NYISO OATT or other applicable tariff of the NYISO. In addition, the Authority shall offer Customer flexibility to settle for transmission losses either financially or physically (in kind), consistent with the NYISO OATT.

If the Authority acts as Customer's transmission agent with the NYISO for delivery of Customer's Project Power and Energy allocation, the Authority shall maintain, for a period of at least three (3) calendar years, records of billings and supporting data received from the NYISO for such delivery services to the Border. Upon request, such billing data shall be provided to Customer in a mutually agreed upon electronic format.

In lieu of the Authority arranging transmission service to the Border, Customer may elect, in its sole discretion, to arrange necessary transmission on its own behalf. In that instance, Customer must provide the Authority with sixty (60) days advance written notice in order to cancel all preexisting transmission (or delivery) arrangements subject to the terms of such arrangements and waive, for such noticed period, any rights it might have obligating the Authority to provide

transmission (or delivery) to the Border. Delivery of Project Power and Energy from the Border to the Distributing Entities' consumers in Customer's State or Commonwealth is the responsibility of Customer or the Distributing Entity, and Customer or Distributing Entity shall make the necessary arrangements to accomplish said delivery. Furthermore, absent good cause, the Authority will not object and will cooperate with Customer if it seeks to establish a new or additional point of delivery for its Project Power and Energy allocation to the Border.

Customer and the Authority recognize that the structure of the marketplace has and continues to undergo change. Certain provisions contained herein may need to be amended, or additional provisions added to conform service hereunder to the rules and regulations of the NYISO, particularly with respect to scheduling, delivery and reliability. The Parties shall negotiate in good faith any such revisions or additions to this Agreement, while maintaining the relative benefits and burdens of this Agreement concerning Project Power and Energy. Customer and Authority also recognize that industry restructuring is underway in New York and in the neighboring states and that certain provisions to this Agreement may need to be amended, or additional provisions added, to provide for such changes and to maintain the relative benefits and burdens of this Agreement, and the Parties shall negotiate in good faith to do so.

The Authority shall endeavor to accommodate Customer's request(s) to meet the requirements of other transmission and/or reliability organizations affecting the delivery of Project Power and Energy under this Agreement.

### **VIII. Scheduling Procedures**

The Scheduling Procedures as provided in Service Tariff Nos. NS-1, NS-2 and NS-3 reflect the scheduling requirements of the Authority. The Authority may implement modified procedures for scheduling Project Power and Energy sold hereunder from time to time upon sixty (60) days' prior written notice to Customer, but if such changes are required to be put into effect on less than sixty (60) days' notice to conform to the requirements of the NYISO, NYPA shall promptly notify Customer of such changes in writing as soon as they are known to NYPA.

### **IX. Dispatching Agent**

Customer may elect to designate one or more dispatching agents ("Dispatching Agent") for the purpose of administering the scheduling provisions of Service Tariff Nos. NS-1, NS-2 and NS-3 for the term thereof. The Authority may require Customer or its Dispatching Agent to schedule Project Energy in general accordance with Customer's system load shape. Customer may substitute the load shape of the Dispatching Agent or another load shape as agreed upon by the Customer and the Authority.

## X. Rates

Unless Customer provides written notice to the Authority pursuant to Article III above of its election to not be bound by this Article, the rates charged by the Authority under this Agreement shall be established in accordance with this Article.

Project Power and Energy shall be sold to Customer hereunder at cost-based rates equivalent to rates charged to in-state preference customers receiving preference power under the NRA. The Authority shall charge and Customer shall pay the preference power rates adopted by the Authority on April 29, 2003, during the period through April 30, 2007, and thereafter for as long as those rates remain in effect during the term of this Agreement. Customer waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority on April 29, 2003 except as otherwise provided for below.

Customer waives any challenges to any of the following methodologies and principles<sup>1</sup> to the extent that one or more of such methodologies and principles are used by the Authority to set rates different than those adopted by the Authority's Trustees in their meeting on April 29, 2003 based on the "January 2003 Report on Hydroelectric Production Rates" and as modified by the April 2003 "Staff Analysis of Public Comments and Recommendations":

- (i) The principles set forth in the March 5, 1986 Settlement Agreement (Appendix B to this Agreement) settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, Index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the "Auer Settlement").
- (ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- (iii) Treatment of sales to third parties, including the New York Independent System Operator.
- (iv) Allocation of Indirect Overheads.
- (v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- (vi) Post-employment benefits other than pensions (*i.e.*, retiree health benefits).

