

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

October 25, 2011

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Minutes of the Regular Meeting of the Power Authority of the State of New York held via video conference 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 Seventh Avenue, New York, NY

The Members of the Board present were:

Michael J. Townsend, Chairman
Jonathan F. Foster, Vice Chairman
D. Patrick Curley, Trustee
John S. Dyson, Trustee
R. Wayne LeChase, Trustee
Eugene L. Nicandri, Trustee
Mark O’Luck, Trustee

Gil C. Quinones	Acting President and Chief Executive Officer
Judith C. McCarthy	Acting General Counsel
Edward Welz	Acting Chief Operating Officer / Executive Vice President and Chief Engineer – Power Supply
Donald Russak	Acting Chief Financial Officer
Thomas Antenucci	Senior Vice President – Power Supply Support Services
Steve DeCarlo	Senior Vice President – Transmission
Thomas DeJesu	Senior Vice President – Public, Governmental and Regulatory Affairs
Paul Finnegan	Senior Vice President – Public, Governmental and Regulatory Affairs
James Pasquale	Senior Vice President – Marketing and Economic Development
Joan Tursi	Senior Vice President – Corporate Support Services
Paul Belnick	Vice President – Energy Services – Energy Services and Technology
Thomas Davis	Vice President – Financial Planning and Budgets
Dennis Eccleston	Vice President – Information Technology/Chief Information Officer
Michael Huvane	Vice President – Marketing – Business and Municipal Marketing
John Kahabka	Vice President – Environmental, Health and Safety
Joseph Leary	Vice President – Community and Government Relations
Lesly Pardo	Vice President – Internal Audit
Scott Scholten	Vice President and Chief Risk Officer – Energy Risk Assessment and Control
Karen Delince	Corporate Secretary
Brian McElroy	Treasurer
Jill Anderson	Director – Business Integration
John Brennan	Director – Strategy and Governance
Robert Knowlton	Director – Civil/Structural Engineering
Mike Lupo	Director – Marketing Analysis and Administration
Michael Saltzman	Director – Media Relations
Lynn Hait	Regional Manager Central NY – Site Administration, B-G
Gary Schmid	Manager – Network Services Infrastructure
Kevin O’Keeffe	Manager – Video Production Services – Media Relations
Trish Hennessy	Photographer – Video and Photographic Services
Michael Schneider	Contractor – Media Relations
Lorna M. Johnson	Assistant Corporate Secretary
Sheila Baughman	Senior Secretary – Corporate Secretary’s Office
Dominick Daniello	Desktop Support Analyst IV
Egle Travis	Pricing and Power Contract Analyst II – Marketing Analysis and Administration

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Brian Saez	Superintendent, Operations/MRM – Control Room Operations, B-G
Chris Brown	Supervisor – Mechanical Maintenance, B-G
Steven Alberti	Operations Shift Supervisor – Control Room Operations, B-G
Ty Hinkley	Operations Shift Supervisor – Control Room Operations, B-G
David Weiman	Senior Civil Engineer I – Control Room Operations, B-G
Mikey Wade	Intern

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

Introduction

Chairman Michael Townsend welcomed the Trustees and staff to the meeting.

1. **Approval of the October 25, 2011 Meeting Agenda**

On motion made and seconded the Agenda for the Meeting was approved.

2. **Consent Agenda**

On motion made and seconded, the Consent Agenda was approved.

a. **Approval of the Minutes**

The Minutes of the Regular Meeting held on September 27, 2011 were unanimously adopted.

b. Authorization to Conduct Competitive Solicitation for Environmental Attributes on Behalf of the Authority and for Resale to NYC Governmental Customers

The Acting President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve the issuance of a Competitive Solicitation for the purchase of environmental attributes to serve the renewable energy requirements of the Authority and of certain of the Authority’s New York City Governmental Customers. Environmental attributes are the megawatt-hours (‘MWhs’) associated with renewable energy generation. Renewable energy is energy that is capable of being continuously replenished by natural or other means, such as solar, wind, geothermal, biomass, landfill gas and tidal generation technologies. Environmental attributes include any emissions or pollutants avoided by the generation of renewable energy, such as carbon dioxide (CO₂), methane (CH₄), or any other greenhouse gases (GHGs).

“Under the Competitive Solicitation, the Authority would purchase the environmental attributes in the Authority’s name from the supplier. The intent is for the Authority to retain some of these environmental attributes for its own use and to resell the remainder to Roosevelt Island Operating Corporation and Battery Park City Authority, as discussed below.

BACKGROUND

“Under the 2005 Long-Term Agreements governing the supply of electricity, the Authority serves the energy and energy-related needs of its New York City Governmental Customers (‘Customers’). Some of these Customers are subject to the requirements of Executive Order 111 (‘*Green and Clean State Buildings and Vehicles*’) which directs state agencies to be more energy-efficient and environmentally aware. Other Customers are interested in purchasing renewable energy to support their own environmental policies and sustainability objectives. The Authority purchases renewable energy to fulfill its Executive Order 111 requirements and maintain the LEED (Leadership in Energy and Environmental Design) status of its Rappleyea headquarters building in White Plains.

“The possibility that Customers would purchase renewable energy and/or renewable attributes from the Authority was contemplated in the Long-Term Agreements which provides that the cost of such products will be borne directly by the Customer through an appropriate bill surcharge. The Authority has been purchasing environmental attributes for these Customers on an ‘as requested’ basis. Such purchases have been made through a series of short-term transactions, in combination with a long-term purchase of renewable attributes from Vento I, LLC (assignee of Horizon Wind Energy LLC) and Iberdrola Renewables, Inc. (formerly PPM Energy, Inc).

DISCUSSION

“The Authority has been asked to procure supplies of environmental attributes by two Customers, Roosevelt Island Operating Corporation and the Battery Park City Authority (collectively, ‘RFP Customers’), in various amounts, commencing in 2011 and potentially continuing to as far as 2020. The Authority is also in need of additional supplies of environmental attributes for its own account. The total volume of environmental attributes to be purchased over this 2011 to 2020 timeframe corresponds to 21,643 MWhs of renewable energy generation. Due to the potential length of term, Trustee approval is required before a solicitation may be issued to fulfill these needs as required by the procedure adopted July 26, 2011 entitled ‘*Power Resource Planning and Acquisition Department Procedure: Competitive Solicitations for Power Supply Products.*’

“A draft of the proposed Competitive Solicitation for these supplies is attached hereto, (Exhibit ‘2b-A’). Also attached is a brochure that staff has distributed to Customers detailing the Authority’s offer to procure Attributes on their behalf and detailing the process for them to follow, (Exhibit ‘2b-B’).

FISCAL INFORMATION

“The full cost of any purchases resulting from this solicitation will be paid for by the RFP Customers. While the price or prices of the environmental attributes to be purchased is unknown, staff estimates that, based on current market data and outlook, the total outlay over the term of these purchases could range from \$200,000 to \$325,000. If the recommended term of the contract exceeds 48 months, the Trustees will be asked to approve the purchase after the bids resulting from the solicitation are received and evaluated, and a recommendation for award is made.

RECOMMENDATION

“The Director, Supply Acquisition and Renewable Energy recommends that the Trustees authorize staff to issue a Competitive Solicitation for the purchase of environmental attributes on behalf of the New York Power Authority, the Roosevelt Island Operating Corporation and the Battery Park City Authority, to be delivered in varying amounts over the period 2011 to 2020.

“For the reasons stated, I recommend the approval of the above-requested action by adoption of a resolution in the form of the attached draft resolution.”

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

WHEREAS, pursuant to the request of two of its New York City Governmental Customers (collectively, “RFP Customers”), and as contemplated in the 2005 Long-Term Agreements, the Authority may purchase environmental attributes to serve the renewable energy requirements of such RFP Customers; and

WHEREAS, as required by Authority policy, any proposed solicitation to purchase environmental attributes over a length of time exceeding four years requires prior Trustee approval; and

WHEREAS, as the procurement proposed by the RFP Customers and required by the Authority for its own use would ask for environmental attributes for a period longer than four years, Trustee approval is needed before staff may issue the Competitive Solicitation.

NOW, THEREFORE, BE IT RESOLVED, That the Senior Vice President, Energy Resource Management, or his designee, is hereby authorized on behalf of the Authority to issue a Competitive Solicitation for the purchase of environmental attributes to meet the needs of the Authority and two of its New York City Governmental Customers as described in the foregoing report of the Acting President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Acting President and Chief Executive Officer, the Acting Executive Vice President and Chief Financial 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 and 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 Acting General Counsel.

Discussion Agenda

3. a. Report of the Acting President and Chief Executive Officer

Acting President and Chief Executive Officer, Mr. Gil Quiniones, discussed the Authority's performance measures in relation to its Business Plan and highlighted the key initiatives undertaken in October – Recharge New York; proposed hydropower rate adjustment; and participation in the Annual Meeting of Multiple Intervenors in Buffalo, New York.

Corporate Performance Measures

Acting President and Chief Executive Officer Quiniones said that staff had developed a matrix which outlined specific, measurable goals to assess the Authority's performance. He reported that in terms of operations the Authority is doing well in its generation and transmission reliability; the O&M budget is meeting its targeted goals; by the end of the year, improvements are expected in compliance; and environmental incidents exceeded its target.

Key Issues

Recharge New York

Acting President and Chief Executive Officer Quiniones said that, to date, staff has received 14 applications for power under the new Recharge New York Program and the State has received 480 Consolidated Financial Applications through the Regional Council of the Governor's office.

Annual Meeting of Multiple Intervenors at the Advanced Energy Research and Technology Center

Acting President and Chief Executive Officer Quiniones said that Mr. James Pasquale and he attended the 2011 Annual Meeting of Multiple Intervenors held at the Advance Energy Research and Technology Center in Buffalo, New York. He said that this was an opportunity for the Authority to communicate its initiatives, especially in the area of research and development, to other stakeholders. He addressed the meeting on the Authority's key energy initiatives in research and development.

In response to a question from Trustee Mark O'Luck, Acting President and Chief Executive Officer Quiniones said that the Authority set a high standard for environmental incidents at a maximum of 27 per year and exceeded this target. The incidents reported were caused by oil or refrigerant spills. The Environmental division is planning additional safety and environmental training at the sites with the goal of avoiding incidents of unintended releases into the environment. Mr. John Kahabka added that the incidents were minor in nature;

however, the Department of Environmental Conservation's regulations obligates the Authority to report all incidents.

In response to a question from Trustee LeChase, Acting President and Chief Executive Officer Quiniones said that staff conducted public informational meetings in different areas of the state on its Recharge New York program. The Authority received positive responses to the program from customers, especially since the period for its renewal is seven years as compared to the previous program which was annually. The challenge to staff is to process the numerous applications the Authority expects to receive in an expeditious manner.

b. Report of the Acting Chief Operating Officer

Acting Chief Operating Officer, Mr. Edward Welz, provided highlights of the report to the Trustees.

Construction Activities

- *Niagara-Lewiston Plant – Feeder #2 was taken out of service to install the new generator step-up transformer.*
- *St. Lawrence Plant Life Extension and Modernization Program – Unit #19 scheduled to return to service on March 28, 2012.*
- *Niagara-Robert Moses Plant – Unit #2 scheduled to return to service on July 12, 2012.*
- *Blenheim-Gilboa and Vischer Ferry Projects – staff continues to assess the damages at these projects as a result of hurricane Irene and Tropical storm Lee.*

Performance Measures

Transmission Reliability

The Authority is performing well and, consistent with the American Public Power Association's scorecard, the Authority had a high score for safety in its class.

Forced Outages

Astoria 500 MW Plant – Unit 7B was taken out of service because of failure of the excitation system; unit 7B was returned to service on October 20th.

Technical Compliance

The North American Electric Reliability Corporation (“NERC”) performed two compliance audits on the Authority both of which had no findings of potential violations. Because of this, the Authority may not be subject to as many audits in the future.

Regional Greenhouse Gas Initiative

The Authority was awarded 500,000 tons of CO₂ allowances at a market price of \$1.89/ton.

c. **Report of the Acting Chief Financial Officer**

Acting Chief Financial Officer, Mr. Donald Russak, provided highlights of the report to the Trustees.

Mr. Russak said that the Authority continues to perform well financially. For the period ended September 30, 2011, Net Income was \$171 million, which is \$55 million above budget.

Mr. Russak also reported the following activities:

- *The Authority closed on its Series 2011A bond issue;*
- *Staff is working on the 2012 Operating Budget. Staff will provide the Trustees with a budget information package for their review before the December 15th meeting.*

In response to a question from Trustee O’Luck, Mr. Russak said that the Authority is expected to be about \$4 to \$5 million above the 2011 “flat” budget.

Responding to a question from Trustee Nicandri, Mr. Russak said that staff plans to conduct individual briefings with the Trustees and that the final budget approval is scheduled for the meeting in December.

**4. Preservation Power Contracts with Newton Falls Fine Paper Company, LLC and Upstate Niagara Cooperative, Inc. –
Transmittal to the Governor**

The Acting President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve the proposed agreements (‘Agreements’) for the sale of Preservation Power to Newton Falls Fine Paper Company, LLC (‘NFFP’) and Upstate Niagara Cooperative, Inc. (‘Upstate Niagara’) and to authorize their transmittal to the Governor. The proposed Agreements with NFFP and Upstate Niagara are attached as Exhibits ‘4-A’ and ‘4-B,’ respectively.

BACKGROUND

“At their May 24, 2011 meeting, pursuant to criteria set forth in §1005 (13) of the Public Authorities Law (‘PAL’), the Trustees approved 5,000 kilowatt (‘kW’) and 3,000 kW Preservation Power allocations for NFFP and Upstate Niagara, respectively. The allocation to NFFP was approved for a term of three years and the allocation to Upstate Niagara was approved for a term of five years. The Trustees also authorized a public hearing, pursuant to §1009 of the PAL, on the proposed Agreements to effectuate the sale of power and energy for the allocation to the companies.

“In return for the 5,000 kW allocation, NFFP, a paper manufacturing company, committed to invest \$6.7 million to purchase and install new and used equipment and to refurbish existing equipment in order to begin producing paper products in the short-term. The investment would allow the company to re-open the mill and rehire workers that were laid off at the end of 2010. The company also committed to invest \$15.0 million to build a biomass cogeneration plant, to be in operation within three years, for a total project investment of \$21.7 million. NFFP committed to create 91 jobs within two years, in addition to the existing 18 jobs, as a result of this project.

“In return for the 3,000 kW allocation, Upstate Niagara committed to invest a total of \$11.0 million to purchase and re-open a dairy processing facility in North Lawrence. The company will install two new high-speed production lines and hire workers to produce dairy products, i.e., yogurt. Roughly, \$5.0 million of the total investment would be spent on the existing facility purchase and re-start, with the remaining \$6.0 million for the new production equipment and installation. The company has committed to create 80 jobs within three years as a result of this project.

“Regarding the proposed Agreements, firm electric service will be equivalent to that provided to all other Authority firm hydropower customers and subject to pro-rata curtailment when there is insufficient generation at the Niagara and St. Lawrence/FDR facilities to meet the energy requirement of the firm hydropower customers. The allocations will be subject to enforceable employment commitments. The Agreements include an annual job reporting requirement with a job compliance threshold of 90%. Should the ratio of actual jobs reported to jobs committed fall below the compliance threshold, the Authority has the right to reduce the hydropower allocation on a pro-rata percentage basis. The rates for Preservation Power are contained in the ‘Schedule of Rates for Sale of Firm Power to Preservation Power Customers -Service Tariff No. 10,’ also included in Exhibits ‘4-A’ and ‘4-B.’

“Regarding the status of the individual expansion projects, Upstate Niagara’s project has commenced with the purchase of the dairy processing facility. The project is progressing and the company anticipates being ready to begin using the hydropower allocation as early as the first quarter of 2012. NFFP continues to assess its options to move forward with the Newton Falls project. The company is reviewing its business strategy and has yet to re-open the mill or purchase the cogeneration system. If the Agreements are approved by the Trustees and the Governor, the individual customer’s agreement will be executed only after a project review is completed by the Authority.

DISCUSSION

“A public hearing on the Agreements was held on July 28, 2011 at the Frank S. McCullough, Jr. Hawkins Point Visitors’ Center at the St. Lawrence/FDR Power Project in Massena. Four oral statements were given at the public hearing and a written statement with attachments was submitted by one of the speakers. Three of the speakers provided statements unrelated to the Agreements. One speaker supported the agreement for the Upstate Niagara power allocation and requested the Trustees do anything that could help create jobs at the North Lawrence facility. The official transcript of the public hearing and the written submittal are attached as Exhibit ‘4-C.’

RECOMMENDATION

“The Manager – Business Power Allocations and Compliance recommends that the Trustees approve the proposed Agreements for the sale of Preservation Power to Newton Falls Fine Paper Company, LLC and Upstate Niagara Cooperative, Inc. and authorize the transmittal of the Agreements to the Governor for approval.

“For the reasons stated, I recommend the approval of the above-requested action by adoption of a resolution in the form of the attached draft resolution.”

Mr. Michael Huvane provided highlights of staff’s recommendation to the Trustees. In response to a question from Trustee Nicandri, Mr. Huvane said that the Contract with Newton Falls Fine Paper Company was for three years; the company requested the shorter-term contract. In response to further question from Trustee Nicandri, Mr. Huvane said that the contract for Upstate Niagara Cooperative was for five years, the standard term of the contracts. Chairman Townsend added that the contracts to both Newton Falls Fine Paper Company and Upstate Niagara Cooperative will result in the reopening of facilities that were shut down. He thinks it’s very important to note that the Authority was able to reenergize these local economies.

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

RESOLVED, That the Preservation Power agreements for the sale of hydroelectric power and energy generated by the Authority for sale to Newton Falls Fine Paper Company, LLC and Upstate Niagara Cooperative, Inc., respectively, are in the public interest and should be submitted to the Governor for approval and that the agreements, along with the record of the public hearing thereon, be forwarded to 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; and be it further

RESOLVED, That the Chairman and the Corporate Secretary be authorized and directed to execute such agreements in the name of and on behalf of the Authority after it has been approved by the Governor; 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 Acting General Counsel, to negotiate and execute any and all documents necessary or desirable to implement the agreements with the companies as set forth

in the foregoing report of the Acting President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Acting President and Chief Executive Officer, the Acting 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 Acting General Counsel.

5. Recharge New York Production Rate Methodology and Indicative Rates

The Acting President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve the proposed production rate methodology to be used to develop indicative rates for the Authority’s new Recharge New York Power Program (‘RNY Power Program’ or ‘RNY’) starting July 2012.

“The Trustees are further requested to authorize staff to update the proposed rates to account for changed economic conditions immediately prior to the July 2012 start of RNY Power Program.

BACKGROUND

“The RNY Power Program is a new significant economic development program created by Chapter 60 (Part CC) of the Laws of 2011 (‘Chapter 60’). In accordance with Chapter 60, the Authority will administer the RNY Power Program, which is designed to be a long-term, cost-effective energy solution for businesses throughout the state. Many such businesses previously depended upon yearly legislative extensions of the Authority’s Economic Development Power and Power for Jobs program benefits, two programs that will be phased out pursuant to Chapter 60.

“The RNY Power Program will make a total of 910 MW of electricity available to New York businesses and not-for-profit entities, which will consist of 455 MW of Authority hydro-electricity and 455 MW of market electricity. Because one-half of the RNY Power Program consists of hydropower, the Authority will be able to offer low-cost electricity to RNY Power Program participants. In addition to the entitlement to receive the hydropower portion of the RNY allocation, each RNY participant shall have an option to choose to receive the market power portion of its RNY allocation from either the Authority or another electricity supplier. If the RNY Power Program participant chooses to receive Authority-supplied market power, the Authority will employ appropriate strategies for procuring market energy and capacity necessary to supply the market power portion of the full RNY allocation. The Authority’s sales under the RNY Power Program shall be accomplished through a direct power sale contract between the Authority and the RNY Power Program participant. If the RNY Power Program participant does not choose to receive the market power portion of its RNY allocation from the Authority, it may choose an alternate supplier and the Authority would only be responsible for supplying the hydropower portion of the participant’s RNY allocation. Each RNY allocation will be entitled to a delivery rate discount from the applicable transmitting utility regardless of whether the market power portion of the allocation is supplied by the Authority or an alternate supplier.*

“Approval of the production rate methodology is necessary for the Authority to market the RNY program to potential consumers throughout the state and to determine the level of energy cost savings, if any, that would be experienced by potential recipients of RNY allocations. If approved, the proposed rate methodology would be inserted into a new Authority service tariff applicable to RNY Power Program allocations. At the December 15, 2011 Trustee meeting, Authority staff intends to present both the form of contract for RNY Power Program sales and the accompanying service tariff for Board approval.

DISCUSSION

“In expectation of the commencement of RNY Power Program sales in July 2012, Authority staff has prepared a rate methodology and two sets of RNY indicative rates to be applicable to RNY Power Program participants. Staff proposes monthly base production rates for demand and energy differentiated by the geographic

* The New York Public Service Commission recently directed the state’s utility companies to adopt a delivery rate discount for RNY Power Program deliveries, as set forth in Case 11-E-0176, *In the Matter of the Commission’s Implementation of Certain Provisions of the Recharge New York Power Program Act*, ‘Order Directing Certain Utilities to Submit Tariff Amendments’ (issued and effective September 19, 2011).

zones established by the New York Independent System Operator ('NYISO'). Exhibit '5-A' contains the base rate components that are used in staff's methodology to compute the rates. Exhibit '5-B' contains the indicative 'RNY Hydro Only' and 'RNY Blended' rates by zone.

A. Rate Methodology:

"RNY Hydro Only refers to the rate for a RNY participant who has chosen to purchase only the hydropower portion of its RNY allocation from the Authority. RNY Blended refers to the rate for a RNY participant who has elected to purchase from the Authority its total RNY allocation, which is comprised of 50 percent Authority hydropower and 50 percent market power procured by the Authority.

"The base rate components included in the RNY Hydro Only rate are the production rate under the Authority's Preservation Power program plus charges for applicable NYISO Charges as set forth in Exhibit '5-A' (which includes, but is not limited to, charges for ancillary services, marginal losses and congestion, NYPA Transmission Adjustment Charge ('NTAC') and other reliability-related charges or any other charge or assessment imposed by the NYISO upon load-serving entities), costs for the locational capacity as required by the NYISO for zones J and K, and the costs for distribution losses to the extent the local utility has made adjustments to the deliveries to account for this function. The NYISO charges included in the RNY Hydro Only rate will reflect the NYISO costs the Authority incurs as the load-serving entity for sale of RNY hydropower.

"The base rate components included in the RNY Blended rate are the same RNY Hydro Only components listed above, plus the Market Energy, Capacity Obligation and an adder to manage risk for bad debt. Of course, the NYISO Charges and the Capacity Obligation components would be increased to reflect the additional load represented by the Authority's role as the load-serving entity for both the market and hydropower portion of the RNY allocation. See Exhibit '5-A.'

"In addition to the base production charges, RNY Power Program participants will be responsible for reimbursing the Authority for any taxes and any costs for substitute energy incurred by the Authority on behalf of a Program participant in the event hydropower needs to be reduced due to projected shortfalls or actual curtailments, and for any other future charges or costs imposed by third-parties and incurred by the Authority that are currently not known.

B. Indicative Base Rates

"Exhibit '5-B' contains monthly indicative base rates for the period July 2012 through June 2013 for demand and energy paid by RNY customer to the Authority, as developed by Authority staff following the above-described methodology. Pricing assumptions used for the market rate components are those based on the most current prices projected in the Authority's Operating Forecast for July 2012 through June 2013. If the actual costs shall vary from those estimated in the base rate components, they will be reconciled through a monthly billing mechanism designed to recover actual costs incurred.

C. Revision of Indicative Base Rates

"Because the proposed indicative base rates were developed using the market and capacity price estimates as contained in the current Operating Forecast, the Trustees are requested to permit staff to update the base rates to incorporate the most current economic data available immediately prior to the start of the RNY Power Program in July 2012.

"Consistent with the Authority's other economic development power programs involving the sale of hydropower, staff intends for the RNY Power Program to be subject to ongoing annual rate adjustments for the hydro and market rate components. Revised RNY Hydro Only and Blended rates would take effect starting in the July billing period each year.

FISCAL INFORMATION

“The proposed rate methodology results in increased hydro revenues for the Authority and establishes full cost recovery and revenue neutrality to the Authority for providing Recharge New York market power.

RECOMMENDATION

“The Director – Market Analysis and Administration recommends that the Trustees approve the proposed rate methodology and indicative rates for providing Recharge New York Power to the Recharge New York Power Program participants, for inclusion in the Authority’s service tariff for RNY Power Program sales at the appropriate time.

“It is also recommended that the Senior Vice President – Marketing and Economic Development, or his designee, be authorized to update the proposed indicative Recharge New York rates before the commencement of sales under the Recharge New York Power Program in July 2012 and each July thereafter.

“For the reasons stated above, I recommend the approval of the above requested action by adoption of a resolution in the form of the attached draft resolution.”

Mr. Mike Lupo provided highlights of staff’s recommendation to the Trustees. In response to a question from Trustee Nicandri, Mr. Lupo said that the cost recovery methodology, which has been evaluated by the Chief Financial officer and senior staff, will result in full recovery of all Authority costs, including all NYISO costs. In response to further question from Trustee Nicandri, Mr. Lupo said that the proposed rate adjustment is subject annual adjustments.

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

RESOLVED, That the Authority has developed a rate methodology for the Recharge New York Power Program; and be it further

RESOLVED, That the Authority has developed indicative Recharge New York Power Program rates; and be it further

RESOLVED, That the Senior Vice President – Marketing and Economic Development, or his designee, be, and hereby is, authorized to update the indicative rates before the commencement of sales under the Recharge New York Power Program in July 2012 and each July thereafter; and be it further

RESOLVED, That the Senior Vice President – Marketing and Economic Development, or his designee, be, and hereby is, authorized to include such methodology and indicative rates in the service tariffs currently under development by the Authority for Recharge New York Power Program sales; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Acting President and Chief Executive Officer, the Acting 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 certificates, agreements and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Acting General Counsel.

6. New York Power New York Power Authority Other Post-Employment Benefits Trust Fund: Funding Plan, Amendments to the Investment Policy Statement and Selection of New Investment Managers

The Acting President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve an on-going funding plan for the New York Power Authority Other Post-Employment Benefits Trust; approve the award of two multiyear procurement contracts relating to professional investment management services for such Trust and approve amendments to the Trust’s Investment Policy Statement.

BACKGROUND

“Certain Governmental Accounting Standards Board (‘GASB’) standards[†] issued in 2004 require governmental employers to account for other post-employment benefit (‘OPEB’) liabilities on an ‘accrual’ basis (i.e., as the benefits are earned during the working career of the employee) rather than on a ‘pay-as-you-go’ basis, where costs are recorded as the benefits are paid during the employee’s retirement years. OPEBs may include medical, prescription drug, dental, vision, life and other long-term care benefits for retirees and eligible beneficiaries. Similar GASB standards for pensions have existed since 1994. The Authority began reporting its OPEB obligations in this manner in 2002.

“The GASB rules do not mandate the funding of OPEB obligations, only a recognition of the accrued OPEB liability on the employer’s financial statements. If left unfunded, however, the amount of the unfunded liability could significantly impact the employer’s overall financial condition and its credit rating with an attendant impact on the cost of debt financing.

“After an assessment by staff, it was determined that the establishment of a separately managed trust fund would be beneficial and at their July 31, 2007 meeting, the Trustees (1) approved the creation of the New York Power Authority Other Post-Employment Benefits Trust (the ‘Trust’); (2) adopted the Trust Investment Policy Statement; (3) appointed a Trustee Custodian and (4) approved an initial \$225 million funding plan.

“The exclusive purpose of the Trust is to accumulate, hold and invest funds for the payment of Benefits to Plan Beneficiaries and the payment of related administrative costs of the Plan and of the Trust, as provided in the Trust Agreement. The principal of the Trust, together with any earnings thereon, are held separate and apart from funds of the Authority. The participants as of the date of the last actuarial valuation (January 1, 2010) included 1,564 active employees, 1,192 retirees and 827 spouses for a total population of 3,583.

“The Trust Investment Policy Statement outlines and discusses the Trust’s investment objectives and includes a strategy for diversification among several asset types and classes so as to be aligned with the Authority’s overall return objectives and risk tolerances. The following table summarizes these various categories, their percentage targets and the market value as of August 31, 2011 for each principal class of investment:

[†] These standards include Statement No. 43 – Financial Reporting for Post-employment Benefit Plans Other Than Pension Plans and Statement No.45 – Accounting and Financial Reporting by Employers for Post-employment Benefits Other than Pensions.

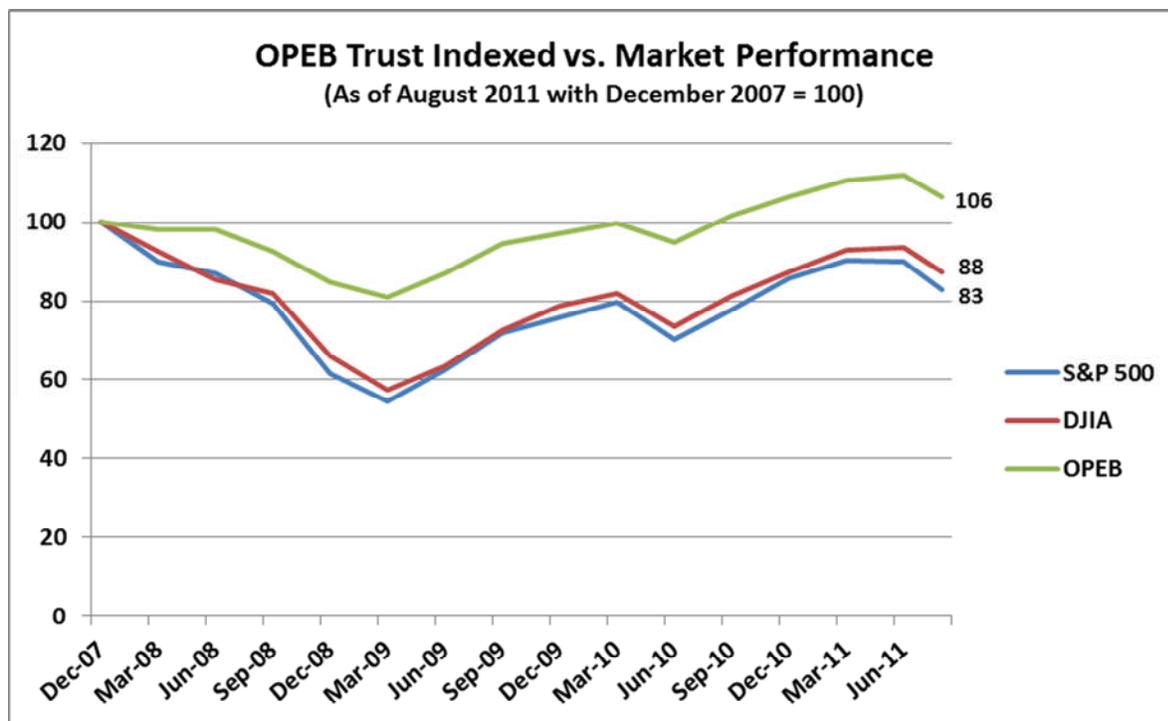
Asset Type	Target Allocation Percentage	Target Allocation Range	Current Allocation Percentage	Market Value Aug 31, 2011 (\$ millions)
Equities	61%		58%	\$139.2
Domestic Equity	42%	37% - 47%	40%	\$ 94.8
International Equity	19%	14% - 24%	18%	\$ 44.4
Other Equity	6%		7%	\$ 16.4
Real Estate	6%	1% - 11%	7%	\$ 16.4
Fixed Income	33%		35%	\$ 83.8
Domestic Fixed Income	30%	25% - 35%	31%	\$ 75.0
Cash Equivalent	3%	0% - 10%	4%	\$ 8.8
Total				\$ 239.4

“The establishment of the Trust, in addition to securing the Authority’s ability to meet its OPEB obligations, reduces the net cost of the obligations by providing investment earnings to offset the anticipated growth in benefit expenditures. Moreover, the establishment of the separate Investment Policy for the Trust allows investment in longer-term and generally higher yielding investments than the Authority’s general funds. Based on an assessment by the Authority’s actuary, the earnings rate on the Trust was estimated to produce more than \$70 million in present value savings over a 30-year period.

“The initial funding level of \$225 million represented only a partial funding of the then \$325 million obligation. At the time of the initial approval, staff indicated to the Trustees that it would take some time to monitor the performance of the Trust and that staff will return to the Board at a later date with any recommended changes and/or further recommendations for funding.

