

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

July 22, 2010

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Minutes of the Special Meeting of the Power Authority of the State of New York held via videoconference at the following participating locations at approximately 11:00 a.m.:

- 1) New York Power Authority, 123 Main Street, White Plains, NY
- 2) New York Power Authority, 501 7th Avenue, New York, NY
- 3) St. Lawrence/FDR Power Project, 830 Barnhart Island Rd., Massena, NY
- 4) Harris Beach, PLLC, 99 Garnsey Road, Pittsford, NY

Members of the Board were present at the following locations:

Michael J. Townsend, Chairman – Pittsford, NY
Jonathan F. Foster, Vice Chairman – New York, NY
Eugene L. Nicandri, Trustee – Massena, NY
Mark O’Luck, Trustee – New York, NY

D. Patrick Curley, Trustee – Alexandria Bay, NY, via teleconference

Richard M. Kessel	President and Chief Executive Officer
Gil C. Quiniones	Chief Operating Officer
Terryl Brown	Executive Vice President and General Counsel
Francine Evans	Executive Vice President, Chief Administrative Officer and Chief of Staff
Elizabeth McCarthy	Executive Vice President and Chief Financial Officer
Jordan Brandeis	Senior Vice President – Power Resource Planning and Acquisition
Angelo Esposito	Senior Vice President – Energy Services and Technology
Paul Finnegan	Senior Vice President – Public, Governmental and Regulatory Affairs
James F. Pasquale	Senior Vice President – Marketing and Economic Development
Joan Tursi	Senior Vice President – Corporate Support Services
Rocco Iannarelli	Vice President – Human Resources
John Kahabka	Vice President – Environment, Health and Safety
Dennis Eccleston	Chief Information Officer
Karen Delince	Corporate Secretary
Michael Saltzman	Director – Media Relations
Sarah Barish-Straus	Special Assistant – Project Development, President's Office
Mary Jean Frank	Associate Corporate Secretary

Chairman Townsend presided over the meeting. Corporate Secretary Delince kept the Minutes.

1. **Consent Agenda**

a. **Proposed Expansion Power Contract with
Yahoo! Inc. – Notice of Public Hearing**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to authorize a public hearing pursuant to §1009 of the Public Authorities Law (‘PAL’) on a proposed contract (‘Contract’) for an allocation of Expansion Power (‘EP’) to Yahoo! Inc. (‘Yahoo!’). The proposed Contract is attached as Exhibit ‘1a-A.’

BACKGROUND

“Under §1005(13) of the Power Authority Act, as amended by Chapter 313 of the Laws of 2005, the Authority may contract to allocate 250 megawatts (‘MW’) of firm hydroelectric power as EP. Each application for an allocation of EP must be evaluated under criteria that include, but need not be limited to, those set forth in PAL Section 1005(13)(a), which details general eligibility requirements. Among the factors used for evaluating a request for an allocation of hydropower are the number of jobs created, the capital investment in the business’ facilities, the number and types of jobs created and the associated wages and benefits.

“At their meeting of May 19, 2009, the Trustees approved an allocation of 15 MW of EP to Yahoo! for a term of 15 years. Approval of the allocation was based on an evaluation of Yahoo!’s application for hydropower in which the company proposed to build a new regional datacenter to serve its East Coast customers. The allocation is contingent on Yahoo!’s investment of \$150 million to build the datacenter and a commitment to create 125 jobs.

DISCUSSION

“On March 15, 2010, the Authority and Yahoo! signed an ‘Interim Agreement for the Sale of Expansion Power and Energy’ (‘Agreement’). The purpose of the Agreement was to enable Yahoo! to accept delivery of its EP allocation at the startup of its datacenter operation on April 1, 2010. Also included in the Agreement was an Appendix cosigned by the Authority, Yahoo! and the delivering utility, New York State Electric and Gas Corporation (‘NYSEG’), to effectuate an April 1, 2010 delivery arrangement.

“The Agreement, in part, cites PAL §1005(11): ‘The Authority is authorized ‘to exercise all the power necessary or convenient to carry out and effectuate the purposes and provisions...to sell...electric power, and generally to do anything and everything necessary or convenient to carry out the purposes of...title [1 of article 5 of PAL].’ Furthermore, the Agreement cites the May 19, 2009 Trustees’ authorization ‘to...take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate...approval of the Allocation.’

“The Agreement expires the earlier of December 31, 2010, or until a long-term contract becomes effective. It is anticipated that the Contract that is the subject of this Trustee item will become effective prior to December 31, 2010, after the anticipated completion of the approval process required by PAL §1009.

“The proposed Contract follows the format of the Western New York proposed contract extensions submitted to the Trustees at their May 26, 2010 meeting. As with the Western New York contracts, the Authority will provide firm electric service from the Niagara plant, consisting of firm power (capacity) and energy service, subject to pro-rata curtailment when there is insufficient generation at the Niagara and St. Lawrence/FDR facilities.

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The power and energy will be sold on a direct-sale basis. Delivery will be provided by the local utility, NYSEG, and billed directly to Yahoo!.

“As per the Trustees authorization, the 15 MW allocation is contingent on Yahoo!’s investment of \$150 million, completion of the new datacenter facility and creation of a total of 125 new jobs. The allocation amount will be subject to an enforceable employment commitment of 125 jobs, and includes an annual job reporting requirement and a job compliance threshold of 90%. Should Yahoo!’s actual jobs reported fall below the compliance threshold, the Authority has the right to reduce the allocation on a pro-rata basis. The rates, terms and conditions for the sale are contained in the relevant service tariffs, which are the same tariffs applicable to all EP allocations. Specifically, Service Tariff No. EP-1 (Exhibit ‘1a-A-1’) is effective through June 30, 2013 and Service Tariff No. WNY-1 (Exhibit ‘1a-A-2’) becomes effective from July 1, 2013 until the expiration of Yahoo!’s allocation on March 31, 2025. The Contract also requires that an energy efficiency audit be performed not less than once every five years during the term of electric service.

RECOMMENDATION

“The Manager – Business Power Allocations and Compliance recommends that the Trustees authorize a public hearing on the terms of the proposed contract with Yahoo! Inc. to be held on a date to be determined at the Niagara Power Project’s Power Vista Visitors’ Center. It is further recommended that, pursuant to §1009 of the Public Authorities Law, the Corporate Secretary be authorized to transmit copies of the proposed contract to the Governor and legislative leaders, and to arrange for the publication of a notice of public hearing in six newspapers throughout the State in accordance with the Public Authorities Law.

“The Executive Vice President and General Counsel, the Senior Vice President – Marketing and Economic Development, the Vice President – Marketing and I concur in the recommendation.”

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That the Trustees hereby authorize a public hearing on the terms of the proposed contract for the sale of Expansion Power to Yahoo! Inc. to be held at the Niagara Power Project’s Power Vista Visitors’ Center on a date to be determined; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit copies of the proposed contract to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee pursuant to §1009 of the Public Authorities Law; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to arrange for the publication of a notice of public hearing in six newspapers throughout the State, all done in accordance with the provisions of §1009 of the Public Authorities Law; and be it further

RESOLVED, That the Senior Vice President – Marketing and Economic Development or his designee be, and hereby is, authorized, subject to the approval of the form thereof by the Executive Vice President and General Counsel, to enter into such agreements, and to

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do such other things, as may be necessary or desirable to implement the Contract with Yahoo! Inc. as set forth in the foregoing report of the President and Chief Executive Officer; and be it further

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

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

AGREEMENT FOR THE SALE

OF EXPANSION POWER AND ENERGY

TO YAHOO! INC.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and Energy (“Agreement”) with YAHOO! INC. (“Customer”), with offices at 701 First Avenue, Sunnyvale, California 94089. The Authority and the Customer are from time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, PAL § 1005(11) provides that the Authority is authorized to “[t]o exercise all the powers necessary or convenient to carry out and effectuate the purposes and provisions of ... title [1 of article 5 of the PAL] ... and as incidental thereto to . . . sell ... electric power, and generally to do any and every thing necessary or convenient to carry out the purposes of ... title [1 of article 5 of the PAL] ...”;

WHEREAS, the Customer applied to the Authority for an allocation of EP for use by the Customer at facilities located at 5319 Enterprise Drive, Lockport, New York 14094 (defined in Section I of this Agreement as the “Facility”), which the Customer is constructing and intends to operate beginning on April 1, 2010;