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<sup>1</sup> These methodologies and principles were employed in and explained by the Authority's January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on April 29, 2003, and in the Rate Stabilization Reserve explanatory statement attached hereto as Appendix B.

- (vii) Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Appendix B.

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

## **XI. Additional Sales**

In the event additional Project Power and Energy or any other Additional Products are available for sale, the Authority shall notify Customer, and Customer may purchase such Additional Products hereunder at the rate schedule or schedules then or to be in effect for such Additional Products, in such amounts and subject to such terms and conditions as shall then be agreed upon between the Authority and Customer.

## **XII. Reallocation of Project Power and Energy**

If Customer is, or becomes unable or chooses not to receive any or all of the Project Power and Energy allocated to it, such Project Power and Energy shall be reallocated by the Authority pro-rata among all Neighboring State Customers. Customer shall provide written notice to the Authority and all Neighboring State Customers of such inability or election within 30 days of its becoming aware of such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the Neighboring State Customers shall become effective as soon as practicable.

If a Distributing Entity included on Customer's Appendix A is, or becomes ineligible to receive preference power pursuant to the NRA, Customer shall cease its resale and distribution of Project Power and Energy to such Designated Entity as soon as practicable after Customer becomes aware of such ineligibility. Customer shall provide written notice to the Authority and all Neighboring State Customers of such ineligibility as soon as practicable upon its becoming aware of such ineligibility. Moreover, in such event, the quantities of Project Power and Energy sold to the Neighboring State Customers shall be reallocated by the Authority pro-rata among all Neighboring State Customers using each state's Appendix A used to establish the initial Contract Demand for the Neighboring State Customers pursuant to this Agreement, modified to eliminate the impact of the ineligible Distributing Entity. Any changes in the allocations of Project Power and Energy among the Neighboring State Customers resulting from application of this paragraph shall become effective as soon as practicable.

### **XIII. Environmental Attributes**

In the event the Niagara Project output sold to Customer hereunder can, at any time, be claimed by Customer in its market area to have renewable characteristics in connection with a renewable portfolio, or renewable attributes or similarly intended program, Customer shall have the right to acquire such attributes upon such terms and conditions to be negotiated between Authority and Customer, provided however that nothing in this Agreement shall be construed as a waiver of the rights of Customer to assert that Customer is entitled to such renewable characteristics or attributes at no additional cost by having purchased Project Power and Energy, and provided further that in no event will Customer be charged more than the rate Authority charges its in-state preference customers for such attributes, if such customers acquire such attributes.

### **XIV. Reports**

The Authority shall make available annually tabulations showing, on a calendar year basis, the disposition of i) Firm Hydroelectric Power and Energy (in kW and MWh and as a percentage of firm sales), ii) Firm Hydroelectric Peaking Power and Energy (in kW and MWh and as a percentage of firm peaking sales), and iii) any non-firm energy sold during the year to all Niagara Project customer groups, including investor owned utilities, in-state preference customers, Neighboring State Customers, Replacement power customers, Expansion power customers, the NYISO, and any other customers, with such disposition accounting for the total Niagara Project output. The Authority shall provide backup documentation for said tabulations at the request of Customer, provided such information shall not include confidential customer billing information.

### **XV. Appointment of Customer Agent**

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer further reserves the right, on reasonable prior written notice to the Authority, to designate a different party as Customer's Agent at any time during the term of this Agreement.

**XVI. Term and Termination of Service**

Once initiated, service shall continue until the earliest of (a) termination by Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) September 1, 2025. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency), or (b) as otherwise provided herein or in the Rules.

Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority or renewal of the Project License.

**XVII. Notification**

Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority  
Manager – Power Contracts  
New York Power Authority  
123 Main Street  
White Plains, NY 10601

To: Customer

**XVIII. Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act.

**XIX. Successors and Assigns**

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided,

however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained, which consent shall not be unreasonably withheld.

## **XX. Previous Agreements and Communications**

This Agreement, together with the Relicensing Settlement Agreement, shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such agreement supersedes all previous agreements and communications between the Parties hereto, either oral or written, with reference to the subject matter of this Agreement.

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

## **XXI. Acceptance and Approvals**

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

## **XXII. Severability and Voidability**

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be void and unenforceable.