DISCUSSION

“Since the creation and funding of the Trust in late 2007/early 2008, the market’s performance has been volatile. From December 2007 through to March 2009, the Dow Jones Industrial Average and the S&P 500, as illustrated in the following chart, each dropped by more than 40%. From March 2009 through August 2011, the markets rebounded to only about 83% - 88% of their December 2007 levels. The diversification strategy of the OPEB Trust, in large part, mitigated this volatility. While declining by as much as 20% in value through March 2009 – about half the drop of the major market indices – the OPEB Trust’s market value has recovered to 106% of its late 2007 level at August 31, 2011.



“While monitoring the performance of the portfolio, the Authority did not deposit any additional funds into the OPEB Trust, nor have funds been withdrawn from the Trust as the Authority continued to meet its benefit obligations with cash from operations. The overall liability, reflecting a number of updated actuarial assumptions, was determined to be \$400 million as of January 1, 2010, the date of the latest study. The principal contributors to the increase in the liability were the use of an updated mortality table and the fact that the Authority had not made any additional deposits to the Fund. With the Trust Fund balance standing at \$239 million, the obligation is about 60% funded.

“Staff, with the support of its financial advisor, PFM Advisors, conducted an evaluation of the funding strategies, the Trust’s performance and the performance of the individual fund managers. Overall, staff is satisfied that the principal objective for the establishment of the Trust Fund is being met, namely, that the Authority is prudently planning for its future obligations to its employees while minimizing its costs. Based on this evaluation, the following recommendations are presented:

(1) Resume Funding of the Trust

“The annual OPEB Expense is determined through a biennial actuarial study. The annual OPEB Expense includes the annual accrual for current employees (often referred to as the ‘Normal Cost’), the amortization of the initial unfunded liability (which represents the amortization of the annual accrual amounts for all years prior to the adoption of the GASB rules) and any necessary adjustments to account for the cost impact of plan and/or assumption changes, etc. The Authority is amortizing the initial prior service obligation over a twenty-year period. The impacts of changes in assumptions and plan changes on costs are generally amortized over future periods. To the extent the annual OPEB Expense is not funded, the lost earnings opportunity will cause the unfunded liability to continually increase.

“It is recommended that the Authority resume funding the Trust through annual deposits in an amount equal to the annual OPEB Expense net of the actual benefits paid for retirees. For 2011, the annual OPEB Expense was determined to be \$33.5 million. The expected level of benefits paid for retirees under the Plan in 2011 is estimated to be \$18.9 million. Therefore, for 2011, the difference between the annual OPEB Expense and the amount paid for retirees, i.e., the net obligation of \$14.6 million, would be deposited into the Trust. In addition, it is recommended that the net obligation amounts for the two prior years in which staff was monitoring the Fund’s

performance – totaling \$25 million for the two years – also be deposited into the fund in order to bring this funding plan current.

(2) Replacement of Investment Manager

“The Authority, in coordination with PFM Advisors, continuously monitors and evaluates individual fund managers and their performance. Beginning in late 2010, Global Currents Investment Management (‘Global’), which manages the Value portion of the International Equity portfolio, experienced significant organizational changes including the departure of their global equity portfolio manager and two analysts providing financials and consumers sector research. Staff has determined that these changes are significant and could negatively affect the ability of Global to effectively manage the portfolio going forward. The Investment Committee at PFM Advisors placed Global on probation status earlier this year and is now advising clients to move assets under management with Global.

“On June 13, 2011, staff solicited proposals for professional investment management services for the referenced investment class by notice to a number of firms providing such services and advertisement in the New York State *Contract Reporter*. On or before July 12, 2011 the Authority received a total of twenty-one proposals.

“Staff, with the support of PFM Advisors, evaluated each proposal according to various criteria, including, but not limited to, performance, performance consistency and volatility, correlation to market, risk metrics, schedule of fees and supporting organizational capabilities. After conducting extensive review and analysis, the five firms with the highest relative rankings were invited to give oral presentations. Based on the above criteria and oral presentations, the following two firms were deemed to have the highest overall rankings to manage a portion of the international assets in the OPEB Trust Fund: Lazard Asset Management LLC (‘Lazard’) and Thomas White International Ltd. (‘Thomas White’).

“Lazard’s unique relative valuation approach, focus on financial productivity, long team history and superior past down market capture compliment the investment style of Barings Asset Management (‘Barings’) which manages the Growth portion of the OPEB Trust’s International Equity portfolio.

“Thomas White employs a quantitative process with a qualitative overlay. The firm has demonstrated a consistent track record for the past two decades, superior risk adjusted returns over the trailing periods and a strong investment team.

“Based on back-testing results from the combination of Barings, Lazard and Thomas White, an improvement in overall historical portfolio risk and return is expected to be achieved. As such, staff is recommending that Lazard and Thomas White be awarded five-year contracts subject, however, to early termination at any time by the Authority on 60 days’ notice.

“Section 2879 of the Public Authorities Law and the Authority’s Guidelines for Procurement Contracts require the Trustees’ approval for procurement contracts involving services to be rendered for a period in excess of one year. The terms of the contracts considered herein are for more than one year and, therefore, Trustee approval is required.

(3) Amendments to the Investment Policy Statement

“Staff is also recommending several amendments to the Investment Policy Statement (‘IPS’) for the New York Power Authority Other Post-Employment Benefit Trust Fund. The IPS has not been amended since approved by the Board on July 31, 2007. The amendments serve to further clarify diversification and credit quality restrictions within the various permissible asset classes. A marked version of the IPS showing the recommended changes is attached as Exhibit ‘6-A’ with any additions shown as underlined and any deletions shown as strikethroughs. A final version of the amended IPS is attached as Exhibit ‘6-B.’

FISCAL INFORMATION

“The implementation of the recommended funding plan is expected to reduce the future amortization of the unfunded obligation by about \$2 million annually and preclude future growth in the unfunded liability due to lost earnings opportunities. The fees for the two recommended Investment Managers, which will be paid from OPEB Trust assets, are expected to average approximately 88 basis points per annum (a basis point equals one one-hundredth of one percent or 0.01%). The fees should equal about \$240,000 for the first year, growing in conjunction with the Fund’s growth. Over the course of the recommended five-year term of the investment manager contracts, fees are estimated to total about \$1.4 million assuming a normal growth rate in the Fund’s Assets.

RECOMMENDATION

“The Acting Executive Vice President and Chief Financial Officer recommends the Trustees (1) authorize the on-going funding plan for the New York Power Authority Other Post-Employment Benefit Trust Fund, as discussed above; (2) approve the award of multiyear services contracts to the two investment managers so named and described above for the New York Power Authority Other Post-Employment Benefit Trust Fund and (3) adopt the revised Investment Policy Statement reflecting the recommended changes noted above and shown on Exhibit ‘6-B.’

“For the reasons stated, I recommend the approval of the above-requested action by adoption of a resolution in the form of the attached draft resolution.”

Mr. Donald Russak presented highlights of staff’s recommendation to the Trustees. In response to a question from Trustee O’Luck, Mr. Russak said staff is requesting approval for \$43.9 million for the plan. In response to a question from Vice Chairman Foster, Mr. Russak said there is no statutory requirement for this action; however, staff thinks the plan, as presented to the Board for its approval, is a prudent approach to funding the Authority’s future obligations. Responding to further question from Trustee O’Luck, Mr. Russak said that, to the extent that the fund under or over performs, it can be adjusted as necessary.

In response to a question from Trustee Nicandri, Mr. Russak said that the selection of the two firms, Lazard Asset Management LLC and Thomas White International Ltd., was done through an evaluation team using various criteria, and, after extensive review and analysis, the evaluation team selected the highest rated firms it considered appropriate to manage the fund. In response to a question from Trustee LeChase, Mr. Russak said that each of the firms will be managing a portion of the \$44 million.

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

RESOLVED, That the Trustees approve the adoption of the recommended funding plan for the Power Authority of the State of New York Other Post- Employment Benefits Trust, as recommended in the foregoing report of the Acting President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award and funding of the multiyear investment management services contracts for

the New York Power Authority Other Post- Employment Benefits Trust are hereby approved and their execution by the Acting Executive Vice President and Chief Financial Officer or his designee is approved, subject to approval of the form thereof by the Acting General Counsel, on behalf of the Authority, as recommended in the foregoing report of the Acting President and Chief Executive Officer; and be it further

RESOLVED, That the Trustees approve the adoption of the amended Investment Policy Statement For Power Authority of the State of New York Other Post- Employment Benefits Trust, reflecting the amendments as recommended in the foregoing report of the Acting President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Acting President and Chief Executive Officer, the Acting Executive Vice President and Chief Financial 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 and 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 Acting General Counsel.

7. **Proposed Schedule of Trustees' Meetings in 2012**

The Corporate Secretary submitted the following report:

“The following schedule of meetings for the year 2012 is recommended:

<u>Date</u>	<u>Location</u>	<u>Time</u>
January 31, 2012	WPO	11:00 a.m.
February 28, 2012	WPO	11:00 a.m.
March 27, 2012 – Annual	WPO	11:00 a.m.
April 24, 2012	ALB	11:00 a.m.
May 22, 2012	WPO	11:00 a.m.
June 26, 2012	STL	11:00 a.m.
July 31, 2012	NIA	11:00 a.m.
AUGUST	<i>NO MEETING SCHEDULED</i>	
September 25, 2012	WPO	11:00 a.m.
October 30, 2012	WPO	11:00 a.m.
November 27, 2012	WPO	11:00 a.m.
December 18, 2012	WPO	11:00 a.m.

RECOMMENDATION

“The Acting President and Chief Executive Officer and I support the proposed schedule for the Authority’s Trustees’ Meetings for the year 2012, as set forth in the foregoing report.

“I recommend the approval of the proposed schedule by adoption of a resolution in the form of the attached draft resolution.”

Ms. Karen Delince highlighted staff’s recommendations to the Trustees. Vice Chairman Foster suggested a more comprehensive agenda with fewer meetings; Trustee Dyson suggested that the schedule be approved as presented as it is easier to cancel than schedule the meetings.

The following resolution, as submitted by the Corporate Secretary, was unanimously adopted.

RESOLVED, That the schedule of Trustees’ Meetings for the year 2012, as set forth in the foregoing report of the Corporate Secretary, be, and hereby is, approved.

8. **Employee Recognition – B-G Storm Event**

Chairman Townsend made the following remarks recognizing the efforts made by certain employees during the crisis as a result of Hurricane Irene and Tropical Storm Lee.

The next item on our agenda gives me great satisfaction and is something we've been looking forward to. As we all know, the Power Authority was severely tested in August in responding to the unprecedented high water levels from Tropical Storm Irene at our Blenheim-Gilboa and Vischer Ferry hydro facilities along the Schoharie Creek and Mohawk River.

Never before in the Authority's history have we faced such surging waters and dangerous conditions, leading to the activation of our emergency action plans at the two facilities on August 28th and 29th. Thankfully, the quick and decisive actions by our B-G staff and others at NYPA led to the stabilizing of conditions, as the waters receded, in what's been referred to as a 500-year flood.

There were a number of employees who contributed mightily to our success, including six individuals, here today, whose heroism and exemplary leadership is representative of the finest qualities of NYPA's workforce. We're proud of what you did and delighted you could make it to this recognition ceremony.

I now want to turn to Lynn Hait, NYPA's Regional Manager for Central New York, who was part of the management operations team, under Gil Quiniones and Ed Welz, which spearheaded the response to the storm. Lynn will talk further about the singular contributions of the individuals we're honoring today.

Mr. Lynn Hait, Regional Manager – Central New York, presented Certificates of Appreciation to the following B-G employees: Messrs. Brian Saez, Operations/MRM Superintendent; David Weiman, Senior Civil Engineer; Chris Brown, Mechanical Maintenance Supervisor; Steven Alberti, Operations Shift Supervisor; Ty Hinkley, Operations Shift Supervisor; and White Plains Office employee, Mr. Robert Knowlton, Director Civil/Structural Engineering. He outlined the critical effects of Tropical Storms Irene and Lee to the Authority's Blenheim-Gilboa and Vischer Ferry Plants and the efforts, above and beyond the call of duty, of each of the employees to alleviate the damage to these facilities and downstream properties. Chairman Townsend added that the Trustees appreciated their efforts.

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

Mr. Chairman, I move that the Authority conduct an executive session pursuant to the Public Officers Law of the State of New York section §105 to discuss matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation. On motion made and seconded, an Executive Session was held.

10. **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.

11. **Next Meeting**

The next regular meeting of the Trustees will be held on **Tuesday, November 15, 2011, at 11:00 a.m., at the Clarence D. Rappleyea Building, White Plains, New York**, unless otherwise designated by the Chairman with the concurrence of the Trustees.

Closing

On motion made and seconded, the meeting was adjourned by the Chairman at approximately 2:32 p.m.

A handwritten signature in black ink, appearing to read "Karen Delince". The signature is fluid and cursive, with a large initial "K" and "D".

Karen Delince
Corporate Secretary

October 25, 2011

EXHIBITS

For

October 25, 2011

Trustees' Meeting

October 25, 2011

Exhibit "2b-A"

OVERVIEW OF REQUEST

The New York Power Authority ("NYPA" or "Authority") is hereby issuing a request for bids for the purchase of Environmental Attributes (also known as Renewable Energy Attributes or RECs) (hereinafter, "Attributes") for itself and/or resale to its customers. The Authority is requesting bids for the products, quantities, and terms shown on Attachment A hereto. All purchases will be in the Authority's name.

BIDS ARE TO BE SUBMITTED VIA EMAIL TO CHRISTOPHER.FRY@NYPA.GOV BY CLOSE OF BUSINESS XX/XX/2011.

GOAL OF RENEWABLE PURCHASES

Purchases may be made up to the amounts shown on Attachment A, for specific purposes as described below. Please note that Renewable Energy Attributes may be both Green-e Energy eligible and EO111 compliant. Please indicate eligibility (e.g. Green-e Energy, EO111, or both) of all products bid.

1. Green-e Energy eligible Attributes:

Attributes will be purchased for voluntary purposes and must be eligible for Green-e Energy certification. Green-e Energy is an independent program of the non-profit Center for Resource Solutions that verifies and certifies renewable energy products. In order to be certified as Green-e Energy, a renewable energy product must undergo a thorough annual verification procedure, which ensures that it is properly accounted for, originates from a facility that meets the requirements of the Green-e Energy National Standard, and has not been double-counted. Potential providers are referred to the Green-e website (www.green-e.org) for full information and guidance on what products and energy sources are Green-e Energy eligible.

2. Compliance with New York State Executive Order 111:

Attributes will be purchased for compliance with New York State Executive Order 111 dated June 10, 2001 (hereinafter, "EO 111"). Potential suppliers are referred to the Guidelines for Executive Order III, Section 5, Requirements for the Purchase of Renewable Power, for a description of the products sought under this solicitation. Please see the link to the Guidelines to the Executive Order, shown below.

(http://www.nyserda.org/programs/State_Government/exorder111guidelines.pdf.)

EO 111 Eligible Resource Types

For compliance with EO 111, eligible resource types are defined as those facilities generating energy from the following technologies:

- Wind
- Solar thermal
- Photovoltaics

- Sustainable managed biomass, which for these purposes shall include all wood resources, with the exception of contaminated waste wood, and shall exclude utility-scale facilities that co-fire with coal
- Tidal
- Geothermal
- Methane waste (from landfills or anaerobic digesters)
- Fuel cells

Hydro production will not be considered for EO 111 compliance purchases.

For purposes of this procurement, supplier is responsible for providing warranty that Attributes bid meet Green-e Energy and/or EO111 eligibility requirements.

REQUIREMENTS FOR ALL PURCHASES

New York State Environmental Disclosure Program

The successful bidder(s) must satisfy the requirements of the Environmental Disclosure Program Rules and Procedures for Conversion Transactions, or any successor rules, established by the New York State Public Service Commission (“NYS PSC”). A Conversion Transaction occurs when an entity that sold energy into the New York Independent System Operator (“NYISO”) Spot Market and an entity that purchased a like amount of energy out of the NYISO Spot Market during the same settlement period jointly identify for the Administrator of the Environmental Disclosure Program such packet of energy such that it can be disaggregated, for environmental disclosure purposes, from the residual pool of Spot Market energy. Conversion Transaction procedures are described in more detail on the Department of Public Service website at: www.dps.state.ny.us/EnvDisclosureLabel.html.

In accordance with this requirement, the Attributes must be associated with electrical energy delivered into the New York Independent System Operator (NYISO) spot market directly from a supplier and/or marketer.

Potential suppliers may also be asked to furnish proof of prior or current contracts for the commodity stated herein to demonstrate their ability to satisfactorily operate in the renewable energy market in New York State.

FOLLOWING SUPPLIER SELECTION AND CONTRACT AWARD:

Verification of Rights to Attributes

Throughout the contract term, NYPA will require certification/ verification of delivery of all rights to the Attributes purchased by NYPA as follows:

- Each invoice submitted by the successful bidder requesting payment must be accompanied by an appropriate Certification, which will identify the number and vintage of all Attributes for which payment is requested, bear an appropriate certification as to the eligibility of such Attributes and transfer all rights and assignments to NYPA.
- In the event the NYS PSC, solely or in conjunction with others, creates, sanctions, adopts or begins participation in a Generation Tracking System in the New York Control Area (“NYCA”) during the term of the agreement contemplated in this bid solicitation,

each Attribute associated with fulfillment of the selected bidder's requirements must be transferred to an account designated by NYPA.

- Facilities providing products that are not located in the NYCA, but are located in a control area with a compatible generation tracking system at the time of submittal of the Bid Proposal, must deliver RECs associated with the Attributes to an account designated by NYPA. For example, the NEPOOL Generation Information System and the PJM Generation Attribute Tracking System are deemed compatible systems by the administrator of the NYS Environmental Disclosure Program.
- For facilities outside the NYCA, the NYS PSC may require verification of delivery of the electricity associated with the Attributes into the NYISO Spot Market.

No Double Counting

In no event shall the Attributes of the generation associated with NYPA's contract(s) under this solicitation be assigned or sold by the seller in another transaction. Any assignment or application by the seller of the Attributes associated with a contract with NYPA under this solicitation to any other entity, program or jurisdiction, whether associated with a publicly administered program or a voluntary transaction, is strictly prohibited.

SUBMISSION OF BID PROPOSALS

BIDS ARE TO BE SUBMITTED VIA EMAIL TO CHRISTOPHER.FRY@NYPA.GOV BY CLOSE OF BUSINESS XX/XX/2011.

- Bidders should use the form of Attachment B included herein, or provide substantially similar information.
- Bidders may provide quotations for any or all of the products and quantities.
- Bidders shall provide quotations for each of the terms requested for any products bid.
- Bidders may provide multiple options for the products and quantities requested.

Bidder shall provide, along with pricing for Attributes, location and name of associated facility(ies) and a full description of the eligible resource type for Attributes bid. Bidder shall specify the eligibility of products bid for the various purposes requested (Green-e and/or EO111). Bidder shall indicate the expiration date of the bid submitted, which must be no earlier than 60 days after the date of submittal. In addition, Bidder shall provide a brief description of its business organization, history, and financial condition.

Required Contract Agreement

Selected supplier(s) shall be required to execute a contract substantially similar to the contract set forth in Attachment C hereto. No material changes to this contract will be accepted.

Evaluation process and Criteria

Proposals must be complete, in conformance with the specifications and other requirements of this solicitation, and must include all documentation, evidence or verification requested. Submittals will be evaluated primarily according to price, with consideration given to the creditworthiness of the bidder. Preference may be given to products generated in New York State.

Basis for Disqualification

A bidder may be disqualified and the bid not considered for reasons including, but not limited to, the following:

- receipt of the bid after the deadline for submission;
- failure to meet all eligibility requirements;
- incomplete bid;
- willful misrepresentations in the bid;
- illegal or undue attempts to influence the bid review process;
- a determination by NYPA, in its discretion, that some or all bids should be rejected.

The Authority reserves the right, in its sole discretion, to withdraw or modify this solicitation at any time, to reject any or all bids for any reason, or no reason, and to enter into further discussions or interviews with any one or more Bidders. Awards may be made to more than one Bidder.

COMMUNICATION DURING THE SOLICITATION PROCESS

NYPA's contact for this solicitation is:

Christopher Fry, Power Resource Planning and Acquisition

Telephone: 914-287-3435

Email: christopher.fry@nypa.gov

Attachment A - Summary of Request for Environmental Attributes (MWh), November 2011

Purpose\Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total	Terms Requested
EO111	910	1,661	1,823	946	975	992	1,010	1,029	1,050	1,061	11,457	2011, 2011-2020
Green-e	0	1,093	1,093	0	0	0	0	0	0	0	2,186	2012, 2012-2013
EO111 & Green-e	0	2,000	2,000	2,000	2,000	0	0	0	0	0	8,000	2012, 2012-2015

Green Power Product Offering

THE NEW YORK POWER AUTHORITY HAS STREAMLINED THE PROCESS through which NYPA customers can procure green power products to meet their policy and environmental objectives or compliance requirements.

The Benefits

The benefits of purchasing green power products through NYPA are numerous.

By aggregating customer requests, NYPA can negotiate:

- Lower prices, when compared to fulfilling requests on an individual basis; and
- Longer-term (multi-year) deals, as opposed to the short terms offered in the market.

In addition, NYPA takes care of issuing RFPs and evaluating proposals on our customers' behalf. This allows customers to take advantage of NYPA's green power expertise while minimizing the cost and effort of procuring green power products.

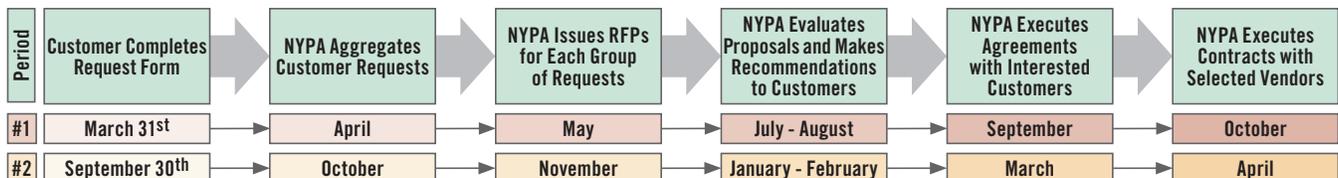
Our Process

There are two enrollment deadlines annually for the procurement of green power products:

—► **March 31** and **September 30**

Customers interested in purchasing green power products should complete the attached Customer Request Form and submit it to NYPA by the next upcoming enrollment deadline. This form may also be accessed through the NYPA customer Web site at <http://www.nypa.gov/extranet/login.aspx>.

NYPA's green power product procurement process typically is as follows:



Should you have any questions about this offering, please contact your NYPA account executive.

NYPA's Green Power Products

FREQUENTLY ASKED QUESTIONS

What is green power?

Green power, also known as renewable energy, is generated from renewable energy technologies. Renewable energy is energy that is capable of being continuously replenished by natural or other means. Renewable energy technologies include solar photovoltaic, solar thermal, wind, geothermal, biomass, landfill gas and tidal generation technologies, among others.

How is green power different from traditional power?

In addition to the actual energy (in MWh), green power includes the environmental benefits associated with renewable energy generation. These environmental benefits are known as Environmental Attributes. Environmental Attributes include any emissions of pollutants avoided by the generation of renewable energy, such as carbon dioxide (CO₂), methane (CH₄) or any other greenhouse gases (GHGs). Environmental Attributes and electric energy may be purchased separately or combined.

Why is green power more expensive than traditional power?

Green power is more expensive than traditional power because it includes not only the energy itself but also the Environmental Attributes associated with the renewable energy generation. Environmental Attributes have financial value due to the existing market demand for them. Demand for Environmental Attributes stems from a variety of sources, including legislation mandating entities to purchase renewable energy, programs (such as LEED) requiring participants to purchase renewable energy, and voluntary purchases of renewable energy by environmentally conscious consumers and organizations.

What are Environmental Attributes, Renewable Energy Credits, and Certificates?

Environmental Attributes are the environmental benefits associated with renewable energy generation. Each megawatt hour ("MWh") of energy supplied from renewable resources displaces an equivalent amount of energy production from conventional fossil-fuel generators. An Environmental Attribute represents the environmental benefit of this displacement. A Renewable Energy Credit ("REC") represents the title to and claim for the Environmental Attributes associated with one (1) MWh of energy generation from a renewable resource. Renewable Energy Certificates ("Certificates") are Renewable Energy Credits that have been formally certified by an independent third party, such as Green-e® Energy. The green power products sold by NYPA include both Green-e Energy-certified RECs and RECs verified through the New York State Public Service Commission's ("NYS PSC's") Conversion Transaction process.

How much do green power products cost?

The cost of green power products fluctuates with market demand, and varies depending on the type of renewable technology involved and the location of the generating facility. Environmental Attributes procured by NYPA have typically ranged in cost from 0.5 cents/kWh to 3.5 cents/kWh.

What is the NYS PSC's Conversion Transaction process?

A Conversion Transaction occurs when a generating facility that sold energy into the New York electricity market and a load-serving entity that purchased a like amount of energy out of the New York electricity market during the same calendar year settlement period jointly identify such energy for the NYS PSC. The purchaser of the energy for which a Conversion Transaction is accomplished thereby receives the Environmental Attributes associated with such energy.

For more information about the Conversion Transaction process, please visit www.dps.state.ny.us/EnvDisclosureLabel.html

What is Green-e Energy, and what does Green-e Energy certification involve?

Green-e Energy is an independent program of the non-profit Center for Resource Solutions that verifies and certifies renewable energy products. In order to be certified as Green-e Energy, a renewable energy product must undergo a thorough annual verification procedure, which ensures that it is properly accounted for, originates from a facility that meets the requirements of the Green-e Energy National Standard, and has not been double-counted.

For more information about Green-e Energy, please visit www.green-e.org

What is the US Green Building Council's Leadership in Energy and Environmental Design Program?

Leadership in Energy and Environmental Design ("LEED") was developed by the U.S. Green Building Council ("USGBC") to serve as a national benchmark in the design, construction and operation of environmentally friendly buildings. LEED provides a framework for new and existing structures wishing to achieve one of four levels of certification: Certified, Silver, Gold or Platinum. Buildings achieve these ascending levels of certification by fulfilling various requirements, including purchasing minimum percentages of energy from renewable resources. Traditional energy may be combined with Environmental Attributes, RECs or Certificates to constitute renewable energy. For compliance with LEED certification standards, the green power products purchased must be Green-e Energy-certified or equivalent.

For more information about LEED, please visit www.usgbc.org

What is NYS Executive Order 111 ("E0111")?

NYS Executive Order 111 requires "all agencies and departments over which the governor has executive authority, and all public benefit corporations and public authorities the heads of which are appointed by the governor" to purchase at least 20 percent of the overall annual electric energy requirements of buildings owned, leased and operated "from the following technologies: wind, solar thermal, photovoltaic, sustainably managed biomass, tidal, geothermal, methane waste and fuel cells."

For more information about EO111, please visit www.nyserda.org/programs/State_Government/exorder111guidelines.pdf

Acting President & Chief Executive Officer Report Gil Quiniones

October 25, 2011

Board of Trustees Meeting

Acting President & CEO Report Overview

- Corporate Performance Measures
- Key Issues
 - ReCharge NY Implementation
 - Proposed Hydro Rate Increase
 - Advanced Energy Research & Technology Center

Corporate Performance Measures

NYPA OVERALL PERFORMANCE						
SEPTEMBER 2011						
CORPORATE MEASURE	OWNER	YTD TARGET	YTD ACTUAL	STATUS		
				Jul	Aug	Sep
POWER SUPPLY OPTIMIZATION						
Generation Market Readiness (%)	ED WELZ	99.4	99.9			
Transmission System Reliability* (%) <small>* Reflects monthly performance</small>	STEVE DECARLO	98.90	99.35			
Installed MWs to Meet Demand (MWs)	JOHN SULOWAY		New	Annual Measure		
FINANCIAL STRENGTH						
O&M Budget Performance (\$ Millions)	BOB HOPKINS	228.1	224.5			
ENTERPRISE RISK AND COMPLIANCE						
Enterprise Risk (% Milestones achieved)	SCOTT SCHOLTEN	50	65			
Compliance Reporting (%)	JOE GRYZLO	75	50			
Compliance Training (%)	JOE GRYZLO	75	50			
Environmental Incidents (Units)	JOHN KAHABKA	21	29			
ECONOMIC DEVELOPMENT						
Jobs Created/Retained (# Jobs)	JIM PASQUALE	1556	2020			
ENERGY EFFICIENCY						
Energy Efficiency (MWHs)	PAUL BELNICK	55,500	57,100			
RENEWABLES						
Renewable Energy (MWHs)	BILL NADEAU	129,300	144,610			
WORKFORCE RENEWAL						
Succession Preparedness (% Milestones)	BUSINESS UNITS	80	60			
SAFETY						
Recordable Incidence Rate** (Index) <small>**Results based on 12 month rolling average</small>	JOHN KAHABKA	1.00	1.36			
SUSTAINABILITY						
Sustainability Profile (Milestones met)	JEN BECKER	7	8			
LEGEND:						
	Meeting Target					
	Needs Monitoring					
	Missing Target					
Strategic Initiative Deliverables:				YTD due: 67	YTD completed: 49	

Key Issues

- **ReCharge NY**
 - Informational meetings concluded in September
 - Remarks at 2011 Annual Meeting of Multiple Intervenors on October 6
- **Proposed Hydro Rate Increase**
 - Public comment period closes on October 24
- **Advanced Energy Research & Technology Center**
 - Remarks at Advanced Energy 2011 Conference in Buffalo, October 12



NYPA's Michael Huvane and Eric Bowers hold a ReCharge NY Informational Meeting at the Niagara Power Project



NYPA's exhibit at the Advanced Energy 2011 Conference

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White Plains, NY 10601-3170
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Edward Welz
Acting Chief Operating Officer

TO: NYPA BOARD OF TRUSTEES
FROM: EDWARD WELZ, ACTING CHIEF OPERATING OFFICER
DATE: OCTOBER 25, 2011
SUBJECT: MONTHLY REPORT FOR THE BOARD OF TRUSTEES

This report covers performance of the Operations group in September. NYPA's generating assets outperformed projections and transmission reliability was also high for the month. In September, NYPA's Research & Technology Development was realigned to report directly to the Chief Operating Officer.

Power Supply

Plant Performance

Systemwide net generation¹ was 2,407,462 megawatt-hours² (MWh) in September, compared to projected net generation of 2,086,347 MWh. Year-to-date net generation is 20,614,663 MWh, compared to the target of 19,004,554 MWh.

The fleet availability factor³ was 99.6 percent in September and is 97.0 percent for the year. Generation market readiness factor⁴ was 100.0 percent in September, compared with the monthly target of 99.4 percent. Year-to-date generation market readiness factor is 99.9 percent.

There were no significant unplanned generation events⁵ in September.

Generation revenue in September was \$184.5 million, with \$0.05 million revenue lost from unscheduled outages. Year-to-date lost opportunity cost is \$1.96 million, about 0.13 percent of year-to-date generation revenue of \$1,560.0 million.

River flows at the Niagara Power Project were greater than forecast in September, and are forecast to be above average through the beginning of 2012. At the St. Lawrence-FDR

Power Project, flows were also greater than forecast in September, and are expected to be at historical average levels in 2012.

Transmission Performance

Transmission reliability⁶ in September was 99.35 percent, which was above the target of 98.90 percent. Year-to-date transmission reliability is 98.33 percent, below the target of 98.71 percent.

There were no significant unplanned transmission events⁷ in September.

Environmental

There was one reportable event in September. At the 500-MW Combined Cycle Plant, a release of an unknown quantity of R-22 refrigerant⁸ resulted from a failed fitting on the oil injection line of chiller No. 1, exceeding the NYS Department of Environmental Conservation (NYSDEC) Reportable Quantity limit (1 pound).

In addition, an adjustment has been made for two previously non-reported events in August. They include a release of 4 lbs. of R-22 refrigerant associated with a leaking valve on an air conditioning unit at the Niagara Power Project, and a release of approximately 17 lbs. of R-22 from the switchyard air conditioning unit at the Blenheim-Gilboa Pumped Storage Power Project.

Year-to-date number of recordable environmental incidents is 29; the 2011 target is 25.

Relicensing – Niagara Power Project

Work on the Beaver Island Habitat Improvement Project was completed in September. A construction contract was awarded to Ciminelli Construction to perform work associated with the Recreation Enhancement project at the Schoellkopf and Whirlpool Overlooks. Ciminelli held a kick off meeting to begin the project.

Relicensing – St. Lawrence-FDR Power Project

Permits were obtained from the Army Corp of Engineers for the Little Sucker Brook Habitat Improvement Project. At Coles Creek, permits were obtained and invasive species control work was performed. A contract was awarded to Perras Construction to construct two new fishing piers in Waddington that will be compliant with the Americans with Disabilities Act.