WHEREAS, on May 19, 2009, the Authority’s Board of Trustees (“Trustees”) approved a 15,000 kilowatt (“kW”) allocation of EP to the Customer for a fifteen (15) year term (defined in Section I of this Agreement as the “Allocation”) as further described in this Agreement;

WHEREAS, on May 19, 2009, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service (defined in Section I of this Agreement) associated with the Allocation is an unbundled service separate from the Authority’s sale of power and energy to the Customer, which will be performed by New York State Electric & Gas

Corporation (“NYSEG”);

WHEREAS, such transmission and delivery service will be made in accordance with a separate agreement between the Customer, the Authority and NYSEG (defined in Section I of this Agreement as the “Supplemental Agreement”), and NYSEG tariffs as applicable;

WHEREAS, on March 15, 2010, the Parties executed an Interim Agreement for the Sale of Expansion Power and Energy (defined in Section I of this Agreement as the “Interim Agreement”), to enable the Customer to receive a portion of the Allocation pending the execution of a long-term agreement, or until December 31, 2010, whichever first occurs;

WHEREAS, in accordance with the Supplemental Agreement, the Authority, the Customer and NYSEG, on March 15, 2010, executed the “Interim Sale Agreement Appendix,” which is attached to the Interim Agreement as Exhibit A;

WHEREAS, the Parties reached an agreement on the terms of a long-term contract for the sale of EP to the Customer;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. Agreement** means this Agreement.
- B. Allocation** refers to the allocation of 15,000 kW of EP awarded to the Customer for a term of fifteen (15) years as specified in Schedule A.
- C. Contract Demand** is as defined in the applicable Service Tariffs.
- D. Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, the Service Tariffs and the Rules.
- E. Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005 (5) and (13).
- F. Facility** means the Customer’s facilities at 5319 Enterprise Drive, Lockport, New York 14094.

- G. Firm Power** is as defined in the Service Tariffs.
- H. Firm Energy** is as defined in the Service Tariffs.
- I. FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.
- K. Hydro Projects** is a collective reference to the Project (defined below) and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. Interim Agreement** means the Interim Agreement for the Sale of Expansion Power and Energy, executed by the Parties on March 15, 2010.
- M. Load Serving Entity (or LSE)** means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- N. NYISO** means the New York Independent System Operator or any successor organization.
- O. NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- P. NYSEG** has the meaning set forth in the eighth recital.
- Q. Project** means the Niagara Power Project, FERC Project No. 2216.
- R. Replacement Power (or RP)** is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- S. Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- T. Sales Agreement Appendix** refers to the form Sales Agreement Appendix which is Attachment B to the Supplemental Agreement, a completed and executed copy of which is annexed to this Agreement as Exhibit A.
- U. Service Tariffs** is a collective reference to the Authority's Service Tariff No. EP-1 and Service Tariff No. WNY-1.

- V. Service Tariff No. EP-1** means the Authority's Service Tariff No. EP-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement. Service Tariff No. EP-1 shall be applicable to Electric Service provided prior to July 1, 2013.
- W. Service Tariff No. WNY-1** means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement. Service Tariff No. WNY-1 shall be applicable to Electric Service provided on and after July 1, 2013.
- X. Schedule A** refers to the Schedule A entitled "Expansion Power Allocations" which is attached to and made part of this Agreement.
- Y. Schedule B** refers to the Schedule B entitled "Expansion Power Commitments" which is attached to and made part of this Agreement.
- Z. Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.
- AA. Supplemental Agreement** means an agreement entitled "Supplemental Agreement for the Delivery of Power Allocations between Power Authority of the State of New York and New York State Electric & Gas Corporation," made as of July 18, 2007.
- BB. Unforced Capacity (or "UCAP")** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

II. Electric Service

- A.** The Authority shall provide Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, the Service Tariffs and the Rules.
- B.** The Authority shall provide UCAP in amounts necessary to meet the Customer's NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs.
- C.** The Contract Demand for the Customer's Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision. The Authority will use reasonable efforts to provide at least thirty (30) days prior written notice to the Customer

of any such modification unless such notice is inconsistent with such ruling, order or decision.

- D. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. From the effective date of this Agreement through and including June 30, 2013, Electric Service shall be sold to the Customer based on the rates, terms and conditions determined in accordance with this Agreement, Service Tariff No. EP-1 and the Rules.
- B. From July 1, 2013 until the termination of this Agreement, Electric Service shall be sold to the Customer based on the rates, terms and conditions determined in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- C. The Service Tariffs and the Rules may be amended from time to time by the Authority. Any amendment made by the Authority to Service Tariff EP-1 or to the Rules shall not affect the base rates as specified in Section III.A of Service Tariff EP-1 for the period prior to July 1, 2013, provided, however, that this limitation shall not limit the Authority from making adjustments to the base rates based on application of the Annual Adjustment Factor as provided in Article V of Service Tariff EP-1 during such time period. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the Service Tariffs or the Rules, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State. No subsequent amendment to the Service Tariffs or the Rules shall affect the determination of rates for EP to the Customer during the term of the Agreement except insofar as otherwise authorized by this Agreement. This provision shall not limit the Authority's discretion to determine rates applicable to allocations of power and energy awarded to the Customer beyond or in addition to the Allocation.
- D. Notwithstanding any provision of this Agreement to the contrary, for Electric Service provided from July 1, 2013 through the term of this Agreement, the power and energy rates shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of

increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion Power Commitments

Schedule B sets forth the Customer's specific "Expansion Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.

V. Rules and Service Tariffs

The Rules and the Service Tariffs are hereby incorporated into this Agreement with the same force and effect as if set forth herein 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.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A.** The Customer will pay NYSEG for transmission and delivery service associated with the Allocation in accordance with the Supplemental Agreement, and all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the Allocation of Firm Power and Firm Energy supplied by the Authority under this Agreement. To the extent the Authority incurs transmission and delivery service charges or other costs associated with the Allocation during the term of this Agreement, the Customer agrees to compensate the Authority for all such charges and costs incurred.
- B.** Each Party hereby represents that nothing in this Agreement conflicts with the Supplemental Agreement, and the event of any such conflict, the terms of the Supplemental Agreement shall control.
- C.** The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in the Service Tariff or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.

VII. Billing and Billing Methodology

- A.** The billing methodology for the Allocation shall be determined on a “load factor sharing” basis consistent with Attachment B of the Supplemental Agreement.
- B.** The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C.** All other provisions with respect to billing are set forth in the applicable Service Tariffs.

VIII. Hydropower Curtailments and Substitute Energy

- A.** If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority’s firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with the Service Tariffs as applicable.
- B.** The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VII.A of this Agreement that could impact Customer’s Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C.** For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority’s Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D.** The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days’ prior written notice.
- E.** Nothing in this Agreement shall prevent the Customer from procuring energy from a supplier other than the Authority in the event that the delivery of Firm Power and Firm Energy to which the Customer is entitled is curtailed pursuant to Section VIII.A of this Agreement, or from generating its own power and energy for use at the Facility under any circumstances.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties: (1) upon execution of this Agreement by the Authority and the Customer; and (2) upon execution of a Sales Agreement Appendix by the Parties and NYSEG unless otherwise agreed to by the Parties and NYSEG pursuant to the Supplemental Agreement.
- B. Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, the Service Tariffs, or the Rules; (3) termination of the Supplemental Agreement or the Sales Agreement Appendix as provided for in the Supplemental Agreement and the Sales Agreement Appendix; or (4) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in the applicable Service Tariffs.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, the Service Tariffs or the Rules. The Authority will use reasonable efforts to notify Customer of any proceeding before any regulatory or judicial body of competent jurisdiction that the Authority has knowledge of and that could result in the cancellation or modification of Electric Service under this Agreement. The Authority shall also provide at least thirty (30) days prior written notice to the Customer of such modification or cancellation unless such notice is inconsistent with such ruling, order or decision or the Service Tariff or the Rules provide for a shorter notice.