## **XXIII. Effectiveness of Agreement**

This Agreement shall take effect only after: (i) the effective date of the FERC License and (ii) the date of this Agreement's execution under Article XXI above; *provided, however*, that in the event this Agreement does not take effect as of September 1, 2007, but is executed under Article XXI above prior to such date, the Parties shall commence performance of the terms of this Agreement on a month-to-

month basis on September 1, 2007, and shall continue such performance until this Agreement takes effect.

**CUSTOMER**

BY \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

(Seal)

Attest by: \_\_\_\_\_

Accepted:

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

BY \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

(Seal)

Attest by: \_\_\_\_\_

POWER AUTHORITY OF THE STATE OF NEW YORK  
30 South Pearl Street, Albany, NY 12207

Service Tariff No. NS -1

Schedule of Rates for Firm Hydroelectric Power  
and Energy Service

EFFECTIVE:

September 1, 2007

APPLICABLE:

To sale of Niagara Firm Hydroelectric Project Power and Energy to Neighboring State Customers.

CHARACTER OF SERVICE:

Alternating current, 60 hertz, three-phase.

RATES:

Capacity Rate: per kilowatt per month of Billing Demand at the Project switchyard.

12-Month Period Commencing	Demand Rate \$/kW-month
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5/1/2006	2.38
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Future rates to be determined.

Base Energy Rate: 4.92 mills per kilowatt-hour

The Energy charge set forth herein shall be subject to a monthly adjustment in accordance with a flow adjustment computation (FAC) as described in Exhibit I

MINIMUM MONTHLY CHARGE:

The product of the Capacity Rate and the Billing Demand.

DEFINITIONS:

Billing Demand: The Billing Demand shall be the Customer's Contract Demand.

Billing Period: Any period of approximately thirty (30) days, generally ending with the last day of each calendar month.

**SPECIAL PROVISION:**

Special Provision for service supplementing or modifying the Rules and Regulations for Power Service and Service Tariff No. NS - 1 with regard to deliveries to Customer is as follows:

**A Availability of Energy**

Unless otherwise agreed upon by the Parties, Authority shall normally provide in any Billing Period firm Energy to Customer in an amount equal to the product of (A) the number of hours in such billing Period, (B) the Contract Demand applicable in such Billing Period and (C) the applicable monthly load factor, as shown on Appendix A. In the event that hydraulic conditions at the Project require the Authority to reduce the amount of Energy provided to Customer under this Service Tariff to an amount below such normal level, reductions as a percentage of the otherwise required Energy deliveries will be the same for all firm Authority hydropower customers. The offer of Energy for delivery pursuant to Section B.1. of Exhibit I shall fulfill Authority's obligations for purposes of this Special Provision whether or not the Energy is taken by Customer.

POWER AUTHORITY OF THE STATE OF NEW YORK  
30 South Pearl Street, Albany, NY 12207

Service Tariff No. NS-2

Schedule of Rates for Firm Peaking Hydroelectric Power  
and Energy Service

EFFECTIVE:

September 1, 2007

APPLICABLE:

To sale of Niagara firm peaking hydroelectric Power and Energy to Neighboring State Customers.

CHARACTER OF SERVICE:

Alternating current, 60 hertz, three-phase.

RATES:

Capacity Rate: per kilowatt per month of Billing Demand at the Project switchyard.

12-Month Period Commencing	Demand Rate \$/kW-month
5/1/2006	2.38
Future rates to be determined	

Base Energy Rate: 4.92 mills per kilowatt-hour

The Energy charge set forth herein shall be subject to a monthly adjustment in accordance with a flow adjustment computation (FAC) as described in Exhibit I.

MINIMUM MONTHLY CHARGE:

The product of the Capacity Rate and the Billing Demand.

DEFINITIONS:

Billing Demand: The Billing Demand shall be the Contract Demand.

Billing Period: Any period of approximately thirty (30) days, generally ending with the last day of each calendar month.

**SPECIAL PROVISION:**

Firm Hydroelectric Peaking Power and Energy: Firm Peaking Power and Energy are firm Power and Energy intended for use primarily during peak load periods and limited as to the Energy to be supplied.