Technical Compliance – NERC Reliability Standards

In September, NYPA provided the Northeast Power Coordinating Council (NPCC)⁹ with minor comments on the final report of the Federal Energy Regulatory Commission¹⁰ (FERC) Order 706 audit for Critical Infrastructure Protection¹¹ (CIP) standards at the Clark Energy Control Center and Niagara Power Project. The final reports of the FERC Order 706 and FERC

Order 693 audit (non-CIP standards) of NYPA are expected to be completed and filed with the North American Electric Reliability Corporation¹² (NERC) in October. As stated in the September COO Report, there were no findings of potential violations from either audit – a significant accomplishment.

Pursuant to FERC Order 743, NERC established a Standard Drafting Team to develop a new Bulk Electric System (BES) definition and a Rules of Procedure Team to develop rules of procedure for an exception process. NYPA's internal team of subject matter experts continues to monitor the work of both of these teams. In August, the second draft of the new BES Definition and Implementation Plan was posted for a 45-day ballot pool and comment period and a 10-day ballot period. The Rules of Procedure, which addresses the process for requesting BES exceptions, was posted for stakeholder comment and ballot in September. NYPA has prepared comments on the BES definition and will submit these comments with its vote on or before the ballot deadline of October 10.

Representatives from the New York Independent System Operator¹³ (NYISO) and the New York Transmission Owners continue to work together to plan for obligations that could result from the revised BES definition. Preliminary estimates of possible cost and resource implications to meet the obligations of the Reliability Coordinator and Transmission Operator functions, using three evaluated options of registration models, were completed following a high level review of the requirements within the current applicable NERC Standards. The team is also assessing the impacts of the Transmission Planning functions of the standards. The general consensus is that compliance may require significant increases in resources to manage the long-term operational and compliance requirements. However, the analysis remains insufficient to inform a recommendation. The team agreed to review the requirements in more detail and identify what additional steps are required to achieve a recommendation. The team met at the NYISO on September 30 to further discuss required actions and next steps.

Research & Technology Development

In September, Research & Technology Development (R&TD) initiated a project related to the study of the hydrokinetics¹⁴ effects of installing micro hydro turbines downstream of a hydro plant to ascertain the impact on plant operation. Also, NYPA started working with the Electric Power Research Institute¹⁵ (EPRI) and a number of other utilities on a project dealing with the impacts of turbine/generator cycling on components at the 500-MW Combined Cycle Plant. R&TD, working with Asset Management, successfully completed the upgrades of the Sound Cable Project cathodic protection system¹⁶ that will ensure longevity of the underwater portion of this important NYPA asset.

Energy Resource Management

NYISO Markets

In September, Energy Resource Management (ERM) bid more than 2.4 million MWh of NYPA generation into the NYISO markets, netting \$53.7 million in power supplier payments to the Authority. Year-to-date net power supplier payments are \$430.2 million.

Fuel Planning & Operations

In September, NYPA's Fuels Group transacted \$24.5 million in natural gas and oil purchases, compared with \$14.2 million in September 2010. Year-to-date natural gas and oil purchases are \$207.4 million, compared with \$169.1 million at this point in 2010. The total year-to-date \$38.3 million increase is mainly attributed to the start up of the Astoria Energy II Plant (+\$30.8 million), increased fuel cost at the 500-MW Combined Cycle Plant (+\$3.8 million), and increased generation at the Small Clean Power Plants (+\$6.3 million) and the Richard M. Flynn Power Plant (+\$10.0 million), which was offset by cessation of operations at the Poletti Power Project (-\$12.6 million, the last day of operations was January 31, 2010).

Regional Greenhouse Gas Initiative

On September 7, Auction 13 of the Regional Greenhouse Gas Initiative¹⁷ was held. During the auction, Vintage 2011 allowances cleared at the auction price floor of \$1.89/ton for the third straight quarterly auction this year. NYPA bid into and was awarded 500,000 tons of Vintage 2011 allowances during the September auction. The total amount of allowances secured through RGGI auctions year-to-date represents approximately 95% of NYPA's current estimated allowance requirement for all plants in 2011. Since the inception of this program, NYPA has spent \$19.7 million on 8.2 million RGGI allowances, or \$2.39/ton on average. With one auction remaining in 2011, NYPA has spent \$1.89/ton on average for Vintage 2011 allowances.

GLOSSARY

¹ **Net Generation** – The energy generated in a given time period by a power plant or group of plants, less the amount used at the plants themselves (station service) or for pumping in a pumped storage facility. Preliminary data in the COO report is provided by Accounting and subject to revision.

² **Megawatt-hour (MWh)** – The amount of electricity needed to light ten thousand 100-watt light bulbs for one hour. A megawatt is equal to 1,000 kilowatts and can power about 800 homes, based on national averages.

³ **Availability Factor** – The Available Hours of a generating unit over the Period Hours (hours in a reporting period when the unit was in an active state). Available Hours are the sum of Service Hours (hours of generation), Reserve Shutdown Hours (hours a unit was not running but was available) and Pump Hours (hours a pumped storage unit was pumping water instead of generating power).

⁴ **Generation Market Readiness Factor** – The availability of generating facilities for bidding into the New York Independent System Operator (NYISO) market. It factors in available hours and forced outage hours that drive the results.

⁵ **Significant Unplanned Generation Events** – Forced or emergency outages of individual generator units of duration greater than 72 hours, or with a total repair cost of greater than \$75,000, or resulting in greater than \$50,000 of lost revenues.

⁶ **Transmission Reliability** – A measurement of the impact of forced and scheduled outages on the statewide system's ability to transmit power.

⁷ **Significant Unplanned Transmission Events** – Forced or emergency outages of individual transmission lines that directly affect the reliability of the state's transmission network, or affect the availability of any component of the state's transmission network for greater than eight hours, or have a repair cost greater than \$75,000.

⁸ **R-22 Refrigerant** – Common refrigerant used in residential and light commercial air conditioning, refrigerators, and freezers. R-22 is being phased out of production in the U.S. because of concerns over its threat to ozone depletion.

⁹ **Northeast Power Coordinating Council (NPCC)** – The Northeast Power Coordinating Council, Inc. (NPCC) is the cross-border regional entity and criteria services corporation for Northeastern North America. NPCC's mission is to promote and enhance the reliable and efficient operation of the international, interconnected bulk power system in Northeastern North America pursuant to an agreement with the Electric Reliability Organization (ERO) which designates NPCC as a regional entity and delegates authority from the U.S. Federal Energy Regulatory Commission (FERC), and by Memoranda of Understanding with applicable Canadian Provincial regulatory and/or governmental authorities. The ERO to which NPCC reports is the North American Electric Reliability Corporation (NERC).

¹⁰ **Federal Energy Regulatory Commission (FERC)** – An independent agency that regulates the interstate transmission of electricity, natural gas, and oil. FERC also reviews proposals to build liquefied natural gas (LNG) terminals and interstate natural gas pipelines as well as licensing hydropower projects.

¹¹ **Critical Infrastructure Protection (CIP)** – The Critical Infrastructure Protection (CIP) program coordinates all of the North American Electric Reliability Corporation’s (NERC) efforts to improve physical and cyber security for the bulk power system of North America, as it relates to reliability. These efforts include standards development, compliance enforcement, assessments of risk and preparedness, disseminating critical information via alerts to industry, and raising awareness of key issues.

¹² **North American Electric Reliability Corporation (NERC)** – The organization that develops and enforces mandatory reliability standards for the bulk power system in the United States, issues long-term and seasonal reliability forecasts and monitors the power system. (NERC standards are also mandatory and enforceable in parts of Canada.)

¹³ **New York Independent System Operator** – A not-for-profit organization that operates New York State’s transmission system, administers the state’s wholesale electricity markets, and engages in planning to ensure the future reliability of the statewide power system.

¹⁴ **Hydrokinetics** – The study and development of harnessing energy from water movement, as in through waves, tidal streams, natural flow of rivers and underwater ocean currents. Hydrokinetic turbines operate on the principle of turning directional power into rotational power by using a certain amount of surface area to come into contact with the fluid’s movement over a period of time in order to harness as much power as possible.

¹⁵ **Electric Power Research Institute (EPRI)** – An independent, nonprofit organization that conducts research and development relating to the generation, delivery and use of electricity for the benefit of the public. EPRI brings together its scientists and engineers as well as experts from academia and industry to help address challenges in electricity, including reliability, efficiency, health, safety and the environment. EPRI also provides technology, policy and economic analyses to drive long-range research and development planning, and supports research in emerging technologies. The Power Authority has long been active in EPRI and has collaborated with the organization on a number of major initiatives.

¹⁶ **Cathodic protection system** – NYPA’s cathodic protection system for the Sound Cable Project consists of a series of sensors in Long Island Sound and control devices at nearby transition.

¹⁷ **Regional Greenhouse Gas Initiative (RGGI)** – A cooperative effort by Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. These nine states have capped CO₂ emissions from the power sector, and will require a 10 percent reduction in these emissions by 2018. RGGI is composed of individual CO₂ Budget Trading Programs in each of the nine participating states. Regulated power plants can use a CO₂ allowance issued by any of the nine participating states to demonstrate compliance with the state

program governing their facility. Taken together, the nine individual state programs function as a single regional compliance market for carbon emissions, the first mandatory, market-based CO₂ emissions reduction program in the United States. New Jersey was a tenth state within the RGGI program but New Jersey's governor has announced that the state is being pulled out of the program.

Acting Chief Operating Officer Report Edward Welz

October 25, 2011

Board of Trustees Meeting

Acting COO Report Overview

- Performance Measures
- Key Issues
 - Forced Outages
 - Planned Maintenance Outages
 - Technical Compliance
 - Regional Greenhouse Gas Initiative

Performance Measures

	September 2011		YTD	
POWER SUPPLY	Actual	Target	Actual	Target
Net Generation (MWh)	2,407,462	2,086,347	20,614,633	19,004,554
Market Readiness (%)	100.0	99.4	99.9	99.4
Generation Revenue (\$MM)	184.5	N/A	1,560.0	N/A
Transmission Reliability (%)	99.35	98.90	98.33	98.71
Environmental Incidents	1	2	29	21
Recordable Incidence Rate	0.8	1.0	1.36	1.0
ENERGY RESOURCE MANAGEMENT				
Power Supplier Payments (\$MM)	53.7	N/A	430.2	N/A
Fuel Purchases (\$MM)	24.5	N/A	207.4	N/A

■ Operations Performance Summary

- Systemwide Net Generation exceeded projections
- Transmission Reliability measure exceeded its target
- No significant generation or transmission events in September

Key Issues

■ Forced Outages

- Unit 7B at the 500-MW Combined Cycle Plant tripped out of service on Sept. 27, returned to service at full capacity on Oct. 10

■ Planned Maintenance Outages

- Richard M. Flynn Power Plant (Oct. 1 to Nov. 23)
- Units at Gowanus and Hell Gate (Out to late December)
- Astoria Energy II Plant (Oct. 1 – Oct. 22)

Key Issues

■ Technical Compliance – NERC Reliability Standards

- NYPA provided comments on the final report of its FERC Order 706 audit (Critical Infrastructure Protection, or “CIP”). Final reports for this audit and the FERC Order 693 audit (non-CIP) are expected in October
- NYPA submitted comments with its vote on the second draft of the new Bulk Electric System definition in early October

■ Regional Greenhouse Gas Initiative

- On September 7, NYPA bid into and was awarded 500,000 tons of Vintage 2011 CO2 allowances. Market prices cleared at \$1.89/ton
- NYPA has secured allowances for 95% of its 2011 estimate requirement

Acting Chief Financial Officer Report Donald Russak

October 25, 2011

Board of Trustees Meeting

Acting CFO Report Overview

- Key Issues
- Net Income
- Operating Fund
- Operating & Maintenance Expenditures
- Capital Expenditures

Key Issues

■ Net Income

- Net income through September was \$191 million, which was \$55 million higher than budgeted due primarily to higher generation and higher market based sales at Niagara and St. Lawrence. Year-end net income is currently projected to be \$223 million, \$45 million above the 2011 budget.

■ Series 2011A Refunding Bonds

- The Power Authority closed on the Series 2011 A Bonds as scheduled on October 6th securing more than \$19 million in present value savings in this refunding issue.
- Under review is the potential for additional refunding opportunities under the current Trustee authorization of July 26, 2011.

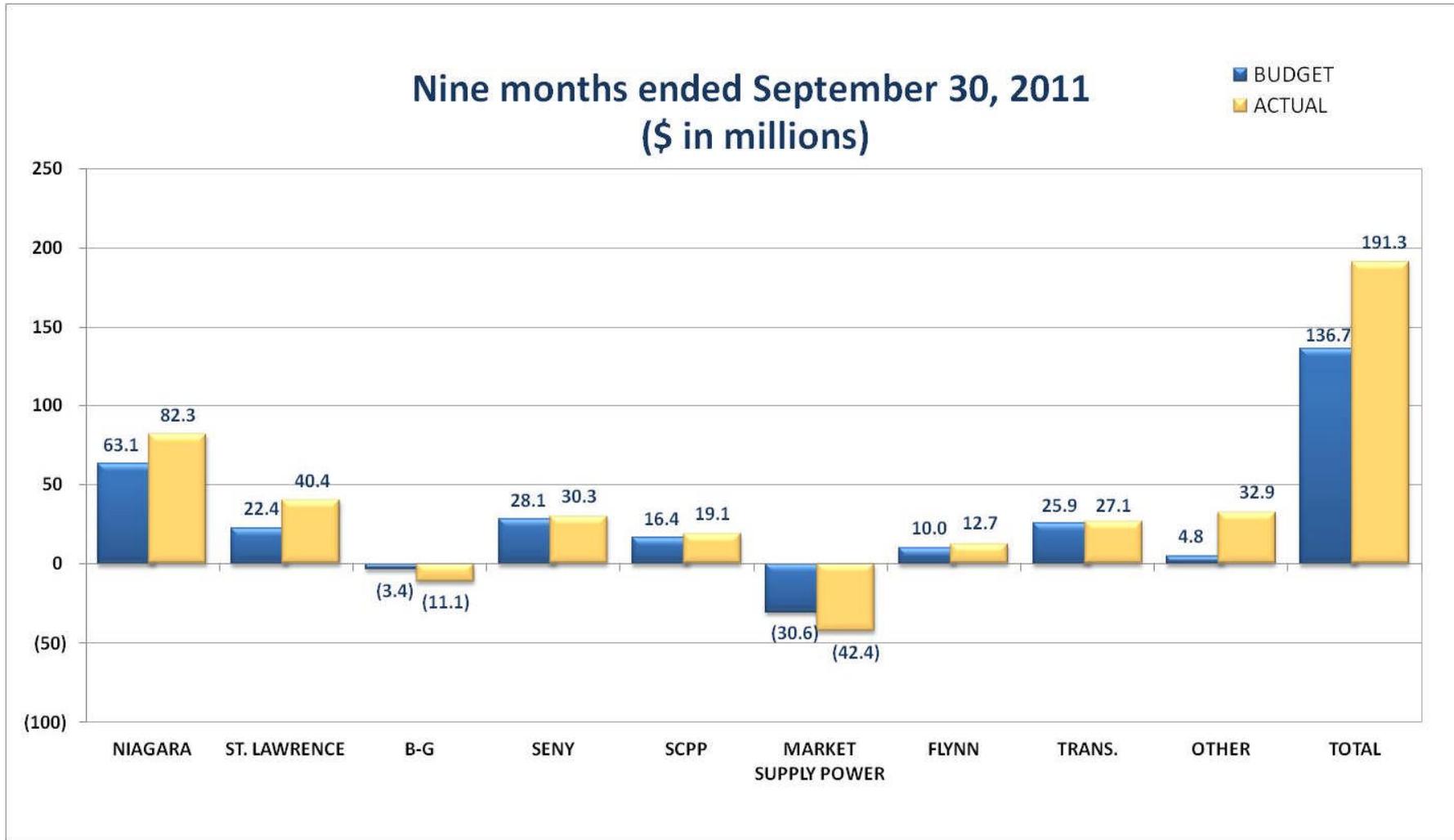
■ 2011 Budget

- With the Board's approval last month of the \$9.6 million increase in expenditures supporting the Authority's plant and equipment, Staff has identified additional areas of savings and cost-cutting totaling approximately \$4 million to partially off-set this increase.

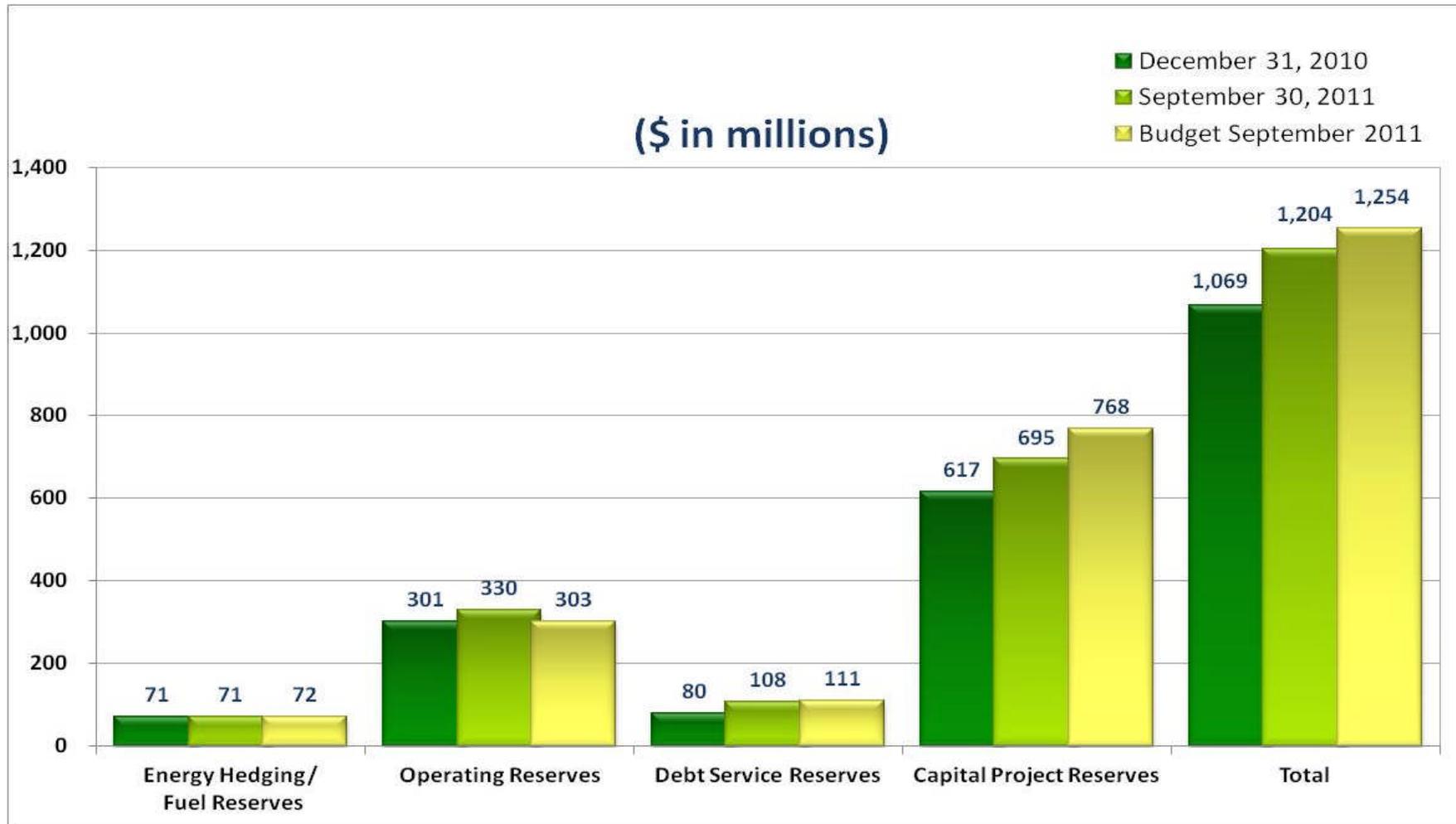
■ 2012 Operating Budget

- The 2012 Operating Budget is scheduled for Trustee consideration at the December meeting.
- Preliminary budget information will be available for review about a month before the meeting date and individual briefings will be arranged.

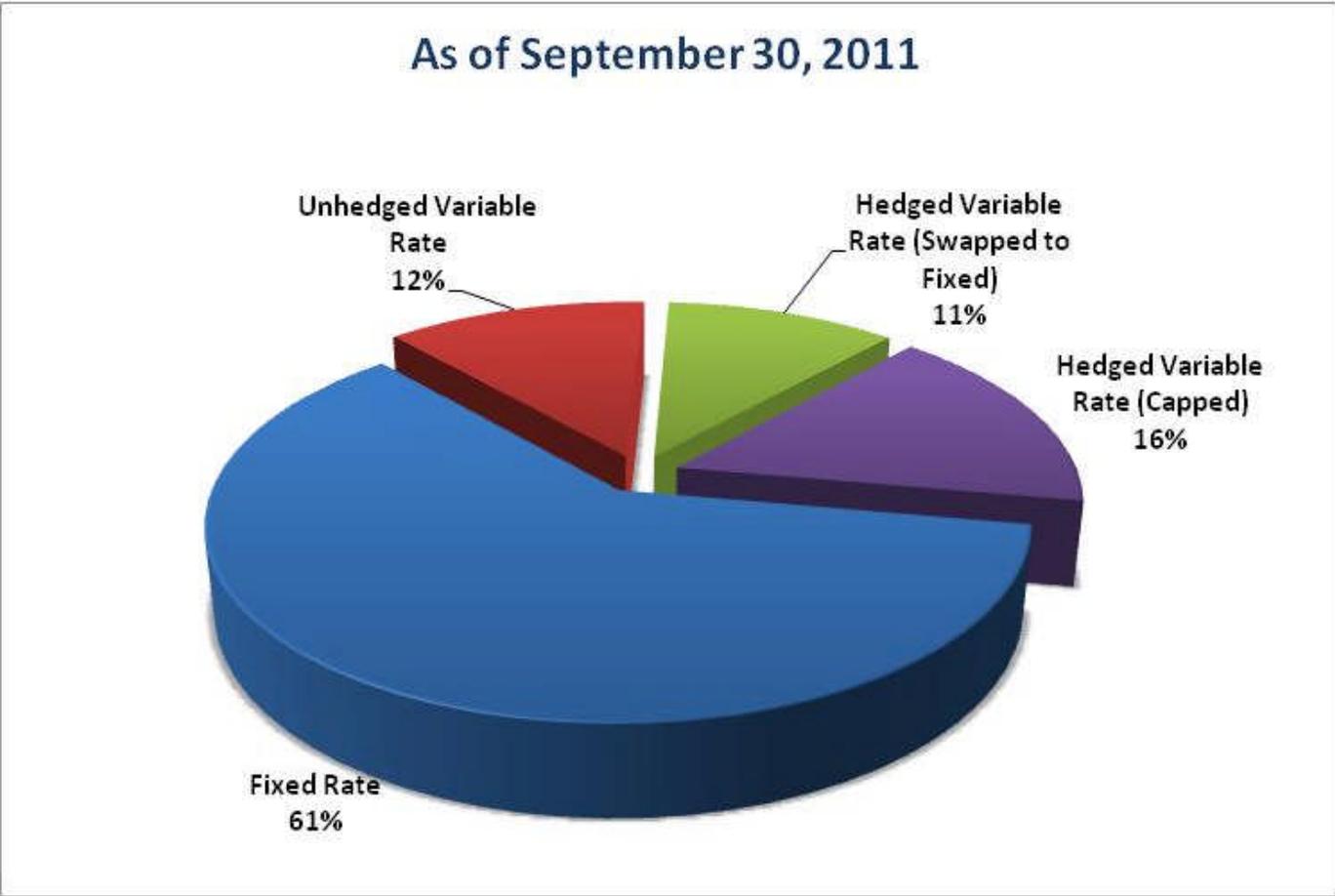
Net Income



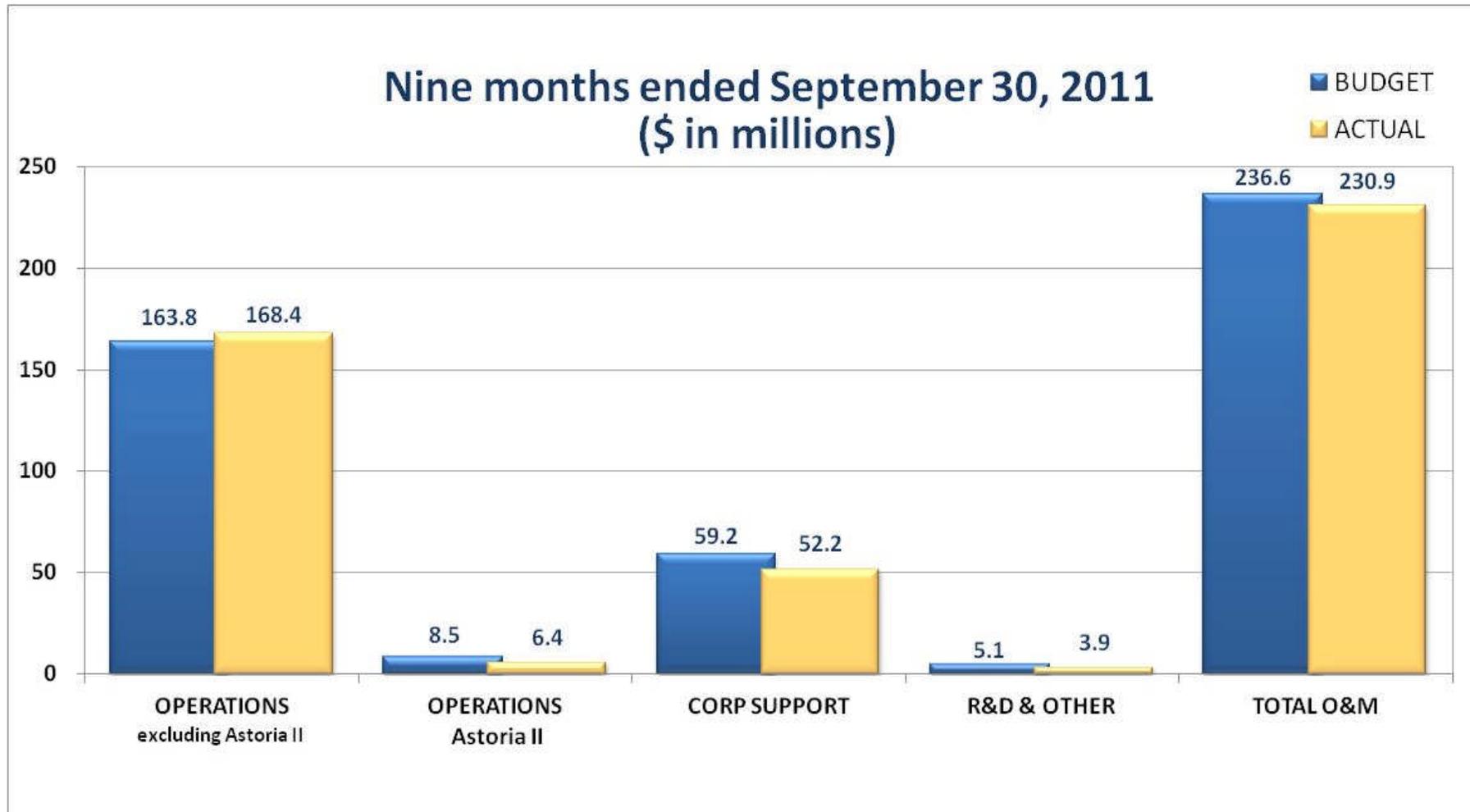
Operating Fund



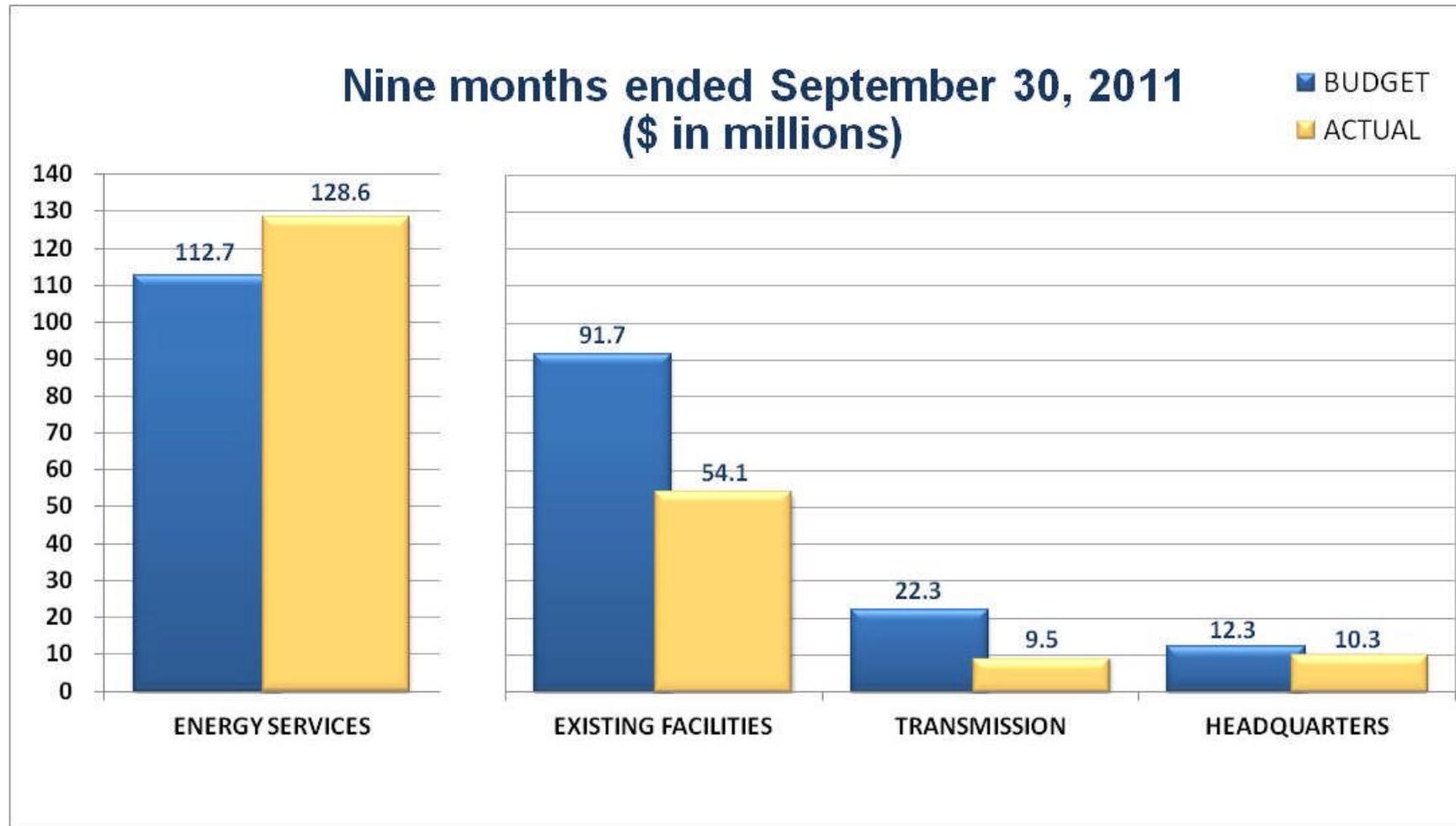
Debt Profile



Operating & Maintenance Expenditures



Capital Expenditures



POWER AUTHORITY
OF THE
STATE OF NEW YORK

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

**AGREEMENT FOR THE SALE OF
PRESERVATION POWER AND ENERGY**

TO NEWTON FALLS FINE PAPER COMPANY, LLC

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 1 of Article 5 of the New York Public Authorities Law, 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 Preservation Power and Energy (“Agreement”) to Newton Falls Fine Paper Company, LLC, having facilities at 875 County Route 60, Newton Falls, NY 13666 (“Customer”). The Authority and the Customer are from time to time referred to in this Agreement individually as a “Party” or collectively as the “Parties” and agree as follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the St. Lawrence-FDR Power Project known as Preservation Power (or “PP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, PP consists of 490 megawatts (“MW”) of firm hydroelectric power and associated energy produced by the St. Lawrence-FDR Power Project;

WHEREAS, St. Lawrence-FDR Power Project hydroelectric power plays an important role in providing competitively priced power for sale to attract and retain business investment and to promote economic development in New York State;

WHEREAS, the Authority has the authority under PAL § 1005(13)(a) to award and extend allocations of PP 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, the Customer has applied for an allocation of PP for use at facilities located at 875 County Route 60, Newton Falls, NY 13666 defined in Article I of this Agreement as the “Facility”);

WHEREAS, on May 24, 2011, the Authority’s Board of Trustees (“Trustees”) approved a 5,000 kilowatt allocation of PP to the Customer for a three year term (defined in Article I of this Agreement as the “Allocation”), as further described in this Agreement;

WHEREAS, the provision of Electric Service (defined in Article I of this Agreement) associated with the Allocation is an unbundled service separate from the transmission and delivery service necessary for the Customer to receive the Allocation which will be performed by the Customer’s local utility company;

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:

Article I. Definitions

- A. **Agreement** means this Agreement as further described in the preamble, including all documents and other matters attached to and incorporated into the Agreement.
- B. **Allocation** refers to the total amount of PP and associated energy set forth in Schedule A to this Agreement awarded to the Customer.
- C. **Contract Demand** has the meaning set forth in the Service Tariff.
- D. **Electric Service** is Firm Power and Firm Energy associated with the Allocation and sold to the Customer in accordance with the provisions of this Agreement, the Service Tariff, and the Rules.
- E. **Facility** means the Customer's paper mill operations located at 875 County Route 60, Newton Falls, NY 13666.
- F. **Firm Energy** has the meaning set forth in the Service Tariff.
- G. **Firm Power** has the meaning set forth in the Service Tariff.
- H. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- I. **FERC License** means the license issued by FERC to the Authority for the continued operation and maintenance of the St. Lawrence Project, pursuant to Section 15 of the Federal Power Act, which became effective October 22, 2003 after expiration of the Project's original license issued in 1953.
- J. **Hydro Projects** is a collective reference to the Authority's Niagara Project and St. Lawrence-FDR Project.
- K. **International Joint Commission** (or **IJC**) refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.

- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- N. **NYISO Charges** has the meaning set forth in the Service Tariff.
- 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. **PAL** means the New York Public Authorities Law.
- Q. **Preservation Power** (or **PP**) has the meaning set forth in the Service Tariff.
- R. **Niagara Project** means the Authority's Niagara Power Project, FERC Project No. 2216.
- S. **Rules** refers to the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by Authority.
- T. **Service Tariff** means the Authority's Service Tariff No. 10, 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.
- U. **St. Lawrence Project** means the Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.
- V. **Schedule A** refers to the Schedule A to this Agreement entitled "Preservation Power Allocation" which is attached to and made part of this Agreement.
- W. **Schedule B** refers to the Schedule B to this Agreement entitled "Preservation Power Commitments" which is attached to and made part of this Agreement.
- X. **Schedule C** refers to Schedule C to this Agreement entitled "Applicable Representations Concerning Local Utility" which is attached to and made part of this Agreement.
- Y. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectric power that would otherwise have been supplied to the Customer under this Agreement.
- Z. **Taxes** have the meaning set forth in the Service Tariff.

- AA. **Unforced Capacity** (or **UCAP**) is the electric capacity required to be provided by Load Serving Entities to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

Article II. Electric Service

- A. The Authority shall provide Electric Service to the Customer to enable the Customer to receive the Allocation in accordance with this Agreement, the Service Tariff and the Rules. The Customer shall not be entitled to receive Electric Service for any PP Allocation that is not specified in Schedule A.
- 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 and the Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as PP from the St. Lawrence 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 PP 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.

Article III. Rates, Terms and Conditions

- A. The Authority will provide Electric Service to the Customer based on the rates, terms and conditions established in accordance with this Agreement, the Service Tariff and the Rules.
- B. The Service Tariff and the Rules may be amended from time to time by the Authority. The Authority shall provide at least thirty (30) days prior written notice to the Customer of any proposed change in the Service Tariff or the Rules. No subsequent amendment to the Service Tariff or the Rules shall affect the determination of rates for PP 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.
- C. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates shall be subject to increase by the Authority at any time upon 30 days prior written notice to Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the St. Lawrence Project and the Authority's competitive position with respect to other suppliers, the 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 the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to the Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers that are subject to the Service Tariff after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, the Authority shall forward to the Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which the Authority will obtain the total of increased revenues and the bases upon which the Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as the Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

Article IV. Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the local electric utility's applicable tariffs.
- B. The Authority shall render bills for power and energy by the tenth (10th) business day of the month for charges due for the previous month. Such bills shall include the NYISO Charges and Taxes (as such terms are defined in the Service Tariff) associated with the Allocation. NYISO Charges and Taxes billed to the Customer are subject to adjustments consistent with any subsequent NYISO re-billings to Authority.
- C. All other provisions with respect to billing are set forth in the Service Tariff.

Article V. Transmission and Delivery of Power and Energy

- A. The Customer shall responsible for securing arrangements with its local utility for transmission and delivery service associated with the Allocation unless otherwise agreed to by the Parties.
- B. The Customer will pay its local utility for transmission and delivery service associated with the Allocation in accordance applicable contracts and all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the 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.
- C. Each Party makes the representations, if any, contained in Schedule C to this Agreement concerning this Agreement and any agreement between the Authority, the Customer and the Customer's local utility company.

- D. 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 as may be required under the applicable local utility company tariffs. In no event shall the Authority act as the LSE for the power and energy consumed by Customer other than Electric Service (inclusive of Substitute Energy, if any) sold by the Authority under this Agreement. The Customer understands and acknowledges that it will be responsible to the Authority for all charges and other costs incurred by the Authority associated with the provision of Electric Service to enable the Customer to receive the Allocation, including charges and costs contained in the NYISO Tariffs or other applicable tariffs (including local utility company tariffs), regardless of whether such charges and costs are transmission-related. Such charges and costs are in addition to the charges for power and energy.

Article VI. Preservation Power Customer Commitments

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

Article VII. Rules and Service Tariff; Conflicts

The Service Tariff is 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 Tariff and the Rules, the provisions of the Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariff, the provisions of this Agreement shall govern.

Article 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 Tariff as applicable.
- B. The Authority shall provide reasonable notice to the Customer of any curtailments referenced in Article VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement.
- C. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the hydroelectricity that would otherwise have been supplied under this

Agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

- D. 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.
- E. 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.

Article IX. Additional Allocations

- A. Upon application by the Customer, the Authority may award additional allocations of PP to the Customer at such rates and on such terms and conditions as set forth in the Service Tariff. Once the Customer agrees to purchase Electric Service associated with such additional allocations, the Authority will produce modified Schedules A and B which will reflect any such additional allocations and other pertinent terms as appropriate. The Authority will furnish the Customer with any such modified Schedules within thirty (30) days of the commencement of Electric Service for any such additional allocation.
- B. The Customer shall furnish such documentation and other information as the Authority requests to enable the Authority to evaluate whether any additional allocations should be made to the Customer and the terms of any additional allocation.

Article X. Notification

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

To: The Authority

Michael J. Huvane
Director, Marketing
New York Power Authority
123 Main Street
White Plains, New York 10601
Telephone: (914) 390-8117
Facsimile: (914) 390-8156
Electronic mail: michael.huvane@nypa.gov

To: Customer

Mr. Gordon McLennan
Government Liaison & Project Manager
Newton Falls Fine Paper Company, LLC
875 County Route 60
Newton Falls, NY 13666
Telephone: _____
Facsimile: _____
Electronic mail: _____

- 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.

Article XI. Applicable Law

Any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to 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 rulings by the IJC and without regard to conflicts of law provisions.

Article 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.

Article XIII. Successors and Assigns; Resale of PP

- 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 no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained.
- B. The Customer may not resell any PP that it has purchased from the Authority under this Agreement.

Article XIV. Previous Agreements and Communications

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of PP, and supersedes all previous communications between the Parties hereto, either oral or written, with respect to the sale of PP. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

Article XV. 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.

Article XVI. Severability and Voidability

- A. If any term or provision of this Agreement is 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 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.

Article XVII. Term, Modification, Termination and Effect

- A. Electric Service under this Agreement shall continue with respect to an Allocation until the earliest of: (1) termination by the Customer with respect to all of the Allocation upon at least thirty (30) days prior written notice to the Authority; (2) termination by Authority pursuant to the Rules upon required notice; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- B. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days prior written notice to the Authority. The termination shall be effective commencing with the first "Billing Period" as defined in the Service Tariff following the required notice.

- C. The Authority may modify or terminate Electric Service hereunder or modify the quantities of power and energy associated with an Allocation: (1) if such termination 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 or in the Rules.

- D. This Agreement shall become legally binding and effective only upon satisfaction of the following conditions precedent: (1) receipt of approval of this Agreement by the Authority Board of Trustees; (2) receipt of approval of this Agreement by the Governor of the State of New York pursuant to PAL § 1009; and (3) execution of this Agreement by the Authority and the Customer.

Article 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.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

NEWTON FALLS FINE PAPER COMPANY, LLC

BY: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

BY: _____

Title: _____

Date: _____

**SCHEDULE A TO AGREEMENT FOR THE SALE OF PRESERVATION
POWER AND ENERGY TO NEWTON FALLS FINE PAPER COMPANY, LLC**

PRESERVATION POWER ALLOCATIONS

Customer: Newton Falls Fine Paper Company, LLC

Facility: 875 County Route 60, Newton Falls, NY 13666

<u>Type of Allocation</u>	<u>Allocation (kW)</u>	<u>Expiration Date</u>
Preservation Power	5,000	3 years after initial delivery of the Allocation

TOTALS: 5,000 kW

**SCHEDULE B TO AGREEMENT FOR THE SALE OF PRESERVATION
POWER AND ENERGY TO NEWTON FALLS FINE PAPER COMPANY, LLC**

PRESERVATION POWER COMMITMENTS

ARTICLE I. EMPLOYMENT COMMITMENTS

A. Base Employment Level

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

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority’s sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Customer employees and contractor employees at the Facility, 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 report shall separately identify Customer employees and contractor employees and 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. 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.

ARTICLE II. REDUCTIONS OF CONTRACT DEMAND

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.C of this Schedule. 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, the 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 facilities receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is defined in the Service Tariff) for PP is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.C of this Schedule. 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 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 pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, 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.

ARTICLE III. CAPITAL INVESTMENT

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

ARTICLE IV. ENERGY EFFICIENCY AUDITS AND INFORMATION REQUESTS

In the event the Customer undergoes an energy efficiency audit of its facilities and equipment at which the Allocation is consumed during the term of this Agreement , 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

I. Base Employment Level

The Customer will employ one hundred and nine (109) persons at the Facility (“Base Employment Level”), within two (2) years of the delivery of the Allocation to the Facility.

The Base Employment Level shall be the number of full-time positions held by employees and contractors of the Customer assigned to the Facility. The number of full-time Customer employees and contractor employees shall not include part-time positions (less than 35 hours per week); provided, however, that two part-time employees each working 20 hours per week or more shall be counted as one full-time employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or 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.

II. Capital Expansion Program

The Customer will re-start operations at the Facility and begin producing paper within one (1) year of approval of the Allocation.

The Customer will complete a Capital Expansion Plan consisting of the following elements:

- The Customer will purchase and install new equipment, and refurbish existing equipment and machinery, including paper-making and ancillary equipment, at the Facility, to enable the Customer to produce paper from pulp and to process the paper into heavy weight, specialty paper products.
- The Customer will purchase and install at the Facility a used biomass cogeneration plant. The boiler and associated ancillary equipment will be housed in a newly-constructed addition to the Customer’s existing boiler house. The addition will be approximately 35’ wide by 70’ long by 50’ high. The biomass boiler will be connected to the Customer’s existing 5 MW turbine generator, and will be equipped with new emissions control equipment as well as a new SCADA boiler control system.

The estimated start dates and the completion dates for the Capital Expansion Program are as follows:

Phase	Description	Start Dates	Completion Dates
A	Cleaning/ Screening Phase II	August 2011	October 2011
B	PM4 Wet End Rebuild (Headbox Retrofit)	August 2011	October 2011
C	PM4 Calendar Stack Replacement	August 2011	October 2011
D	Roll Wrap Line Upgrade	August 2011	October 2011
E	PM4 Coater Rebuild	June 2012	July 2012
F	New Biomass (Cogen) Boiler	August 2011	June 2012

The Customer's total capital investment in the Capital Expansion Program will total at least \$21.7 million, comprised roughly of \$6.7 million associated with restarting the Facility and \$15 million associated with installation of the biomass cogeneration plant.

The Authority shall have the right to inspect the Facility and to request pertinent information from the Customer for the purpose of verifying the progress of the Capital Expansion Program and the Customer's compliance with Capital Expansion Program requirements at reasonable times during the Capital Expansion Program and prior to the takedown of the Allocation by the Customer. The Customer shall provide the Authority with Facility access and pertinent information requested by the Authority for these purposes.

In the event the Customer fails satisfy the requirements for the Capital Expansion Program, the Authority, in its sole discretion, may reduce or cancel the Allocation.

Upon request of the Customer, the Authority, in its sole discretion, may consent to modifications to the Capital Expansion Program requested by the Customer, including but not limited to modifications to Start Dates and Completion Dates and to the scope of the Capital Expansion Program.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF PRESERVATION
POWER AND ENERGY TO NEWTON FALLS FINE PAPER COMPANY, LLC**

APPLICABLE REPRESENTATIONS CONCERNING LOCAL UTILITY

Local Utility: National Grid

Representations:

None.



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

**Schedule of Rates for Sale of Firm Power to
Preservation Power Customers**

Service Tariff No. 10

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Preservation 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 Preservation 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 Preservation Power from the Authority and who purchases Preservation 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.

- G. The term "Preservation 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 St. Lawrence-FDR Power Project, FERC Project No. 2000.
- L. The term "Rate Year" or "RY" means the period from July 1 through June 30 of the following year.
- M. The term "Rules" means 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.
- N. The term "Service Tariff" means this Service Tariff No. 10.

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

III. Monthly Rates and Charges

A. Preservation Power Base Rates

The monthly base rates for demand and energy charges paid by Customer to Authority shall be:

<u>Rate Year</u>	<u>Demand Charge</u> \$/kW-mo.	<u>Energy Charge</u> \$/MWh
2010	6.15	10.52
2011	6.71	11.48
2012	7.32	12.52
2013	7.99	13.66

Beginning with the 2014 Rate Year (July 1, 2014), and for each Rate Year thereafter, such rates shall be subject to an Annual Adjustment Factor set forth in Section V herein.

B. Preservation Power 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 Preservation Power 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 Preservation Power, not to exceed the Customer's Allocation, provided to such Customer by the Authority in accordance with the Agreement. The minimum Contract Demand for any Preservation Power Allocation is 100 kW.

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 Firm Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Firm Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Firm Energy sales will be the same for all Firm Power and Firm 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.

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 Firm 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 Preservation Power allocated to the Customer.

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.

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.

H. Conflicts

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. In the event of any inconsistencies, conflicts or differences between the provisions of the Agreement and this Service Tariff, the provisions of the Agreement shall govern.

I. Customer Resales Prohibited

The Customer may not resell any quantity of Preservation Power.

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."

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.

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: 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 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**

- 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 AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.99	13.66
New Rate Year Base Rate	8.12	13.88

POWER AUTHORITY
OF THE
STATE OF NEW YORK

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

**AGREEMENT FOR THE SALE OF
PRESERVATION POWER AND ENERGY**

TO UPSTATE NIAGARA COOPERATIVE, 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 1 of Article 5 of the New York Public Authorities Law, 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 Preservation Power and Energy (“Agreement”) to Upstate Niagara Cooperative, Inc., having facilities at 22 County Route 52, North Lawrence, NY 12967 (“Customer”). The Authority and the Customer are from time to time referred to in this Agreement individually as a “Party” or collectively as the “Parties” and agree as follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the St. Lawrence-FDR Power Project known as Preservation Power (or “PP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, PP consists of 490 megawatts (“MW”) of firm hydroelectric power and associated energy produced by the St. Lawrence-FDR Power Project;

WHEREAS, St. Lawrence-FDR Power Project hydroelectric power plays an important role in providing competitively priced power for sale to attract and retain business investment and to promote economic development in New York State;

WHEREAS, the Authority has the authority under PAL § 1005(13)(a) to award and extend allocations of PP 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, the Customer has applied for an allocation of PP for use at facilities located at 22 County Route 52, North Lawrence, NY 12967 defined in Article I of this Agreement as the “Facility”);

WHEREAS, on May 24, 2011, the Authority’s Board of Trustees (“Trustees”) approved a 3,000 kilowatt allocation of PP to the Customer for a five year term (defined in Article I of this Agreement as the “Allocation”), as further described in this Agreement;

WHEREAS, the provision of Electric Service (defined in Article I of this Agreement) associated with the Allocation is an unbundled service separate from the transmission and delivery service necessary for the Customer to receive the Allocation which will be performed by the Customer’s local utility company;

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:

Article I. Definitions

- A. **Agreement** means this Agreement as further described in the preamble, including all documents and other matters attached to and incorporated into the Agreement.
- B. **Allocation** refers to the total amount of PP and associated energy set forth in Schedule A to this Agreement awarded to the Customer.
- C. **Contract Demand** has the meaning set forth in the Service Tariff.
- D. **Electric Service** is Firm Power and Firm Energy associated with the Allocation and sold to the Customer in accordance with the provisions of this Agreement, the Service Tariff, and the Rules.
- E. **Facility** means the Customer's paper mill operations located at 22 County Route 52. North Lawrence, NY 12967.
- F. **Firm Energy** has the meaning set forth in the Service Tariff.
- G. **Firm Power** has the meaning set forth in the Service Tariff.
- H. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- I. **FERC License** means the license issued by FERC to the Authority for the continued operation and maintenance of the St. Lawrence Project, pursuant to Section 15 of the Federal Power Act, which became effective October 22, 2003 after expiration of the Project's original license issued in 1953.
- J. **Hydro Projects** is a collective reference to the Authority's Niagara Project and St. Lawrence-FDR Project.
- K. **International Joint Commission** (or **IJC**) refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.

- L. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- M. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.
- N. **NYISO Charges** has the meaning set forth in the Service Tariff.
- 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. **PAL** means the New York Public Authorities Law.
- Q. **Preservation Power** (or **PP**) has the meaning set forth in the Service Tariff.
- R. **Niagara Project** means the Authority's Niagara Power Project, FERC Project No. 2216.
- S. **Rules** refers to the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by Authority.
- T. **Service Tariff** means the Authority's Service Tariff No. 10, 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.
- U. **St. Lawrence Project** means the Authority's St. Lawrence-FDR Power Project, FERC Project No. 2000.
- V. **Schedule A** refers to the Schedule A to this Agreement entitled "Preservation Power Allocation" which is attached to and made part of this Agreement.
- W. **Schedule B** refers to the Schedule B to this Agreement entitled "Preservation Power Commitments" which is attached to and made part of this Agreement.
- X. **Schedule C** refers to Schedule C to this Agreement entitled "Applicable Representations Concerning Local Utility" which is attached to and made part of this Agreement.
- Y. **Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectric power that would otherwise have been supplied to the Customer under this Agreement.
- Z. **Taxes** have the meaning set forth in the Service Tariff.

- AA. **Unforced Capacity** (or **UCAP**) is the electric capacity required to be provided by Load Serving Entities to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

Article II. Electric Service

- A. The Authority shall provide Electric Service to the Customer to enable the Customer to receive the Allocation in accordance with this Agreement, the Service Tariff and the Rules. The Customer shall not be entitled to receive Electric Service for any PP Allocation that is not specified in Schedule A.
- 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 and the Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as PP from the St. Lawrence 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 PP 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.

Article III. Rates, Terms and Conditions

- A. The Authority will provide Electric Service to the Customer based on the rates, terms and conditions established in accordance with this Agreement, the Service Tariff and the Rules.
- B. The Service Tariff and the Rules may be amended from time to time by the Authority. The Authority shall provide at least thirty (30) days prior written notice to the Customer of any proposed change in the Service Tariff or the Rules. No subsequent amendment to the Service Tariff or the Rules shall affect the determination of rates for PP 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.
- C. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates shall be subject to increase by the Authority at any time upon 30 days prior written notice to Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the St. Lawrence Project and the Authority's competitive position with respect to other suppliers, the 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 the Authority's bond and note resolutions and covenants with the holders of its financial obligations. The Authority shall use its best efforts to inform the Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to the Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers that are subject to the Service Tariff after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, the Authority shall forward to the Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which the Authority will obtain the total of increased revenues and the bases upon which the Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as the Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

Article IV. Billing Methodology

- A. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the local electric utility's applicable tariffs.
- B. The Authority shall render bills for power and energy by the tenth (10th) business day of the month for charges due for the previous month. Such bills shall include the NYISO Charges and Taxes (as such terms are defined in the Service Tariff) associated with the Allocation. NYISO Charges and Taxes billed to the Customer are subject to adjustments consistent with any subsequent NYISO re-billings to Authority.
- C. All other provisions with respect to billing are set forth in the Service Tariff.

Article V. Transmission and Delivery of Power and Energy

- A. The Customer shall be responsible for securing arrangements with its local utility for transmission and delivery service associated with the Allocation unless otherwise agreed to by the Parties.
- B. The Customer will pay its local utility for transmission and delivery service associated with the Allocation in accordance with applicable contracts and all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the 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.
- C. Each Party makes the representations, if any, contained in Schedule C to this Agreement concerning this Agreement and any agreement between the Authority, the Customer and the Customer's local utility company.

- D. 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 as may be required under the applicable local utility company tariffs. In no event shall the Authority act as the LSE for the power and energy consumed by Customer other than Electric Service (inclusive of Substitute Energy, if any) sold by the Authority under this Agreement. The Customer understands and acknowledges that it will be responsible to the Authority for all charges and other costs incurred by the Authority associated with the provision of Electric Service to enable the Customer to receive the Allocation, including charges and costs contained in the NYISO Tariffs or other applicable tariffs (including local utility company tariffs), regardless of whether such charges and costs are transmission-related. Such charges and costs are in addition to the charges for power and energy.

Article VI. Preservation Power Customer Commitments

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

Article VII. Rules and Service Tariff; Conflicts

The Service Tariff is 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 Tariff and the Rules, the provisions of the Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariff, the provisions of this Agreement shall govern.

Article 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 Tariff as applicable.
- B. The Authority shall provide reasonable notice to the Customer of any curtailments referenced in Article VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement.
- C. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the hydroelectricity that would otherwise have been supplied under this

Agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

- D. 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.
- E. 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.

Article IX. Additional Allocations

- A. Upon application by the Customer, the Authority may award additional allocations of PP to the Customer at such rates and on such terms and conditions as set forth in the Service Tariff. Once the Customer agrees to purchase Electric Service associated with such additional allocations, the Authority will produce modified Schedules A and B which will reflect any such additional allocations and other pertinent terms as appropriate. The Authority will furnish the Customer with any such modified Schedules within thirty (30) days of the commencement of Electric Service for any such additional allocation.
- B. The Customer shall furnish such documentation and other information as the Authority requests to enable the Authority to evaluate whether any additional allocations should be made to the Customer and the terms of any additional allocation.

Article X. Notification

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

To: The Authority

Michael J. Huvane
Director, Marketing
New York Power Authority
123 Main Street
White Plains, New York 10601
Telephone: (914) 390-8117
Facsimile: (914) 390-8156
Electronic mail: michael.huvane@nypa.gov

To: Customer

Mr. John J. Wilhelm
Director of Purchasing
Upstate Niagara Cooperative, Inc.
25 Anderson Road
Buffalo, NY 14225
Telephone: _____
Facsimile: _____
Electronic mail: _____

- 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. Any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to 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 rulings by the IJC and without regard to conflicts of law provisions.

Article 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.

Article XIII. Successors and Assigns; Resale of PP

- 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 no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained.
- B. The Customer may not resell any PP that it has purchased from the Authority under this Agreement.

Article XIV. Previous Agreements and Communications

This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of PP, and supersedes all previous communications between the Parties hereto, either oral or written, with respect to the sale of PP. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

Article XV. 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.

Article XVI. Severability and Voidability

- A. If any term or provision of this Agreement is 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 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.

Article XVII. Term, Modification, Termination and Effect

- A. Electric Service under this Agreement shall continue with respect to an Allocation until the earliest of: (1) termination by the Customer with respect to all of the Allocation upon at least thirty (30) days prior written notice to the Authority; (2) termination by Authority pursuant to the Rules upon required notice; or (3) expiration of the Allocation by its own term as specified in Schedule A.
- B. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days prior written notice to the Authority. The termination shall be effective commencing with the first "Billing Period" as defined in the Service Tariff following the required notice.
- C. The Authority may modify or terminate Electric Service hereunder or modify the quantities of power and energy associated with an Allocation: (1) if such termination 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 or in the Rules.

- D. This Agreement shall become legally binding and effective only upon satisfaction of the following conditions precedent: (1) receipt of approval of this Agreement by the Authority Board of Trustees; (2) receipt of approval of this Agreement by the Governor of the State of New York pursuant to PAL § 1009; and (3) execution of this Agreement by the Authority and the Customer.

Article 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.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

UPSTATE NIAGARA COOPERATIVE, INC.

BY: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

BY: _____

Title: _____

Date: _____

**SCHEDULE A TO AGREEMENT FOR THE SALE OF PRESERVATION
POWER AND ENERGY TO UPSTATE NIAGARA COOPERATIVE, INC.**

PRESERVATION POWER ALLOCATIONS

Customer: Upstate Niagara Cooperative, Inc.

Facility: 22 County Route 52. North Lawrence, NY 12967

<u>Type of Allocation</u>	<u>Allocation (kW)</u>	<u>Expiration Date</u>
Preservation Power	3,000	5 years after initial delivery of the Allocation

TOTALS: 3,000 kW

**SCHEDULE B TO AGREEMENT FOR THE SALE OF PRESERVATION
POWER AND ENERGY TO UPSTATE NIAGARA COOPERATIVE, INC.**

PRESERVATION POWER COMMITMENTS

ARTICLE I. EMPLOYMENT COMMITMENTS

A. Base Employment Level

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

The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority’s sole discretion.

B. Employment Records and Reports

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Customer employees and contractor employees at the Facility, 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 report shall separately identify Customer employees and contractor employees and 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. 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.

ARTICLE II. REDUCTIONS OF CONTRACT DEMAND

A. Employment Levels

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in this Schedule B, for the subject calendar year, the Authority may reduce the Contract Demand subject to Article II.C of this Schedule. 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, the 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 facilities receiving the power covered by the Agreement. If the average of the Customer's six (6) highest Billing Demands (as such term is defined in the Service Tariff) for PP is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to Article II.C of this Schedule. 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 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 pursuant to this Schedule, the Authority shall provide the Customer with at least thirty (30) days prior written notice of such reduction, specifying the amount of the reduction of Contract Demand and the reason for the reduction, 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.

ARTICLE III. CAPITAL INVESTMENT

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

ARTICLE IV. ENERGY EFFICIENCY AUDITS AND 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

I. Base Employment Level

The Customer will employ eighty (80) persons at the Facility (“Base Employment Level”) within three (3) years of the initial delivery of the Allocation to the Facility.

The Base Employment Level shall be the number of full-time positions held by employees and contractors of the Customer assigned to the Facility. The number of full-time Customer employees and contractor employees shall not include part-time positions (less than 35 hours per week); provided, however, that two part-time employees each working 20 hours per week or more shall be counted as one full-time employee.

The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or 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.

II. Capital Expansion Program

The Customer will complete a Capital Expansion Plan consisting of the following elements:

- (1) Within one (1) year of the approval of the Allocation, the Customer will:
 - (a) purchase, refurbish and re-start operations at a manufacturing facility in North Lawrence, NY (defined in Article 1 of the Agreement as “Facility”);
 - (b) commence two new high speed production lines at the Facility for the production of dairy products; and
 - (c) begin producing dairy products.
- (2) The Customer’s total capital investment in the Capital Expansion Program will total at least \$11.0 million, comprised roughly of (1) \$5.0 million for the purchase and refurbishment of the Facility, and (2) \$6.0 million for the installation of the two new production lines.

The Authority shall have the right to inspect the Facility and to request pertinent information from the Customer for the purpose of verifying the progress of the Capital Expansion Program and the Customer’s compliance with Capital Expansion Program requirements at reasonable times during the Capital Expansion Program and prior to the takedown of the Allocation by the Customer. The Customer shall provide the Authority with Facility access and pertinent information requested by the Authority for these purposes.

In the event the Customer fails satisfy the requirements for the Capital Expansion Program, the Authority, in its sole discretion, may reduce or cancel the Allocation.

Upon request of the Customer, the Authority, in its sole discretion, may consent to modifications to the Capital Expansion Program requested by the Customer, including but not limited to modifications to Start Dates and Completion Dates and to the scope of the Capital Expansion Program.

**SCHEDULE C TO AGREEMENT FOR THE SALE OF PRESERVATION
POWER AND ENERGY TO UPSTATE NIAGARA COOPERATIVE, INC.**

APPLICABLE REPRESENTATIONS CONCERNING LOCAL UTILITY

Local Utility: National Grid

Representations:

None.



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

**Schedule of Rates for Sale of Firm Power to
Preservation Power Customers**

Service Tariff No. 10

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Preservation 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 Preservation 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 Preservation Power from the Authority and who purchases Preservation 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.

- G. The term "Preservation 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 St. Lawrence-FDR Power Project, FERC Project No. 2000.
- L. The term "Rate Year" or "RY" means the period from July 1 through June 30 of the following year.
- M. The term "Rules" means 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.
- N. The term "Service Tariff" means this Service Tariff No. 10.

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

III. Monthly Rates and Charges

A. Preservation Power Base Rates

The monthly base rates for demand and energy charges paid by Customer to Authority shall be:

<u>Rate Year</u>	<u>Demand Charge</u> \$/kW-mo.	<u>Energy Charge</u> \$/MWh
2010	6.15	10.52
2011	6.71	11.48
2012	7.32	12.52
2013	7.99	13.66

Beginning with the 2014 Rate Year (July 1, 2014), and for each Rate Year thereafter, such rates shall be subject to an Annual Adjustment Factor set forth in Section V herein.

B. Preservation Power 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 Preservation Power 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 Preservation Power, not to exceed the Customer's Allocation, provided to such Customer by the Authority in accordance with the Agreement. The minimum Contract Demand for any Preservation Power Allocation is 100 kW.

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 Firm Energy to which the Customer is entitled shall be applied on a *pro rata* basis to all Firm Power and Firm Energy customers served from the Hydro Projects. Reductions as a percentage of the otherwise required Firm Power and Firm Energy sales will be the same for all Firm Power and Firm 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.

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 Firm 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 Preservation Power allocated to the Customer.

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.

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.

H. Conflicts

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. In the event of any inconsistencies, conflicts or differences between the provisions of the Agreement and this Service Tariff, the provisions of the Agreement shall govern.

I. Customer Resales Prohibited

The Customer may not resell any quantity of Preservation Power.

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."

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.

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: 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 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**

- 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 AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.99	13.66
New Rate Year Base Rate	8.12	13.88

NYP& PUBLIC HEARING
IN THE MATTER OF THE
PROPOSED PRESERVATION POWER CONTRACTS WITH NEWTON FALLS FINE
PAPER COMPANY AND UPSTATE NIAGARA COOPERATIVE, INC.

NEW YORK POWER AUTHORITY

DATE: July 28, 2011

TIME: 3:00 p.m. to 6:00 p.m.

LOCATION: Frank S. McCullough, Jr.
Hawkins Point Visitor Center
21 Hawkins Point Road
Massena, New York 13662

ORIGINAL

APPEARANCES

FOR NEW YORK POWER AUTHORITY:

KAREN DELINCE, ESQ., Corporate Secretary, Law
Department

JAMES F. PASQUALE, Senior Vice President, Marketing &
Economic Development

New York Power Authority

123 Main Street

White Plains, New York 10601

(914) 390-8085

SPEAKERS:

Kanietakeron (Larry Thompson)

Kakwerais (Dana Lee Thompson)

Katenies (Janet Davis)

Brian K. Hammond

MS. DELINCE: Good afternoon. My name is Karen Delince and I'm the Corporate Secretary of the New York Power Authority.

This public hearing is being conducted by the Power Authority to provide an overview and receive public comment on the proposed Preservation Power Contracts with Newton Falls Fine Paper Company and Upstate Niagara Cooperative, Inc.

During the 30-day period prior to today's hearing, copies of the proposed contracts have been available for inspection at the Authority's office in White Plains and our website.

Pursuant to Section 1009(1) of the Public Authorities Law, notice of this hearing was published in the following seven newspapers once a week for the four weeks leading up to the hearing: Albany Times Union; Massena Daily Courier-Observer; Ogdensburg Journal; Plattsburgh Press Republican; Syracuse Post Standard; Utica Observer Dispatch; Watertown Daily Times.

Also, pursuant to Section 1009(1) of the Public Authorities Law, notice of this hearing and copies of the proposed contracts were sent to: Governor Andrew Cuomo; President Pro Temp of New York State Senate, Dean Burnham Reporting (315) 379-0205

1 Skelos; Speaker of the Assembly, Sheldon Silver;
2 Chairman of the Senate Finance Committee, John A.
3 DeFrancisco; Chairman of the Assembly Ways and Means
4 Committee, Herman Farrell, Jr.; Senate Minority Leader,
5 John Sampson; Assembly Minority Leader, Brian Kolb.