X. Notification

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

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email: James.Pasquale@nypa.gov
Attention: Mr. James F. Pasquale, Senior Vice President, Marketing and Economic Development

To: The Customer

Yahoo! Inc.
701 First Avenue
Sunnyvale, CA 94089
Email: ogonzale@yahoo-inc.com
Attention: Vice President of Production Operations

With copy to:

Yahoo! Inc.
701 First Avenue
Sunnyvale, CA 94089
Email: callahan@yahoo-inc.com
Attention: General Counsel

- B. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

XI. 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 (16 USC §§836, 836a).

XII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIII. Successors and Assigns; Resale of Hydropower

- A. 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 the Customer may not assign or otherwise transfer an interest in this Agreement without written approval by the Authority whose approval shall not be unreasonably withheld.
- B. The Customer may not resell any quantity of EP it has purchased from the Authority under this Agreement.

XIV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale, transmission and delivery of the Allocation and supersedes all previous communications and agreements between the Parties hereto, either oral or written, with reference to said Allocation, including the Interim Agreement.
- B. No modification 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.

XV. Severability and Voidability

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

XVI. Waiver

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

XVII. Confidentiality

- A. The Parties recognize that information the Customer furnishes to the Authority in connection with this Agreement may comprise (1) a record which in whole or in part constitutes a trade secret, (2) information which if disclosed would cause substantial injury to the competitive position of the Customer, or (3) information that is otherwise exempted from disclosure pursuant to New York's Freedom of Information Law, New York Public Officers Law, Article 6 ("FOIL"), as determined by the Authority ("Confidential Information").
- B. The Authority agrees not to disclose Confidential Information to a third-party without the advance written consent of the Customer except to the extent disclosure is required: (1)

pursuant to a court order; (2) pursuant to an order of a regulatory body having jurisdiction over the matter; or (3) pursuant to a law or regulation requiring such disclosure.

- C. Except as otherwise prohibited by law, in the event of a request to the Authority for Confidential Information by a third party, the Authority shall: (1) timely notify the Customer of the request; (2) keep the Customer informed of the status of its processing of the request; and (3) afford the Customer the rights and remedies otherwise available to a third party whose Confidential Information is in the Authority's possession, including the rights and remedies available under FOIL and 21 NYCRR Part 453.
- D. The Authority shall not object to a Customer seeking protection from a court of competent jurisdiction to protect information from disclosure to a third party the Customer contends is Confidential Information.
- E. Nothing in this Article shall be construed as a waiver by the Authority of its obligations under FOIL to make a determination regarding disclosure, determine an appeal under FOIL, or make any other determination required pursuant to FOIL.

XVIII. Execution

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

XIX. Federal Contractor Status

The Customer represents that it is an equal employment opportunity employer and is a federal contractor. Neither this representation nor the Customer's represented status as an equal opportunity employer or a federal contractor is intended to impose, and shall not be construed to impose, any obligations on the Authority beyond the specific obligations provided for under this Agreement.

XX. Use of Name, Trademarks and Service Marks

The Authority shall not use the Customer's name, trademarks, or service marks for the purpose of promoting any commercial services the Authority offers or proposes to offer without the Customer's prior written consent. For avoidance of doubt, the forgoing provision shall not preclude or otherwise limit the Authority from using the Customer's name, trademarks, or service marks or other descriptions of the Customer in: (a) any

report, document, disclosure or other communication (collectively, “communication”) made pursuant to any law, rule, regulation, request made pursuant to litigation or other legal process; or (b) any communication intended to inform any government official, any government agency or the public (individually or generally) of the Authority’s activities.

[SIGNATURES FOLLOW ON NEXT PAGE]

DRAFT

AGREED:

YAHOO! INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Title: _____

Date: _____

DRAFT

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND ENERGY TO YAHOO! INC.

EXPANSION POWER ALLOCATIONS

Customer: YAHOO! Inc.

Facility: The Facility (located at 5319 Enterprise Drive, Lockport, NY 14094)

<u>Type of Allocation</u>	<u>Allocation (kW)</u>	<u>Expiration Date</u>	<u>Extended Expiration Date</u>
1. EP	15,000	March 31, 2025	N/A

TOTALS: 15,000 kW

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO YAHOO! INC.**

EXPANSION POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The Customer agrees to create and maintain the employment level (the “Base Employment Level”) set forth in the Appendix to this Schedule.

B. Employment Records and Reports

Records shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of employees at the Lockport Facilities and employed at the Other NYS Facilities (defined in Appendix to Schedule B to this Agreement), as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such records shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. In addition, the Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

Commencing with calendar year 2015 and continuing through the term of this Agreement, if the year-end monthly average number of employees at the Lockport Facilities and new full time employees at Other NYS Facilities (defined in Appendix to Schedule B to this Agreement) is less than 90% of the Base Employment Level set forth in Schedule B for the subject calendar year, the Contract Demand may be reduced by Authority subject to Paragraph II.C of this Schedule A. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by this Agreement. Commencing with calendar year 2015 and continuing through the term of this Agreement, if the average of the Customer's six (6) highest billing demands for expansion power is less than 90% of the Customer's Contract Demand in such calendar year, the Authority may reduce the Contract Demand. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest billing demands for expansion power in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced as provided above, at least ninety (90) days prior written notice of such reduction shall be given to the Customer, specifying the amount of the reduction of the Contract Demand and the reason therefore provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or facilities upgrading periods when such

events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Capital Investment

The Customer agrees to undertake the Capital Investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such Data Center Project access and documentation the Authority deems necessary to determine the Customer's compliance with the Customer's capital investment obligations.

IV. Energy Efficiency Audits; Information Requests

The Customer shall undergo an energy efficiency audit of its facilities and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the facilities.

The Customer agrees to cooperate to make its facilities available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

Base Employment Level

No later than September 21, 2014, the Customer shall employ at least (i) one hundred (100) full-time employees at the Facility and/or other facilities located in Lockport, New York (the “Lockport Facilities”), and (ii) an additional twenty-five (25) full time employees at the Lockport Facilities and/or as new employees at other Customer facilities located in the State of New York (the “Other NYS Facilities”). (Collectively, these one hundred twenty-five employees shall constitute the “Base Employment Level”). A full-time employee shall mean an individual who works at least thirty-five (35) hours per week at the Facility. For the purpose of calculating the Base Employment Level, an individual working less than thirty-five (35) hours per week shall not be counted as a full-time employee; provided, however, that two individuals each working at least twenty (20) hours per week but less than thirty-five (35) hours per week at the Facility shall be counted as one full-time employee. In addition, for the purpose of calculating the number of new employees employed at the Other NYS Facilities, such number shall be determined based on the number of employees employed at such Other NYS Facilities as of May 19, 2009.

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

Capital Investment

The Customer will purchase up to thirty (30) acres of land, and will build, own and operate on such land, a new data center facility at 5319 Enterprise Drive, Lockport, New York (defined in Section I of the Agreement as the “Facility”).

The Customer will make a capital investment of at least \$150 million on the Facility (the “Capital Investment”). The Capital Investment in the Facility is expected to consist of the following specific expenditures:

Foundation	\$2 to \$4 million
Generators and UPS	\$ 7 million
Electric Infrastructure	\$ 25 million
Mechanical infrastructure	\$5 to 12 million
Fit-out and cabinet positions	\$10 million
<u>Servers</u>	<u>\$100 million</u>
Total:	\$149 to \$158 million

The Facility began operating on April 1, 2010. The Facility will be completed and fully operational, and the Capital Investment will be made, by May 19, 2012, i.e.,

within three (3) years of the Authority's approval of the Allocation. Upon request of the Customer, such date may be extended by the Authority in its reasonable discretion.



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Expansion Power
Direct Service

Service Tariff No. EP-1

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power (as defined below) directly to Customer (as defined below) for firm power service.

II. Frequently used Abbreviations and Terms

A. The following abbreviations are used:

kW	kilowatt(s)
kWh	kilowatt-hour(s)
NYPA	New York Power Authority
NYISO	New York Independent System Operator
NY PAL	New York Public Authorities Law

B. The term "Authority" means New York Power Authority, an alternative name for the Power Authority of the State of New York.

C. The term "Customer" means a business customer who has received an Expansion Power allocation from the Authority and who purchases Expansion Power directly from Authority.

D. The term "Project" means the Authority's Niagara Hydroelectric Project.

E. The term "Firm Power" means capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the applicable contract(s) between Authority and Customer . Firm Power shall not include peaking power.

F. The term "Firm Energy" means energy (kWh) associated with Firm Power.

G. The term "Expansion Power" means Project Firm Power and Project Firm Energy made available by Authority to Customers for business purposes pursuant to Section 1005 (13) of the NY PAL.