Special Provision for service supplementing or modifying the Rules and Regulations for Power Service and Service Tariff No. NS-2 with regard to deliveries to Customer is as follows:

**A. Availability of Energy**

Authority shall normally supply Firm Hydroelectric Peaking Power & Energy to Customer at 12.5 percent (12.5%) monthly load factor with no more than five kilowatt hours per kilowatt of Contract Demand supplied in any single calendar day, unless otherwise agreed upon by the Parties. In the event that hydraulic conditions at Authority's hydroelectric generating stations require the Authority to reduce the amount of Energy provided to Customer under this Service Tariff No. NS-2 to an amount below such normal level, reductions shall be applied to all Customers served under Service Tariff No. NS-2 in proportion to their relative allocations of Firm Hydroelectric Peaking Power and Energy. In the event Firm Hydroelectric Peaking Energy is supplied at less than 12.5 percent (12.5%) load factor, Customer may supply to Authority pumping power and Energy in amounts which after adjustment for losses associated with use of the Authority's facilities will increase the supply of Firm Hydroelectric Power & Energy hereunder to 12.5 percent (12.5%) monthly load factor.

In the event that Customer desires Energy in excess of 12.5 percent (12.5%) monthly load factor, Customer may, with the consent of Authority, supply to Authority pumping power and energy in such amounts as Authority determines it can accept. Upon request by Customer, Authority may purchase pumping power and Energy on behalf of Customer and at Customer's expense. The ratio of firm energy produced to pumping energy supplied shall be taken as 0.90, both as measured at Authority's Niagara Switchyard.

Pumping energy may be provided either at the Project switchyard or at the Border, at the Customer's option, subject to Customer agreeing to pay any NYISO costs for delivery of pumping energy from the Border to the Project switchyard.

The offer of Firm Peaking Power and Energy for delivery pursuant to Section B.1. of Exhibit I shall fulfill Authority's obligations for purposes of this Special Provision whether or not the Energy is taken by Customer.

POWER AUTHORITY OF THE STATE OF NEW YORK  
30 South Pearl Street, Albany, NY 12207

Service Tariff No. NS-3

Schedule of Rates for Non-Firm Hydroelectric  
Energy Service

EFFECTIVE:

September 1, 2007

APPLICABLE:

To sale of Niagara Non-Firm Hydroelectric Energy to Neighboring State Customers.

CHARACTER OF SERVICE:

Alternating current, 60 hertz, three-phase.

RATES:

Base Energy Rate: 4.92 mills per kilowatt-hour.

The Energy charges set forth herein shall be subject to a monthly adjustment in accordance with a flow adjustment computation (FAC) as described in Exhibit I

MINIMUM MONTHLY CHARGE:

None.

DEFINITIONS:

Billing Period: Any period of approximately thirty (30) days, generally ending with the last day of each calendar month.

SPECIAL PROVISION:

Special Provision for service supplementing or modifying the Rules and Regulations for Power Service and Service Tariff No. NS-3 with regard to deliveries to Customer is as follows:

A Availability of Energy

Non-Firm Hydroelectric Energy will be subject to its availability as determined by Authority. The offer of Energy for delivery pursuant to Section B.1. of Exhibit I shall fulfill Authority's obligations for purposes of this Special Provision whether or not the Energy is taken by Customer.

## Exhibit I

### Common Adjustments to Service Tariffs Nos. NS-1, NS-2 and NS-3

#### 1. For Flow Adjustment Computation ("FAC")

The Energy charges under these Service Tariffs and the applicable Service Tariffs associated with the St. Lawrence Hydroelectric Project, in the aggregate, are subject to a credit or surcharge pursuant to an FAC in any rate year following a calendar year for which the Hydroelectric Project Rate Stabilization Reserve ("RSR") is greater than \$+25 million, or less than \$-25 million, respectively. The RSR will be used to ensure rate stability and cost recovery and its level will be determined and any credit or surcharge for the succeeding rate year will be calculated after the prior calendar year's costs and generation levels are known. Any credit or surcharge will be applied on a uniform basis to the monthly billing statements rendered pursuant to Service Tariffs NS-1, NS-2, and NS-3 during the succeeding rate year.

The FAC is inapplicable in any rate year succeeding a calendar year at the end of which the RSR is within the \$+25 million to \$-25 million range. If at the end of any calendar year, the RSR is determined to exceed \$+25 million, such excess amount will be credited pro-rata to Customers during the succeeding rate year pursuant to the FAC. If the RSR at the end of any calendar year is determined to be less than \$-25 million, the difference below \$-25 million will be surcharged pro-rata to Customers during the succeeding rate year pursuant to the FAC.