6 If you plan to make an oral statement at this
7 hearing, I ask that you fill out a card and I ask that
8 you provide your complete name and the name of the
9 company you represent, if any. And I also ask that you
10 give copies of your written statement to the reporter
11 for the record. Both your oral statement and your
12 written statement will appear in the record of the
13 hearing.

14 The record of this hearing will remain open through
15 close of business Friday, July 29th, for submissions of
16 any additional comments or statements. These should be
17 addressed to the Authority's Corporate Secretary at 123
18 Main Street, 11-P, White Plains, New York 10601; or may
19 be faxed to (914) 390-8040; or e-mailed to
20 secretarys.office@nypa.gov.

21 A transcript of the hearing as well as your
22 submissions will be reviewed by the Authority's Trustees
23 and will be made available to the public on our website,
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1 www.nypa.gov.

2 At this point, I will ask Mr. James Pasquale, the
3 Authority's Senior Vice President of Marketing and
4 Economic Development, to provide additional detail on
5 the proposed contract extensions. I will then call on
6 speakers one by one. Thank you.

7 MR. PASQUALE: Thank you, Ms. Delince. Good
8 afternoon, everyone. As Ms. Delince said, my name is
9 James F. Pasquale, and I am the Senior Vice President
10 for Marketing and Economic Development at the New York
11 Power Authority. I'm here today to present an overview
12 of proposed contracts with two customers, Newton Falls
13 Fine Paper Company and Upstate Niagara Cooperative,
14 Incorporated, for the sale of 5 Megawatts and 3
15 Megawatts of Preservation Power, respectively, from the
16 St. Lawrence/FDR Power Project.

17 In 2005, the New York State Legislature enacted,
18 and the Governor signed, Chapter 313 of the Laws of 2005
19 which established the Preservation Power Program set
20 forth in Section 1005, Subsection 13, of the Public
21 Authorities Law.

22 Preservation Power allows businesses in Northern
23 New York to be served with low-cost hydroelectric power
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1 from the Authority's St. Lawrence/FDR Power Project.
2 This program governs the allocation of any power
3 relinquished from the block of 490 Megawatts of St.
4 Lawrence/FDR Power Project power currently sold to ALCOA
5 and RACER Trust, formally General Motors. The law
6 authorizes allocation of power to businesses in
7 Franklin, Jefferson and St. Lawrence Counties.

8 Each application for an allocation of Preservation
9 Power must be evaluated under criteria that includes,
10 but need not be limited to, those set forth in the
11 Public Authorities Law Section 1005, Subsection 13,
12 paragraph A, which details general eligibility
13 requirements. Among the factors to be considered when
14 evaluating a request for an allocation of hydropower are
15 the number of jobs created as a result of the
16 allocation, the business's long-term commitment to the
17 region as evidenced by the current and/or planned
18 capital investment in the business's facilities in the
19 region, the ratio of the number of jobs to be created to
20 the amount of power requested, the types of jobs created
21 as measured by wage and benefit levels, and the type and
22 cost of buildings, equipment and facilities to be
23 constructed, enlarged or installed.

1 On November 24th, 2009, the Authority, the Empire
2 State Development Corporation and Franklin, Jefferson
3 and St. Lawrence Counties signed a Memorandum of
4 Understanding that outlines the process to coordinate
5 marketing and allocating Preservation Power. The
6 entities noted formed the Northern New York Advisory
7 Group with the intent of better using the value of this
8 resource to improve the economy of Northern New York and
9 the State of New York. Nothing in the MOU changes the
10 legal requirements applicable to the allocation of
11 Preservation Power and the Authority's Trustees are the
12 sole decision makers regarding allocation of
13 Preservation Power, subject only to the Governor's
14 contract approval role under Section 1009 of the Public
15 Authorities Law.

16 At their meeting of May 24, 2011, the Power
17 Authority Trustees approved an allocation of 5 Megawatts
18 of Preservation Power to Newton Falls Fine Paper Company
19 for a term of three years. Approval of the allocation
20 was based on an evaluation of the customer's application
21 for hydropower, in which it proposed to invest \$6.7
22 million to re-open its paper mill, purchase and install
23 new and used equipment, and begin papermaking in the
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1 short-term. The company also proposed to invest \$15
 2 million to build a biomass cogeneration plant to
 3 self-supply steam and electricity within three years.

4 The total investment of \$21.7 million would support
 5 the company's commitment to create 91 new jobs in
 6 addition to an existing base of 18 jobs. The allocation
 7 was supported by the Advisory Group and the St. Lawrence
 8 County Industrial Development Agency. The company has
 9 garnered various other economic development and energy
 10 efficiency incentives from Empire State Development,
 11 National Grid and NYSERDA.

12 The proposed contract requires the company to
 13 restart operations at the Newton Falls paper mill and
 14 begin producing paper within one year of Trustee
 15 approval of the allocation. The contract also provides
 16 an enforceable employment commitment of 109 jobs to be
 17 reached within two years of operation. There is an
 18 annual job reporting requirement and a job compliance
 19 threshold of 90 percent. Should Newton Falls Fine
 20 Paper's actual job numbers be below the compliance
 21 threshold of 90 percent, or 98 jobs, the Authority has
 22 the right to reduce the allocation on a pro rata basis.

23 Regarding Upstate Niagara Cooperative, on May 24,
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1 2011, the Trustees approved an allocation of 3 Megawatts
2 of Preservation Power based on an evaluation of the
3 customer's application for hydropower. Upstate Niagara
4 Cooperative proposed to invest \$11 million to purchase
5 and re-open the North Lawrence dairy processing
6 facility, to install two new high-speed productions
7 lines, and to re-hire workers to begin producing dairy
8 products. Upstate Niagara Cooperative has committed to
9 create 80 new jobs within three years of operation as a
10 result of this project. This allocation was supported
11 by the Advisory Group and the project is being supported
12 by Empire State Development and the St. Lawrence County
13 IDA.

14 The allocation amount will be subject to an
15 enforceable employment commitment of 80 jobs, and
16 includes an annual job reporting requirement and a job
17 compliance threshold of 90 percent. Should Upstate
18 Niagara Cooperative's actual jobs fall below the
19 compliance threshold of 90 percent, or 72 jobs, the
20 Authority has the right to reduce the allocation on a
21 pro rata basis. The contract also requires that an
22 energy efficiency audit be performed at least once
23 during it's five-year term.

1 The Authority will provide firm electric service
2 from the St. Lawrence/FDR plant, consisting of firm
3 power capacity and energy service. The service is
4 subject to pro rata curtailment when there is
5 insufficient generation at the Niagara and St.
6 Lawrence/FDR facilities to meet all its firm load
7 requirements. The power and energy will be sold and
8 billed directly to the customers by the Authority, with
9 delivery service provided and billed by the local
10 utility, National Grid. The rates, terms and conditions
11 for the sales are contained in the relevant service
12 tariff, "Schedule of Rates for Sale of Firm Power to
13 Preservation Power Customers - Service Tariff No. 10."

14 The contracts are subject to a public hearing and
15 approval by the Governor, as set forth in Section 1009
16 of the Public Authorities Law.

17 As Ms. Delince stated earlier, the Authority will
18 accept comments on the proposed contract until the close
19 of business tomorrow, Friday, July 29th, 2011. I will
20 now turn the forum back over to Ms. Delince.

21 MS. DELINCE: Okay. Thank you, Mr. Pasquale. I
22 will now call speakers, starting with Dana Lee Thompson.

23 KAKWERAIS: Larry.
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1 MS. DELINCE: Do you want to start?

2 KAKWERAIS: I'd rather let him go before me.

3 MS. DELINCE: Okay. And please state your name for
4 the record.

5 KANIETAKERON: I answer to the name of
6 Kanietakeron, my true name. My ex-slave name is Larry
7 Thompson. As it is with our tribal customs and usage in
8 our way, the ancient way, I need for you to grab hold of
9 this so that this could be officially documented and
10 officially conducted. Thank you.

11 MS. DELINCE: Okay.

12 KANIETAKERON: You can hold the white one for a
13 moment. It just makes it official between the people
14 you represent and the people we represent.

15 MS. DELINCE: Okay.

16 (Kanietakeron spoke to Ms. Delince and Mr. Pasquale
17 in native language.)

18 KANIETAKERON: I've been mandated by the clan
19 mother, the head clan mother of our tribe, to come here
20 and relent to you as to our concerns and the violations
21 that have been done to our tribe, the violations in
22 regard to what you produce here in front, is that before
23 you go on to conducting new business there needs to be
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1 old business that needs to be addressed. And the old
2 business that needs to be addressed is that your
3 forefathers, by way of New York officials, fraudulently
4 and by bad faith got to this point here where they place
5 this dam out across the water.

6 And as a friend, I come before you to bring this to
7 your attention because as a decent being if I was
8 involved in a conspiracy that occurred a long time ago
9 and conducted that conspiracy to go forth, I would want
10 somebody to come and tell me that, "Well, I'm involved
11 in a conspiracy," as I'm about to do with you.

12 The conspiracy was done by NYPA's officials in
13 Albany, New York. The land we speak of here is not
14 truly legally New York nor a part of the United States
15 legally. You have entities that have entered into
16 agreements by way of contract, compact, accord,
17 treaties, which are domesticated Indians, which are
18 expatriated Indians, created by New York, and they seek
19 protection under your Constitution. Our Constitution
20 forbids us to go in that direction, it's a violation of
21 our Divine Law. We would be committing treason if we
22 were to go in that direction, so we're forbidden to go
23 there.

1 I cannot speak for the people that have chose to go
 2 in that direction, which I again repeat, they entered
 3 into a compact with you, treaty, which have no effect on
 4 us. You've got land claims coming down the pipe
 5 shortly. Maybe in another two months another decision
 6 will be made in regard to those expatriated Indians,
 7 which we are no way, shape or form in privity of how
 8 they're battling it in regard to what they feel is
 9 theirs, but we have provided-- we will provide
 10 documentation that sits over here on this chair to show
 11 beyond a shadow of a doubt what I say is to be true, and
 12 New York by way of Governor Paterson was sent
 13 documentation in that regard.

14 Once you give that to your legal people, they will
 15 decipher it, do their due diligence and find out what I
 16 say is so because we are day and night with the
 17 expatriated Indians by way of the Tribal Council, St.
 18 Regis Mohawk Tribal Council, the Haudenosaunee Longhouse
 19 Mohawk Nation and the Band Council on the other side of
 20 the waters. They are in talks, they are in court,
 21 litigation, and we are not part of that. That needs to
 22 be known so that you may tell your superiors as to what
 23 I say, that that has no binding effect on us because we
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1 are of the ancient ways. We are of the clan mother who
 2 holds plenary authority over this area here, and that
 3 was never given up because it was -- it's not her place
 4 to give that up. The women are the underlying stewards
 5 of this land. They would never give that up because it
 6 belongs to the coming generations.

7 So with the others that I mentioned that we're not
 8 part of, I don't know what their position is, I have no
 9 idea what their argument is, but we're -- like I said
 10 earlier, we're not in privity with that. And that needs
 11 to be brought to your attention, where once you are told
 12 and the documentation provided to you and you hand it
 13 over to your superiors, right up to Governor Cuomo, who
 14 I understand is part of this, dialog needs to occur
 15 there -- shortly thereafter in regard to the status of
 16 this -- the legal status of this land, not by way of the
 17 expatriated, not by way of domesticated Indians who gave
 18 up their traditional way but by way of what we speak of.

19 The injustice that was done, the crime that was
 20 done, the fraud that was done, the bad faith that was
 21 done is all there. It's already been in your courts and
 22 it's already been ruled on so all you have to do is go
 23 over it, give it to your attorneys and then they'll find

1 out what we say to be true. This area here we speak of
2 has never been ceded or surrendered. It does not fall
3 under your Congress, it doesn't fall under your
4 President, by the ancient way, which is still alive and
5 well today, providing you have the right character to
6 present, and we have that right character to present
7 because we are of the old ancient ways. And I cannot
8 speak for the other people that are claiming to be
9 stewards, landlords of this area here, only I can speak
10 for our tribe, which I have been mandated by the clan
11 mother to bring to your attention.

12 Excuse me a moment. I wrote down a couple of notes
13 and I don't want to forget anything that I was mandated
14 to bring to your attention.

15 And as I indicated earlier, we are of the
16 Onkwehonwe Signatory Tribe, ancient. Your Governor --
17 ex-Governor I should say, not -- is it Paterson, the
18 ex-Governor was Paterson? He has documentation to the
19 effect as to our identification as to who we are, and
20 it's already in motion since I believe '09.

21 So to prove that I come in peace, honor and
22 friendship, I've offered all the documentation so that
23 we can maintain the peace. And the reason why we need
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1 to maintain the peace and honor and friendship is
 2 because I am confident that we, the Onkwehonwe Signatory
 3 Tribe, still holds plenary authority by way of our clan
 4 mother, still holds underlying title and still are the
 5 landlords, and the building across the waters here was
 6 taken fraudulently. And to prove that we are the
 7 stewards, the legal stewards of this area, I'm going to
 8 come back after Saturday. We have not had a clan
 9 meeting to direct me as to when I shall be coming back,
 10 but when I do come back I will be coming to gather and
 11 harvest a deer in this lands that we are on now. And I
 12 will be putting up a dwelling shortly thereafter to
 13 prove what I say, that we are the stewards and we have
 14 every right to do such a thing. I will be doing that
 15 also.

16 And you need to inform your superiors so that they
 17 may inform their park police that when they see this
 18 identification (indicating) that they are to not molest
 19 me, that they are to stand down and give recognition as
 20 to who we truly are, and we are the entities that I
 21 spoke of earlier, that we do not have no treaty, we do
 22 not have to no compact, we do not have no accord, we
 23 don't have no covenant with the State of New York who
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1 has sovereign powers when it comes to Indians against
2 the United States and we are above that, and we have
3 sovereign power above the United States.

4 And when I speak of New York having sovereign --
5 sovereign status when it comes to the Indians, that is
6 the time of the Nonintercourse Act. Thereafter the
7 United States has a say but there before the United
8 States cannot tell me what to say or what to do. So
9 it's important that you give this documentation to
10 Governor Cuomo, who is sovereign in some ways when it
11 comes to speaking of our kind. And I mean our kind
12 meaning the ancestral ways that we never let go and are
13 still doing our tribal customs and usage.

14 And when I do come here, I say it's going to be
15 after Saturday, I will be coming after a deer to harvest
16 for the coming winter, and I will be coming to put up a
17 dwelling to prove -- now, those documents are your law.
18 Those documents will prove that your officials in the
19 olden days, not too far back, committed these frauds,
20 committed this bad faith. It's all in there. And when
21 it reaches the people that took an oath to uphold the
22 law, they will either do one of two things: Turn a
23 blind eye and be part of the conspiracy and break their
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1 oath, or honor and correct the wrongs that were done to
2 our tribe. And we hope for the latter, but we cannot
3 control what is going to come down by the decision
4 makers of your government, which this is a part of.
5 This is NYPA, New York State Power Authority.

6 And in regard to the power that has already been
7 agreed upon to sell 5 and 3 Megawatts, that needs to be
8 put on hold because corrections need to be done to go
9 forth with our tribe. That supercedes your Trustees, it
10 supercedes New York and it supercedes the United States,
11 and we get that authority by way, as I indicated
12 earlier, of Causus Omissis, which is the clan mother of
13 our tribe.

14 New York, as well as the United States, is ruled by
15 corpus juris secundum, which is second law to the land.
16 We are ruled by Causus Omissis, which is first law to
17 the land. We gave you the right, meaning the invaders,
18 to come and use and occupy, as long as they maintained
19 the peace and lived in peace. We have upheld our end to
20 date and we are still trying to uphold our end, and very
21 difficult. So the test will be tested, I guess, when I
22 do -- when I do return and harvest a deer and put a
23 dwelling as to see what position your government will
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1 take, as to see what position NYPA will take.

2 The documentation for our phone numbers are in
3 there. You can contact us any time and you can have
4 your attorneys or their attorneys look at it and do
5 their due diligence and they will find -- as sure as the
6 sun comes up from the east and goes down in the west,
7 they will find the documentation that I will provide for
8 you, it's true. The question is: Do they continue with
9 the conspiracy?

10 The documentation that defines the expatriated
11 Indians are in the documentation we're going to give to
12 you. They are of no more our kind by choice, maybe by
13 ignorance, but ignorance is no defense of the law,
14 according to your way. We know who we are. We have
15 studied your ways and we know what they are saying, not
16 that we agree but it is what it is. This came from
17 Judge Jan Plumadore as to defining those entities that I
18 speak of that disassociated themselves from the ancient
19 ways by choice, I guess, we can't answer for them; but
20 that documentation is provided for you in there, a copy
21 of my identification is provided in there and anything
22 that will justify as to what is leading to my actions in
23 coming back here.

1 And if they should arrest me then they're in breach
2 of the peace. If they should arrest me and throw me in
3 jail, they're in -- they're violating our peace with
4 them and they're molesting me because, legally speaking,
5 they don't have the authority to do that to me. With --
6 according to Jan Plumadore, if they change their
7 character, if it was an expatriated Indian coming here
8 and try to argue the same argument I'm telling you, he
9 could and he will, and that has already been done, they
10 have already been arrested and it already went through
11 your system in your courts. I, on the other hand, am
12 not part of your court. As I said earlier, we are the
13 first law to the land, Causus Omissis. The European is
14 second law to the land, corpus juris secundum, and
15 that's just the way it is. So I'm pretty much done.
16 I'll leave this up for the young lady here.

17 MS. DELINCE: All right. Thank you.

18 KANIETAKERON: Unless you have any other questions,
19 I'm here.

20 MS. DELINCE: No. You can just give me your
21 materials and I'll be sure to pass it along to the
22 Trustees. Do you want to speak now?

23 KAKWERAIS: Wait. She wants to read that into the
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1 record.

2 KATENIES: Good afternoon. My name is Katenies.
3 I'm with the Onkwehonwe Signatory Tribe. This is dated
4 July 28th, 2011, to Richard M. Kessel, President and
5 Chief Executive Officer, New York Power Authority, 123
6 Main Street, White Plains, New York 10601. Mr. Kessel,
7 we are here to re-clarify the command that was sent to
8 former Governor David A. Paterson July 4th, 2009. For
9 further clarification, the St. Regis Mohawk tribe, the
10 Mohawk Council of Akwesasne and the Mohawk Nation
11 Council of Chiefs are not to be associated with our
12 Onkwehonwe Signatory Tribute members for we are not in
13 privity with any of the parties in Northern District of
14 New York Case Number 5-82-CV-00783 (NPM/GHL), attached.
15 It's a cover sheet.

16 Also attached you will find a copy of the command
17 sent to former Governor David A. Paterson, determination
18 of County Judge Jan H. Plumadore, April 9th, 1980, a
19 notice of a removal in a District Court for the Northern
20 District of New York 08-CV-0711, Franklin County Court
21 judicial assignment notice, Northern District civil
22 cover sheet, Northern District admission of service
23 08-CV-0711, Franklin County Attorney Jonathan Miller,
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1 identification of Onkwehonwe Signatory Tribe head man
2 Kanietakeron, Larry Thompson. You do not hold Seisin
3 Title and can only hold the Right of Occupancy if
4 granted by the ancient Onkwehonwe Signatory Tribe. We
5 have attached -- on there's our letterhead, it has our
6 phone number, which is a contact number, (518) 651-9091,
7 and this was again by the head man Kanietakeron with the
8 Causus Omissis, the bear clan mother, and attached is
9 all the documents and the packages for you.

10 MS. DELINCE: Thank you. Did you want to speak?

11 KAKWERAIS: Do I have to go there because I believe
12 she can hear me?

13 MS. DELINCE: You can speak from there, that's
14 fine.

15 (Kakwerais spoke to Ms. Delince and Mr. Pasquale in
16 native language.)

17 KAKWERAIS: My name is Kakwerais, and I addressed
18 Karen -- I don't want to say your name wrong.

19 MS. DELINCE: Delince.

20 KAKWERAIS: Delince. And the reason why I
21 addressed you is because you're a woman. And as a
22 woman, if you're a child bearer, if you have children,
23 then maybe to some degree you can understand what I'm
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1 going to say because when you're a woman you have a
 2 responsibility when you bring a child into the world,
 3 and that means that you'll do whatever is humanly
 4 possible to protect your children and your grandchildren
 5 no matter what.

6 Your -- your thing that says here New York Power
 7 Authority and why you're conducting these hearings to
 8 ask if you could sell 8 Megawatts of power to two
 9 different entities, and one of the things is that if I
 10 went somewhere and stole and cheated and pillaged a
 11 people and then years later have hearings to conduct to
 12 want to sell something that doesn't belong to me, and
 13 this is what I feel that this hearing is, is that there
 14 is a big elephant in the room which the New York State
 15 Power Authority thinks, maybe believes, that this is
 16 theirs. It's not. It's our people and it's for our
 17 children, even the ones that aren't here. But the miss
 18 -- to misconstrue this is very simple, how maybe you sit
 19 here and say "Who are these people? Where did they come
 20 from? Why are they addressing us?" Because of the fact
 21 of the convoluted, distorted, untrue history that your
 22 government helped facilitate.

23 With no disrespect, the St. Regis Mohawk tribe was
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1 a creation of the State of New York. New York State
2 created the St. Regis Mohawk tribe for many different
3 reasons, and it wasn't for the reason for the good of
4 the people. They created a legal entity. And the
5 reason why I bring that up is because of the court
6 issues that are before the Federal Court in the Northern
7 District of New York in regard to a land claim which New
8 York State Power Authority is part of.

9 The second group that's in there is called the
10 Mohawk Council of Akwesasne, which was an entity that
11 was created by the Canadian government imposed under the
12 Indian Act of Canada, and that was done too not for the
13 goodness of the people but to further what Canada was
14 continuing to do, which was create chaos, to steal and
15 to do many terrible things to our people. So the Mohawk
16 Council of Akwesasne was created by Canada. As a matter
17 of fact, when they went there and the Indians after
18 numerous times wouldn't accept it, they shot a man, his
19 name was Jake Fire. And that's how Canada created the
20 Mohawk Council of Akwesasne.

21 And the third part is the Mohawk Nation Council of
22 Chiefs, which is a body of people who say that they're
23 under the authority of the Haudenosaunee. That's the
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1 third party. We are not of any of those parties because
2 we come to understand how this works, how the government
3 of the United States and -- well, New York would see
4 that the United States and Canada created all these
5 entities. So today as we sit here in 2011, it's like a
6 legal fiction that's been created of entities that
7 purport to say that they represent the Onkwehonwe, which
8 is not so.

9 And the thing of it is is that in our -- in your
10 laws it says you can never ever take land from the
11 Indians, that's your law, but they can give it. And
12 those entities that were created were not created for
13 the betterment of our people, those were created for the
14 betterment of your government. It's just like, as an
15 example, if people come here and say to you today maybe
16 the Syrians can come here and they'll go to Albany or
17 they'll go to Washington and they'll say we want to make
18 a new government for you, how would that be? Would
19 Albany embrace that idea? Would the United States? No.
20 It would be unheard of. So the thing of it is is that
21 the world is changing, times are changing, but we
22 haven't changed.

23 And so when you have a hearing which you have a
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1 prepared statement that you read in regard to these two
 2 entities of things that you want to sell, which is not
 3 yours to sell, it's very wrong. It's very wrong because
 4 the creation of the FDR Power Project did many things
 5 and it wasn't of a benefit to our people at all, and you
 6 brought it up yourself today: You talked about RACER
 7 Trust and ALCOA, how you gave them power. You gave them
 8 cheap power, those two -- three entities because now
 9 it's known as ALCOA, it was before known as Reynolds.

10 And what those people did with their cheap power --
 11 you talked about jobs. Our people didn't get jobs from
 12 those places, but what our people got was the residue
 13 that you allowed these corporations to pillage and
 14 contaminate, which today the terms are called
 15 environmental genocide. You gave General Motors power
 16 at a cheap rate and they dumped all their poison in our
 17 community, in our children's bodies, which today we can
 18 get the lead scientist in the world and they don't have
 19 a way how to extract that poison from our systems. So
 20 it's known in your government, the Environmental
 21 Protection Agency, that that site is one of the top 10
 22 sites in the United States in regard to the
 23 contamination of PCB's.

1 In 1976 when the United States finally realized
2 that they were dealing with something that was very
3 terrible, they banned it. They banned it. But the only
4 thing is that General Motors and the people that you
5 gave cheap power to continued to dump their poison into
6 our communities and not even -- even blink an eye. All
7 they did was look into the east where our villages were
8 and what they did is they rolled up their dump trucks,
9 put their poison in there, went off and just dumped it
10 right onto the ground. They didn't put it in a secure
11 landfill. They did not get a permit from their
12 superior, supposedly the State of New York. They defied
13 all laws that they were supposed to do. And the
14 destruction and the havoc that these plants, which you
15 gave this cheap power to, wrecked havoc on our people.
16 And so had you understood and looked a little bit
17 further instead of looking at its insatiable appetite
18 for power and money.

19 Our ancestors told you -- told us about you, about
20 the white brothers that were going to come across the
21 salt water. So today, even sitting here as you are
22 sitting here listening, maybe you're thinking this is
23 just another -- another one of these -- we have to kind
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1 of listen to the Indians, but it's more than that
2 because of when we came, what we did. We were given
3 things too to try to make it what's right. And one of
4 the things is the Law of Creation and the Law of Nature
5 and we set into motion those things also to try to see
6 if your ears and your minds could be open and to try to
7 understand what that has done to our communities and
8 then have the gall even today in 2011 to think that you
9 can sell stuff that doesn't belong to you and not
10 address the past.

11 I didn't make those agreements because I wasn't
12 here, but the State of New York before it came -- became
13 the State of New York, the Continental Congress, and
14 subsequently the United States government, they did
15 these things. They created fraud. They created even
16 Indian government to make things like this. So I guess
17 I'm -- what I'm here to say is that as a woman, as an
18 Onkwehonwe woman, I have a responsibility, and maybe if
19 I didn't bring children into the world I could go like
20 that (turning head), but I can't because I was a life
21 giver. And so your government doesn't own this land, it
22 can't ever own it.

23 And the second part of it is they tried to create
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1 the semblance, the paper, like they did own it, but they
 2 don't. One of the largest firms in the United States,
 3 and the oldest, called Case & White out of New York
 4 City, knows what I talk about. And they do not have
 5 original Indian title to our lands because we didn't
 6 give it up. We never gave it up. And so each day as I
 7 read in your -- all your documents, even when you wanted
 8 a re-licensing in 2003, you didn't tell the truth then
 9 either. All you were looking at is the fact of greed
 10 and money and never taking into account the people who
 11 are the true owners. It's not New York.

12 And so if you have it in you, you'll go through
 13 82-CV-783 in the Northern District, which is a document
 14 that entities have put in there to make a land claim.
 15 You can't claim something that's yours. If it's yours,
 16 you don't need to make a claim. Those things were
 17 created to take our people off the track. So what I'm
 18 saying here is that you bear responsibility in the law
 19 of creation, in natural law. If you turn and close your
 20 ears and you don't speak the truth and you don't look
 21 for the truth because the forces that help us, which you
 22 can't see, which your people always try to erase from
 23 who we were. That's why you went into our homes and
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1 took our children because, one, you wanted -- you didn't
 2 want us to speak our language, you didn't want us to
 3 identify with who we were and you didn't want us to
 4 still have our connection, but many of our people
 5 suffered, many of our people were massacred and many of
 6 our people fought on to today, and that's why we're
 7 still here because there was some of our people that
 8 never gave that up. Ever.

9 And so if -- I don't know if you're Christians, if
 10 you're Muslims, if you're -- if you believe in the Koran
 11 or whatever, but usually people who say that they
 12 believe in a higher power are supposed to live by truth,
 13 not lies. Honesty. And so that's what I'm asking you.

14 If you have that in yourself and not just to think
 15 that this is another exercise like going to the Niagara
 16 Falls Vista, okay, we have to listen to these people,
 17 they're going to come in, maybe they're with the Green
 18 Party, maybe they're with the person we want to give the
 19 powers, maybe we're with their people who are against
 20 them, but we just have to, you know, go along through
 21 and listen to this stuff. I hope that's not how you're
 22 sitting here with your mind because that's the wrong
 23 way. That's the wrong way. But if you're a man or a

1 woman that has a belief in a higher power, you know what
2 you have to do. And if you don't, then it's at your
3 peril, meaning that -- how you were brought up.

4 I'm sure that when you were brought up your parents
5 told you you have to be honest, you have to tell the
6 truth and you have to stand up for what's right because
7 I know most people, that's how they bring their children
8 up. Do not steal from anybody. Don't take something
9 that's not yours. Don't commit any crimes against your
10 -- others. Don't do those kind of things. Most people
11 in the world, that's what they teach their children. I
12 can't say with great certainty that that's what you were
13 taught by your parents, but the most people that have
14 common goodness for humanity, that's what they teach
15 their children.

16 And I'd like to bring up one other thing: Our
17 people, they have a name for your presidents, from the
18 first one to the one today, and our people gave him a
19 name. It's called Rahnatakias, village destroyer,
20 that's the name he was given, and he'll keep that name
21 until he does what's right. Village destroyer. And so
22 what I'm saying to you is that our people have every
23 right to come here if they want to put a dwelling, if
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1 they want to harvest food, if they want to pick
 2 medicine, because it's theirs.

3 And so -- and the most important thing is to
 4 distinguish the creations that the State of New York
 5 created and what Canada created is not who our people
 6 are. Those creations were created to be able to deal
 7 and make documents and make agreements and make it have
 8 the semblance of being valid, which it's not. Our
 9 people can't give up anything that doesn't belong to
 10 them. It doesn't belong to us, it belongs to the
 11 children of the faces that we don't see yet, that's
 12 whose it is.

13 And so because the New York State Power Authority
 14 has been doing this and helping and creating havoc with
 15 our people and changing how we live downstream because
 16 it's all polluted, poisoned, and you facilitated as New
 17 York State Power Authority because you gave those people
 18 free power. Had they not -- not free power, cheap
 19 power. Cheap power that even the people there because
 20 you facilitated with that, and because our people are
 21 suffering, dying, east because of these things, we're
 22 telling them to move west, above the poison, because the
 23 only way to extract poison that's in our systems,
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1 there's two ways. How do you get PCB's which has
 2 wrecked havoc -- go online, read the studies. Read the
 3 studies of all the people throughout the world why they
 4 banned its use in 1976, because of the fact of what it
 5 does. Two ways for it to come out of your body, known.
 6 One is through the breast feeding of your children, and
 7 two is through the sperm. Those are the only two human
 8 ways that the scientists know. So is that a good thing?
 9 Feed your baby poison or make one?

10 So New York State Power Authority facilitated those
 11 industries to do that to our people, so that's what
 12 we're telling our people, move above the pollution.
 13 It's beautiful here. We know, we always come here. And
 14 so it's not your land, it never was. Even through your
 15 legal documents, even through your legal documents, it's
 16 not yours. And so I hope that the ancestors, yours,
 17 that did all the corruption, and mine, who suffered
 18 under it, are here right now listening and maybe they'll
 19 want you to correct the wrongs of the past.

20 And you bring up RACER Trust. Even after all that,
 21 after you gave them the cheap power and they did what
 22 they did, they even got the nerve to say we want to --
 23 we want to sell that land to a defense contractor and
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1 maybe you're going to want to give them cheap power, but
2 they don't got a right to sell nothing because it's not
3 theirs either.

4 And so what I would like to say is that I just hope
5 that the forces of nature make you do what's right and
6 not be like your ancestor because we're the true people
7 of this land. Thank you.

8 MS. DELINCE: Thank you for your testimony.

9 KANIETAKERON: Just so you will know, when I
10 return, the United States and New York, I guess, more so
11 the United States, we can agree they have much enemies
12 out there and coming to a facility like this, as I said
13 earlier, I come in peace, honor and friendship. And
14 when I return, I still come in peace, honor and
15 friendship, so they don't need to call the National
16 Guard when they see me come. So that there you can re
17 -- you know, tell your superiors to tell their park
18 police or whomever, New York State Police, or maybe
19 they're going to send the National Guard, but as sure as
20 I said earlier, the sun will come up and go down, I'm
21 coming back.

22 Sovereignty is exercising it, not just talking
23 about it. If it's here (indicating) and if it's here
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1 (indicating) and it's together as one, you will do what
 2 you feel is right. With the knowledge that we gathered
 3 up, I believe I have the wisdom to know what's coming
 4 and that peace will prevail, it will hold, because the
 5 truth will make your superiors honor their pledge and
 6 uphold the law which your forefathers, superiors,
 7 lawmakers, violated and broke. It's in that
 8 documentation. I guarantee you it's in there. And they
 9 will have to be -- you know, stand out.