H. The term "Service Tariff" means this Service Tariff No. EP-1.

III. Monthly Rates and Charges

A. Monthly Base Rates

The monthly base rates for capacity and energy paid by Customer to Authority shall be either: (i) the rates charged by Authority from time to time for the sale of Niagara and St. Lawrence-FDR hydroelectricity for the benefit of domestic and rural consumers or (ii) the following base rates as adjusted in accordance with Section V whichever results in a higher bill.

BASE RATES	
<u>Capacity Charge</u>	<u>Energy Charge</u>
\$/kW-month	Mills/kWh
3.80	6.50

The base rates set forth above shall be subject to an Annual Adjustment Factor in accordance with Section V and do not include any applicable costs for delivery services provided by the local utility. Such base rates will apply at the Project switchyard, subject to Section IV. J.1.

B. Minimum Monthly Charge

The sum of (i) the product of the Capacity Charge and the Contract Demand and (ii) a charge representing reimbursement to the Authority for all applicable taxes incurred by the Authority as a result of providing the Expansion Power allocated to the Customer.

C. Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month, but subject to the billing cycle requirements of the utility in whose service area Customer's facilities at which Expansion Power is delivered are located.

D. Contract Demand

The Contract Demand of each Expansion Power Customer will be the amount of Expansion Power allocated to such Customer by the Authority which the Customer agrees to take and pay for.

IV. General Provisions

General Provisions for service supplementing or modifying the Rules and Regulations for Power Service and Service Tariff No. EP-1 with regard to deliveries to the Expansion Power Customer are as follows:

A. Character of Service

Alternating current, 60 hertz, three-phase.

B. Availability of Energy

1. The Authority shall provide in any Billing Period firm Energy to Customer (subject to hydrologic conditions, see subsection 2, below) in an amount equal to the amount of Expansion Power energy determined in accordance with the load splitting provisions, if applicable, set forth in the Agreement for the Sale of Expansion Power and Energy between Authority and Customer. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Customer.

2. The Authority will have the right to reduce on a pro rata basis the amount of energy provided to Customer if such reductions are necessary due to low flow (i.e., hydrologic) conditions at the Authority's Niagara and St. Lawrence-FDR hydroelectric generating stations. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Customer in later billing periods.

C. Adjustment of Rates

To the extent not inconsistent with the Agreement for the Sale of Expansion Power and Energy between the Authority and the Customer, the rates contained in this Service Tariff EP-1 may be revised from time to time on not less than thirty (30) days written notice to Customer.

D. Delivery

For the purpose of this Service Tariff, 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.

E. Payment by Customer to Authority

1. The Expansion Power Customer shall pay the Authority for Firm Hydroelectric Power and Energy during any Billing Period the higher of either (i) the sum of a), b) and c) below or (ii) the Monthly Minimum Charge as defined herein:
 - a. The Capacity Charge per kilowatt for Firm Power & Energy specified in this Service Tariff or any modification thereof applied to the Expansion Power Customer's Billing Demand (as defined in General Provision F, below) for the Billing Period; and
 - b. The Energy Charge specified in this Service Tariff or any modification thereof applied to the amount of firm Energy delivered by Authority to the Expansion Power Customer during such Billing Period as determined by a load splitter percentage, if applicable, in accordance with the Agreement for the Sale of Expansion Power and Energy between Authority and Customer.
 - c. A charge representing reimbursement to the Authority for all applicable taxes incurred by the Authority as a result of providing the Expansion Power allocated to the Customer.
2. NYISO Transmission and Related Charges ("NYISO Charges")

The Customer shall compensate the Authority for the following NYISO charges assessed on the Authority for services provided by the New York Independent System Operator, Inc. ("NYISO") or any successor organization pursuant to its Open Access Transmission Tariff ("OATT") or other tariffs (as the provisions of those tariffs maybe amended and in effect from time to time):

1. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
2. Marginal losses;
3. The New York Power Authority Transmission Adjustment Charge ("NTAC");
4. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
5. Any and all other charges, assessments or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are

assessed on the Authority by the NYISO or any successor organization under the provisions of its OATT or under other applicable tariffs; and

6. Any charges assessed on the Authority with respect to service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by NYPA with respect to service to Customers), applicable tariffs or required to be paid by the Authority in accordance with law.

Such NYISO Charges are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

3. The Expansion Power Customer shall pay for Substitute Energy, if applicable, as specified in the power contract between the Expansion Power Customer and Authority.
4. Bills computed under Service Tariff EP-1 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.

F. Billing

1. Demand – Unless separately metered, the Billing Demand charged by the Authority to each Expansion Power Customer will be the highest 15-minute integrated demand during each Billing Period recorded on the Expansion Customer's meter multiplied by a load splitter percentage, if applicable, as determined in accordance with the Agreement for the Sale of Expansion Power and Energy between Authority and Customer.
2. Energy – Unless separately metered, the kilowatt-hours charged by the Authority to each Expansion Power Customer will be the total number of kilowatt-hours recorded on the Expansion Power Customer's meter for the Billing Period multiplied by a load splitter percentage, if applicable, as determined in accordance with the Agreement for the Sale of Expansion Power and Energy between Authority and Customer.

G. Delivery Point

The delivery point is the point where the incoming lines of the utility in whose service area the Expansion Power Customer's facilities for receipt of the Expansion Power are located are attached to such facilities of Customer.

H. Load Splitter Determination

The load splitter determination, if any, to be applied to render bills to the Customer related to its Expansion Power allocation shall be determined in accordance with the Agreement for the Sale of Expansion Power and Energy between the Authority and Customer. In order for any load splitter determination to become effective, the utility in whose service area the Customer's Expansion Power allocation is delivered must provide its consent.

I. Supplementary Provision

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

J. Adjustment of Charges

1. Distribution Losses

Rates contained in this Service Tariff apply at the Project's switchyard where Customer purchases power from Contractor. Where Customer purchases power directly from Authority, where applicable, appropriate adjustments will be made to compensate for distribution losses.

2. Taxes and Other Charges

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

3. Deposits

Authority may require Customer to pay a cash deposit at any time to Authority equal to at least one month's estimated bill which shall be deemed security for the payment on unpaid bills or other claims. Any such cash deposits will be subject to the specific provisions set forth in the Customer's sales agreement with the Authority.

4. Rules and Regulations

The Authority's rules and regulations (16 NYCRR §450 *et seq.*) shall apply to the service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the rules and regulations, the provisions of this Service Tariff shall govern.

5. Niagara and St. Lawrence-FDR Hydroelectricity Rates Notice

When the monthly rates charged by Authority for the sale of Niagara and St. Lawrence-FDR hydroelectricity for the benefit of domestic and rural consumers change, Authority shall so notify Contractor in writing thirty (30) days prior to such change.

V. Annual Adjustment Factor

A. Adjustment of Rate and Charges

1. An adjustment factor based upon four Indices ((a) through (d) noted below) shall be determined and applied to the base rates set forth in Section III, Monthly Rates and Charges for each Rate Year. The Rate Year is from May 1 to April 30 of the succeeding year. Each of the following four Indices shall be determined as provided below for each calendar year (the "Measuring Year") immediately preceding each Rate Year. The Measuring Year's values shall be compared to the Base Year's (CY 1990) values. The resulting comparison shall be the basis of the annual base rate adjustment.

- (a) the weighted average fuel cost (WAFC) replaced the New York Power Pool (NYPP) based fuel cost index, which ceased with the operation of the NYPP. The 1990 and 1998 NYPP weighted fuel cost indices and the 1998 PPI for Industrial Power remain fixed.

The measuring year (MY) value is the product of the 1998 NYPP fuel price and the ratio of the MY PPI Industrial Power to the 1998 PPI Industrial Power, or:

$$1998 \text{ NYPP fuel price} * \frac{\text{MY PPI Industrial Power}}{1998 \text{ PPI Industrial Power}}$$

- (b) the average of the monthly Producer Price Indexes, Industrial Commodities as published by the U.S. Department of Labor, Bureau of Labor statistics, and posted on stats.bls.gov/ (Series Id WPU03thru15);
- (c) the annual Implicit Price Deflator for Gross Domestic Product, as published by the United States Department of Commerce, Bureau of Economic Analysis, and posted on bea.gov/ (table titled "Implicit Price Deflators for Gross Domestic Product", currently table 1.1.9.);
- (d) the average of the monthly Producer Price Indexes, Industrial Electric Power as published by the U.S. Department of Labor, Bureau of Labor statistics, and posted on stats.bls.gov/ (Series Id WPU0543).