To the extent that there is a balance in the RSR (positive or negative) on the effective date of service under this Agreement, arising out of service under a prior agreement for the sale of Project Power and Energy, that RSR balance shall be carried forward and maintained as the balance as of the effective date of service under this Agreement.

### Common Provisions to Service Tariffs Nos. NS-1, NS-2 and NS-3

#### A Adjustment of Rates

To the extent not inconsistent with the attached Agreement for the Sale of Hydropower and Energy, the rates contained in this Service Tariffs NS-1, NS-2, and NS-3 may be revised from time to time on not less than thirty (30) days written notice to Customer.

#### B Delivery

1. Power and/or Energy supplied under Service Tariffs NS-1, NS-2, and NS-3 shall be delivered by Authority at the Project switchyard to the NYISO for delivery to Customer's or Designated Entities' Transmission Agent at the Border.

For the purpose of these Service Tariffs, Power and/or Energy shall be deemed to be offered when Authority is able to supply Power and Energy and NYISO transmits it to its designated points of interconnection with Customer's Transmission Agent(s). If, despite such offer, there is a failure of delivery by Customer or Designated Entities' Transmission Agents, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

### C Scheduling Procedures

1. Authority will advise Customer or its Dispatching Agent by the tenth (10<sup>th</sup>) Business Day of the preceding month of the estimated quantity of Energy expected by Service Tariff to be made available from the Project.
2. Authority may require that such Energy from the Project be scheduled in general accordance with the load shape of Customer or its Dispatching Agent or as otherwise agreed upon by the Customer and Authority.
3. Customer or its Dispatching Agent shall file with Authority pursuant to procedures established by Authority, a daily schedule setting forth the Customer's requested amounts from the Project on a clock hour basis.
4. Subsequent to Authority approval of schedules for any day, Authority and Customer or its Dispatching Agent may agree on changes in such schedules subject to NYISO scheduling requirements and procedures Authority shall establish such that an efficient dispatch of Authority facilities will be accomplished.

### D Payment by Customer for Power and/or Energy

1. Customer shall pay for Power and/or Energy during any Billing Period the sum of a) and b) below:
  - a. For Firm Hydroelectric Power and Energy and Firm Peaking Hydroelectric Power & Energy, the capacity rate per kilowatt for Firm and Peaking Power & Energy specified in the applicable Service Tariff or any modification thereof applied to Customer's Billing Demand for the Billing Period: and
  - b. The Energy rate specified in the applicable Service Tariff or any modification thereof applied to the amount of firm and non-firm Energy delivered by Authority to Customer during such Billing Period.
2. Bills computed under Service Tariffs NS-1, NS-2, and NS-3 are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by Authority. In the event that there is a dispute on any items of a bill rendered by Authority, Customer shall pay such bill and adjustments, if necessary, will be made thereafter.

E Supplementary Provision

Sections 454.2 (c) and 454.5 of the Rules are inapplicable to this Service Tariff.

## **Appendix A**

List of Distributing Entities and their monthly Load Factors.

## **Appendix B**

### **NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY**

The Rate Stabilization Reserve (RSR) is calculated consistent with Service Tariff provisions regarding the Flow Adjustment Computation (FAC), which was not altered in the January 2003 Report on Hydroelectric Production Rates or the Staff Analysis of Public Comments and Recommendations adopted by the Trustees of the Power Authority on April 29, 2003. The calculation (an example of which is attached) is described below:

1. Calculate the total cost of service (CoS) for the Niagara/St. Lawrence projects.  
  
Costs include: Operations and Maintenance, amortized roadwork, Indirect Overheads (Shared Services, Research and Development, debt service) and Capital Costs (using TOC for equity funded and OC for debt funded).
2. Credit the CoS by any excess capacity (ICAP) sales to the ISO.
3. Allocate costs to the demand function by multiplying the sum of the customers' billed demands by the preference demand charge, which has been inflated to include ancillary services production costs. This larger demand charge is used only for the purposes of the RSR.
4. Calculate the cost-based energy rate by dividing the remaining energy assigned costs by the annual metered generation.
5. Calculate the difference between the cost-based energy rate and the billed preference energy rate.
6. Multiply the difference in the rates by the actual annual billed preference energy sales to determine the annual change in the RSR.
7. Add the annual change to the RSR balance from the prior year-end to get the current year-end RSR balance.

8. If the current year-end balance is in excess of +/- \$25 million, the excess would be subject to a credit or a surcharge in the subsequent rate year.