10 So as I said, I will return, and the first one, to
 11 get a deer; the second one, to put a dwelling, and I
 12 will -- in time we'll see many other people come. So
 13 we're putting you on legal notice, we're not hiding, and
 14 those other people that come will also come in peace,
 15 honor and friendship because this is rightfully theirs.
 16 This building that sits on this area is legally theirs.
 17 And NYPA has no authority or legal right to give away
 18 lands in the water, known as an island, lands on the
 19 shore. Legal, they have no legal authority to pass them
 20 over to anyone. It is not theirs to give legally. We
 21 are the first law.

22 I could go on for a few more days but the
 23 documentation there is going to keep your attorneys busy
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1 for a little bit, but all they have to do is call up the
2 people that were involved, which my wife and I were
3 involved in it, and we know what they have to do. They
4 have to honor their pledge. They have to honor their
5 allegiance. As painful as it was, and it was painful
6 for them, but the truth they say hurts at times and what
7 I present to you today is the truth.

8 To add on to our belief, which I feel very strongly
9 your Pope believes in it, if you're Christian by Roman
10 Catholic standards, the Queen, anybody that believes in
11 a higher power, we summon the people that have passed.
12 They're here. It's like the wind. The air is here but
13 you don't feel it unless it allows you. With the
14 spirits that we called, they will follow you home. They
15 may come in your dream. They may be in your back seat
16 when you're driving home alone and you look in the
17 mirror, there they are, and you go and look, they're not
18 there. That's just to put you on notice that they are
19 here helping you to guide you to do the right thing.
20 This is above you and I. This is the spiritual end.

21 You may hear somebody in your house. You know
22 you're all alone. You may be sleeping and then the
23 blankets will come off you, put the lights on, no one is
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1 there. The spirits protect us. They're not here to do
 2 harm to you or anyone else but to bring you consciously
 3 that they do exist and they will guide you. As
 4 difficult as that may be, you may believe it, you may
 5 not, but I will not tell you this if I didn't believe it
 6 myself.

7 And the message we gave to you today, you need to
 8 give that to Cuomo. Cuomo is a very powerful man when
 9 it comes to telling what the United States can do and
 10 can't do when it comes to our kind. He's just as
 11 powerful because of those documents that they made
 12 fraudulently. The only reason why you have this area
 13 here is because New York made a fraudulent document,
 14 they call it a deed, so that the banks could give loans
 15 to develop the area, whether it be a farmer or whether
 16 it be a plant. They're not worth the paper it's written
 17 on legally, legally, true legal. That will blow your
 18 mind because we have already witnessed New York State
 19 stand down already. They had no choice.

20 The documents speak for themselves, and as I said,
 21 the truth hurts and your superiors will have to stand
 22 down and enter into talks with our kind, not the ones
 23 they created, expatriated Indians who seek protection

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1 under the Constitution of New York State or the federal
2 government. They have joined by way of assimilation.
3 They left their ancient ways and have gone with the
4 so-called American way of life. We have not. We still
5 practice our tribal customs and usage and still respect
6 mankind no matter how much harm they have done us, how
7 much wrong they have done us. We're trying to
8 understand. How much is enough? But I understand one
9 thing, once you eat from the trough of greed, the
10 chances of survival is almost impossible. I have yet to
11 witness that yet. So having said that, I close.

12 MS. DELINCE: Thank you.

13 KANIETAKERON: Unless you have any questions for
14 any one of us.

15 MS. DELINCE: Will you make sure the transcriber
16 has the correct spelling of your names for the record.

17 KANIETAKERON: Don't forget to tell your people, I
18 come in peace. When I do come, it will be in the
19 morning, early before sunrise, when a true hunter goes
20 and takes the creation for making it here. Again, have
21 a good day.

22 MS. DELINCE: Thank you.

23 KANIETAKERON: They don't need to come blaring out,
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1 which, I have to be honest, I expect them to do, unless,
2 of course, you deter that.

3 MR. PASQUALE: We will let them know.

4 KANIETAKERON: I leave you in peace, honor and
5 friendship, and you too.

6 MR. PASQUALE: Thank you.

7 (Off-the-record discussion.)

8 MS. DELINCE: All right. Now we have Brian
9 Hammond. Go right ahead.

10 MR. HAMMOND: I'm Brian K. Hammond, President of
11 Teamsters Local 687 representing the members at North
12 Country Dairy in North Lawrence, New York. And I
13 strongly urge anything that the Power Authority can do
14 to help create jobs at that facility would definitely be
15 greatly appreciated by the Teamsters. Thank you very
16 much.

17 MS. DELINCE: Thank you, Mr. Hammond.

18 MR. PASQUALE: Thank you. I'm glad you made it.

19 (Off-the-record discussion.)

20 MS. DELINCE: Well, it is now six o'clock. Seeing
21 no more speakers, I declare this hearing officially
22 closed.

23 (The public hearing concluded at 6:00 p.m.)

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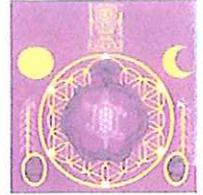
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16:3 18:11 19:14 20:15 26:19 30:23,23 32:23 38:2,4 ways 4:3 14:1 15:7 17:10,12 19:15,19 33:1 33:5,8 38:3 website 3:12 4:23 week 3:15 weeks 3:16 went 20:10 23:10 24:17 27:9 29:23 west 19:6 32:22 we'll 35:12 we're 12:22 14:7 14:9,10 19:11 30:6,19 32:21 33:12 34:6 35:13,13 38:7 white 2:6 3:11 4:18 11:12 21:6 27:20 29:3 wife 36:2 wind 36:12 winter 17:16 wisdom 35:3 witness 38:11 witnessed 37:18 woman 22:21,22 23:1 28:17,18 31:1 women 14:4 workers 9:7 works 25:2 world 23:2 25:21 26:18 28:19 31:11 33:3 worth 37:16 wouldn't 24:18 wrecked 27:15 33:2 written 4:10,12 37:16 wrong 22:18	26:3,3 30:22 30:23 38:7 wrongs 18:1 33:19 wrote 15:12 www.nypa.gov 5:1 <hr/> Y <hr/> year 8:14 years 7:19 8:3 8:17 9:9 23:11 York 1:10,19 2:3 2:5,6 3:2,23 4:18 5:10,17 5:23 7:6,8,9 12:3,13,14,18 13:12 16:23 17:4 18:5,10 18:14 21:5,6 21:14,20 23:6 23:14 24:1,1,7 24:8 25:3 27:12 28:12,13 29:3,11 32:4 32:13,17 33:10 34:10,18 37:13 37:18 38:1 39:12 40:1,17 young 20:16 <hr/> \$ <hr/> \$11 9:4 \$15 8:1 \$21.7 8:4 \$6.77 21 <hr/> 0 <hr/> 08-CV-0711 21:20,23 09 15:20 <hr/> 1 <hr/> 10 10:13 26:21 1005 5:20 6:11 1009 7:14 10:15 1009(1) 3:13,20 10601 2:6 4:18 21:6 109 8:16	11-P 4:18 123 2:6 4:17 21:5 13 5:20 6:11 13662 1:19 18 8:6 1976 27:1 33:4 1980 21:18 <hr/> 2 <hr/> 2003 29:8 2005 5:17,18 2009 7:1 21:8 2011 1:14 7:16 9:1 10:19 21:4 25:5 28:8 21 1:18 24 7:16 8:23 24th 7:1 28 1:14 28th 21:4 29th 4:15 10:19 <hr/> 3 <hr/> 3 5:14 9:1 18:7 3:00 1:16 30-day 3:9 313 5:18 390-8040 4:19 390-8085 2:7 <hr/> 4 <hr/> 4th 21:8 490 6:3 <hr/> 5 <hr/> 5 5:14 7:17 18:7 5-82-CV-00783 21:14 5/11/14 40:18 518 22:6 <hr/> 6 <hr/> 6:00 1:16 39:23 651-9091 22:6 687 39:11 <hr/> 7 <hr/> 72 9:19 <hr/> 8 <hr/>	8 23:8 80 9:9,15 82-CV-783 29:13 <hr/> 9 <hr/> 9th 21:18 90 8:19,21 9:17 9:19 91 8:5 914 2:7 4:19 98 8:21
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Territory of the
Onkwehonwe Signatory Tribe
Via P.O. Box 147
"Rooseveltown, NY 13683"
518-651-9091



Americus Empire
(A.K.A.) Turtle Island

July 28, 2011

Richard M. Kessel
President and Chief Executive Officer
New York Power Authority
123 Main Street
White Plains, NY 10601

Mr. Kessel:

We are here to re-clarify the command that was sent to former Governor David A. Patterson, July 4, 2009.

For further clarification the St. Regis Mohawk Tribe, the Mohawk Council of Akwesasne and the Mohawk Nation Council of Chiefs are not to be associated with our Onkwehonwe Signatory Tribe members. For we are not in privity with any of the parties in *Northern District of New York* case #: 5:82-cv-00783-NPM-GHL (attached cover sheet).

Also attached you will find a copy of the command sent to former Governor David A. Patterson; determination of County Judge Jan H. Plummadore, April 9th 1980; Notice of Removal in the District Court for the Northern District of New York 08-CV-0711; Franklin County Court Judicial Assignment Notice; Northern District Civil Cover Sheet; Northern District Admission of Service 08-CV0711; Franklin County Attorney Jonathon Miller; Identification of Onkwehonwe Signatory Tribe, Headman, Kanietakeron "Larry Thompson".

You do not hold Seisin Title and can only hold the right of occupancy if granted by the ancient Onkwehonwe Signatory Tribe.

Headman

Clan



U.S. District Court
Northern District of New York - Main Office (Syracuse) [LIVE - Version 4.0.3]
(Syracuse)
CIVIL DOCKET FOR CASE #: 5:82-cv-00783-NPM-GHL

Canadian St. Regis, et al v. State of New York, et al
Assigned to: Senior Judge Neal P. McCurn
Referred to: Magistrate Judge George H. Lowe
Demand: \$0
Member case: ([View Member Case](#))
related Case: [8:09-cv-00896-NPM-GHL](#)
Cause: 28:1362 Indian Tribal Controversy

Date Filed: 07/27/1982
Jury Demand: Both
Nature of Suit: 290 Real Property: Other
Jurisdiction: Federal Question

Plaintiff

**Canadian St. Regis Band of Mohawk
Indians**

*by Lawrence Francis, Chief, and Lloyd
Benedict, Mike Mitchell, Bruce
Roundpoint, Joe Jacobs, John Oakes,
Angus Bonaparte, Jr., David Benedict*

represented by **Arthur Lazarus , Jr.**
Sonosky, Chambers Law Firm
1425 K Street, N.W.
Suite 600
Washington, DC 20005
202-682-0240
Fax: 202-682-0249
Email: alazarus@sonosky.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Harry R. Sachse
Sonosky, Chambers Law Firm
1425 K Street, N.W.
Suite 600
Washington, DC 20005
202-682-0240
Fax: 202-682-0249
Email: hsachse@sonosky.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Curtis G. Berkey
Alexander, Berkey Law Firm
2030 Addison Street
Suite 410
Berkeley, CA 94704
510-548-7070
Fax: 510-548-7080
Email: cberkey@abwwlaw.com
ATTORNEY TO BE NOTICED

IN THE DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

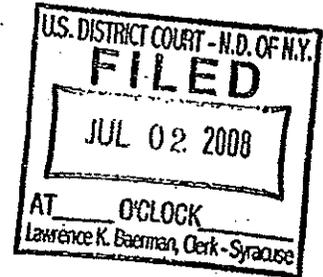
KAKWERIAS, KANIETAKERON, and TSIOKAWE,

Defendants,

-v-

COUNTY OF FRANKLIN and BRIAN VARIN,
TREASURER OF FRANKLIN COUNTY,

Plaintiff.



08 -CV- 0711

NOTICE OF REMOVAL

NPM RFT

Respondents Kakwerias (aka Dana Leigh Thompson), and her spouse Kanietakeron (aka Larry V. Thompson) as well as Tsiokawe (aka Lyle David Pierce, III) hereby give notice that the above captioned action, which was commenced in New York Supreme Court, Franklin County, is hereby removed to the United States District Court for the Northern District of New York, based on the following:

1. Respondents Kakwerias, Kanietakeron and Tsiokawe are former members of the Saint Regis Mohawk Tribe. Kakwerias renounced and abjured her membership with the Saint Regis Mohawk Tribe on June 27, 1997. Her spouse, Kanietakeron, renounced and abjured his membership with the Saint Regis Mohawk Tribe on June 30, 1997. Tsiokawe renounced his membership with the St. Regis Mohawk Tribe on June 26, 1996. See, e.g., *United States ex rel. Standing Bear v. Crook*, 5 Dill. 453, 25 Fed.Cas. No. 14,891 (1879); *Smith v. Bonifer*, 154 F. 883 (1907). For greater certainty, Respondents Kakwerias, Kanietakeron and Tsiokawe are neither Mohawks nor members of the St. Regis Mohawk Tribes, the St. Regis Tribe of Mohawks, the St. Regis Tribe, the Mohawk Tribe and any derivative thereof.

2. Although "Indians", Respondents Kakwerias, Kanietakeron and Tsiokawe are neither Citizens of a State nor Citizens or Subjects of any Foreign State.
3. The Respondents Kakwerias, Kanietakeron and Tsiokawe not being members of the Saint Regis Mohawk Tribe are therefore not impacted by, *among other things*, the 1988 Tax Foreclosure Agreement worked out between the Saint Regis Mohawk Tribe's former attorney Richard Sobol and Franklin County's land claim attorney, Jan Farr.
4. Respondent Kakwerias (aka Dana Leigh Thompson) is "the record title owner of a certain parcel of real property" purportedly "located within the Lands Claims Area of the Saint Regis Mohawk Tribal Reservation commonly known as the Bombay Triangle located on Route 37, within the Town of Bombay, County of Franklin, State of New York having a Tax ID number of 18.2-3-4." Respondents Kakwerias, Kanietakeron and Tsiokawe adamantly dispute, withhold their consent and deny that the area in general and this parcel in particular are in fact located within New York State and/or its subdivisions. For greater certainty, Respondents Kanietakeron, Tsiokawe and, in particular, Respondent Kakwerias, do not base their defence and answer to the foreclosure proceedings in relation to this particular parcel on a deed issued by the state of New York and/or its subdivisions, rather Respondents Kanietakeron, Tsiokawe and, in particular, Respondent Kakwerias, ground their defence and answer on the basis of the fact that the Original Indian Title has not yet been validly extinguished.
5. Respondents Kakwerias, Kanietakeron and Tsiokawe allege and assert that the 68 acre parcel of land which was the subject of the litigation in *Dana Leigh Thompson v. County of Franklin and William A. Hughes. Treasurer of Franklin County (92-CV-1258)* is beyond the limits (legislative or otherwise) of the state of New York and, accordingly, not subject to, *inter alia*, the taxing authority of the state of New York and/or its subdivisions. For greater certainty, Respondents Kanietakeron, Tsiokawe and, in particular, Respondent Kakwerias, do not base their defence and answer to the looming foreclosure and proceedings in relation to this particular parcel (or otherwise) on a deed issued by the state of New York and/or its subdivisions, rather, Respondents

Kanietakeron, Tsiokawe and, in particular, Respondent Kakwerias, ground their defence and answer on the basis of, *among other things*, the fact that the Original Indian Title has not yet been validly extinguished.

6. Respondents Kakwerias, Kanietakeron and Tsiokawe allege and assert that the "Contract between the state of New York, and the Seven Nations (of Indians) of Canada...", sometimes referred to as the "Treaty with the Seven Nations of Canada, 1796", held in the City of New York, and Proclaimed by then United States President George Washington, is repugnant to, *inter alia*, Article II of the United States Constitution and is illegal, void and done in bad faith. See, Bioren, John and W. John Duane, *Laws of the United States*, Vol. 1, 1815, at pp. 375-6; see also, Kappler, Charles J., *Indian Affairs Laws and Treaties*, Vol. II, 1904, at pp. 45-6. It is noteworthy that Jeremiah Wadsworth, the United States Commissioner in fact appointed to hold this treaty was not in attendance. See, *American State Papers*, Vol. 1, 1832, at p. 585 ("No. 70"); see also, Greenleaf, Thomas, *Laws of New York*, Vol. 3, at pp. 335-41 and, in particular, p. 340 ("An ACT for the Payment of certain Officers of Government and other contingent Expences, Passed 11th April, 1796.").

7. Respondents Kakwerias, Kanietakeron and Tsiokawe allege and assert that the "A contract, executed at a treaty held at fort Schuyler, (formerly fort Stanwix,) by the Oneida tribe or nation of Indians, on the 22d of September, 1788, with George Clinton, William Floyd, Ezra L'Hommedieu, Richard Varick, Samuel Jones, Egbert Benson, and Peter Gansevoort, junior, commissioners on behalf of the state of New York, by which the Oneidas...d[id] cede and grant all their lands to the state of New York, forever...." violated Articles 2, 6 and 9 (*cf.* Article 13) of the Articles of Confederation and is illegal, void and done in bad faith. See, Bioren, John and W. John Duane, *Laws of the United States*, 1815, Vol. 1, at pp. 317-21; see also, *Laws of the United States*, at pp. 10-28. Moreover, the respondents Kakwerias, Kanietakeron and Tsiokawe allege and assert that the "Treaty of Fort Schuyler, 1788" violates the Proclamation of September 22, 1783. See, *Laws of the United States*, at pp. 607-8. In any event, did not affect lands that were

in fact located outside the limits of the state of New York and New York State and/or those lands which were not of the Oneida Indian Nation of New York.

8. Respondents Kakwerias, Kanietakeron and Tsiokawe allege and assert that the May 2, 1791, proposal of Alexander Macomb (See, *Calendar of N.Y. Colonial Manuscripts indorsed Land Papers in the Office of the Secretary of State of New York 1643-1803*: Albany, Weed, Parsons & Co., 1864, at pp. 842-3) and the subsequent purported sale of the lands identified therein by the state of New York to Alexander Macomb derived from the lands purportedly ceded and granted by the Oneida tribe or nation of Indians to the state of New York through the "Treaty of Fort Schuyler, 1788" or otherwise is illegal, void and done in bad faith.

9. Respondents Kakwerias, Kanietakeron and Tsiokawe allege and assert that, *inter alia*, the bad faith of the state of New York is evidenced as follows:

Mr. James Duane, who had been a Delegate from this State in Congress, communicated to the Governor the following Views in regard to this Treaty: Great Difficulty arises from the Interference of the proposed Treaty with the Authority and the Views of Congress.

Five of the six Tribes of Indians were at open War with the United States. The general Treaty of Peace doth not mention nor extend to them. Congress therefore, on the 9th Art. of the Confederation, claims the exclusive Right to make this Peace, and if the Tribes are to be considered as *independent Nations*, detached from the State, and absolutely unconnected with it, the Claim of Congress would be uncontrovertible.

There is then an indispensable Necessity that these Tribes should be treated as *antient Dependants on this State*, placed under its Protection, with all their territorial Rights, by their own Consent publicly manifested in solemn and repeated Treaties (of this there is sufficient Evidence), and particularly by the Deeds of 1701 and 1726, which tho' in the name of the King, were obtained at the Expense of the People of the State and for their Benefit. On this ground the Tribes in question may fall under the Character of *Members of the State* with the management of whom Congress have no concern (Confed. 9th Art., 4th Clause).

But the Spirit of the Message from the Indians renders it questionable whether they will submit to be treated as *Dependants*....

See, Munsell, Joel, and Franklin B. Hough: *Proceedings of the Commissioners of Indian Affairs Appointed by Law for the Extinguishment of Indian Titles....* Albany: 1861

10. The attempt to, *inter alia*, tax and foreclose upon the lands herein mentioned and, in particular, the parcels herein identified, is illegal, void and done in bad faith.

11. Any foreclosures of the lands, *inter alia*, identified herein interferes with the Respondents' rights and freedoms to the free and unmolested use and occupancy of said lands.

12. Respondents Kakwerias, Kanietakeron and Tsiokawe allege and assert that in light of the live issues and controversies raised and/or identified herein, or otherwise, that in view of 28 U.S.C. § 1331 which mandates that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States" this Notice of Removal pursuant to 28 U.S.C. § 1446 is timely and the issues are properly before this Honourable Court (Federal Question Jurisdiction). This defence therefore is properly removed by Respondents/defendants pursuant to Article III of the United States Constitution as well as 28 U.S.C. § 1331 and 28 U.S.C. 1441(a).

13. Respondents Kakwerias, Kanietakeron and Tsiokawe have no formal legal training whatsoever and respectfully inform this Honourable Court that they have used their best efforts to draft an initial complaint in the limited amount of time available given the circumstances and, in fact, need further time to perfect the complaint/defence.

14. Such further or other grounds as the Respondents Kakwerias, Kanietakeron and Tsiokawe may advise and this Honourable Court may permit.

RELIEF SOUGHT

15. A declaration that "A contract, executed at a treaty held at fort Schuyler, (formerly fort Stanwix,) by the Oneida tribe or nation of Indians, on the 22d of September, 1788, with George Clinton, William Floyd, Ezra L'Hommedieu, Richard

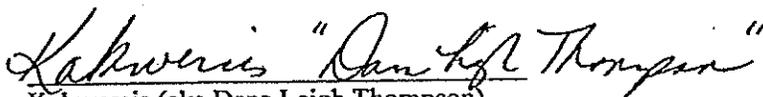
Varick, Samuel Jones, Egbert Benson, and Peter Gansevoort, junior, commissioners on behalf of the state of New York, by which the Oneidas...d[id] cede and grant all their lands to the state of New York, forever...." violated Articles 2, 6 and 9 (cf. Article 13) of the Articles of Confederation and is illegal, void and done in bad faith.

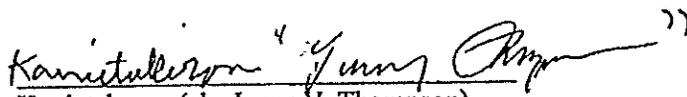
16. A declaration that the May 2, 1791, proposal of Alexander Macomb (See, *Calendar of N.Y. Colonial Manuscripts indorsed Land Papers in the Office of the Secretary of State of New York 1643-1803*: Albany, Weed, Parsons & Co., 1864, at pp. 842-3) and the subsequent purported sale of the lands identified therein by the state of New York to Alexander Macomb derived from the lands purportedly ceded and granted by the Oneida tribe or nation of Indians to the state of New York through the "Treaty of Fort Schuyler, 1788" is not supportable in fact and/or law and is, accordingly, illegal, void and done in bad faith.

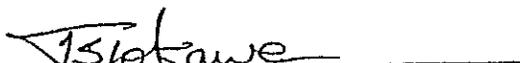
17. A declaration that the Contract sometimes referred to as the "Seven Nations of Canada, 1796" is repugnant to, *inter alia*, Article II of the United States Constitution and is illegal, void and done in bad faith.

18. Such further relief as this Honorable Court considers reasonable and just in the circumstances.

Dated: July 2, 2008
Elsewhere, South of the middle of the River Cataraquay


Kakwerais (aka Dana Leigh Thompson)


Kanietakeron (aka Larry V. Thompson)


Tsiokawe (aka Lyle David Pierce, III)



The rights and responsibilities of our tribal citizens are not to be interfered with by any Officer or Agent of a Foreign Government as the legal protection and immunity supercedes all laws governing civilized nations as determined by the foundation of International Law.

Should there be any complaints against our tribal citizens, they are to be forwarded to the headman of the tribal government as prescribed by International Law.

Territory of the Onkwehonwe Tribe

Via: P.O. Box 147, "Rooseveltown, NY" 13683

No. 001 Date Issued: July 2, 2009
 TAX IMMUNED No. 666-99-6

CERTIFICATE OF MEMBERSHIP

ONKWEHONWE
 Indian Name: KANIETAKERON
 Name (ENGLISH): LARRY THOMPSON

D.O.B.: Sept. 8, 1954
 Clan: BEAR
 Address: Territory of Onkwehonwe



Signature: [Handwritten Signature]
 This is to certify that the above individual is a recognized member of the Onkwehonwe Tribe

Signature of Issuing Authority
 Signatory Tribe 666-99-6

FRANKLIN COUNTY COUNTY COURT
FRANKLIN COUNTY COURTHOUSE
355 WEST MAIN ST., PO BOX 70 Index No. 2007-1498
MALONE, NY 12953
(518)481-1748 or (518)481-1749

JUDICIAL ASSIGNMENT NOTICE

June 2, 2008

MILLER, JONATHAN J.
436 EAST MAIN STREET
MALONE, NY 12953
(518)483-8400

Re: RJI No.: 16-0-2008-0247
RJI DATE: 06-02-2008 NOTE OF ISSUE FILED:
TYPE OF ACTION: OTHER REAL PROPERTY
MOTION: S-

FRANKLIN COUNTY ..vs..
VARIN, BRYON A.
IN THE MATTER OF THE FORECLOSURE
OF 2003 TAX LIENS AND 2004 TAX
LIENS BY PROCEEDING IN REM
PURSUANT TO ARTCILE 11 OF REALTAX
LAW BY FRANKLIN COUNTY

In accordance with directives of the Chief Administrative Judge,
this case has been assigned to:

HON. ROBERT G. MAIN, JR.
FRANKLIN COUNTY COURTHOUSE
MALONE, NY 12953
(518)483-6767

Judges have issued memorandums regarding motion terms, scheduled dates and submission requirements, copies of which have been sent to members of the Franklin County Bar. Motion terms are held at the Franklin County Courthouse, 355 West Main Street, Malone, New York 12953. Supreme Court Judges may elect to hear motions at their chambers. In those instances, counsel or pro se parties will be advised of changes to the location where motions will be heard.

All subsequent inquiries, correspondence, copies of motions, copies of other documents, etc. should be directed to the assigned judge at their chambers. (original motion papers and original documents should be forwarded to the Chief Clerk's office for filing).

You are required to notify all opposing counsel, or any party who appears pro se, of the assignment of this judge and submit proof of service by mail of such notice.

Kimberly A. Crow
Chief Clerk

CIVIL COVER SHEET

JS 44 (Rev. 1/70)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 KAKWERAS
 KADIE TALEON
 ISIAKAWF

(b) County of Residence of First Listed Plaintiff
 (EXCEPT IN U.S. PLAINTIFF CASES)
 KAKWERAS (DANA LEIGH THOMPSON)
 P.O. Box 147
 "ROOSEVELTON, NY 13683"

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS
 FRANKLIN COUNTY TREASURER
 BEITH VARNY

County of Residence of First Listed Defendant
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 24 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 830 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Chalkage- 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 930 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1331

Brief description of cause:

ORIGINAL JURISDICTION OF ALL CIVIL ACTIONS ARISING UNDER CONSTITUTION

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

KAKWERAS "Dana Leigh Thompson"

FOR OFFICE USE ONLY

RECEIPT SJRIK/143 AMOUNT 350.00 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____



FRANKLIN COUNTY ATTORNEY

Court House, Malone, New York 12953

(518) 483-8400
Fax: (518) 483-2054

Office of
Jonathan J. Miller
County Attorney

*Remailed
to Dana
Leigh
11/17/09*

August 5, 2009

Hon. Neal P. McCurn
U.S. District Court, Northern District
100 South Clinton Street
P.O. Box 7367
Syracuse, New York 13261

RE: Dana Leigh Thompson et. al. v. Franklin County

Dear Judge McCurn:

Franklin County received the signed In Rem order of the State Court signed on 7/31/09, a copy of which is enclosed.

The parcels of land of the above plaintiffs were not included in the parcels in which the County sought title, and as such are not included in the list of parcels in which the county was granted title.

As there is no issue of the plaintiff's loss of title in the foreclosure proceedings, I kindly request that the Court grant a Rule 41 dismissal of the action, as the matter is moot.

Very truly yours,

JONATHAN J. MILLER

JJM/cam
Enc.
Philip H. Tarbell
Dana Leigh Thompson
Michael Rhodes-Devey, Esq.

Territory of the Onkwehonwe Tribe

IDENTIFICATION of the ONKWEHONWE
of Amerious Empire
(A.K.A.) Turtle Island

The Eagle Bowl Treaty
(A.K.A.)
Camel's Eye Treaty

To Roam Freely at Large Unmolested for
Hunting and Fishing Free to Drive Vehicles
(Boats, Cars, Motorcycles, Etc...)

Immuned from any foreign taxes, levies,
tariffs, fines, duty and tolls, etc.
(Highway, waterway, bridges, etc.)

The rights and responsibilities of our tribal citizens are not to be interfered with by any Officer or Agent of a Foreign Government as the legal protection and immunity supercedes all laws governing civilized nations as determined by the foundation of International Law.

Should there be any complaints against our tribal citizens, they are to be forwarded to the headman of the tribal government as prescribed by International Law.

Territory of the Onkwehonwe Tribe

Via: P.O.Box 147, "Rooseveltown, NY" 13683

No. 001 Date issued: July 2, 2009

TAX IMMUNED No. 666-99-6

CERTIFICATE
OF MEMBERSHIP

ONKWEHONWE

Indian Name: KANIETAKERON

Name (ENGLISH): LARRY THOMPSON

D.O.B.: Sept. 8, 1954

Clan: BEAR

Address: Territory of

Onkwehonwe



Signature:

This is to certify that the above individual is a recognized member of the Onkwehonwe Tribe

Signature of Issuing Authority
Signatory Tribe 666-99-6

STATE OF NEW YORK
COUNTY OF FRANKLIN

60-71

4-10-80

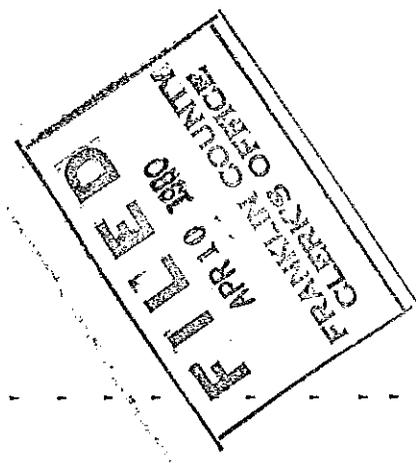
COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

AGAINST

HARRIET BOOTS
DAVID DEER
DOUGLAS GEORGE
ERIN OAKES
RICHARD POWLESS
KENNETH THOMPSON

Defendants



JAN H. PLUMADORE
County Judge

APPEARANCES: Joseph J. Ryan, Esq.,
District Attorney for the People
of the State of New York,

William Kunstler, Esq.,
Robert Coulter, Esq., and Howard
Berman, Esq., Attorneys for the
Defendants:

O P I N I O N

These defendants have moved this Court for the following relief: dismissal of all charges because 1) the courts of the State of New York lack jurisdiction over (Mohawk) Indians, 2) the charges are the result of "selective and persecutorial prosecution," 3) in the interests of justice; dismissal of such of the charges as are not supported by sufficient evidence; inspection of the Grand Jury minutes; Bill of Particulars; multi-faceted discovery.

I. JURISDICTION:

A. STATUS OF INDIAN TRIBES:

Indian tribes, contrary to the defendants' assertions, are no longer sovereign bodies or nations, that is, they are "no longer" possessed of the full attributes of sovereignty" (United States v. Wheeler, 435 U.S. 313, 55 L. Ed 2d 203 at 313, 98 S. Ct. 1079, citing U.S. v. Kagama, 118 U.S. 375 at 381, 30 L. Ed.228,

6 S. Ct. 1109), no longer capable of entering into "direct commercial or governmental relations with foreign nations" (Wheeler, supra at 314, citing Worcester v. Georgia, 6 Pet 515, 559, 8 L. Ed. 483). "Their incorporation within the territory of the United States, and their acceptance of its protection, necessarily divested them of some aspects of the sovereignty which they had previously exercised. By specific treaty provision they yielded up other sovereign powers; by statute, in the exercise of its plenary control, Congress has removed still others" (Wheeler, supra at 312). In 1857 the N.Y. Court of Appeals very aptly termed the status of Indian nations/tribes "quasi independent" (People ex Rel. Cutler v. Dibble, 1857, 16 N.Y. 203 at 212, aff'd 62 U.S. 366; see also St. Regis Tribe of Mohawk Indians v. State of N.Y., 5 N.Y. 2d 24 at 38, 177 N.Y.S. 2d 289, cert. denied 359 U.S. 910, 79 S. Ct. 586, 3 L. Ed. 2d 573, rehearing denied 359 U.S. 1015, 79 S. Ct. 1146, 3 L. Ed. 2d 1039). Finally, and more germane to the cases at bar, while "it is undisputed that Indian tribes have power to enforce their criminal laws against TRIBE MEMBERS" (Wheeler, supra at 312), they cannot try NONMEMBERS in tribal courts (Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 55 L. Ed 2d 209, 98 S. Ct. 1011) (emphasis added). This power is of course subject to complete defeasance by Congress in the exercise of its plenary power. It is of course the customs and practices of the tribe which determine tribal membership or lack thereof (Patterson v. Council of Seneca Nation (1927) 245 N.Y. 433, 157 N.E. 734).