Such adjustment to the base rates shall be computed as follows:

- (i) for each of the four Indices divide the value for the Measuring Year by the value for the Base Year, then,

- (ii) calculate the arithmetic mean of the four quotients so determined to obtain the Annual Adjustment factor and then,
- (iii) multiply the base rates by the annual adjustment factor to obtain the adjusted base rates.

The foregoing calculation shall be performed by Authority in the manner shown in Section B below.

2. The Authority shall provide Customer with notice of any adjustment to base rates and with all data and calculations necessary to compute such adjustment by April 15 of each year to be effective on May 1 of such year, commencing in 1993; provided that if all necessary data is not provided to Customer by April 15, the rates will be adjusted by the Authority effective May 1 of such year and notice of the proposed increase or decrease and supporting data shall be furnished to Customer as soon thereafter as possible.
3. If any of the four Indices shall cease to be available, Customer and the Authority shall mutually select a substitute index. Pending agreement on a substitute index, the Authority will use the remaining three indices to calculate the Annual Adjustment factor in the manner set forth in paragraph 1 of Section V. A above. If during the term of Agreement, the methodology used in any of the reports or publications reference in paragraph 1 of Section V. A above changes, appropriate adjustment shall be made to all subsequent Measuring Year values so that such values are determined in a manner consistent with the Base Year values.

B. Calculation of the Adjustment Factor

1. Steps to calculate adjustment factor

- Step 1: Determine values for the Measuring Year and the Base Year for each of the four Indices.
- Step 2: For each of the four Indices divide the Measuring Year value by Base Year value.
- Step 3: Calculate Adjustment Factor by summing the results of Step 2 and divide by 4.
- Step 4: Multiply Base Capacity and Energy rates by Adjustment Factor calculated in Step 3.

2. Sample calculation of adjustment factor for May 1, 2006

Base Year = 1990
 Measuring Year = 2005

STEP 1

- Index 1 – Weighted Average Fuel Cost

$$125.08 \quad * \quad \frac{156.2}{130.1}$$

1998 NYPP Fuel Price = 125.08
 1998 PPI Industrial Power = 130.1
 MY PPI Industrial Power = 156.2
 BY NYPP Fuel Price = 177.23

- Index 2 – Producer Price Index, Industrial Commodities

	<u>Base Year</u>	<u>Measuring Year</u>
January	114.1	152.7
February	113.6	153.6
March	113.2	155.6
April	113.2	157.2
May	113.5	156.3
June	113.2	156.6
July	113.4	159.1
August	115.9	160.8
September	118.4	166.0
October	121.4	170.6
November	120.7	167.5
December	119.0	166.6
AVERAGE	115.8	160.2

- Index 3 – GNP Deflator

<u>Base Year</u>	<u>Measuring Year</u>
82.9	112.1

▪ Index 4 – Producer Price Index, Industrial Power

	<u>Base Year</u>	<u>Measuring Year</u>
January	114.9	148.9
February	115.0	148.0
March	115.4	148.1
April	115.1	148.7
May	117.0	151.1
June	123.9	159.7
July	124.4	162.1
August	124.6	162.5
September	125.0	162.8
October	121.2	159.5
November	120.2	161.5
December	118.9	161.8
AVERAGE	119.6	156.2

STEP 2

- Index 1 150.10 / 177.23 = 0.85
- Index 2 160.2 / 115.8 = 1.38
- Index 3 112.1 / 82.9 = 1.35
- Index 4 156.2 / 119.6 = 1.31

STEP 3

$$\frac{0.85 + 1.38 + 1.35 + 1.31}{4} = 1.22$$

STEP 4

Base Capacity Rate X Adjustment Factor = Adjusted Rate

$$\text{\$3.80/kW} \quad \text{X} \quad 1.22 \quad = \quad \text{\$4.64/kW}$$

Base Energy Rate X Adjustment Factor = Adjusted Rate

$$6.50 \text{ mills/kWh} \quad \text{X} \quad 1.22 \quad = \quad \text{7.93 mills/kWh}$$



POWER AUTHORITY OF THE STATE OF NEW YORK
30 SOUTH PEARL STREET
ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power to Expansion and
Replacement Customers located
In Western New York

Service Tariff No. WNY-1

Date of Issue: _____, 2010

Date Effective: _____ 2013

Issued by James F. Pasquale, Senior Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207

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Date of Issue: _____, 2010

Date Effective: _____2013

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

A. The following abbreviations are used:

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

B. The term "Agreement" means an executed "Agreement for the Sale of Expansion and/or Replacement Power and Energy" between the Authority and the Customer (each as defined below).

C. The term "Annual Adjustment Factor" or "AAF" shall have the meaning set forth in Section V herein.

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

E. The term "Customer" means a business customer who has received an allocation for Expansion Power and/or Replacement Power from the Authority and who purchases Expansion Power and/or Replacement Power directly from the Authority.

F. The term "Electric Service" means the power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Date of Issue: _____, 2010

Date Effective: _____2013

- G. The term "Expansion Power and/or Replacement Power" means Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).
- H. The term "Firm Power" means capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.
- I. The term "Firm Energy" means energy (kWh) associated with Firm Power.
- J. The term "Load Serving Entity" or "LSE" shall have the meaning set forth in the Agreement.
- K. The term "Project" means the Authority's Niagara Power Project, FERC Project No. 2216.
- L. The term "Rate Year" or "RY" means the period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.
- M. The term "Rules" means the Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.
- N. The term "Service Tariff" means this Service Tariff No. WNY-1.
- O. The term "Target Rate" shall have the meaning set forth in Section III herein.

All other capitalized terms and abbreviations used but not defined herein shall have the same meaning as set forth in the Agreement.

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III. Monthly Rates and Charges

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

Beginning on July 1, 2013, there will be a 3-year phase-in to new base rates. The phase-in will be determined by the rate differential between the 2012 EP/RP rates and a "Target Rate." The Target Rate, specified in Section III.A.1. below, is based on the rates determined by the Authority to be applicable in RY 2013 for sales of "preservation power" as that term is defined in PAL § 1005(13). The following Sections III.A.1-4 describe the calculation and implementation of the phase-in.

1. The initial rate point will be established by the EP/RP rates (\$/kW and \$/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be \$7.99/kW and \$13.66/MWh.
2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in \$/kW and \$/MWh) are referred to as the "annual increment."
3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

RY 2013: July 1, 2013 to June 30, 2014

RY 2014: July 1, 2014 to June 30, 2015

RY 2015: July 1, 2015 to June 30, 2016

The annual rate adjustments normally made effective on May 1, 2013 under then-applicable EP and RP tariffs will be suspended, such that demand and energy rates established in 2012 shall be extended through June 30, 2013.

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:
 - A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.
 - B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.

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C. Beginning in RY 2016, the AAF will be applied to the previous RY rates, and the annual increment is no longer applicable.

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

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) and PAL § 1005(5) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

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

D. Minimum Monthly Charge

The minimum monthly charge shall equal the product of the demand charge and the contract demand (as defined herein). Such minimum monthly charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Billing Period

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

F. Billing Demand

The billing demand shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

G. Billing Energy

The billing energy shall be determined by applying the applicable billing methodology to total meter readings during the billing period. See Section IV.E, below.

H. Contract Demand

The contract demand of each Customer will be the amount of Expansion Power and/or Replacement Power, not to exceed their Allocation, provided to such Customer by the Authority in accordance with the Agreement.

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IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
2. If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of NYPA's Firm Power customers served from the Hydro Projects, hydropower curtailments (*i.e.* reductions) in the amount of Firm Power and Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Energy sales will be the same for all Firm Power and Energy customers served from the Hydro Projects. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods. The Customer will receive appropriate bill credits as provided under the Rules.

C. Delivery

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

D. Adjustment of Rates

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

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E. Billing Methodology and Billing

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

1. The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.
2. Billing Demand – Unless separately metered, the billing demand charged by the Authority to each Customer will be the highest 15-minute integrated demand during each billing period recorded on the Customer's meter multiplied by a percentage based on load factor sharing, as applicable.
3. Billing Energy – Unless separately metered, the kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the billing period multiplied by a percentage based on load factor sharing, as applicable.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Energy during any billing period the higher of either (i) the sum of (a), (b) and (c) below or (ii) the monthly minimum charge as defined herein:

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's billing demand (as defined in Section IV.E, above) for the billing period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's billing energy (as defined in Section IV.E, above) for the billing period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

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2. Transmission Charge

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

3. NYISO Transmission and Related Charges ("NYISO Charges")

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

- A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
- B. Marginal losses;
- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another third party.

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

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4. Taxes Defined

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

5. Substitute Energy

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

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Adjustment of Charges

1. Distribution Losses

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

2. Transformer Losses

If delivery is made at transmission voltage but metered on the low-voltage side of the Customer's substation, the meter readings will be increased two percent to compensate for transformer losses.

3. Power Factor

Power factor is the ratio of real power (kW) to apparent power (kVa) for any given load and time. The Authority may require the Customer to maintain a power factor of not less than 90%, lagging or leading, at the point of delivery, or as may otherwise be imposed upon the Authority by the local electric utility providing delivery and/or NYISO.

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H. Conflicts

The Authority's Rules shall apply to the Electric Service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

I. Customer Resales Prohibited

The Customer may not resell any quantity of Expansion Power and/or Replacement Power.

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V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

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2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
- a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.
 - b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.
- Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

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

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the

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substitute indices will be retroactive to the previous July 1. If unable to reach agreement on substitute indices within the 90-day period, the Parties agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

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

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> (\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24

Measuring Year -1 (2011)

CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23
Ratio of MY/MY-1			1.00

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- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year <u>(2013)</u>	Measuring Year -1 <u>(2012)</u>
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

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

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

Date of Issue: _____, 2010

Date Effective: _____ 2013

**b. Economic Development Plan – Kolmar
Laboratories, Inc. – Industrial Incentive Award**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve an Industrial Incentive Award (‘Award’) to Kolmar Laboratories, Inc. (‘Kolmar’) in accordance with the previously approved Economic Development Plan (‘Plan’).

BACKGROUND

“Chapter 32 of the Laws of 1987 added the eighth unnumbered paragraph of Section 1005 of the Public Authorities Law (‘PAL’), which directs the Authority to identify net revenues produced by the sale of Expansion Power (‘EP’) and, further, to identify an amount of such net revenues to be used solely for Awards. These awards are to be made in conformance with a Plan covering all such net revenues that is submitted by the Authority to the Economic Development Power Allocation Board (‘EDPAB’) and is approved by EDPAB pursuant to Section 188 of the Economic Development Law (‘EDL’).

“Net revenues are defined by Section 1005 as any excess of revenues properly allocated to the sales of EP over costs and expenses properly allocated to such sales. The Authority is directed in Section 1005 to identify net revenues no less often than annually. Section 188 of the EDL provides that EDPAB is to review each Plan applying the same economic development criteria as those used to evaluate applications for power. The statute does not define Industrial Incentive Awards.

“At their meeting of September 29, 2009, the Trustees approved a Plan that allows the use of net revenues from the sale of EP for calendar years 2008 through 2016 to provide electric bill discounts to New York State manufacturing companies that are at identifiable risk of closing or relocating to another state.

DISCUSSION

“Economic conditions are placing added strain on many New York State manufacturing companies. Among these companies is Kolmar, which has been manufacturing pharmaceutical, cosmetics and personal care products in Port Jervis for nearly 70 years, employing hundreds of people and generations of families. Due to rising business costs in 2008, Kolmar began looking at the possibility of relocating its plant to Texas, Louisiana or a sister facility in New Jersey. In 2009, Kolmar began to seriously consider a move to Texas.

“The Empire State Development Corporation, along with other local and regional economic development agencies, began to bring together resources to enable the company to stay and invest in the Port Jervis facility. Based on Kolmar’s business case, the Authority has been asked to consider authorizing an Award as part of a broader package of incentives to keep the facility in New York State. Kolmar has been asked to commit a \$23 million investment to support the operations in Port Jervis and retain 400 jobs in return for a package of State and local incentives worth up to \$6.4 million.

“It is recommended that the Authority’s Trustees authorize an Award to Kolmar. This recommendation comes after careful consideration of Kolmar’s business case. The form of the award will be a 3¢/kWh price discount applied to annual electric consumption up to a maximum annual award of \$300,000, as described in Exhibit ‘1b-A.’ The Award is predicated on the availability of net revenue funding for such an award and will be issued at the Authority’s sole discretion.

July 22, 2010

“Kolmar’s Award will remain in effect for a one-year period. The Award may be extended for up to two additional one-year terms based on the availability of funds and provided that Kolmar meets the agreed-upon job commitment as specified in Exhibit ‘1b-A.’ In the event that Kolmar qualifies for and participates in a future, yet-to-be-determined, statewide power program that offers similar value, the Award would ultimately be terminated.

“Staff will report to the Trustees annually on the actual disbursement of these funds.

RECOMMENDATION

“The Senior Vice President – Marketing and Economic Development recommends that the Trustees approve an Industrial Incentive Award to Kolmar Laboratories, Inc. The terms of the Industrial Incentive Award and the maximum annual payments are specified in Exhibit ‘1b-A.’

“The Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer and I concur in the recommendation.”

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That the Authority hereby approves an Industrial Incentive Award to Kolmar Laboratories, Inc. as per the terms set forth in the foregoing report of the President and Chief Executive Officer; and be it further

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

Industrial Incentive Award (IIA)

Kolmar Laboratories, Inc.

- Port Jervis (Orange County) – 400 jobs
- Orange & Rockland service area
- Discount (¢/kWh) against O&R / ESCO rate
- IIA of 3 ¢/kWh, with max award of \$300,000 / year
- 1 year initial term with potential to extend up to 2 additional 1 year terms
- Flexibility to allow Kolmar Laboratories, Inc. to participate in any new NYPA power program

Total recommended Industrial Incentive Award maximum = \$300,000

Discussion Agenda

**2. Hudson Transmission Partners, LLC --
Authorization to Post Security**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“At a later date it is anticipated that the Trustees will be requested to authorize the execution of a twenty-year agreement between the Authority and Hudson Transmission Partners, LLC (‘HTP’) (the ‘Firm Transmission Capacity Purchase Agreement’ or ‘FTCPA’), for the purchase by the Authority of firm transmission capacity through a to-be-constructed undersea/underground high voltage direct current transmission cable from Bergen County, New Jersey to Manhattan (the ‘Line’ or ‘Project’). The Project is targeted to commence operations in late 2012/early 2013.

“Pending finalization of negotiations with HTP, the Trustees are requested to authorize the Authority to post corporate guaranties with PJM Interconnection, LLC (‘PJM’) by August 15, 2010 and to post an additional guaranty as a substitute for collateral posted by HTP on June 30, 2010 in the amounts described below. These postings would guarantee the payment by HTP of interconnection and upgrades which are necessary to accommodate the HTP Project. In order to protect the guaranties the Authority will post, HTP has filed notice, pursuant to its rights under the PJM tariff, to suspend all interconnection and upgrade work in New Jersey to be done by Public Service Electric and Gas (‘PSEG’) and Jersey Central Power and Light (‘JCPL’). The suspension will not be lifted without the Authority’s written consent, which will not be given until the FTCPA is executed, all requisite approvals for the Project are received, and the HTP Project’s financial closing has occurred, or the Authority’s guaranties have been replaced by alternate security posted by HTP.

BACKGROUND

“At their November 2006 meeting, the Trustees authorized Authority staff to begin negotiations with HTP, the winning transmission line bidder in response to the Authority’s March 11, 2005 Request for Proposals (‘RFP’) for Long-Term Supply of In-City Unforced Capacity and Optional Energy.¹ This RFP was a competitive solicitation for the benefit of the NYC Governmental Customers, with whom Authority staff collaborated during the RFP process.

The Line would be a long-term asset, having a useful life of 40 to 60 years. With the Line in service, the Authority would acquire certain non-equity rights in the project that would enable it to, among other things, import energy from the PJM market into the NYISO market. Under the proposed FTCPA, the Authority would acquire the right to 495 MW, or 75% of the Line’s 660 MW capacity. HTP would retain a 25% share, a portion of which it may transfer to a third party.

“Operation of the Project would contribute to a reduction in the energy prices for the NYC Governmental Customers and other electricity consumers in New York City and New York State and enhance both the fuel and geographic diversity of electric supply for the New York City region.