B. VALIDITY OF 25 U.S.C. section 232:

As noted in the Wheeler case, Congress possesses plenary power over Indian tribes by virtue of their dependent status. Included within this plenary power is the exercise of federal criminal jurisdiction over Indians. In the cases of certain groups of States Congress delegated, or in some cases proffered,

this power to them in 1953 (see Pub. L. 280; Washington v. Confederated Bands and Tribes, 1979, 99 S. Ct. 740). In the State of New York's case, however, federal criminal jurisdiction was specifically ceded to it (N.Y.) (Washington, supra at 746) in 1948 via section 232. While section 232 has never been tested in the United States Supreme Court, the cases that do mention it discuss it favorably (Washington, supra; Oneida Indian Nation of N.Y. State v. County of Oneida, N.Y., 1974, 94 S. Ct. 772). This Court shares the Supreme Court's implicit opinion that section 232, like Pub. L. 280, is a valid delegation of Congressional (federal) power.

The defense argues, however, the 232 is invalid because 1) Congress did not specifically say it intended, via 232, to abrogate any treaty(ies) and, in the alternative, 2) unilaterally abrogating treaty rights violates international law. As to 1), the Supreme Court addressed this point in Washington (Supra at 750) when it said:

"The argument made by the Tribe is tendentious. The treaty right asserted by the Tribe is jurisdictional. So also is the entire subject-matter of Pub. L. 280. To accept the Tribes' position would be to hold that Congress could not pass a jurisdictional law of general applicability to Indian country unless in so doing it itemized all potentially conflicting treaty rights that it wished to affect. This we decline to do. The intent to abrogate inconsistent treaty rights is clear enough from the express terms of Pub. L. 280."

If what was said in regard to Pub. L. 280 is true, then it must also be true in the cases at bar where there are at least two major treaties (1794 and 1796) in issue (disregarding, for our purposes, all the other treaties dealing with Indians residing in New York State). With regard to 2) above, despite the fact

that Indian treaties have been referred to as recently as 1979 as "essentially a contract between two sovereign nations" (Washington v. Washington State Commercial Passenger Fishing Vessel Association 99 S. Ct. 3055 at 3069, citing Lone Wolf v. Hitchcock, 187 U.S. 553, 23 S. Ct. 216, 47 L. Ed. 299), by virtue of their special, dependent status Congress has plenary power over Indian tribes (Washington v. Confederated Tribes, supra at 761; Wheeler, supra). Stated simply, from Worcester v. Georgia in continuous succession to Washington v. Confederated Tribes the Indian law of this nation has been shaped and determined by the dependent, quasi sovereign status of the Indians and not by any application of conventional principles of international law.

The prosecution contends that 25 U.S.C. section 232 amounts to a complete defeasance by Congress of any remaining jurisdiction by the tribe. This Court cannot subscribe to that view.

At the time of the enactment of section 232 or at any time before Congress had not shown any intent to completely divest the St. Regis Indians of their remaining jurisdiction. All Congress sought to do by the enactment of the statute in question was to convey whatever jurisdiction the federal government possessed to New York State (S. Rep. No. 1489, 80 th Cong., 2d Sess. (1948)).

In addition a strong presumption exists that in civil or criminal disputes between tribal members on Reservation land the Tribe possesses jurisdiction co-equal with that of the United States. This is retained jurisdiction by the Tribe as a result of its unique quasi sovereign status (Wheeler and Oliphant, supra).

25 U.S.C. section 232 simply transfers the federal portion of jurisdiction in all such matters to New York State.

It is the conclusion of this Court that 25 U.S.C. section 232 was and is a valid surrender of federal criminal jurisdiction over Indians within the borders of New York State.

C. APPLICABILITY OF THE TREATIES OF 1794 v. 1796:

The defense argues that the Canandaigua Treaty of 1794 between the Six Nations and the United States is the treaty determinative of their rights (and indeed the rights of all Indians on the St. Regis Reservation). The courts of this State however, and the United States Supreme Court by implication, take the opposite view; that is, that the Treaty of 1796, between the Seven Nations of Canada and the United States is the applicable treaty (St. Regis Tribe of Mohawk Indians, supra; Matter of Fischer v. Tebo, 1959 3d Dept., 9 A.D. 2d 470, 194 N.Y.S. 2d 772). In Matter of Fischer the Appellate Division said:

"Tebo appeared specially to contest the jurisdiction of the Court, contending that the St. Regis Tribe was governed by the Treaty of 1794 which granted to the people of the Six Nations the sole right to govern themselves without interference by the courts, also that the court could not settle jurisdictional disputes as to property within the reservation and that the elective chiefs who filed the complaint did not lawfully represent the American branch of the tribe. The court overruled these objections, determining that the Treaty of 1796-not 1794-was applicable to the American branch of the St. Regis Indians; that section 106 of the Indian Law did not preclude the court from finding Tebo an intruder and that the Legislature of the State of New York provided the manner and method for the election of chiefs and there was no evidence before the court of non-compliance with the law-section 110 of the Indian Law. Section 106, mentioned herein, governs jurisdiction of Council of Chiefs to determine disputes.

In a subsequent opinion, dated January 15, 1958, the County Court determined the merits of the controversy, holding that Tebo was a member of the Canadian branch and as a consequence he was an intruder subject to removal and so ordered. The court made no finding concerning the real property rights.

From a reading of the two treaties involved, set forth in the record, it conclusively appears that the Treaty of 1796 was intended to govern the St. Regis Indians. Not only does it refer to the tribe by name but provides, among others, for the tract of land now known as the St. Regis Reservation in Franklin County. The Treaty further provided for the State of New York to compensate the seven Canadian tribes and they relinquished all their rights to lands within the State. In recent years there has been considerable litigation as to Indian property-perhaps due to its close proximity to power and water developments-and that the St. Regis Indians were part of the Seven Nations Treaty made in 1796 seems to be authoritatively settled. (St. Regis Tribe v. State of New York, 5 N.Y. 2d 24, 29, 32, 37, 40, cert. denied 359 U.S. 910, rehearing denied 359 U.S. 1015.) We determine in this action that such treaty governs.

...In further reliance upon the Treaty of 1794, appellants argue that sections 108-113 of the Indian Law are unconstitutional. These sections involve the procedure and election of officers-chiefs-of the tribe of St. Regis Indians in New York State. Having already determined that the Treaty of 1794 does not govern the St. Regis Tribe, there is no merit to the argument and no necessity for further discussion." (at 472).

It is therefore the settled law of this State, and indeed implicitly of this nation, that the Treaty of 1796 is the one which, in conjunction with both federal and State law, governs

the rights, especially jurisdictional and governmental, of the Indians on the St. Regis Reservation.

This conclusion regarding the Treaty of 1796 is amply supported by historical evidence dealing with both colonial era Indian demographics and treaty negotiations. Much of the source material for these historical findings was provided or cited by the defense.

Northern New York State and southern Canada during the 1600-1700's were somewhat in dispute as to which tribes of Indians had "proprietary" rights therein. Two of the maps submitted/reviewed show the Mohawks themselves mainly confined to the area around the Mohawk River. ¹The second of these maps, as well as one other, ² list northern New York and southern Canada as either the country of the Six Nations or their deer-hunting territory, with the latter map listing northern Vermont as Iroquois beaver-hunting country. Two other maps ³ merely list the northern boundary of the Iroquois as open.

Prior to and during the early colonial period:

Surrounding the few tribes of the Iroquois on every hand dwelt the much more numerous tribes of the Algonquin family, to which belonged all the New England tribes, as well as the Mohicans, Horicans,

¹Colden, C. History of the Five Indian Nations Depending on the Province of New-York in America, Cornell University Press (1973), 1747 map at pp. xviii and xix. Defense map of 1784; see also Pickering, *infra*, vol. 62 at p. 261a.

²Hough, Dr. Franklin B. History of St. Lawrence and Franklin Counties, New York Regional Pub. Co. (Facsimile Ed., 1970), p.236.

³1771 Map in Defense Memorandum of Law; Frisch, J. Revitalization, Nativism and Tribalism Among the St. Regis Mohawks, unpub. PH.D. dissertation, Indiana Univ. Press (1970), p. 25.

and other New York Indians who dwelt east of the Hudson and were known as River Indians.

Northward of the Iroquois were the Nipissings, LaPetite Nation, and LaNation De L'Isle, and other tribes in the valley of the Ottawa River. Along the valley of the St. Lawrence dwelt the Algonquins proper, the Abenakis, the Montagnais, and other roving bands below the mouth of the Saguenay."⁴

The Iroquois were nearing the height of their power in the 16th and 17th centuries, however, and they succeeded in relegating most of these neighbors to the status of secondary powers. During the middle of the 17th century alone the Iroquois destroyed the Tobacco and Neutral nations of what is now southeastern Ontario, defeated the Eries and drove the Moheicans of what is now Rensselaer County beyond the Connecticut River, laying claim to Vermont as beaver trapping territory.

Notable exceptions to total Iroquois domination were the Algonquins and the Hurons. The latter restricted Iroquois expansion in the Great Lakes area and the former hotly contested any Iroquois movement into the northern Adirondack Mountains and the St. Lawrence Valley.⁵

The Indians of Akwesasne (the St. Regis Reservation) arrived at that location via Caughnawaga (near Montreal)⁶. The latter reservation was settled by Mohawks (circa 1669), Hurons, Abenakis and many others who had been converted to Christianity by Jesuit missionaries during the 17th century.⁷ Around 1755 the Akwesasne settlement was established by a group from Caughnawaga, in part to alleviate overcrowding there.⁸ The settlement at

⁴ Sylvester, Nathaniel B. History of Ulster County, New York, Everts and Peck (1880), p. 21.

⁵ Ibid.

⁶ Hough, supra at page 191

⁷ Frisch, at pages 44, 48, 49.

⁸ Frisch at p. 60; Hough, Supra beginning at page 111.

St. Regis was included in the Seven Nations of Canada, a "loose religious confederation formed sometime during the 18th century,"⁹ being included therein to "take the place of the scattered tribe" (the Oswegatchies), "and they thenceforth represented them in the assemblies."¹⁰

Relations between the Iroquois and the Caughnawagas (Seven Nations) were never especially cordial: The Iroquois renounced the Caughnawagas in 1684 because they refused to return to the Mohawk Valley;¹¹ the Caughnawagas, under the auspices of the French, attacked the Senecas Twice, the last time in 1687;¹² the Iroquois once attacked Caughnawaga, which served to solidify the French-Caughnawaga alliance for 70 years thereafter;¹³ the Mohawks and Caughnawagas met in 1799, unsuccessfully, to attempt to resolve differences regarding land claims in northern New York;¹⁴ the Caughnawagas and Iroquois, circa 1757, were at odds over whom to support, the French or the British.¹⁵

During the time of the American Revolution those residents of Akwesasne/St. Regis who were descended from the Iroquois (generally Mohawk) were separated by religion,¹⁶ form of government (elected v. traditional, which Canadian/U.S. St. Regis split was principally occasioned by annuity disputes and finally by the War of 1812),¹⁷ national allegiance, 100 or more years of history, and 200 miles from their "ancestors" and central New York. This separation has in large part continued until

⁹Frisch at page 65

¹⁰Hough at page 127

¹¹Frisch at page 52

¹²Frisch at page 53

¹³Frisch at page 55

¹⁴Hough at page 149

¹⁵Frisch at page 62

¹⁶Frisch at pages 134 and 138; Hough at page 176

¹⁷Frisch at pages 75-86, and see espec. 112; Hough at pages 154, 177; see also Matter of Fischer, supra at page 472; U.S. ex rel Kennedy v. Tyler, 269 U.S. 13; Andrews v. State 79 N.Y.S. 2d 479.

the present day, with two exceptions.

In 1888, the Six Nations (Iroquois) adopted the St. Regis Indians to succeed the Mohawks as the "keepers of the eastern door," the Mohawks having lost that status when they moved to Ontario. As a result, the traditional nine Mohawk chiefs' titles were given over to the St. Regis Indians.¹⁸ Also, the Longhouse form of religion arrived at St. Regis in the 1930's (see footnote 16). Despite these two exceptions, the Indians at St. Regis are legally just that, St. Regis Indians despite the fact that most are ethnically Mohawks. Whatever their revived cultural identity may be, it changes their legal status no more than that of the average U.S. citizen who traces his/her ancestry back to England, Poland, Germany, Ireland, China, Africa or wherever. The only difference is that, because they are a recognized tribe, they retain some vestiges of the sovereignty they initially enjoyed as one of the Seven Nations of Canada. The Court would also note at this juncture that symbolic actions of the Iroquois Grand Council and revived cultural awareness notwithstanding, the rights of the St. Regis Indians can only be determined in light of the Treaty of 1796, federal statutes and decisions, and New York State's criminal (here) and Indian Laws.

In view of the fact that it was the Seven Nations of Canada who were parties to the Treaty of 1796, and not the Mohawk/Iroquois, and in light of the Court's historical analysis supra, it appears that there is ample justification for the various court opinions, cited supra, holding that it is the Treaty of 1796, not 1794, which is the treaty applicable to the St. Regis Reservation.

¹⁸Frishcat pages 91 and 92.

Even if the Treaty of Canadaiqua(1794) were applicable to the St. Regis Reservation it would not operate to bar the criminal jurisdiction of State Courts over these alleged offenses. This is true for several reasons:

FIRST, Article VII of that treaty reads as follows:

"Lest the firm peace and friendship now established should be interrupted by the misconduct of individuals, the United States and Six Nations agree, that for injuries done by individuals on either side, no private revenge or retaliation shall take place; but, instead thereof, complaint shall be made by the party injured, to the other: By the Six Nations or any of them, to the President of the United States, or the Superintendent by him appointed: and by the Superintendent, or other person appointed by the President, to the principal chiefs of the Six Nations, or of the nation to which the offender belongs: and such prudent measures shall then be pursued as shall be necessary to preserve our peace and friendship unbroken; until the legislature (or great council) of the United States shall make other equitable provision for the purpose." (emphasis added).

"NOTE. It is clearly understood by the parties to this treaty, that the annuity stipulated in the sixth article, is to be applied to the benefit of such of the Six Nations and of their Indian friends united with them as aforesaid, as do or shall reside within the boundaries of the United States; For the United States do not interfere with nations, tribes or families, of Indians elsewhere resident."

The plain language of this section authorizes and in fact seems to anticipate the passage of a statute such as 25 U.S.C. section 232. In this sense the language of Article VII operates as a conditional relinquishment of criminal jurisdiction by the Iroquois. 25 U.S.C. section 232 is in part an exercise of this

conditional relinquishment as well as an exercise of Congressional plenary power. The argument is made that the operative language of section 232 may not have been considered equitable within the meaning of Article VII in 1794 by the parties thereto. However, it cannot be seriously contended that 25 U.S.C. section 232 was not "equitable" when enacted in 1948.

SECOND, even if the Article VII operated to retain jurisdiction by the Iroquois that jurisdiction would only be concurrent with that of the Courts of New York State. (Wheeler, (supra)).

THIRD, although unlike the Treaty of 1789 the Treaty of 1794 does not specifically exclude the Mohawks unless they signed it, the fact remains that they were not present during its negotiation, despite repeated invitations, and they did not sign it.¹⁹ It is interesting to note here that the defense claims that they did sign it, through one Henry Youngbrant. Mr. Youngbrant was the only Mohawk present, however, and never lent his voice to the negotiations, coming forward merely to express his sentiments to Col. Pickering.²⁰ Additionally, it appears that Mr. Youngbrant was in fact the nephew and "representative" of the very same Joseph Brandt who has been disavowed by the defense as a mere British mercenary and no legitimate Mohawk chief.²¹

¹⁹Pickering, *infra*, Vol. 60 at pages 209a, 204, 202, 203; Vol. 62 at 145, 213.

²⁰Pickering, *infra*, Vol. 62 at page 100.

²¹*Ibid* at page 108.

The defense claims that it matters not whether the Mohawks signed the treaty inasmuch as the Treaty was ratified by the Grand Council of the Iroquois and thereby binds the Mohawks.

Applying fundamental principles of contract law it is obvious that if the Mohawks choose to be bound by a Treaty they did not negotiate or sign this would have no binding effect on the other party to the Treaty, the United States. It is also obvious that by taking such a position the Mohawks could not hope to bind another non-party to the Treaty, the St. Regis Band.

The Court notes that apparently the United States hoped the Mohawks would abide by the Treaty, i.e. live peaceably, and indeed even offered them the money equivalent of the "presents" they gave those tribes who did attend and sign.²² However, this observation still does not change the factual and legal conclusions outlined above.

FOURTH, and finally, the defense argues that the Treaty of 1794 must be interpreted in the way the Indians (Mohawks) understood/understand it, citing Worcester v. Georgia and Washington v. Washington State Commercial Passenger Fishing Vessel Association, supra.

It is obvious that this rule of Treaty construction would only come into play when the treaty language lends itself to more than one interpretation. The applicable language of Article VII is unequivocal and clear and not subject to any legitimate

²²Pickering, *infra*, Vol. 62 at page 108.

variations in interpretation. It is worthy of note that the Treaty of 1794 in its final form was the result of numerous drafts, none of the others of which "gave them satisfaction."²³ It would certainly seem that in this instance that the parties who did sign the Treaty of 1794 got essentially what they bargained for.

D. IS THE ST. REGIS RESERVATION THE SOVEREIGN TERRITORY OF THE MOHAWK NATION:

The answer to this must be "NO". As must be seen from the discussion in section C, supra, it is not historically clear whether or not the area north of the Adirondacks was geographically ever an 'integral part of the Mohawk Nation' as we would understand it.²⁴ Furthermore, there is historical evidence to indicate that the Mohawks physically, if not legally (highly suspect land "giveaways" notwithstanding)²⁵ abandoned New York State between the American Revolution and the Treaty of 1794.²⁶

Further support for the proposition that the Mohawks physically abandoned New York comes principally from the Papers of Col. Timothy Pickering.²⁷ From the Court's reading thereof, it is unequivocally established that many of the Mohawks had, prior to 1794, taken up residence in Ontario (448 with Joseph

²³Pickering, *infra*, Vol. 60 at page 208.

²⁴See, for example, footnotes 1 and 2.

²⁵"Treaty with the Mohawk, 1797," wherein Mohawk leaders Joseph Brandt and John Deserontyon, who were not Sachems (chiefs) relinquished all Mohawk land claims for \$1000.00 plus \$600.00 personal expenses. This "treaty" was never ratified by the Grand Council and appears to be fraudulent on its face.

²⁶Footnotes 14 and 18, *supra*.

²⁷Papers of Timothy Pickering, Massachusetts Historical Society Collection, Vols. 60 and 62.

Brandt at Grand River,²⁸ 200 or so more with John Deserontyon at the Bay of Kentac, sic. Quinte).²⁹

The Court would also point out that even were the St. Regis Reservation actually Mohawk territory, it would not and could not be "sovereign" in light of Wheeler et al.

E. ST. REGIS RESERVATION OUTSIDE FRANKLIN COUNTY:

This argument is fallacious. The defendants' cited statutory description of the borders of Franklin County clearly includes the Reservation. Matter of Fischer, supra, describes the Reservation as "in Franklin County." The courts of this State, indeed of this nation, have proceeded under this "premise" for centuries. This is not to deny the quasi-sovereign status of the Reservation, but it is within the borders of Franklin County and New York.

F. WHEELER, 25 U.S.C. section 232, THE TREATY OF 1796 and THEIR APPLICATION:

The "Treaty with the Seven Nations of Canada, 1796" is reproduced herein as follows:

"The agents for the State, having, in the presence, and with the approbation of the commissioner, proposed to the deputies for the Indians, the compensation hereinafter mentioned, for the extinguishment of their claim to all lands within

²⁸ Johnston, Chas. M. The Valley of the Six Nations, the Champlain Society, Toronto 1964 page 52.

²⁹ Pickering, Vol. 60 at pages 204, 241, 115, 203; Vol. 62 at pages 100, 250.

the State, and the said deputies being willing to accept the same, it is thereupon granted, agreed and concluded between the said deputies and the said agents, as follows: The said deputies do, for and in the name of the said Seven Nations or Tribes of Indians, cede, release and quit claim to the people of the State of New-York, forever, all the claim, right, or title of them, the said Seven Nations or tribes of Indians, to lands within the said State: PROVIDED NEVERTHELESS, That the tract equal to six miles square, reserved in the sale made by the commissioners of the land-office of the said State, to Alexander Macomb, to be applied to the use of the Indians of the Village of St. Regis, shall still remain so reserved. The said agents do, for and in the name of the People of the State of New-York, grant to the said Seven Nations or tribes of Indians, that the People of the State of New-York shall pay to them, at the mouth of the River Chazy, on Lake Champlain, on the third Monday in August next, the sum of one thousand two hundred and thirty-three pounds, six shillings and eight-pence, and the further sum of two hundred and thirteen pounds six shillings and eight-pence, lawful money of the said State, and on the third Monday in August yearly, forever thereafter, the like sum of two hundred and thirteen pounds six shillings and eight-pence: PROVIDED NEVERTHELESS, That the People of the State of New-York shall not be held to pay the said sums, unless in respect to the two sums to be paid on the third Monday in August next, at least twenty, and in respect to the said yearly sum to be paid thereafter, at least five of the principal men of the said Seven Nations or tribes of Indians, shall attend as deputies to receive and to give receipts for the same: The said deputies having suggested, that the Indians of the Village of St. Regis have built a mill on Salmon River, and another on Grass River, and that the meadows on Grass River are necessary to them for hay; in order, therefore, to secure to the Indians of the said village, the use of the said mills and meadows, in case they should hereafter appear not to be included within the above tract so to remain reserved; it is, therefore, also agreed and

concluded between the said deputies, the said agents, and the said William Constable and Daniel M'Cormick, for themselves and their associates, purchasers under the said Alexander Macomb, of the adjacent lands, that there shall be reserved, to be applied to the use of the Indians of the said Village of St. Regis, in like manner as the said tract is to remain reserved, a tract of one mile square, at each of the said mills, and the meadows on both sides of the Grass River from the said mill thereon, to its confluences with the River St. Lawrence."

It will be noted that nowhere therein do the Caughnawagas (St. Regis Indians, for our purposes) purport to surrender or cede any jurisdiction, over tribal members, criminal or civil, to the United States. Under Wheeler and its decisional ancestors, that jurisdiction therefore is still retained by the Indians. Congress has never exercised its plenary power to divest them of this jurisdiction, so they still have it, though at this time there exist no Indian Courts on the Reservation capable of exercising it. What Congress has done, however, is cede federal jurisdiction to New York State via 25 U.S.C. sections 232 (criminal) and 233 (civil).

In summary all the above leads the Court to the following conclusions:

- 1) The St. Regis Indians are still possessed of both civil and criminal jurisdiction over disputes involving only tribe members on their Reservation, though at present they have not the judicial machinery necessary to exercise it;
- 2) The State of New York, and this Court specifically, have criminal (and civil) jurisdiction which is concurrent with that of the Indians with respect to members of their tribe as it does not arise from the same sovereign (Wheeler, supra), and exclusive with respect to all other persons or criminal acts on

or off the Reservation. (25 U.S.C. section 232).

Therefore the motion to dismiss due to lack of jurisdiction will be denied.

II. INSPECTION OF THE GRAND JURY MINUTES:

The People have consented to have the Court inspect the Grand Jury minutes, and the Court will do so.

The defense has also requested the opportunity to review and copy the Grand Jury minutes. To such relief they are simply not entitled (C.P.L. section 210, 30 subd. 2; Proskin v. County Court of Albany County, 1972, 30 N.Y. 2d 15, 330 N.Y.S. 2d 44). From the same authorities comes the conclusion that the defense is not entitled to the testimony of grand jury witnesses whom the People do not intend to call at trial(s). Additionally, such testimony is quite likely irrelevant, and if it is not, i.e. IS exculpatory, the People have a continuing Brady obligation to divulge it.

The Court would note that with respect to the defendants' other request regarding the Grand Jury, disclosure of the records of the votes, this relief is unwarranted and unauthorized. The Grand Jury need not record its votes. It is the District Attorney's responsibility to instruct them as to the applicable law and voting procedure; in this respect nothing else is required (see People v. Colebut, 1976, N.Y. Co. S.Ct., 86 Misc 2d 729, 383 N.Y.S. 2d 985 at 991).

The Court will reserve decision on the questions of sufficiency of evidence until it has completed its reading of the minutes.

III. DISMISSAL IN THE INTERESTS OF JUSTICE:

The defendants have moved, in the alternative, for a dismissal of the indictments in the interests of justice. As grounds therefor they assert 1) the alleged political basis, Indian and otherwise, of the incidents and indictments, 2) the different criminal justice result of an investigation into the unrelated shooting death in this County of a Canadian St. Régis Indian, 3) the very nature of the instant charges, and 4) Iran (upon which the Court will not comment further).

Interest of justice dismissals are governed by C.P.L. section 210.40, which states that indictments may be dismissed when:

"...such dismissal is required as a matter of judicial discretion by the existence of some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such indictment or count would constitute or result in injustice. In determining whether such compelling factor, consideration or circumstance exists, the Court must, to the extent applicable, examine and consider, individually and collectively, the following:

- (A) the seriousness and circumstances of the offense;
- (B) the extent of harm caused by the offense;
- (C) the evidence of guilt, whether admissible or inadmissible at trial;

(D) the history, character and condition of the defendant;

(E) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant;

(F) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;

(G) the impact of a dismissal upon the confidence of the public in the criminal justice system;

(H) the impact of a dismissal on the safety or welfare of the community;

(I) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion;

(J) any other relevant fact indicating that a judgment of conviction would serve no useful purpose.

2. An order dismissing an indictment in the interest of justice may be issued upon motion of the people or on the court itself as well as upon that of the defendant. Upon issuing such an order, the court must set forth its reasons therefor upon the record."

It appears that consideration of this aspect of the motion must also await completion of the Court's reading of the Grand Jury minutes. This is so because C.P.L. section 210.40's factors (A), (B), (C) and (J), which encompass defendants' alleged grounds, cannot realistically be evaluated until then.

Factor (E) will in all likelihood be determined in light of the Discovery to be ordered infra. Factors (G) and (H) are especially important in related criminal actions of the numerical magnitude exhibited herein.

Upon completing review of the Grand Jury minutes, IF the Court finds that some or all of the arraigned defendants are prima facie eligible for a dismissal (assuming arguendo that all the indictments are based upon legally sufficient evidence), a Clayton hearing may be required. At such hearing the Court will consider the attitude and testimony of the complainants/victims with respect to such dismissals (C.P.L. section 210.40, subd. 1 (I)).

Defense counsel have urged the Court to consider dismissals in the interests of justice with regard to those unnamed defendants who have yet to surrender/be arrested. Simply stated, there are not nor can there be any omnibus motions on those defendants' behalf before this Court at this time as they have not yet been arraigned upon their indictments (C.P.L. section 210.20).

IV. DISCOVERY AND BILLS OF PARTICULARS:

The first part of defendants' Discovery motion deals with intercepted communications and a demand on their part therefor. The People concede/point out that they have never served upon defendants copies of any warrants(s) and application(s); ergo if they DID have any such material they would be precluded from offering it in evidence (citing C.P.L. section 700.70).

Defense counsel during oral argument suggested that perhaps the People could write to all of the agencies listed and inquire whether or not they have (independently or not) conducted any surveillance in connection herewith. Such a request is not unreasonable and could be accomplished by means of a form letter, culminating in an itemized (sworn) statement by the People that "the results of the inquiry are as follows..." Furthermore, the results may well facilitate disposition of the interests of

justice portion of this motion, as noted supra.

The People deny that they have or are aware of any personal property taken from the defendants under any circumstances.

The rest of defendants' Discovery demands are covered by C.P.L. Art. 240 and cases decided thereunder and, stated as follows, will be

-photographs and sketches: Decision reserved pending a statement by the People as to whether any or all of such material was made by (a) public servant(s) engaged in law enforcement activity (C.P.L. section 240.20 subd. 1. (d);

-statements of defendants to or for law enforcement personnel or their agents only: Granted, to the extent that People are by due diligence aware of same (C.P.L. section 240.20 subd. 1. (a);

-suppression of statements by defendants: Denied without prejudice to an application for a Huntley hearing upon a showing that such statements do in fact exist;

-law enforcement agency reports: Granted, though not required by C.P.L. section 240.20, they are material and necessary to the preparation of the defense, to the extent that they do not contain witnesses' statements nor work-product (People v. Wright, 74 Misc. 2d 419; People v. Rice, 76 Misc. 2d 632; People v. Inness, 69 Misc. 2d 429);

-names, addresses and statements of any informants/witnesses; Denied at this time as not required by 240.20, and in fact not mandated until the trial jury has been sworn (240.45);

-notes taken, now or in the future, by witnesses: Granted to the extent that the People shall exercise a good faith effort to ensure that the witnesses are ready to produce any such writings at the time of their testimony at any trials herein;

-records of conviction/pending charges (only) of any forthcoming trial witnesses: Denied until the time of trial and then only pursuant to the terms of 240.45;

-names and addresses of all PEOPLE present when defendants may have made statements and/or interviewed by the People with respect hereto: Denied as beyond the scope/mandates of Art. 240;

-personnel files of public employees: Denied as beyond the mandates of Art. 240, and see People v. Gissendanner, 48 N.Y. 2d 543;

-any and all written or recorded documents the People intend to introduce: Granted, to the extent that they exist without prejudice to People's application for a protective order where warranted;

-inspection of any physical evidence in the custody or control of the People: Granted, and to the extent such evidence exists the Court will hear an application for the suppression thereof;

-defendants criminal records: People consent, Granted.

The Court would emphasize, at this point, that the ordered Discovery is to be made available to and for the use of Defense Counsel only, especially with regard to police reports and witnesses names, addresses and statements when those are required

to be disclosed (see C.P.L. section 240.50). The very community sensitivity which may have been a contributing factor in the alleged underlying incidents mandates this step. Accordingly, disclosure will be to and for the eyes of defense counsel alone, for their exclusive use and possession in the preparation of the defense of these actions, and shall not be further copied nor in any way revealed nor disseminated.

WITH RESPECT TO THE DEMAND FOR A BILL OF PARTICULARS:

-the defendants have been apprised of the exact time, date, place and actions constituting their alleged offenses by their indictments,

-defendants are not entitled to names and addresses (see Discovery, supra, and C.P.L. section 200.90 case notes 43 McKinney's Book 11A);

-People state that they are unaware of any property taken from the defendants;

-manner, time, date and place of arrest; irrelevant with respect to the function of a Bill of Particulars and/or already within knowledge of defendants.

Defendants' demand for a Court review of the People's entire file(s) with an eye towards discovering exculpatory information will be denied. The People, as they have indicated, are aware of their continuing duty to disclose Brady material. The defense will, at trial, have the benefit of the criminal records/status of any witnesses. Even U.S. v. Agurs (427 U.S.

97) did not discuss court inspection of a prosecutor's file; it

dealt principally with the difficulties of determining and the subtle shades of what is or could be exculpatory evidence, and in fact upheld the conviction wherein the non-disclosure was raised. The defendants' list of evidentiary matters sought in this context, however, is a good one. Prosecutors in general might find it useful, for example, in determining (and disclosing) what is or may be exculpatory.

V. "SELECTIVE AND PERSECUTORIAL PROSECUTION"

The defendants also claim that they have been charged due to their adherence to the laws and customs of the Iroquois, and also to influence others not to so-adhere.

Discriminatory enforcement is a defense only where it is, or can be, shown the alleged discrimination was intentional or purposeful. This is the well-settled New York rule, determined and strictly developed through a long line of cases commencing with the Yick Wo case in 1886. (Yick Wo v. Hopkins, 118 U.S. 356 (1886); People v. Friedman, 302 N.Y. 75 (1950), app. dsmd. 341 U.S. 907 (1951); People v. Utica Daw's Drug Co., 16 A.D. 2d 12 (4th Dept. 1964), affd. 16 N.Y. 2d 503 (1965), cert. denied 382 U.S. 838 (1965); cf. People v. Walker, 14 N.Y. 2d 901 (1964) Matter of DiMaggio v. Brown, 19 N.Y. 2d 283 (1967)).

In the case of these defendants, however, the Record thus far is barren of any support for what is merely a conclusory allegation. Without more, this portion of defendants' motion must at this time be denied without prejudice to the defense's right to request such relief should egregious conduct by the prosecution come to light by trial testimony, discovery or otherwise.