DISCUSSION

“The Authority has virtually completed negotiations with HTP on the terms of the FTCPA and has commenced talks with its NYC Governmental Customers about the terms of an agreement under which the Customers would agree to make monthly payments to the Authority for the duration of the FTCPA.

¹ A load serving entity, such as the Authority, must demonstrate that it has acquired sufficient generation capacity to serve its load under the rules of the New York Independent System Operator, Inc. (‘NYISO’). Unforced Capacity or ‘UCAP’ is a capacity measure that accounts for required reserves and forced outage rates. NYISO rules further require that a proportion of the load within the five boroughs of New York City be served by UCAP that is recognized as being located within that locality (‘In-City UCAP’).

“Discussions are underway to obtain acceptance of Customer Term Sheets from the major NYC Governmental Customers. These Term Sheets, which are non-binding, will differ only in the relative shares of the Customers’ obligations to the Authority with respect to the HTP Line. The Authority’s obligations to HTP under the FTCPA will be contingent on the execution and effectiveness of formal Customer agreements consistent with the Term Sheets.

“Staff will come back to the Trustees with the full terms of the transaction and its benefits for the NYC Customers and other consumers. At that time, staff will seek Trustee approval for the execution of all agreements relevant to the Project.

“In the meantime, for HTP to maintain its interconnection priority positions in PJM and the NYISO, certain financial security postings are required under the respective rules of both transmission system operators. The security is to ensure transmission owners are paid for the work they do on interconnection and transmission system upgrades, which are necessary to accommodate the HTP Project.

“Thus far, the Authority has posted a guaranty for \$16.471 million on January 11, 2010 as security for interconnection and upgrade work to be performed by Con Edison in New York City. That guaranty is required under NYISO rules so that the HTP Line will maintain its priority for interconnection to Con Edison’s West 49th Street Substation. The guaranty was given on the condition that Con Edison will spend no money on and expend no resources toward the system upgrade facilities needed to accommodate the HTP Line unless authorized by the Authority. Thus, if HTP does not proceed with the Project, Con Edison will not spend money on these upgrades and there will be no call on the Authority’s guaranty.

“The Authority has also posted a guaranty for \$1.68 million, which, together with a \$1.68 million matching letter of credit security from HTP, satisfied the June 30, 2010 PJM security requirement of \$3.36 million to assure payment of the interconnection and upgrade work of PSEG and JCPL. The Authority agreed that, with Trustee approval, it would increase its guaranty from \$1.68 million to \$3 million, with HTP retaining the obligation to supply a letter of credit for the remaining balance of \$360,000.

“The June 30th guaranty was posted with PJM only after HTP issued a directive to suspend all work by PSEG and JCPL associated with the construction and installation of interconnection facilities and network upgrades for the HTP Project. The estimated duration of this suspension directive is until the Project’s financial closing in early 2011. Further, HTP agreed not to release, rescind, withdraw or modify the suspension directive without the Authority’s express written consent. Because all work in PJM has been suspended and will not be resumed without the Authority’s consent, the Authority has reasonable protection against liability for interconnection and upgrade costs which would otherwise be ongoing. These costs would be owed in the first instance by HTP, but would be backstopped by the Authority’s guaranty.

“Additional security will be required to be posted with PJM in August 2010. Accordingly, to facilitate the HTP Project and to help HTP to meet the PJM security requirements, the Trustees are requested to authorize the posting of an additional corporate guaranty to provide this security, subject to the same suspension directive given by HTP as to the prior postings. This additional guaranty would be in the amount of \$2.75 million and is required by August 15, 2010.

“An additional and final posting of \$172 million (less any previously posted amounts) is due by October 31, 2010. This posting is not covered by this authorization request, but will be included in the subsequent request for authority to execute agreements with HTP and the NYC Customers. Upon Seller’s financial close, all guaranties posted by the Authority to secure HTP’s obligations under the PJM requirements will be terminated and replaced by one or more letters of credit or other forms of acceptable security posted by or on behalf of HTP. Under the proposed FTCPA, the Authority would be responsible to reimburse HTP for all interconnection and upgrade costs once the Project commences operations.

FISCAL INFORMATION

“As explained above, it is expected that no call will be made on the Authority’s guaranties prior to the start of the interconnection work which is currently suspended and will not commence unless the Trustees at a later meeting approve the requisite agreements and all conditions precedent are met. Consequently, there is expected to be no cost to the Authority in providing these guaranties.

RECOMMENDATION

“It is recommended that the Trustees authorize the President and Chief Executive Officer or the Executive Vice President and Chief Financial Officer to post security in furtherance of the HTP Project’s obligations with respect to upgrades or interconnecting to the PJM system, as outlined above. Such authorizations are subject to the conditions set forth above.

“The Chief Operating Officer, the Executive Vice President and General Counsel, the Senior Vice President and Chief Engineer – Power Generation, the Senior Vice President – Marketing and Economic Development, the Senior Vice President – Corporate Planning and Finance, the Senior Vice President – Power Resource Planning and Acquisition, the Vice President – Energy Risk Assessment and Control and I concur in the recommendation.”

Ms. Elizabeth McCarthy presented the highlights of staff’s recommendations to the Trustees. President Richard Kessel said that the limited scope of this item minimized the risk of financial exposure for the Authority. In response to a question from Trustee Eugene Nicandri, Ms. McCarthy said that staff would be coming back to the Trustees with additional information once it has been compiled within a week or so. Chairman Townsend said that a number of Trustees had spoken recently about the fact that the Authority’s revenues are down and their sense that they need to be more informed about the Authority’s capital project planning process. He said that while the Authority needs to be cognizant of the needs of New York State, the Trustees share an ongoing concern that they need a better sense of where the Authority is going and how it is going to get there. Ms. McCarthy said that part of the additional information staff would be providing to the Trustees was the long-term perspective for this project. President Kessel said that he wanted to make three points: (1) he had made the decision not to ask the Trustees for approval of the whole project at this juncture because of the information that still needed to be presented to the Trustees; (2) he agrees with Chairman Townsend and Vice Chairman Foster that the Authority needs a roadmap for its future direction in terms of capital planning and (3) the recent heat wave has convinced him even more than the Authority needs to be proactive in terms of helping the State meet its electricity needs in order to avoid a repeat of the events of 2000-02. Trustee Mark O’Luck said that he felt comfortable with how staff is currently approaching the HTP project. Vice Chairman Foster said that while the Authority’s projects need to be forward looking they also need to be economically feasible and that in the case of this project, the economics need to be more equitably shared among the stakeholders.

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That the President and Chief Executive Officer and the Executive Vice President and Chief Financial Officer are hereby authorized on behalf of the Authority to post security in the form of a corporate guaranty in the amount of \$2.75 million on or before August 15, 2010 and increase the amount of the Authority's guaranty posted on June 30, 2010 to \$3 million; and be it further

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

3. **Motion to Conduct an Executive Session**

“Mr. Chairman, I move that the Authority conduct an Executive Session pursuant to Section 105(1)(f) of the Public Officers Law of the State of New York to discuss matters leading to the appointment, employment, promotion, discipline, suspension, dismissal or removal of a particular person or corporation.” On motion made and seconded, an Executive Session was held.

4. **Motion to Resume Meeting in Open Session**

“Mr. Chairman, I move to resume the meeting in Open Session.” On motion made and seconded, the meeting resumed in Open Session.

5. New York State and Local Employees' Retirement System – Retirement Incentive

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to authorize the Authority’s participation in the recently enacted two-part New York State retirement incentive for the benefit of certain eligible employees as set forth below.

BACKGROUND

“On June 2, 2010, the Governor approved Chapter 105 of the Laws of 2010 establishing a two-part retirement incentive. While reducing the State’s workforce to stimulate budgetary savings and avoid layoffs prompted the Governor to provide a program bill to the legislature for this incentive, the Authority, as a participating employer in the New York State and Local Employees’ Retirement System (‘Retirement System’), can elect to participate as well. The Authority has the option to offer the targeted incentive feature of this retirement legislation, known as Part A, to its employees, and/or may opt into a temporary ‘55/25 – No Penalty’ retirement program, known as Part B. The Authority may also choose to not participate in either part of this retirement incentive program.

“Part A is a Targeted Incentive Program which, if adopted, may be open to all employees who are at least 50 years old with 10 years of service, or may have a targeted availability only to certain titles within that group of employees. As explained at the Board of Trustees June 29, 2010 meeting, under the ‘targeting’ method, the Authority’s President and Chief Executive Officer would determine the job titles and number of positions in such titles, identified by department or work location, for which the Part A incentive would be offered. The Part A program provides one additional month (1/12 of a year) of service credit for each year of pension service credited at the time of retirement, up to a maximum of 36 months. However, it does not eliminate benefit reductions for members who have not reached the regular retirement age and service milestones (55 years of age with 30 years of service, or 62 years of age).

“Part B, the Age 55/25-Year Retirement Incentive Program, allows members who are at least 55 years old and have 25 or more years of service credit to retire without benefit reductions. This program does not provide eligible employees with additional service credit.

“Chapter 105 provides that a resolution establishing a retirement incentive program under Part A must be adopted by the Authority, on or before August 31, 2010, and that the resolution must specify the commencement date of the program and the length of the open period for eligible employees to retire. The open period has to be not more than 90 and not less than 30 days and it must end no later than December 31, 2010. As for Part B, Chapter 105 provides that a resolution to participate shall be adopted by September 1, 2010, and that the resolution must establish a commencement date for a mandatory 90-day open period for eligible employees to elect to retire. This open period must also close by the end of this year. Under both the Part A and Part B programs, employees would have to both file their applications for service retirement and leave the employ of the Authority during the applicable open period(s).

“Since 1985, there have been at least 10 other retirement incentive programs enacted into law in New York State. The Authority opted to offer the retirement incentive to its employees on four of these occasions (1985, 1991, 2000 and 2002).

“The Board of Trustees considered the adoption of this Retirement Incentive at its June 29, 2010 meeting. At that time, the Board directed staff to develop more detailed data on the financial and operational effects of the legislation and to report back at a special meeting at which the adoption of the retirement incentive programs would be considered.

DISCUSSION

“Based on the completed review of the monetary and operational implications that would arise from the adoption of the 2010 Retirement Incentive legislation, it is recommended that the Authority’s Trustees offer the Part A Targeted Incentive Program only to a limited group of employees who work at the Charles Poletti Power Project (‘Poletti’) by adopting a resolution establishing a 90-day open period commencing on October 1, 2010.

“In addition, it is recommended that the Authority’s Trustees adopt a resolution offering the Part B incentive program to all eligible employees and fix August 2, 2010 as the commencement date for the mandatory 90-day open period for the Age 55/25-Years Retirement Incentive.

“The recommendation to only offer Part A of the retirement incentive legislation to this limited group of employees is being made because a larger targeted group that staff initially identified could not satisfy the cost savings requirements of the legislation. The legislation specifically provides that should the Authority seek to fill any position vacated by an individual retiring under the Part A program, it must show cumulative savings over a two-year period of 50% of the retiring individual’s annual salary. In addition, under Part A the Authority would need to insure that any position vacated as a result of an individual retiring would not:

- directly reduce the service level mandated to protect or care for clients or to assure the public health or safety;
- endanger remaining employees;
- clearly cause a loss of revenue; or
- result in a substantial increase in overtime or contractual costs.

“Staff completed a comprehensive evaluation of a proposed targeted Part A and determined that given the current staff levels and the need to comply with the criteria set forth above, it would not be feasible to offer targeted Part A to the Authority.

“The only distinction among otherwise eligible employees that seems appropriate is to recommend that the Poletti employees who might otherwise be subject to layoff due to the cessation of operation of the plant, be targeted for the Part A incentive program. This is a distinct group facing a one- time extraordinary circumstance, justifying the recommendation to offer these employees the retirement incentive seems appropriate. Only Poletti employees would be eligible for the Part A incentive. This would minimize the impact of retiring Authority employees on operations and work performance that a more extensive targeted plan would have. The adoption of this limited targeted Part A incentive program provides the opportunity for the Authority to manage both the costs of the retirements as well as the operational costs from the departure of employees. It also would facilitate the accomplishment of the needed cost savings under Part A. The resulting estimated annual salary cost savings for this group would be \$1 million should all individuals in the targeted positions chose to retire.

“The Part B ‘55/25 – No Penalty’ incentive program describes an eligible employee as one who is a member of a retirement system and who is at least 55 years old with at least 25 years of creditable service in a retirement system. The Authority can disqualify a title from participating in the Part B program if it determines that a particular employee holds a position that is deemed critical to the maintenance of public health or safety. Currently, 106 employees are eligible to participate in the Part B retirement program. Of this group, approximately 40% are at headquarters and 60% at the operating sites. Given that there is no savings requirement under Part B, the business unit leaders believe they could manage the potential reductions in work force, through some level of eliminations and some back filling of positions.

FISCAL INFORMATION

“The eventual cost estimate of participation in these retirement incentive programs will depend on how many positions are targeted under the Part A program and how many eligible employees will actually choose to leave under Part A and Part B.

The percentage of eligible employees who opted for the prior incentives may provide some perspective. In 2000, 14% of 918 eligible employees took advantage of the incentive (125 retired – 96 salaried and 29 bargaining union). Similarly, in 2002, 17% of 682 eligible employees participated (114 retired – 59 salaried and 55 bargaining union).

“It is estimated that the cost of participation in Part A of the program for the targeted Poletti employees would not exceed \$ 2 million. If the Authority adopts Part B of the incentive as proposed, the cost is approximately \$1.1 million per million dollars of salary of the retiring employees. If one estimates that 20% of the eligible employees opted in to Part B, the lump sum cost to the Authority would be approximately \$2.1 million. By comparison, if 75% of those eligible retire, the cost will be \$8 million. The resulting payroll savings would depend on how many of those positions could be eliminated or filled at a lower salary.

“The pension benefit costs of the incentive are to be paid over a period not to exceed five years commencing in the State’s fiscal year ending March 31, 2012. Payment will be made from the Authority’s Operating Fund.

RECOMMENDATION

“I recommend that the Authority participate in the 2010 New York State and Local Employees’ Retirement Incentive Program and opt in to Part B of that plan. In addition, I recommend that the Authority opt in to Part A as a targeted plan for Poletti personnel only as described above.

“The Executive Vice President and Chief Financial Officer and the Vice President – Human Resources concur in this recommendation.”

Ms. Terryl Brown presented the highlights of staff’s recommendations to the Trustees. She said that since the item had first been presented to the Trustees at their June meeting, staff had compiled more specific information on the savings and costs of the program and that management was confident that, as currently structured, the program would not negatively affect the Authority’s operations. She said that management was recommending that Part A, the targeted retirement incentive, be offered to certain employees at the Charles Poletti Power Project, while Part B, the 55/25 option, be offered to all eligible Authority employees. Part A would be open to eligible Poletti employees for a 90-day period beginning October 1, 2010, while Part B would be open to eligible Authority employees for a 90-day period beginning August 2, 2010. On motion made and seconded, the Trustees approved the resolution, as amended to specifically refer to Part A being offered only to certain employees at the Charles Poletti Power Project.

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That the Trustees of the Power Authority of the State of New York do hereby elect to provide the benefits of Part A of Chapter 105 of the Laws of 2010 commencing on October 1, 2010 as a targeted plan for Poletti employees who might otherwise be subject to layoff due to the cessation of operation of the plant who retire with an effective date of retirement set during the 90-day period beginning with and immediately following the commencement date and who are

otherwise targeted as eligible as specified by Part A of Chapter 105 of the Laws of 2010; and be it further

RESOLVED, That the Trustees of the Power Authority of the State of New York do hereby elect to provide the benefits of Part B of Chapter 105 of the Laws of 2010, commencing on August 2, 2010, for all eligible employees who retire with an effective date of retirement set during the 90-day period beginning with and immediately following the commencement date and who are otherwise eligible as specified by Part B of Chapter 105 of the Laws of 2010; and be it further

RESOLVED, That the Chairman and the President and Chief Executive Officer, or their designees, be, and hereby are, authorized to take all measures necessary or convenient to effectuate and implement the foregoing resolutions.

6. Next Meeting

Chairman Townsend said that the next meeting of the Trustees would be held at a location to be determined in Syracuse on Tuesday, September 28, 2010.

Closing

On motion made and seconded, the meeting was adjourned by the Chairman at approximately 12:07 p.m.

Karen Delince
Corporate Secretary