People to submit Order.

DATED: April 9, 1980

Jan H. Plumadore

Jan H. Plumadore, County Judge

Recharge New York Power Rate Components

1. Preservation Power

Preservation Power prices, as set in Section III A of the Authority's Service Tariff No. 10, shall be used for supplying hydro demand and energy to RNY Power Program participants receiving electricity subject to RNY Hydro Only or RNY Blended rates. Preservation Power prices have been set through the rate year ending July 2014 and shall be subject to the same Annual Adjustment Factor as stated in Tariff No. 10, starting July 2014, and then every July thereafter.

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

The NYISO Charges assessed on the Authority for services provided by the NYISO pursuant to its Open Access Transmission Tariff ("OATT") or Market Services and Administration Tariff or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing RNY Power to the RNY Power Program participant are included in the base rates as part of the Authority's production charges that are charged to the participant in accordance with this Service Tariff. Those NYISO Charges accounted for in the base rate include:

- a. Ancillary Services 1 through 6;
- b. Transmission Usage Charges ("TUC") which is Marginal Losses and Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT);
- c. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- d. NYISO Wide Uplift;
- 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 RNY Power to participants 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 participant), 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.

3. Capacity Obligation

The cost to meet the NYISO's capacity obligation, inclusive of the required reserve margin has been accounted for in the base rates. This is currently expressed by the NYISO as the Unforced Capacity or UCAP obligation.

For the hydropower portion of all RNY allocations, except for loads in NYISO zones J and K, UCAP shall be secured through Authority's hydro self supply.

For the hydropower portion of RNY allocations for loads in NYISO zones J and K, the “locational” UCAP (*i.e.* for NYC and Long Island) shall be secured through market purchases, while the remaining “Rest of State” UCAP shall be secured through Authority’s hydro self supply.

For the market power portion of RNY allocations, UCAP shall be secured through a combination of bilateral contracts, NYISO Automated Auctions, or any other means as determined to be most appropriate by the Authority.

4. Distribution Losses

Distribution losses of the local electric utility have been accounted for in the base rates. If deemed necessary during an annual RNY pricing process the Authority will make appropriate adjustments to the distribution loss component of the rate to appropriately compensate for distribution losses of the local electric utility.

5. Market Energy

RNY Blended base rates include Market Energy costs associated with market purchase price estimates made by Authority on behalf of the RNY Power Program participant based on current and anticipated market conditions. Authority will procure market energy using short and long-term financial hedging and/or short and long-term purchases, including purchases from the NYISO Day-Ahead Market and/or Real-Time Market (each term defined in the NYISO Tariffs), as well as through Request for Proposal process as the Authority deems appropriate. These purchases will be made in whichever portfolio combination the Authority deems to be appropriate.

6. Risk for Bad Debt

The costs representing the risk for bad debt shall be included in the market power portion of the RNY Blended rate only. NYPA’s Preservation Power rate, which is used for both the RNY Hydro Only and RNY Blended rates, is inclusive of such costs.

Estimated Indicative RNY Rates for July 2012 - June 2013

Hydro Only Customers

Zones	Demand (\$/kw)	Energy (\$/kwh)
Zone A	7.32	0.01129
Zone B	7.32	0.01424
Zone C	7.32	0.01551
Zone D	7.32	0.01432
Zone E	7.32	0.01710
Zone F	7.32	0.02363
Zone G	7.32	0.02492
Zone H	7.32	0.02635
Zone I	7.32	0.02578
Zone J	7.32	0.03280
Zone K	7.32	0.03844

Blended Customers

Zones	Demand (\$/kw)	Energy (\$/kwh)
Zone A	3.66	0.02915
Zone B	3.66	0.03224
Zone C	3.66	0.03346
Zone D	3.66	0.03225
Zone E	3.66	0.03508
Zone F	3.66	0.04176
Zone G	3.66	0.04306
Zone H	3.66	0.04569
Zone I	3.66	0.04385
Zone J	3.66	0.05151
Zone K	3.66	0.05660

October 25, 2011
Exhibit “6-A”

INVESTMENT POLICY STATEMENT

FOR

POWER AUTHORITY OF THE STATE OF NEW YORK

OTHER POST-EMPLOYMENT BENEFITS TRUST

Amended: October 25, 2011

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Background

The Power Authority of the State of New York (the “Authority”) has established a Trust fund, known as the Power Authority of the State of New York Other Post-Employment Benefits Trust (the “Trust”). This Trust provides medical, prescription drug, life and other long-term benefits for those employees who meet the age and service requirements outlined in Attachment A of the Trust Agreement. The Trust consists of contributions from the Power Authority of the State of New York. The Power Authority of the State of New York will oversee certain policies and procedures related to the operation and administration of the Trust.

Purpose

The purpose of this Investment Policy Statement (the “Policy”) is to assist the Authority in effectively supervising, monitoring and evaluating the investment of assets of the Trust. A thorough investment program is defined throughout this document to achieve the following:

1. Document the Authority’s investment objectives, performance expectations and investment guidelines for Trust assets.
2. Establish an appropriate investment strategy for managing all Trust assets, including an investment time horizon, risk tolerance ranges and asset allocation. The goal of this strategy is to provide sufficient diversification and overall return over the long-term time horizon of the Trust.
3. Establish investment guidelines to control overall risk and liquidity, within the agreed upon investment strategy.
4. Establish periodic performance reporting requirements that will effectively monitor investment results and ensure that the investment policy is being followed.
5. Comply with all fiduciary, prudence, due diligence and legal requirements for Trust assets.

The Authority has arrived at this Policy through careful study of the returns and risks associated with alternative investment strategies in relation to the current and projected liabilities of the Trust. This Policy has been chosen as the most appropriate policy for achieving the financial objectives of the Trust which are defined in the objectives of this Policy.

Statement of Objectives

In defining the objectives of the Trust, the Authority has carefully reviewed its current and projected financial obligations as well as the risk and return relationships included in various asset allocation strategies. Based on these considerations, the Trust objectives are:

1. To invest assets of the Trust in a manner consistent with the fiduciary standards of State of New York, namely: (a) all transactions undertaken must be for the sole interest of Trust participants and their beneficiaries and to provide maximum benefits and defray reasonable expenses in a prudent manner, and (b) assets are to be diversified in order to minimize the impact of large losses in individual investments.
2. To provide for the funding and anticipated withdrawals on a continuing basis.
3. To conserve and enhance the capital value of the Trust in real terms through asset appreciation and income generation, while maintaining a moderate investment risk profile.
4. To minimize principal fluctuations over the investment cycle (three to five years).
5. To achieve a long-term level of return commensurate with contemporary economic conditions and equal to or exceeding the investment objective set forth in the policy.

While there can be no assurance that these objectives will be realized, the Authority believes that the likelihood of their realization is reasonably high based upon this Policy.

Investment Guidelines

Time Horizon

The Trust's objectives are based on a 20-year investment horizon so that interim fluctuations should be viewed with appropriate perspective. The Authority has adopted a long-term investment horizon such that the chances and duration of investment losses are carefully weighed against the long-term potential for appreciation of assets.

Diversification

In general, the Trust will hold between 6 and 12 months of protected liquidity needs for benefit payments and expenses in cash. The remaining assets will be invested.

Investments shall be diversified with the intent to minimize the risk of investment losses. Consequently, the total portfolio will be constructed and maintained to provide prudent diversification with regard to the concentration of holdings in individual issues, issuers, countries, governments or industries.

Asset Allocation

The Authority believes that to achieve the greatest likelihood of meeting Trust objectives and the best balance between risk and return for optimal diversification, the Trust should allocate assets in accordance with the targets for each asset class as follows:

<u>Asset Class</u>	<u>Asset Weightings</u>	
	<u>Range</u>	<u>Target</u>
Domestic Equity	37% - 47%	42%
International Equity	14% - 24%	19%
Other Equity	1% - 11%	6%
Fixed Income	25% - 35%	30%
Cash Equivalent	0% - 10%	3%

The investment managers shall have discretion to temporarily invest a portion of the assets in cash reserves when they deem it appropriate. However, the managers will be evaluated against their peers on the performance of the total funds under their direct management.

Rebalancing Philosophy

The asset allocation range established by this investment policy represents a long-term perspective. As such, rapid unanticipated market shifts or changes in economic conditions may cause the asset mix to fall outside the policy range. When these divergences occur, the investment consultant may recommend to the Authority to rebalance the asset mix to its appropriate targets and ranges. Similarly, if the cash requirement to handle liquidity needs falls to a level where near term distributions (over the following three months or less) cannot be met and no contributions are anticipated, the investment consultant may recommend to the Authority to rebalance the trust to its appropriate targets and ranges.

When the investment consultant is notified of new contributions by the Trust custodian, the investment consultant will review the Trust allocation and recommend to the Authority to fill the liquidity allocation first and the remaining investment allocations last.

Risk Tolerances

The Authority recognizes that the objectives of the Trust cannot be achieved without incurring a certain amount of principal volatility. The Trust will be managed in a style that seeks to minimize principal fluctuations over the established time horizon and that is consistent with the Trust's stated objectives.

Performance Expectations

Over the long-term, a rolling five year period, the investment objectives for this portfolio shall be to achieve an average total annual rate of return that is equal to or greater than the Plan's stated 7% actuarial assumption. The Authority acknowledges that actual returns may vary significantly from these targets on a year to year basis.

Selection of Investment Managers

The Authority, with the assistance of its independent investment consultant, shall select appropriate investment managers to manage the assets of the Trust. Managers must meet the following criteria:

- The investment manager must be a bank, insurance company, or investment adviser as defined by the Investment Advisers Act of 1940.
- The investment manager must provide CFA Institute (Formerly Association for Investment Management and Research) compliant historical quarterly performance numbers calculated on a time-weighted basis, based on a composite of all fully discretionary accounts of similar investment style and reported gross of fees.
- The investment manager must provide detailed information on history of the firm, key personnel, key clients, fee schedule (including most favored nation clauses), and support personnel. This information can be a copy of a recent Request for Proposal (RFP) completed by the manager.
- The investment manager must clearly articulate the investment strategy that will be followed and document that the strategy has been successfully adhered to over time.

Guidelines for Portfolio Holdings

Equities

Investment in common and preferred stocks shall be limited to securities of domestic (corporations incorporated in the United States) or foreign corporations listed on the New York Stock Exchange, American Stock Exchange, National Association of Securities Dealers Automated Quotation system or other globally recognized exchanges. Investments in American Depository Receipts and publicly traded Real Estate Investment Trusts are also permitted. Investments in non-dollar denominated equities are prohibited.

Domestic Equity - Not more than 5% of the total stock portfolio valued at market may be invested in the common stock of any one corporation. Ownership of the shares of one company shall not exceed two (2%) percent of those outstanding. No individual "sector", as defined by the Global Industry Classification Standard (GICS[®]), shall exceed the greater of 20% of stock valued at market or 125% of the benchmark allocation. Other than these constraints, there are no quantitative guidelines suggested as to issues, industry or individual security diversification. However, prudent diversification standards should be developed and maintained by the investment manager(s).

In order to maintain an effective money management structure that is style neutral, the large capitalization growth equity portion of the investment portfolio shall not exceed the large capitalization value equity portion of the portfolio by more than a two-to-one ratio. Conversely, value shall not exceed growth by the same ratio. This same relationship should be followed for the portfolio's small capitalization equity investment managers as well.

International Equities - Not more than 5% of the total equity portfolio valued at market may be invested in the common equity of any one corporation. Ownership of the shares of one company shall not exceed 2% of those outstanding. No individual "sector", as defined by GICS, shall exceed the greater of 20% of equity valued at market or 125% of the benchmark allocation. The overall non-U.S. equity allocation should include a diverse global mix that is comprised of the equity of companies from multiple regions and sectors. The emerging markets exposure, as defined by Morgan Stanley Capital International Inc. ("MSCI"), should be limited to 35% of the non-U.S. portion of the portfolio.

REIT

Equity real estate investment assets will be held only in diversified Pooled Vehicles, primarily holding Real Estate Investment Trusts and servicing companies.

Fixed Income

Fixed income investments shall generally be high quality, marketable securities with a preponderance of the investments in (1) U.S. Treasury, federal agencies and U.S. Government guaranteed obligations, (2) investment grade municipal issues, 3) domestic or international investment grade corporate issues including convertibles, and 4) international sovereign debt. Additional investment is allowable in the high yield sector (credit rating below BBB-) where diversification against domestic interest rate changes is warranted and/or the yield spread adequately compensates for the additional risk.

Fixed income securities of any one issuer shall not exceed 5% of the total bond portfolio at time of purchase. This does not apply to issues of the U.S. Treasury or other Federal Agencies.

The overall rating of the fixed income assets shall be at least "A", according to one of the three rating agencies (Fitch, Moody's or Standard & Poor's). In cases where the yield spread adequately compensates for additional risk, securities where two of the three rating agencies (Fitch, Moody's or Standard & Poor's) have assigned ratings of Baa3 or BBB- ratings or below (high yield), can be purchased up to a maximum of 20% of total market value of fixed income securities.

Active bond management is encouraged and may require transactions that will temporarily lower the return or change the maturity of the portfolio in anticipation of market changes. Holdings of individual securities should be liquid so as not to incur unnecessary transaction costs.

Cash Equivalents

Cash equivalent reserves shall consist of cash instruments having a quality rating of A-1, P-1 or higher, as established by Moody's or Standard & Poor's. Bankers' acceptances, certificates of deposit and savings accounts must be made of United States banks or financial institutions, or foreign branches of United States banks, or United States branches of foreign banks, which are federally insured with unrestricted capital of at least \$50 million. Short-term corporate obligations must be rated A or better by Fitch, Moody's or Standard & Poor's.

Pooled Vehicles

The diversification restrictions for individual stocks and fixed income securities purchased and held in the total portfolio shall not apply to similar investment instruments held in a commingled fund or a SEC registered mutual fund specifically approved by the Authority. Every effort shall be made, to the extent practical, prudent and appropriate, to select commingled funds and/or mutual funds that have investment objectives and policies that are consistent with this Policy. However, given the nature of commingled funds and mutual funds, it is recognized that there may be deviations between this Policy and the objectives of these pooled vehicles. Any commingled fund(s) and/or mutual fund(s) approved by the Authority shall first be reviewed and recommended by the Authority's independent investment consultant and shall be eligible for inclusion in the total portfolio as long as it is in compliance with the Investment Company Act of 1940's diversification requirement.

Prohibited Securities

The following securities and transactions are not authorized and shall not be purchased: letter stock and other unregistered securities, commodities or commodity contracts, short sales, margin transactions, private placements (with the exception of Rule 144A securities); derivatives, options or futures for the purpose of portfolio leveraging are also prohibited. Neither real estate equity nor natural resource properties such as oil, gas or timber may be held except by purchase of publicly traded securities or pooled investment vehicles. The purchase of collectibles is also prohibited.

Safekeeping

All securities shall be held by a custodian appointed by the Authority for safekeeping. The custodian shall produce statements at least quarterly listing the name and value of all assets held, and the dates and nature of all transactions. Assets of the Trust held as liquidity or investment reserves shall, at all times, be invested in interest-bearing accounts.

Control Procedures

Independent Investment Consultant

The Authority will appoint a consultant to assist them in the investment process and maintaining their compliance to this Policy. The investment consultant must be independent and registered in good standing with the Securities and Exchange Commission.

Review of Investment Objectives

The independent investment consultant shall review annually the appropriateness of the Policy for achieving the Trust's stated objectives. It is not expected that the Policy will change frequently. In particular, short-term changes in the financial markets should not require an adjustment in the investment policy.

Review of Investment Performance

The independent investment consultant shall report on a quarterly basis to the Authority to review the total Trust investment performance. In addition, the independent investment consultant will be responsible for keeping the Authority advised of any material change in all investment managers' personnel, investment strategy, and other pertinent information potentially affecting performance of all investments.

The independent investment consultant shall compare the investment results on a quarterly basis to appropriate benchmarks, as well as market index returns in both equity and debt markets. Examples of benchmarks and indexes that will be used include the S&P 500 Index for large cap equities, Russell 2000 Index for small cap equities, MSCI Europe, Australia, and Far East Index (EAFE) for international equities, Barclay's Capital Aggregate Bond Index for fixed income securities, and the U.S. 91 Day T-Bill Index for cash equivalents.

Voting of Proxies

Voting of proxy ballots shall be for the exclusive benefit of the Trust. Unless the Authority provides information on how to vote a proxy, the investment managers shall vote the proxies in accordance with this policy on all shareholder issues. Proxies must be intelligently voted in a manner that best serves the interest of the participants and beneficiaries of the Trust. Where the Authority has retained an investment manager(s), the Authority will delegate to the investment manager(s) the authority to vote the proxies. The Authority delegates this authority subject to the understanding that the investment manager(s) in voting the proxies will consider only those factors that may affect the value of the Trust's investment and not subordinate the interests of the participants and beneficiaries to unrelated objectives. The Authority will, in addition to monitoring the investment manager(s) with respect to the management of Trust assets, monitor the decisions made and actions taken with regard to proxy voting decisions. The Authority will require the investment manager(s) to maintain accurate records as to

proxy voting and report annually to the Authority a summary of all proxy voting decisions made by the investment manager(s) on behalf of the Trust. Investment manager(s) are prohibited from abstaining in voting proxies. Investment manager(s) are expected to be aware of corporate provisions that may adversely affect stockholdings, including but not limited to “golden parachutes,” “super majorities,” “poison pills,” “fair price” provisions, staggered boards of directors, and other tactics. Proxies should be vigorously voted with the interest of preserving or enhancing the security’s value.

The investment manager(s) of a commingled trust or mutual fund that holds the assets of the Trust along with assets of other funds with conflicting proxy voting policies must reconcile the conflicting policies to the extent possible, and, if necessary, to the extent legally permissible, vote the proxies to reflect the policies in proportion to each fund’s interest in the pooled fund.

Execution of Security Trades

The Authority expects that the purchase and sale of all Trust securities shall be made in a manner designed to receive the combination of best price and execution. All transactions are to be governed by negotiation to achieve “best execution” (best price net of commissions). The lowest commission rate need not mean “best execution.” Firms which offer research services may be given preference as long as the principle of “best realized price” and the investment manager(s)’s option to “pay up” for research are compatible.

Adoption of Investment Policy Statement

This Policy is not immutable, but any changes or exceptions to it will be in writing and delivered to each investment manager.

Approved by the Power Authority of the State of New York:

Title

Date

October 25, 2011
Exhibit “6-B”

INVESTMENT POLICY STATEMENT

FOR

POWER AUTHORITY OF THE STATE OF NEW YORK

OTHER POST-EMPLOYMENT BENEFITS TRUST

Amended: October 25, 2011

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Background

The Power Authority of the State of New York (the “Authority”) has established a Trust fund, known as the Power Authority of the State of New York Other Post-Employment Benefits Trust (the “Trust”). This Trust provides medical, prescription drug, life and other long-term benefits for those employees who meet the age and service requirements outlined in Attachment A of the Trust Agreement. The Trust consists of contributions from the Power Authority of the State of New York. The Power Authority of the State of New York will oversee certain policies and procedures related to the operation and administration of the Trust.

Purpose

The purpose of this Investment Policy Statement (the “Policy”) is to assist the Authority in effectively supervising, monitoring and evaluating the investment of assets of the Trust. A thorough investment program is defined throughout this document to achieve the following:

1. Document the Authority’s investment objectives, performance expectations and investment guidelines for Trust assets.
2. Establish an appropriate investment strategy for managing all Trust assets, including an investment time horizon, risk tolerance ranges and asset allocation. The goal of this strategy is to provide sufficient diversification and overall return over the long-term time horizon of the Trust.
3. Establish investment guidelines to control overall risk and liquidity, within the agreed upon investment strategy.
4. Establish periodic performance reporting requirements that will effectively monitor investment results and ensure that the investment policy is being followed.
5. Comply with all fiduciary, prudence, due diligence and legal requirements for Trust assets.

The Authority has arrived at this Policy through careful study of the returns and risks associated with alternative investment strategies in relation to the current and projected liabilities of the Trust. This Policy has been chosen as the most appropriate policy for achieving the financial objectives of the Trust which are defined in the objectives of this Policy.

Statement of Objectives

In defining the objectives of the Trust, the Authority has carefully reviewed its current and projected financial obligations as well as the risk and return relationships included in various asset allocation strategies. Based on these considerations, the Trust objectives are:

1. To invest assets of the Trust in a manner consistent with the fiduciary standards of State of New York, namely: (a) all transactions undertaken must be for the sole interest of Trust participants and their beneficiaries and to provide maximum benefits and defray reasonable expenses in a prudent manner, and (b) assets are to be diversified in order to minimize the impact of large losses in individual investments.
2. To provide for the funding and anticipated withdrawals on a continuing basis.
3. To conserve and enhance the capital value of the Trust in real terms through asset appreciation and income generation, while maintaining a moderate investment risk profile.
4. To minimize principal fluctuations over the investment cycle (three to five years).
5. To achieve a long-term level of return commensurate with contemporary economic conditions and equal to or exceeding the investment objective set forth in the policy.

While there can be no assurance that these objectives will be realized, the Authority believes that the likelihood of their realization is reasonably high based upon this Policy.

Investment Guidelines

Time Horizon

The Trust's objectives are based on a 20-year investment horizon so that interim fluctuations should be viewed with appropriate perspective. The Authority has adopted a long-term investment horizon such that the chances and duration of investment losses are carefully weighed against the long-term potential for appreciation of assets.

Diversification

In general, the Trust will hold between 6 and 12 months of protected liquidity needs for benefit payments and expenses in cash. The remaining assets will be invested.

Investments shall be diversified with the intent to minimize the risk of investment losses. Consequently, the total portfolio will be constructed and maintained to provide prudent diversification with regard to the concentration of holdings in individual issues, issuers, countries, governments or industries.

Asset Allocation

The Authority believes that to achieve the greatest likelihood of meeting Trust objectives and the best balance between risk and return for optimal diversification, the Trust should allocate assets in accordance with the targets for each asset class as follows:

<u>Asset Class</u>	<u>Asset Weightings</u>	
	<u>Range</u>	<u>Target</u>
Domestic Equity	37% - 47%	42%
International Equity	14% - 24%	19%
Other Equity	1% - 11%	6%
Fixed Income	25% - 35%	30%
Cash Equivalent	0% - 10%	3%

The investment managers shall have discretion to temporarily invest a portion of the assets in cash reserves when they deem it appropriate. However, the managers will be evaluated against their peers on the performance of the total funds under their direct management.

Rebalancing Philosophy

The asset allocation range established by this investment policy represents a long-term perspective. As such, rapid unanticipated market shifts or changes in economic conditions may cause the asset mix to fall outside the policy range. When these divergences occur, the investment consultant may recommend to the Authority to rebalance the asset mix to its appropriate targets and ranges. Similarly, if the cash requirement to handle liquidity needs falls to a level where near term distributions (over the following three months or less) cannot be met and no contributions are anticipated, the investment consultant may recommend to the Authority to rebalance the trust to its appropriate targets and ranges.

When the investment consultant is notified of new contributions by the Trust custodian, the investment consultant will review the Trust allocation and recommend to the Authority to fill the liquidity allocation first and the remaining investment allocations last.

Risk Tolerances

The Authority recognizes that the objectives of the Trust cannot be achieved without incurring a certain amount of principal volatility. The Trust will be managed in a style that seeks to minimize principal fluctuations over the established time horizon and that is consistent with the Trust's stated objectives.

Performance Expectations

Over the long-term, a rolling five year period, the investment objectives for this portfolio shall be to achieve an average total annual rate of return that is equal to or greater than the Plan's stated 7% actuarial assumption. The Authority acknowledges that actual returns may vary significantly from these targets on a year to year basis.

Selection of Investment Managers

The Authority, with the assistance of its independent investment consultant, shall select appropriate investment managers to manage the assets of the Trust. Managers must meet the following criteria:

- The investment manager must be a bank, insurance company, or investment adviser as defined by the Investment Advisers Act of 1940.
- The investment manager must provide CFA Institute (Formerly Association for Investment Management and Research) compliant historical quarterly performance numbers calculated on a time-weighted basis, based on a composite of all fully discretionary accounts of similar investment style and reported gross of fees.
- The investment manager must provide detailed information on history of the firm, key personnel, key clients, fee schedule (including most favored nation clauses), and support personnel. This information can be a copy of a recent Request for Proposal (RFP) completed by the manager.
- The investment manager must clearly articulate the investment strategy that will be followed and document that the strategy has been successfully adhered to over time.

Guidelines for Portfolio Holdings

Equities

Investment in common and preferred stocks shall be limited to securities of domestic (corporations incorporated in the United States) or foreign corporations listed on the New York Stock Exchange, American Stock Exchange, National Association of Securities Dealers Automated Quotation system or other globally recognized exchanges. Investments in American Depositary Receipts and publicly traded Real Estate Investment Trusts are also permitted. Investments in non-dollar denominated equities are prohibited.

Domestic Equity - Not more than 5% of the total stock portfolio valued at market may be invested in the common stock of any one corporation. Ownership of the shares of one company shall not exceed two (2%) percent of those outstanding. No individual "sector", as defined by the Global Industry Classification Standard (GICS[®]), shall exceed the greater of 20% of stock valued at market or 125% of the benchmark allocation. Other than these constraints, there are no quantitative guidelines suggested

as to issues, industry or individual security diversification. However, prudent diversification standards should be developed and maintained by the investment manager(s).

In order to maintain an effective money management structure that is style neutral, the large capitalization growth equity portion of the investment portfolio shall not exceed the large capitalization value equity portion of the portfolio by more than a two-to-one ratio. Conversely, value shall not exceed growth by the same ratio. This same relationship should be followed for the portfolio's small capitalization equity investment managers as well.

International Equities - Not more than 5% of the total equity portfolio valued at market may be invested in the common equity of any one corporation. Ownership of the shares of one company shall not exceed 2% of those outstanding. No individual "sector", as defined by GICS, shall exceed the greater of 20% of equity valued at market or 125% of the benchmark allocation. The overall non-U.S. equity allocation should include a diverse global mix that is comprised of the equity of companies from multiple regions and sectors. The emerging markets exposure, as defined by Morgan Stanley Capital International Inc. ("MSCI"), should be limited to 35% of the non-U.S. portion of the portfolio.

REIT

Equity real estate investment assets will be held only in diversified Pooled Vehicles, primarily holding Real Estate Investment Trusts and servicing companies.

Fixed Income

Fixed income investments shall generally be high quality, marketable securities with a preponderance of the investments in (1) U.S. Treasury, federal agencies and U.S. Government guaranteed obligations, (2) investment grade municipal issues, 3) domestic or international investment grade corporate issues including convertibles, and 4) international sovereign debt. Additional investment is allowable in the high yield sector (credit rating below BBB-) where diversification against domestic interest rate changes is warranted and/or the yield spread adequately compensates for the additional risk.

Fixed income securities of any one issuer shall not exceed 5% of the total bond portfolio at time of purchase. This does not apply to issues of the U.S. Treasury or other Federal Agencies.

The overall rating of the fixed income assets shall be at least "A", according to one of the three rating agencies (Fitch, Moody's or Standard & Poor's). In cases where the yield spread adequately compensates for additional risk, securities where two of the three rating agencies (Fitch, Moody's or Standard & Poor's) have assigned ratings of Baa3 or BBB- ratings or below (high yield), can be purchased up to a maximum of 20% of total market value of fixed income securities.

Active bond management is encouraged and may require transactions that will temporarily lower the return or change the maturity of the portfolio in anticipation of market changes. Holdings of individual securities should be liquid so as not to incur unnecessary transaction costs.

Cash Equivalents

Cash equivalent reserves shall consist of cash instruments having a quality rating of A-1, P-1 or higher, as established by Moody's or Standard & Poor's. Bankers' acceptances, certificates of deposit and savings accounts must be made of United States banks or financial institutions, or foreign branches of United States banks, or United States branches of foreign banks, which are federally insured with unrestricted capital of at least \$50 million. Short-term corporate obligations must be rated A or better by Fitch, Moody's or Standard & Poor's.

Pooled Vehicles

The diversification restrictions for individual stocks and fixed income securities purchased and held in the total portfolio shall not apply to similar investment instruments held in a commingled fund or a SEC registered mutual fund specifically approved by the Authority. Every effort shall be made, to the extent practical, prudent and appropriate, to select commingled funds and/or mutual funds that have investment objectives and policies that are consistent with this Policy. However, given the nature of commingled funds and mutual funds, it is recognized that there may be deviations between this Policy and the objectives of these pooled vehicles. Any commingled fund(s) and/or mutual fund(s) approved by the Authority shall first be reviewed and recommended by the Authority's independent investment consultant and shall be eligible for inclusion in the total portfolio as long as it is in compliance with the Investment Company Act of 1940's diversification requirement.

Prohibited Securities

The following securities and transactions are not authorized and shall not be purchased: letter stock and other unregistered securities, commodities or commodity contracts, short sales, margin transactions, private placements (with the exception of Rule 144A securities); derivatives, options or futures for the purpose of portfolio leveraging are also prohibited. Neither real estate equity nor natural resource properties such as oil, gas or timber may be held except by purchase of publicly traded securities or pooled investment vehicles. The purchase of collectibles is also prohibited.

Safekeeping

All securities shall be held by a custodian appointed by the Authority for safekeeping. The custodian shall produce statements at least quarterly listing the name and value of all assets held, and the dates and nature of all transactions. Assets of the Trust held as liquidity or investment reserves shall, at all times, be invested in interest-bearing accounts.

Control Procedures

Independent Investment Consultant

The Authority will appoint a consultant to assist them in the investment process and maintaining their compliance to this Policy. The investment consultant must be independent and registered in good standing with the Securities and Exchange Commission.

Review of Investment Objectives

The independent investment consultant shall review annually the appropriateness of the Policy for achieving the Trust's stated objectives. It is not expected that the Policy will change frequently. In particular, short-term changes in the financial markets should not require an adjustment in the investment policy.

Review of Investment Performance

The independent investment consultant shall report on a quarterly basis to the Authority to review the total Trust investment performance. In addition, the independent investment consultant will be responsible for keeping the Authority advised of any material change in all investment managers' personnel, investment strategy, and other pertinent information potentially affecting performance of all investments.

The independent investment consultant shall compare the investment results on a quarterly basis to appropriate benchmarks, as well as market index returns in both equity and debt markets. Examples of benchmarks and indexes that will be used include the S&P 500 Index for large cap equities, Russell 2000 Index for small cap equities, MSCI Europe, Australia, and Far East Index (EAFE) for international equities, Barclay's Capital Aggregate Bond Index for fixed income securities, and the U.S. 91 Day T-Bill Index for cash equivalents.

Voting of Proxies

Voting of proxy ballots shall be for the exclusive benefit of the Trust. Unless the Authority provides information on how to vote a proxy, the investment managers shall vote the proxies in accordance with this policy on all shareholder issues. Proxies must be intelligently voted in a manner that best serves the interest of the participants and beneficiaries of the Trust. Where the Authority has retained an investment manager(s), the Authority will delegate to the investment manager(s) the authority to vote the proxies. The Authority delegates this authority subject to the understanding that the investment manager(s) in voting the proxies will consider only those factors that may affect the value of the Trust's investment and not subordinate the interests of the participants and beneficiaries to unrelated objectives. The Authority will, in addition to monitoring the investment manager(s) with respect to the management of Trust assets, monitor the decisions made and actions taken with regard to proxy voting

decisions. The Authority will require the investment manager(s) to maintain accurate records as to proxy voting and report annually to the Authority a summary of all proxy voting decisions made by the investment manager(s) on behalf of the Trust. Investment manager(s) are prohibited from abstaining in voting proxies. Investment manager(s) are expected to be aware of corporate provisions that may adversely affect stockholdings, including but not limited to “golden parachutes,” “super majorities,” “poison pills,” “fair price” provisions, staggered boards of directors, and other tactics. Proxies should be vigorously voted with the interest of preserving or enhancing the security’s value.

The investment manager(s) of a commingled trust or mutual fund that holds the assets of the Trust along with assets of other funds with conflicting proxy voting policies must reconcile the conflicting policies to the extent possible, and, if necessary, to the extent legally permissible, vote the proxies to reflect the policies in proportion to each fund’s interest in the pooled fund.

Execution of Security Trades

The Authority expects that the purchase and sale of all Trust securities shall be made in a manner designed to receive the combination of best price and execution. All transactions are to be governed by negotiation to achieve “best execution” (best price net of commissions). The lowest commission rate need not mean “best execution.” Firms which offer research services may be given preference as long as the principle of “best realized price” and the investment manager(s)’s option to “pay up” for research are compatible.

Adoption of Investment Policy Statement

This Policy is not immutable, but any changes or exceptions to it will be in writing and delivered to each investment manager.

Approved by the Power Authority of the State of New York:

Title

Date